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(two briefings)

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 921245–2345]

Revisions to the Commerce Control List; Navigation and Avionics

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Commerce Control List (CCL) of the Export Administration Regulations (EAR) by removing Global Positioning Satellite (GPS) receiving equipment controlled by ECCNs 7A05A and 7A25B, and adding a note to ECCN 7A94F that clarifies which Global Positioning Satellite (GPS) receivers are under the jurisdiction of the Department of Commerce. All GPS receivers under the jurisdiction of Commerce are now controlled under ECCN 7A94F.

DATES: This rule is effective June 24, 1993. Comments must be received by July 26, 1993.

ADDRESSES: Nancy Crowe, Office of Technology and Policy Analysis, P.O. Box 273, Bureau of Export Administration, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Jerald Beiter, Office of Technology and Policy Analysis, Electronic Components Technical Center, Bureau of Export Administration, Telephone: (202) 482–1641.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1990, the President signed Executive Order 12735 on Chemical and Biological Weapons Proliferation, and directed various other export control measures including the removal from the USML of all items contained on the COCOM dual-use list, unless such removal would significantly jeopardize U.S. national security. To implement this part of the directive, a space technical working group was established, consisting of representatives from the Departments of State, Commerce, and Defense, as well as other U.S. government agencies. The group is empowered to recommend the transfer of commercial satellites and related articles identified by the COCOM Industrial List from the USML to the CCL.

On April 27, 1992, the Department of State published a final rule establishing a new Category XV on the USML for Spacecraft Systems and Associated Equipment. On January 16, 1992, State published a proposed rule on military GPS receivers, and followed with a final rule on September 9, 1992, that formally moved military GPS receivers into Category XV on the USML. That rule creates a new paragraph under Category XV that describes GPS receiving equipment specifically designed, modified or configured for military use. The GPS equipment that had been controlled by ECCN 7A05A and much of the equipment that had been controlled by ECCN 7A25B are now in Category XV of the USML. Any GPS equipment not meeting the definition of military GPS receiving equipment described in Category XV is considered commercial in nature. All commercial GPS receiving equipment is under the jurisdiction of the Department of Commerce, and is classified under ECCN 7A94F on the CCL.

This interim rule amends the EAR to clarify which GPS receiving equipment is under the jurisdiction of the Department of Commerce.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.).* These collections have been approved by the Office of Management and Budget under control numbers 0694–0005 and 0694–0010.

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

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close July 26, 1993. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available

for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 799—[AMENDED]

The authority citation for part 799 continues to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978); E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12730 of September 30, 1990 (55 FR 40373, October 2, 1990), as continued by Notice of September 25, 1992 (57 FR 44649, September 28, 1992); and E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992).

In Supplement No. 1 to § 799.1, Category 7 is amended by removing ECCNs 7A05A and 7A25B and by adding a Note directly following the Requirements sections of ECCN 7A94F, to read as follows:

7A94F Other navigation direction finding equipment, radar, airborne communication equipment, all aircraft inertial navigation systems, and other avionic equipment, including parts and components, n.e.s.

Requirements

Validated License Required: SZ, Iran, Syria and South African military and police.
Unit: $ value
Reason for Control: FP
GLV: $0
GCT: No
GFW: No

Note: Global Positioning Satellite receivers having the following characteristics are under the jurisdiction of the Department of State, Office of Defense Trade Controls:

a. Designed for encryption or decryption (e.g. Y-code) of GPS precise positioning service (PPS) signal;

b. Designed for producing navigation results above 60,000 feet altitude and at 1,000 knots velocity or greater;

c. Specifically designed or modified for use with a null-steering antenna or including a null-steering antenna designed to reduce or avoid jamming signals; or

d. Designed or modified for use with unmanned air vehicle systems capable of delivering at least a 500 kg payload to a range of at least 300 km. (GPS receivers designed or modified for use with military unmanned air vehicle systems with less capability are considered to be specially designed, modified or configured for military use and therefore covered under Category XV, paragraph (c), of the ITAR).

N.B.: Manufacturers or exporters of equipment under DOC jurisdiction are advised that the U.S. Government does not assure the availability of the GPS P-code for civil navigation.

Dated: June 21, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93–14923 Filed 6–23–93; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Civil Money Penalties

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to FDA officials by adding a new delegations section concerning the issuance of notices and orders relating to the administrative imposition of civil money penalties under various statutes.

EFFECTIVE DATE: June 24, 1993.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: In recent legislation, Congress has provided for the administrative imposition by FDA of civil money penalties as a means of law enforcement. This legislation has included the National Childhood Vaccine Injury Act of 1986, the Prescription Drug Marketing Act of 1988, the Safe Medical Devices Act of 1990, and the Generic Drug Enforcement Act of 1992. In this document, the authority to perform certain functions necessary to the implementation of the authority to impose civil money penalties is being redelegated from the Commissioner to the Deputy Commissioner for Operations, the Associate Commissioner for Regulatory Affairs, and the Directors and Deputy Directors of the Center for Devices and Radiological Health (CDRH), the Center for Drug Evaluation and Research (CDER), and the Center for Biologics Evaluation and Research (CBER). Accordingly, FDA is adding new § 5.99 to the regulations.

Further redelegation of authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the

Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.99 is added to subpart B to read as follows:

§ 5.99 Issuance of notices and orders relating to the administrative imposition of civil money penalties under various statutes.

(a) The Center Director and Deputy Director of the Center for Drug Evaluation and Research (CDER), the Center Director and Associate Director, Policy Coordination and Public Affairs of the Center for Biologics Evaluation and Research (CBER), and the Center Director and Deputy Director of the Center for Devices and Radiological Health (CDRH) are authorized to issue notices of opportunity for hearings pursuant to § 12.21(b) of this chapter in all administrative civil money penalties proceedings involving the jurisdiction of their respective centers.

(b) The Associate Commissioner for Regulatory Affairs is authorized to issue notices of hearing pursuant to § 12.35 of this chapter for all administrative civil money penalties proceedings.

(c) In all administrative civil money penalties proceedings, the Deputy Commissioner for Operations is authorized, pursuant to § 12.130 of this chapter, to issue the final decision for the Commissioner, which constitutes final agency action.

(d) In all administrative civil money penalties proceedings, the Deputy Commissioner for Operations is authorized to issue all orders denying hearings and granting summary judgment pursuant to § 12.28 of this chapter where such orders are issued prior to the issuance of the notice of hearing.

Dated: June 17, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–14836 Filed 6–23–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207, 213, 220, 221, 232, 241, 242, and 244

[Docket No. R–93–1662; FR–3224–I–01]

RIN 2502–AF64

Effect of Acquisition of Title by Mortgagee or the Secretary on a Title Insurance Policy

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule, request for public comment.

SUMMARY: This rule removes a provision in current HUD regulations requiring that any title insurance policy obtained in connection with the insurance of multifamily mortgages must provide that, upon acquisition of title by the mortgagee or the Secretary, "it will become an owner's policy running to the mortgagee or the Secretary, as the case may be" and substitutes the provision "it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be". The purpose of this rule is to remove a regulatory restriction and to adopt in its place a more efficient procedure.

DATES: Effective date: July 26, 1993. Comment due date: August 23, 1993.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Comments should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Gaines E. Hopkins, Managing Attorney, Multifamily Mortgage Division, Office of General Counsel, room 9228, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–4090, TDD (202) 708–3259. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Section 207.36 of Title 24 of the code of Federal Regulations requires a mortgagee to furnish a survey and a policy of title insurance or its equivalent as a prerequisite to the closing of an insured multifamily housing loan. Where a title policy is to be furnished, the regulation requires that the policy name the mortgagee and HUD as the insured and also provide that, upon acquisition of title by either the mortgagee or HUD, the policy will become an owner's policy running to either the mortgagee or HUD.

If a mortgage default occurs and a mortgagee elects to exercise its right to assign the mortgage to HUD, it must comply with 24 CFR 207.258(b)(4)(ii). This provision requires that all policies of title insurance or evidences of title submitted to HUD have the original title coverage extended to include the date of the assignment of the mortgage. If the mortgagee elects to foreclose on the mortgage itself, or if it accepts a deed-in-lieu of foreclosure from the mortgagor, the requirements set out in §§ 207.258(c)(8) and 207.258a apply. These sections provide that if title insurance was utilized at the time of endorsement, the mortgagee will be required to submit an owner's title policy in favor of HUD that is effective on the date that the project is conveyed to the Secretary. If, however, an abstract and attorney's opinion were originally accepted at the time of endorsement, they are again acceptable. It should be noted that the aforementioned regulations either are incorporated into, or have a counterpart in, all parts of Title 24 of the Code of Federal Regulations that are applicable to multifamily and health care mortgage insurance programs.

There are two basic title insurance policy formats, one for owners/mortgagors and a second for lenders/mortgagees. Each is used in both commercial and residential transactions. The standard title policies have been written and promulgated by the industry trade organization, American Land Title Association (ALTA), for use in all jurisdictions except for a few notable exceptions, such as New York and Texas, that by statute require a local variation. For the last two decades, HUD has accepted the 1970 ALTA format, and no other ALTA format under the aforesaid regulatory requirements, in those jurisdictions that do not otherwise require the use of a particular title policy. (In jurisdictions that mandate a particular format, HUD has deferred to state law and accepted the state-mandated format.)

Periodicially, ALTA has revised its approved standard title policy to provide for what it perceives as changing legal and market conditions. At the request of ALTA, HUD has

reviewed each new policy format to assess its positive or negative impact upon the specific title insurance needs of the Department. In 1987, ALTA published a new title policy that was reviewed and subsequently approved by HUD, but only upon the condition that, in multifamily and health care cases, title companies add an endorsement to the lender's policy providing that it will automatically "convert" to an owner's policy if HUD becomes the owner of the FHA-insured project as a result of foreclosure. The HUD Office of General Counsel expressed the opinion that a "conversion" endorsement is necessary to comply with the requirement in § 207.36(a)(1) "that upon acquisition of title by the mortgagee or the Secretary, [the title policy] will become an owner's policy * * *." This endorsement condition has been strongly resisted by ALTA and some of its individual corporate members, resulting in situations where it was only with considerable difficulty that title insurance was obtainable.

Title Industry Position

The title industry argues that a lender's policy cannot be "converted" to an owner's policy as HUD has requested and raises arguments relating to (1) distinctions between the two formats that bear directly upon the "value" of the coverage; (2) cost schedules that are on file with state insurance commissioners; (3) the unavailability of coverage to other mortgagees or private mortgage insurers; (4) the prior practice of FHA; (5) a different interpretation of the regulation; and (6) the opinion that either HUD or the lender should pay the entire cost of a new owner's policy. Inasmuch as HUD, by this rule, is removing the regulatory restriction, it is not necessary to set forth the relative merits and demerits of this industry position.

Current HUD Procedure

At present, HUD acquires title to a project pursuant to one of several procedures. The most common procedure is for the mortgagee to assign the mortgage to HUD when there is a default. As part of the assignment process, the mortgagee is required, at its own expense, to extend the coverage of the original mortgagee policy to include the time period between the dates of original endorsement for insurance and the assignment. This is usually accomplished by a limited title search and a "date-down" endorsement of the existing title policy, but may also be done through the purchase of an entirely new lender's policy. After assignment of a mortgage, if the default continues, it is HUD's policy to employ an attorney who practices in the jurisdiction where the project is located to act as a commissioner or trustee in the foreclosure. It is the responsibility of the foreclosure commissioner to perform a limited title search covering the time period between the assignment of the mortgage to HUD and the institution of proceedings under the Federal Foreclosure Act. Even though no title policy is obtained by HUD as a result of the foreclosure commissioner's findings and report, HUD would have the power to bring a malpractice action against the licensed attorney who acted as the foreclosure commissioner if the work product were flawed.

A lender also may elect not to assign, but to institute foreclosure proceedings on its own or to take title from the mortgagor by a deed-in-lieu of foreclosure and to convey title directly to HUD. After the lender obtains title to the project by means of foreclosure or a deed-in-lieu, it is entitled to transfer title directly to HUD. If the lender chooses to proceed in this manner, § 207.258a requires that it purchase, at its own expense, an owner's title policy "effective on or after the date of the recording of the conveyance to the Commissioner."

It should also be noted that section 207(k) of the National Housing Act and the implementing regulations also give HUD the option of either proceeding to foreclosure or taking a deed-in-lieu of foreclosure directly from the mortgagor, following the assignment of the project mortgage to the Secretary.

HUD Response

Title insurance is necessary in virtually all primary and secondary mortgage market transactions. Although individual title companies may still be willing to issue the 1970 ALTA lender's title policy on a case-by-case basis in those states where they are not forbidden by state regulation from doing so, the 1990 ALTA lender's policy format now represents the only title policy format that has the official approval of the title industry's trade association for use by title companies nationwide. The Department has determined that it is necessary to change its regulations so that the 1990 ALTA title policy format can be accepted by HUD for use in FHA-insured multifamily mortgage transactions.

The Department's regulations must be revised to remove the requirement that the Secretary, in every case, be issued an owner's title policy. HUD would retain the flexibility, however, to make such a determination on a case-by-case basis. Accordingly, in this rule HUD is revising 24 CFR 207.36(a)(1) and conforming other relevant sections by removing the phrase "it will become an owner's policy running to the mortgagee or the Secretary as the case may be," and substituting "it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be".

As a consequence of having removed the regulatory requirement in § 207.36 requiring the purchase of an owner's policy, HUD could either purchase an owner's title policy after acquisition of title, or HUD could choose to self-insure after acquisition of title. After this rule takes effect HUD will decide on a case-by-case basis either to purchase an owner's policy at its own expense, or to self-insure for the time period after acquisition of title.

II. Need for an Interim Rule

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment, in that prior public procedure is unnecessarily. The removal of the current regulatory requirement will not have adverse impact upon any party and will permit real estate transactions to go forward that are not being unnecessarily delayed because of confusion about the current regulatory provision.

III. Findings and Certifications

Regulatory Agenda

This rule was listed in the Department's Semiannual Agenda of Regulations published on April 26, 1993 (58 FR 24382, 24414) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major

increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before its publication and, by approving it, certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule effectively liberalizes title insurance requirements which must be met if a mortgage insurance claim is being made against HUD. Its impact on small entities will be minimal and any such impact will be beneficial.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule does not significantly change existing roles and relationships between federal, state and local governments in any of the programs to which it applies.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice does not have potential for significant impact on family formation, maintenance, and general well-being.

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 241

Energy conservation, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 244

Health facilities, Mortgage insurance, Reporting and recordkeeping requirements.

The Catalog of Federal Domestic Assistance Numbers are: 14.112, 14.126, 14.128, 14. 129, 14.134, 14.135, 14.138, 14.139 and 14.155.

Accordingly, chapter II, title 24 of the Code of Federal Regulations is amended as follows:

PART 207—MULTIFAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 207 is revised to read as follows:

Authority: 12 U.S.C. 1713, 1715b; 42 U.S.C. 3535(d). Sections 207.258 and 207.258b are also issued under 12 U.S.C. 1701z–11(e).

2. Paragraph (a) of § 207.36 is revised to read as follows:

§ 207.36 Title evidence.

(a) Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to the Commissioner, and a policy of title insurance covering the property, as provided in paragraph (a)(1) of this section. If, for reasons the Commissioner considers to be satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (a)(2), (3), or (4) of this section, as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of the title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 213 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

4. Paragraph (a) of § 213.44 is revised to read as follows:

§ 213.44 Title evidence.

(a) Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to the Commissioner, and a policy of title insurance covering the property, as provided in paragraph (a)(1) of this

section. If, for reasons the Commissioner considers to be satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (a)(2), (3), or (4) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of the title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

* * * * *

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENT AREAS

5. The authority citation for 24 CFR part 220 is revised to read as follows:

Authority: 12 U.S.C. 1713, 1715b, 1715k; 42 U.S.C. 3535(d).

6. The introductory text of the section and paragraph (a) of § 220.580 are revised to read as follows:

§ 220.580 Title evidence.

When the principal amount of the loan exceeds $40,000, the lender, without expense to the Commissioner, shall furnish to the Commissioner a policy of title insurance as provided in paragraph (a) of this section, or if the lender is unable to furnish the policy for reasons satisfactory to the Commissioner, the lender, without expense to the Commissioner, shall furnish such evidence of title as provided in paragraph (b) of this section as the Commissioner may require. The following are the requirements covering the title insurance and abstract of title:

(a) The policy of title insurance shall be issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the lender and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the lender or the Secretary, as the case may be.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

7. The authority citation for CFR part 221 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715*l*; 42 U.S.C. 3535(d). Section 221.544(a)(3) is also issued under 12 U.S.C. 1707(a).

8. Paragraph (a) of § 221.563 is revised to read as follows:

§ 221.563 Title evidence.

(a) Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to the Commissioner, and a policy of title insurance covering the property, as provided in paragraph (a)(1) of this section. If, for reasons the Commissioner considers to be satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (a)(2), (3), or (4) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Committee, it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be.

(2) An abstract of title satisfactory to the Commissioner, prepared by an abstract company or individual engaged in the business of preparing abstracts of title, accompanied by a legal opinion satisfactory to the Commissioner, as to the quality of the title, signed by an attorney at law experienced in the examination of titles.

(3) A Torrens or similar title certificate.

(4) Evidence of title conforming to the standards of a supervising branch of the Government of the United States of America, or of any State or Territory thereof.

* * * * *

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

9. The authority citation for 24 CFR part 232 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715w; 42 U.S.C. 3535(d).

10. The introductory text of the section and paragraph (a) of § 232.94 are revised to read as follows:

§ 232.94 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to the Commissioner, and a policy of title insurance covering the property, as provided in paragraph (a) of this section. If, for reasons the Commissioner considers to be satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b) or (c) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be.

* * * * *

11. The introductory text of the section and paragraph (a) of § 232.600 are revised to read as follows:

§ 232.600 Title evidence.

The lender, without expense to the Commissioner, shall furnish to the Commissioner a policy of title insurance, or if the lender is unable to

furnish a policy for reasons satisfactory to the Commissioner, the lender, without expense to the Commissioner, shall furnish an abstract of title. The following are the requirements covering the title insurance and abstract of title:

(a) The policy of title insurance shall be issued by a company, and in a form, satisfactory to the Commissioner. The policy shall name as the insureds the lender and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the lender or the Secretary, the policy of title insurance will continue to provide the same coverage as the original policy, and will run to the lender or the Secretary, as the case may be.

* * * * *

PART 241—SUPPLEMENTARY FINANCING FOR INSURED PROJECT MORTGAGES

12. The authority citation for 24 CFR part 241 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–6); 42 U.S.C. 3535(d).

13. Paragraph (a)(1) of § 241.85 is revised to read as follows:

§ 241.85 Title evidence.

(a) * * *

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the lender upon its acquisition of the property in extinguishment of the debt, and to the Secretary upon acquisition of the property pursuant to the loan insurance contract.

* * * * *

14. Paragraph (a)(1) of § 241.600 is revised to read as follows:

§ 241.600 Title evidence.

(a) * * *

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the lender upon its acquisition of the property in extinguishment of the debt, and to the Secretary upon acquisition of the property pursuant to the loan insurance contract.

* * * * *

15. Paragraph (a)(1) of § 241.1085 is revised to read as follows:

§ 241.1085 Title evidence.

(a) * * *

(1) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name the lender and the Secretary of Housing and Urban Development, as their respective interests may appear, as the insured. The policy shall provide that upon acquisition of title by the lender or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the lender upon its acquisition of the property in extinguishment of the debt, and to the Secretary upon acquisition of the property pursuant to the loan insurance contract.

* * * * *

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

16. The authority citation for 24 CFR part 242 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715n(f), 1715z–7; 42 U.S.C. 3535(d).

17. The introductory text of the section and paragraph (a) of § 242.91 are revised to read as follows:

§ 242.91 Title evidence.

Upon insurance of the mortgage, the mortgagee shall furnish to the Commissioner a survey of the mortgage property, satisfactory to the Commissioner, and a policy of title insurance covering the property, as provided in paragraph (a) of this section. If, for reasons the Commissioner considers to be satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b) or (c) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of title evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be.

* * * * *

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES (TITLE XI)

18. The authority citation for 24 CFR part 244 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1749aaa–5); 42 U.S.C. 3535(d).

19. The introductory text of the section and paragraph (a) of § 244.182 are revised to read as follows:

§ 244.182 Title evidence.

Upon insurance of the mortgage, the mortgage shall furnish to the Commissioner a survey of the mortgaged property, satisfactory to the Commissioner, and a policy of title insurance covering the property, as provided in paragraph (a) of this section. If, for reasons the Commissioner considers to be satisfactory, title insurance cannot be furnished, the mortgagee shall furnish such evidence of title in accordance with paragraph (b) or (c) of this section as the Commissioner may require. Any survey, policy of title insurance, or evidence of title required under this section shall be furnished without expense to the Commissioner. The types of evidence are:

(a) A policy of title insurance issued by a company and in a form satisfactory to the Commissioner. The policy shall name as the insureds the mortgagee and the Secretary of Housing and Urban Development, as their respective interests may appear. The policy shall provide that upon acquisition of title by the mortgagee or the Secretary, it will continue to provide the same coverage as the original policy, and will run to the mortgagee or the Secretary, as the case may be.

* * * * *

Dated: June 16, 1993.

Nicholas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–14628 Filed 6–23–93; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. H–004L]

RIN 1218–AB34

Occupational Exposure to Lead in Construction; Approval of Information Collection Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Interim final rule.

SUMMARY: On May 4, 1993, OSHA published a final interim rule governing occupational exposure to lead in the construction industry (58 FR 26590). This standard is designed to reduce the risks from exposure to lead. At that time, OSHA submitted the information collection requirements to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) of 1980. This document amends the May 4, 1993, Federal Register document to properly display the OMB control number.

DATES: This amendment became effective June 3, 1993. The OMB clearance expires May 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, room N3637, 200 Constitution Ave., NW., Washington, DC 20210 Telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION: The PRA provisions on information collection are triggered when an OSHA compliance officer asks an employer to produce certain records and, in some circumstances, when an employer goes out of business. The interim final lead in construction standard requires that OSHA have access to the employer's compliance plan (§ 1926.62(e)(2)(iv)), employee information and training records (§ 1926.62(l)(3)(ii)), as well as the employee's medical and monitoring records (§ 1926.62(n)(5)). If an employer ceases business operation and there is no successor employer to receive these records, the employer is required to notify the Director of the National Institute for Occupational Safety and Health at least three months prior to disposal of the records and transmit the records to the Director if he or she requests them § 1926.62(n)(6)(ii–iv).

Public reporting burden for collection of information is estimated to average .09 hour per employer to account for OSHA access to the employer's records, and transfer of records to NIOSH.

OMB reviewed the collection of information requirements for occupational exposure to lead in construction in accordance with the PRA, 44 U.S.C. 3501 et seq., and 5 CFR part 1320. On May 5, 1993, OMB approved all information requirements contained in 29 CFR 1926.62 under OMB clearance number 1218–0189 for three years, the maximum period authorized by the Paperwork Reduction Act.

Authority and Signature

This document was prepared under the direction of David C. Zeigler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is being taken under section 1031 of the Housing and Community Development Act of 1992 (section 1031, Title X, 106 Stat. 3924 (42 U.S.C. 4853)), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC this 16th day of June 1993.

David C. Zeigler,

Acting Assistant Secretary for Occupational Safety and Health.

Part 1926 of title 29 of the Code of Federal Regulations is hereby amended as follows:

PART 1926—[AMENDED]

1. The authority citation for subpart D of part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable.

Section 1926.59 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Section 1926.62 issued under Sec. 1031 of the Housing and Community Development Act of 1992 (Sec. 1031, Title X, 106 Stat. 3924 (42 U.S.C. 4853)).

2. In § 1926.62 by adding a parenthetical, as follows, at the end of the regulatory text:

§ 1926.62 Lead.

* * * * *

(Approved by the Office of Management and Budget under control number 1218–0189.)

[FR Doc. 93–14832 Filed 6–23–93; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program Amendment

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with one exception, of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 92–8) consists of revisions to Indiana's Surface Coal Mining and Reclamation Rules concerning ownership and control. The amendment defines what constitutes ownership and control of a surface coal mining operation; establishes actions to be taken to identify and correct improvidently issued permits; and establishes actions to be taken to resolve outstanding violations. The amendment is intended to revise the Indiana program to be no less effective than the corresponding Federal regulations.

EFFECTIVE DATE: June 24, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982 Federal Register (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are

identified at 30 CFR 914.10, 914.15, and 914.16.

II. Submission of the Amendment

By letter dated May 11, 1989 (Administrative Record No. IND–0644), OSM informed Indiana of changes to the Federal regulations concerning ownership and control which may necessitate changes in the Indiana program. Indiana responded on May 11, 1992 (Administrative Record No. IND–1080), when the Indiana Department of Natural Resources (DNR) submitted a proposed amendment to the Indiana program at 310 Indiana Administrative Code (IAC) 12–0.5, 12–3, and 12–6.

By letter dated August 26, 1992, OSM requested that Indiana correct and/or clarify certain provisions in the proposed amendment (Administrative Record No. IND–1137).

By letter dated November 13, 1992, Indiana submitted a revised amendment concerning ownership and control (Program Amendment 92–8) and requested that the amendment submitted on May 11, 1992 (Program Amendment 92–3), be withdrawn (Administrative Record No. IND–1167). OSM published a Notice of Withdrawal on December 2, 1992 (57 FR 57039).

By letter dated December 3, 1992 (Administrative Record No. IND–1178), Indiana submitted a change to the proposed amendments. AT 310 IAC 12–3–119.6(c), the citation which reads "IC 4–21.5–3–6" is revised to read "IC 4–21.5–3." Indiana explained that Indiana Code (IC) 4–21.5–3 is the proper reference for the initiation of appeal and will reduce the possibility of confusion. During the course of OSM's review of the proposed amendment, OSM informed Indiana of various concerns with the proposed amendments. Indiana responded to OSM concerns on April 23, 1993 (IND–1236), May 7, 1993 (IND–1243), and May 17, 1993 (IND–1245).

OSM announced receipt of the proposed amendment in the January 12, 1993, **Federal Register** (58 FR 3928), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on February 11, 1993. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

III. Director's Findings

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

A. Revisions to Indiana's Rules That Are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
310 IAC 12–0.5–72.5	Definition of MSHA	30 CFR 701.5.
310 IAC 12–0.5–80.5	Definition of Owned or Controlled and Owns and Controls	30 CFR 773.5.
310 IAC 12–3–19.1	Identification of Interests	30 CFR 778.13.
310 IAC 12–3–20	Compliance Information	30 CFR 778.14.
310 IAC 12–3–111(a), (a)(1)(A), and (b)(2)	Review of Permit Applications	30 CFR 773.15 (a)(1), (b)(2).
310 IAC 12–3–112(a), (a)(1), (a)(2), (a)(3)(A), (a)(4), (a)(5), (a)(7) through (12).	Permit Approval or Denial	30 CFR 773.15(c).
310 IAC 12–3–119.5(a), (b), (c), (d)(1) and (e)	Improvidently Issued Permits	30 CFR 773.20.
310 IAC 12–3–119.6(a), (a)(2) through (a)(4), and (c)	Improvidently Issued Permits—Rescission Procedures	30 CFR 773.21.
310 IAC 12–6–5 (a) through (g), and (i) through (j)	Cessation Orders	30 CFR 843.11 (a)(1), (3), (b)(1), (c)(4), (f).

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Indiana's proposed rules are no less effective than the Federal regulations.

B. Revisions to Indiana's Rules That Are Not Substantively Identical to the Corresponding Federal Regulations

Revisions which are not discussed below concern nonsubstantive wording changes, or revise paragraph notations to reflect organizational changes resulting from this amendment.

1. 310 IAC 12–3–111 Review of Permit Applications

(a) In subsection 111(a)(1)(B), the new language provides that if no informal conference is held under 310 IAC 12–3–109, or no hearing is held pursuant to IC 13–4.1–4–2(c), the permit decision shall be made within 180 days from the date the administratively complete application is submitted to the director of IDNR.

The Federal regulations at 30 CFR 773.15(a) provide that such permit decisions be made within a reasonable time set by the regulatory authority. The Director finds that the proposed 180-day period set by Indiana is reasonable and that the proposed provision is no less effective than the Federal regulations. The Director notes that there was a word missing and an extraneous word in the original submittal of this provision. These errors were corrected in the January 1, 1993, printing of the proposed rules in the Indiana Register.

(b) In subsection 111(a)(2), the new language provides that the applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all requirements of 310 IAC 12. The counterpart Federal regulations at 30 CFR 773.15(b)(2) provide that the applicant shall have the burden of establishing that the application is in compliance with the regulatory program. That is, to be no less effective than the Federal regulation, the applicant must be responsible for compliance not only with 310 IAC 12, but also with IC 13–4.1, and any other applicable Indiana statutes and rules, directives, policy memos, and code of regulations which, together, constitute the Indiana regulatory program.

In response to OSM's comments about this provision, Indiana will amend the proposed provision to require the applicant to establish that the application is in compliance with all requirements of 310 IAC 12 "and the approved regulatory program." The Director finds that with the added language quoted above, the provision is substantively identical to and no less effective than the counterpart Federal regulations. Therefore, the Director is approving 310 IAC 12–3–111(a)(2) with the understanding that Indiana will add, prior to final promulgation of this rule, that the applicant must establish that the application is in compliance with all requirements of the approved regulatory program.

(c) In subsection 111(b)(1), most of the pre-existing language has been deleted and replaced with new language. As

revised, subsection 111(b)(1) is substantively identical to the counterpart Federal regulations at 30 CFR 773.15(b)(1).

In the Federal regulations at 30 CFR 773.15(b)(1), OSM interprets the word "State" (as in "Federal and State failure-to-abate cessation orders," and "unabated Federal and State imminent harm cessation orders") to mean any and all State cessation orders, not just those issued by Indiana. In response to OSM's inquiry about Indiana's interpretation of its rule, Indiana stated that Indiana interprets the word "state" (non-capitalized) to mean all states. Therefore, with this interpretation of Indiana's use of the word "state," the Director finds that the proposed language is substantively identical to and no less effective than the Federal language at 30 CFR 773.15(b)(1).

The proposed language contains an apparent typographical error. The Indiana rule incorrectly identifies section 518 of SMCRA as "30 U.S.C. 1232." The correct codification of section 518 of SMCRA is "30 U.S.C. 1268." Indiana will correct this citation during final rule promulgation.

(d) The several general references to SMCRA which appear in the proposed rules and cite "30 U.S.C. 1232" are incorrect.

These incorrect citations appear at 310 IAC 12–3–111(b)(1) and (c), and 310 IAC 12–3–112(a) (1) and (2). The correct citation is " 30 U.S.C. 1201–1328." Indiana will correct these citations during final rule promulgation.

(e) At subsection 111(b)(1), Indiana provides the following:

> In the absence of a failure to abate cessation order, the director may presume that a notice of violation issued pursuant to rule 6 of this article or under a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties.

In litigation relating to 30 CFR 773.15(b)(1) before the U.S. District Court for the District of Columbia, the Secretary of the Department of the Interior advised the court that he would reconsider the issue of whether, in the absence of a failure to abate cessation order (FTACO), the regulatory authority may presume that a notice of violation (NOV) has been or is being corrected. *National Wildlife Federation* v. *Lujan*, No. 88–3117 (consolidated) (Memorandum of Points and Authorities in Support of the Federal Defendants Cross-Motion for Summary Judgment and In Opposition to Plaintiffs' Motion for Summary Judgment, pp. 89–90). Subsequently, on September 6, 1991, OSM published a proposed rule in the Federal Register (56 FR 45780) to revise 30 CFR 773.15(b)(1) to delete the presumption that, in the absence of a FTACO, an NOV has been or is being corrected. As a consequence of the proposed Federal rule, OSM is deferring its decision concerning the proposed language quoted above. The remainder of subsection 111(b)(1) is substantively identical to and no less effective than the Federal regulations and is approved.

(f) Subsection 111(c) has been amended to mirror the Federal regulations at 30 CFR 773.15(b)(3). In the course of its review of the proposed language, OSM asked Indiana if Indiana interprets the proposed rule such that the citation of SMCRA includes all State regulatory programs. (OSM interprets reference to "the Act" (SMCRA) at 30 CFR 773.15(b)(3) to include all State regulatory programs under SMCRA.) In response to OSM, Indiana stated that the IDNR interprets subsection 111(c) to require consideration of a demonstrated pattern of willful violations in states outside Indiana the same as it requires for demonstrated patterns of willful violations within Indiana. With this interpretation, subsection 111(c) is substantively identical to and no less effective than the Federal regulations at 30 CFR 773.15(b)(3). The Director finds, with the understandings noted above, and except as noted in 1(e) above, that 310 IAC 12–3–111 is substantively identical to and no less effective than the Federal regulations at 30 CFR 773.15.

2. 310 IAC 12–3–112 Permit Approval or Denial

(a) At subsection 112(a)(3)(B), the proposed new language provides that no permit application or application for a significant revision of a permit shall be approved unless the proposed permit area is shown not within an area designated as unsuitable for mining pursuant to 310 IAC 12–2–1. The new language is substantively identical to the counterpart Federal regulations at 30 CFR 773.15(c)(3)(ii) except that the proposed citation of 310 IAC 12–2–1 is not a complete counterpart to the Federal citation of "Parts 762, 764, and 769." To be no less effective than the Federal counterpart, Indiana should cite 310 IAC "12–2" rather than "12–2–1." In response to OSM's comments concerning this provision, Indiana stated that the citation will be corrected to read "310 IAC 12–2" as the final rule is promulgated. The Director finds, therefore, with the understanding that the citation of "12–2–1" will be changed prior to final promulgation to read "12–2," that the proposed language is no less effective than the Federal regulations.

(b) At subsection 112(a)(6), the proposed new language provides that no permit application or application for a significant revision of a permit shall be approved unless the applicant has demonstrated that any existing structure will comply with the applicable performance standards of 310 IAC 12–5–5 through 12–5–72, and 310 IAC 12–3–113. The new language is substantively identical to the counterpart Federal regulations at 30 CFR 773.15(c)(6) except that the proposed rule does not require compliance with the Indiana rules for underground mining as is required by the Federal rule. In response to OSM's comments concerning this provision, Indiana stated that the citation will be corrected during final promulgation. The Director finds, therefore, with the understanding that the rule will be changed prior to final promulgation to also require compliance with Indiana's underground mining rules, that the proposed language is no less effective than the Federal regulations.

3. 310 IAC 12–3–119.5(d)(2) Improvidently Issued Permits—General Procedures

This new provision is substantively identical to the counterpart Federal language at 30 CFR 773.20(b)(3) except that the proposed language uses the word "during" where the Federal language uses "under." Since use of the word "during" would render the rule less effective than the Federal language, OSM advised Indiana that the word "during" should be replaced by "under." In response, Indiana stated that the correction will be made during final rule promulgation. The Director finds, with the understanding that prior to final rule promulgation, the word "during" will be replaced with "under," that the proposed language is no less effective than the Federal regulations.

4. 310 IAC 12–3–119.6 Improvidently Issued Permits-Rescission Procedures

(a) At new subsection 119.6(a), Indiana provides that proposed suspension and rescission of a permit will become effective unless the permittee submits proof, and the Director of IDNR makes any of the findings provided at subsection 119.6(a) (1) through (4). The proposed language at subsection 119.6(a)(1) states the following: "[t]he finding of the director under section 119.5 (b) of this rule was erroneous." The proposed language is substantively identical to the Federal

regulations at 30 CFR 773.21(a)(1) except that the Indiana citation of 310 IAC 12–3–119.5 (b) is not the complete counterpart to the Federal citation of 30 CFR 773.20(b) which is cross-referenced at 30 CFR 773.21(a)(1). To be no less effective than the Federal regulations, the Indiana rule should cite 310 IAC 12–3–119.5 (b) through (d) as the counterpart to 30 CFR 773.20(b). In response to OSM's comments concerning this provision, Indiana stated that the provision will be changed to cite 310 IAC 12–3–119.5 (b) through (d). The Director finds, with the understanding that prior to final rule promulgation, the citation will be amended to read "119.5 (b) through (d)," that the proposed language is no less effective than the Federal regulations.

(b) At new subsection 119.6(b), the proposed language is substantively identical to the counterpart Federal regulations at 30 CFR 773.21(b) concerning cessation of operations, with one exception. Where the Federal regulation states "[a]fter permit suspension or rescission" the Indiana rule states "[a]fter permit cessation of rescission." In Indiana's rule, the word "cessation" should read "suspension." This change would render the Indiana language no less effective than 30 CFR 773.21(b) and would provide consistency with Indiana's rule at 310 IAC 12–3–119.6(a). In response to OSM's comment concerning this provision Indiana stated that the correct wording, "permit suspension or rescission," has been inserted and will be part of the rule when promulgated. The Director finds, with the understanding that the final promulgated language of this provision will read "permit suspension or rescission," that 310 IAC 12–3–119.6(b) is no less effective than the Federal Regulations.

5. 310 IAC 12–6–5 Cessation Orders

(a) The Indiana rule at subsection 5(h) does not provide for the termination of a cessation order written under 310 IAC 12–6–5(b) concerning lack of a valid permit. In response to OSM's comment concerning this provision, Indiana stated that the rule will be revised to provide for the termination of a cessation order under 310 IAC 12–6–5 (a) or (b). The Director finds, with the understanding that 310 IAC 12–6–5(h) will be revised prior to final promulgation to cite subsection "(a) or (b)" of 310 IAC 12–6–5, that 310 IAC 12–6–5(h) is no less effective than the Federal regulations at 30 CFR 843.11(f).

(b) In subsection 5(k), the new language is substantively identical to the counterpart Federal regulations at 30 CFR 773.17(i) with one exception. The Federal regulation applies to cessation orders issued under either 30 CFR 843.11 or the Indiana program. The Indiana provision at subsection 5(k), however, excludes cessation orders issued under 30 CFR 843.11 by referring only to cessation orders issued under 310 IAC 12–6–5. To be no less effective than the Federal regulations, 310 IAC 12–6–5(k) must apply to both Indiana and Federal cessation orders. In response to OSM's comments concerning this provision, Indiana stated that the provision will be revised to also include cessation orders issued under the Federal requirements at 30 CFR 843.11. The Director finds, with the understanding that 310 IAC 12–6–5(k) will be revised prior to final promulgation to include Federal cessation orders under 30 CFR 843.11, that 310 IAC 12–6–5(k) is no less effective than the Federal regulations at 773.17(i).

(c) In subsection 5(1), the new language is substantively identical to the Federal regulations at 30 CFR 843.11(g) with one exception. The proposed reference to subsection "(h)" of 310 IAC 12–6–5 is incorrect and should be changed to read "(k)." 310 IAC 12–6–5(k) is the counterpart to 30 CFR 773.17(i) which is cited in the Federal regulation. In response to OSM's comment, Indiana stated that this error will be corrected during final rule promulgation. The Director finds, with the understanding that prior to final rule promulgation, the reference to subsection "(h)" will be changed to "(k)," that 310 IAC 12–6–5(1) is no less effective than 30 CFR 843.11(g).

6. 310 IAC 12–3–19 Identification of Interests

Indiana has repealed this section and replaced it with 310 IAC 12–3–19.1 concerning identification of interests. As noted above in the Director's findings at A., the proposed Indiana rules at 310 IAC 12–3–19.1 are identical in meaning and no less effective than the corresponding Federal regulations at 30 CFR 778.13. Therefore, the Director finds the deletion of 310 IAC 12–3–19 from the Indiana rules does not render the Indiana program less effective than the Federal regulations and is approved.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies. The U.S. Fish and Wildlife Service (FWS) recommended that the wording of 310 IAC 12–3–112(a)(10) be changed to state that no permit shall be approved which would "jeopardize" the continued existence of a listed species, and that a permit which may "affect" a listed species not be issued until consultation with the FWS has been completed.

FWS stated that section 7 of the Endangered Species Act prohibits actions by a Federal agency (or its official designee) which would "jeopardize" the continued existence of a listed species. Also, section 7 of the Endangered Species Act requires consultation with the FWS if a Federal/designee action may "affect" a listed species (50 CFR 402.14). Therefore, FWS asserts, the proposed wording (and that of the Federal counterpart) is confusing. In response, the Director notes that Indiana's proposed language at 310 IAC 12–3–112(a)(10) is identical to the counterpart Federal regulations at 30 CFR 773.15(c)(10). According to the Federal regulations at 30 CFR 732.17(h)(10), the applicable criteria for approval or disapproval of State program amendments is set forth in 30 CFR 732.15. 30 CFR 732.15(a) provides that (among other criteria) the Secretary shall not approve a State program (or in this case an amendment to a State program) unless the Secretary finds the program amendment provides for the State to carry out the provisions and meet the purposes of SMCRA and the Federal regulations at title 30, chapter VII and that the State's laws and regulations are in accordance with SMCRA and consistent with the requirements of title 30, chapter VII. As stated above, Indiana's proposed language is identical to the counterpart Federal language.

Public Comments

The public comment period and opportunity to request a public hearing was announced in the January 12, 1993, **Federal Register** (58 FR 3928). The comment period closed on February 11, 1993. No comments were received during the comment period, and no one requested an opportunity to testify at the scheduled public hearing so no hearing was held.

V. Director's Decision

Based on the findings above, and except as noted below, the Director is approving Indiana's program amendment number 92–8 as submitted by Indiana on November 13, and revised on December 3, 1992. As discussed above in Finding B.1.(e), the Director is deferring decision on proposed language at 310 IAC 12–3–111(b)(1) concerning

presumption that an NOV has been or is being corrected. The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that 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.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required. However, by letters dated December 18, 1992 (Administrative Record Number IND–1197), and January 13, 1993 (Administrative Record Number IND–1206), EPA concurred without comment.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

ated: June 17, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

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

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

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

2. In § 914.15, paragraph (tt) is added to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(tt) The following amendment (Program Amendment Number 92–8) to the Indiana program as submitted to OSM on November 13, 1992, and revised on December 3, 1992, is approved, except as noted below, effective June 24, 1993: 310 IAC 12–0.5 concerning the definitions of "MSHA," and "Owned or controlled" and "owns or controls;" the deletion of 310 IAC 12–3–19 concerning identification of interests; 310 IAC 12–3–19.1 concerning identification of interests; 310 IAC 12–3–20 concerning compliance information; 310 IAC 12–3–111 concerning review of permit applications except that decision on 310 IAC 12–3–111(b)(1) concerning presumption that an NOV has been or is being corrected, is deferred; 310 IAC 12–3–112 concerning permit approval or denial; 310 IAC 12–3–119.5 concerning improvidently issued permits—general; 310 IAC 12–3–119.6 concerning improvidently issued permits—rescission procedures; and 310 IAC 12–6–5 concerning cessation orders.

[FR Doc. 93–14889 Filed 6–23–93; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–93–30]

Special Local Regulations for Marine Events; Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements 33 CFR 100.509 for the Welcome America Fireworks Display. The display will be launched from barges anchored off Penn's Landing, Delaware River, Philadelphia, Pennsylvania on July 2, 1993. The regulations are needed to control vessel traffic in the immediate vicinity of the event due to the confined nature of the waterway and expected spectator craft congestion during the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.509 are effective from 8:30 p.m. to 11 p.m., July 2, 1993. If inclement weather causes the postponement of the

event, the regulations are effective from 8:30 p.m. to 11 p.m., July 4, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Philadelphia (215) 271–4825.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LCDR Christopher Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Pennsylvania Convention and Visitors Bureau submitted an application dated May 19, 1993 to hold the Welcome America Fireworks Display. The display will be launched from barges anchored off Penn's Landing, Delaware River, Philadelphia, Pennsylvania. Since many spectator vessels are expected to be in the area to watch the fireworks, the regulations in 33 CFR 100.509 are being implemented for this event. The fireworks will be launched from within the regulated area. The waterway will be closed during the display. Since the closure will not be for an extended period, commercial traffic should not be severely disrupted.

Dated: June 7, 1993.

W.T. Leland,

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

[FR Doc. 93–14893 Filed 6–23–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Wilmington, NC Regulation 93–02]

Safety Zone Regulations; Eagle Island Fireworks Display, Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Cape Fear River in the vicinity of the Battleship USS North Carolina Memorial in the waterfront area of downtown Wilmington, North Carolina. The safety zone is needed to protect people, vessels, and property from safety hazards associated with the launching of fireworks from Eagle Island. Entry into this zone is prohibited unless authorized by the Captain of the Port, Wilmington, North Carolina, or his designated representative.

EFFECTIVE DATE: This regulation is effective from 8 p.m. to 10 p.m. on July 4, 1993, unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

FOR FURTHER INFORMATION CONTACT: LCDR R.W. Muth, USCG, c/o U. S. Coast Guard Captain of the Port, suite 500, 272 N. Front Street, Wilmington, North Carolina 28401–3907, Phone: (919) 343–4881.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would not have been possible since the USS North Carolina Battleship Commission did not request Coast Guard assistance until May 28, 1993.

Drafting Information

The drafters of this regulation are JTJG G.A. Howard, project officer for the Captain of the Port, Wilmington, North Carolina, and LCDR C.A. Abel, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The City of Wilmington has requested that the Coast Guard provide a safety zone for the event. There will be a fireworks display from 9 p.m. to 9:30 p.m. on July 4, 1993. The launching of commercial fireworks constitutes a potential safety hazard to the people, vessels, and property in the vicinity. This safety zone is needed to protect the public from the potential hazards near the fireworks display and to insure a smooth launching operation. It will consist of an area of water 200 yards wide and 667 yards long.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

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

PART 165—[AMENDED]

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

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

2. A new § 165.T0531 is added, to read as follows:

§ 165.T0531 Safety Zone: Eagle Island Fireworks Display, Cape Fear River, Vicinity of Battleship USS NORTH CAROLINA Memorial, Wilmington, North Carolina.

(a) *Location.* The following area is a safety zone:

(1) The waters of the Cape Fear River circumscribed by a line drawn from the following navigational points: Latitude 34°14'12" North, longitude 77°57'10" West, then east to latitude 34°14'12" North, longitude 77°57'06" West, then south to latitude 34°13'54" North, longitude 77°57'00" West, then west to latitude 34°13'54" North, longitude 77°57'06" West, then to the beginning.

(2) The safety zone boundary can be described as follows: The zone starts at the stern of the Battleship USS North Carolina, across the Cape Fear River to the north end of the Coast Guard moorings, down along the east bank of the Cape Fear River to the bow of the tug Captain John Taxis Memorial (Chandler's Wharf), back across the Cape Fear River to Eagle Island, and then up along the west bank of the Cape Fear River to the stern of the Battleship USS NORTH CAROLINA.

(b) *Effective date.* This regulation is effective from 8 p.m. to 10 p.m. on July 4, 1993, unless sooner terminated by the Captain of the Port, Wilmington, North Carolina.

(c) *Local regulations.* Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(1) The operator of any vessel in the immediate vicinity of this safety zone shall:

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

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

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

(d) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port, Wilmington, North Carolina to act on his behalf. The following officers have or will be designated by the Captain of the Port: The Coast Guard Patrol Commander, the senior boarding officer on each vessel enforcing the safety zone,

and the Duty Officer at the Marine Safety Office, Wilmington, North Carolina.

(1) The Captain of the Port and the Duty Officer at the Marine Safety Office, Wilmington, North Carolina can be contacted at telephone number (919) 343–4895.

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

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

Federalism Assessment

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

Dated: June 10, 1993.

C.F. Eisenbeis,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 93–14890 Filed 6–23–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG31

Resumption and Payment of Withheld Benefits; Incompetents $1,500 Estate Cases

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning the resumption and payment of withheld benefits of certain incompetent veterans whose estates exceed $1,500. This amendment is necessary because the United States Court of Veterans Appeals (COVA) invalidated a portion of the regulations as exceeding the regulation-prescribing authority of the Secretary of Veterans Affairs. The intended effect of this amendment is to bring the regulations into conformance with the COVA decision.

EFFECTIVE DATE: This amendment is effective March 11, 1993, the date that COVA rendered the decision.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 5503(b)(1)(A) precludes the payment of compensation when a veteran is without spouse or child; is receiving hospital treatment, institutional care, or domiciliary care without charge or otherwise from the U.S. or any political subdivision of the U.S.; is rated incompetent by the Secretary in accordance with regulations; and his or her estate (excluding, generally, the value of his or her home) exceeds $1,500. While subparagraph (A) requires suspension of compensation when all four prerequisites exist, if the veteran is held competent by VA for a period of six months, subparagraph (B) imposes the additional requirement that the suspended benefits be paid in a lump sum.

The Secretary has prescribed at 38 CFR 3.558(c)(2) an additional requirement that a veteran rated competent for six months or longer and thereafter re-rated as incompetent must have a spouse or child in order to be eligible for the lump-sum payment. In *Felton* v. *Brown*, U.S. Vet. App. No. 90–965, COVA held that the requirement found at 38 CFR 3.558(c)(2) is an unauthorized limitation on the scope of 38 U.S.C. 5503, and is, therefore, neither "appropriate to carry out" nor "consistent with" the law under 38 U.S.C. 501(a). We have amended § 3.558 to delete paragraph (c)(2) effective March 11, 1993, the date of the COVA decision.

Additionally, we have amended the remaining text of § 3.558 to clarify that the sole criterion for determining whether a veteran is entitled to a lump-sum payment is that he or she must have been subsequently rated competent by VA for a period of not less than six months. VA believes that this interpretation of the statute is consistent with the COVA decision in *Felton* v. *Brown*, which held that 38 U.S.C. 5503(b)(1)(B) clearly mandates a lump-sum payment after the expiration of a six-month period following competency.

VA is issuing a final rule to implement the decision of COVA in *Felton* v. *Brown*. Because this amendment implements a COVA decision invalidating a portion of a regulation, publication as a proposal for public notice and comment is unnecessary.

Since a notice of proposed rulemaking is unnecessary and will not be published, this amendment is not a "rule" as defined in and made subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(2). In any case, this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the RFA, 5 U.S.C. sections 601–612. This amendment will not directly affect any small entity.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: May 25, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.558, paragraph (c) is revised to read as follows:

§ 3.558 Resumption and payment of withheld benefits; incompetents $1,500 estate cases.

* * * * *

(c) Any amount not paid because of the provisions of § 3.557(b), and any amount of compensation or retirement pay withheld pursuant to the provisions of § 3.551(b) (and/or predecessor regulatory provisions) as it was

constituted prior to August 1, 1972, and not previously paid because of the provisions of § 3.557(b), will be awarded to the veteran if he or she is subsequently rated competent by VA for a period of not less than six months.

(Authority: 38 U.S.C. 5503)

[FR Doc. 93–14909 Filed 6–23–93; 8:45 am]
BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI29–01–5744; FRL–4664–4]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is taking action to approve Wisconsin's air quality planning procedures as a revision to Wisconsin's State Implementation Plan (SIP) for ozone. USEPA's action is based upon a revision request that was submitted by the State to satisfy the requirements of Section 174 of the Clean Air Act (CAA), which requires the State and elected officials of affected local governments containing ozone nonattainment areas to prepare SIP revisions under the continuing transportation air quality planning process described in Section 108(e) of the CAA. Section 174 allows the State to recertify the Lead Planning Organization (LPO) and to indicate which agency or agencies will be responsible for developing, adopting, and implementing each element of the revised SIP.

DATES: This action will be effective August 23, 1993 unless notice is received by July 26, 1993 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Michael Leslie at (312) 353–6680, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 15, 1992, the Wisconsin Department of Natural Resources (WDNR) submitted a SIP revision to the USEPA, which certified the responsible air quality planning organization and updated the air quality planning procedures in existence prior to enactment of the 1990 CAA amendments.

Section 174 of the CAA requires the State and elected officials of affected local governments containing ozone nonattainment areas to prepare SIP revision under the continuing transportation air quality planning process described in Section 108(e) of the CAA. The 1992 Transportation and Air Quality Planning Guidelines, issued pursuant to Section 108(e), defines the LPO for the State. WDNR was designated the State LPO responsible for air quality planning in the Wisconsin nonattainment areas prior to the 1990 amendments. WDNR will continue as the LPO for the State of Wisconsin. Its responsibilities include developing, submitting, and implementing air quality plans for the State of Wisconsin. WDNR has created seven workgroups made up of State and local governments that are charged with analyzing ozone control strategies for Wisconsin. WDNR has also formed a 16 member Clean Air Task Force to promote public participation in developing Wisconsin's regulatory and programmatic response to the 1990 CAA amendments. The Clean Air Task Force is made up of representatives of industry, government, civic, environmental, and transportation groups.

The WDNR held public hearings on the Section 174 planning procedures on January 12 and 13, 1993.

II. Review Criteria/Results of Review

USEPA has reviewed the submittal for the recertification of the LPO, as interpreted in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498, 13559 (April 16, 1992). USEPA's analysis has shown that the Wisconsin submittal addresses the criteria for recertification of the LPO for the Wisconsin nonattainment area.

III. Rulemaking Action

USEPA approves the revision to the Wisconsin's ozone SIP for Section 174 Planning Procedures.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on August 23, 1993. However, if we receive notice by July 26, 1993 that someone wishes to submit adverse comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, 54 FR 2214–2225. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

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

SIP approvals under Section 110 and subchapter I, Part D, of the 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 the regulatory flexibility analysis would constitute Federal inquiry into the economic

reasonableness of the State action. The CAA forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 Amendments of the CAA enacted on November 15, 1990.

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 August 23, 1993. 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

Intergovernmental relations, Ozone.

Dated: May 25, 1993.

Valdas V. Adamkus,

Regional Administrator.

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 YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (c) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(c) Approval—On November 15, 1992, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to the recertification of the planning organization responsible for developing, adopting, and implementing air quality plans for the State of Wisconsin.

* * * * *

[FR Doc. 93–14839 Filed 6–23–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WI27–01–5742; FRL–4664–3]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is taking action to approve Wisconsin's conformity process as a revision to Wisconsin's State Implementation Plan (SIP) for ozone. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of Section 176(c)(4)(C) of the Clean Air Act (CAA), which requires a revision to an implementation plan for assessing the conformity of any federally-funded plan, program, or project with the SIP.

DATES: This action will be effective August 23, 1993, unless notice is received by July 26, 1993, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the Wisconsin 176(c)(4)(C) SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Air Toxics and Radiation Branch, Regulation Development Section (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background/Summary of State Submittal

On November 15, 1992, The Wisconsin Department of Natural Resources (WDNR) submitted a SIP revision to the USEPA, which contains a plan for developing a process for assessing conformity of any federally-funded transportation and other federally-funded projects in the Wisconsin nonattainment area with Wisconsin's ozone SIP.

The WDNR held public hearings on the Section 176(c)(4)(C) Conformity submittal on January 12 and 13, 1993.

The State of Wisconsin's conformity process that is currently in place was reviewed by the USEPA and the United States Department of Transportation (USDOT) and determined to be consistent with the June 7, 1991, joint USEPA/USDOT guidance entitled "Guidance For Determining Conformity of Transportation Plans, Programs, And Projects With Clean Air Act Implementation Plans During Phase 1 of the Interim Period." On October 24, 1991, USEPA and USDOT jointly issued futher guidance indicating that the June 7, 1991, guidance would continue until the agencies promulgate the final conformity regulations.

Wisconsin is currently working on the development of a permanent conformity process. A Memoranum of Understanding between the affected agencies will be developed in accordance with the upcoming Federal conformity regulations. Wisconsin anticipates finalizing the conformity process within 1 year of final publication of the Federal conformity regulations as required by the CAA.

II. Review Criteria/Results of USEPA Review

USEPA reviewed the submittal against the criteria outlined in the above noted USEPA/USDOT conformity guidance. USEPA's analysis of the Wisconsin submittal has shown that the Wisconsin conformity process described therein is consistent with the criteria outlined in the joint USEPA/USDOT guidance.

III. Rulemaking Action

USEPA approves the revision to the Wisconsin ozone SIP for Wisconsin's Section 176(c)(4)(C) conformity procedures.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective August 23, 1993. However, if we receive notice by July 26, 1993 that someone wishes to submit adverse comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

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

SIP approvals under Section 110 and Subchapter I, Part D of the 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 the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids USEPA 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).

The Agency has reviewed this request for revision of the federally-approved State Implementation Plan for conformance with the provisions of the 1990 Amendments to the CAA, enacted on November 15, 1990.

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 August 23, 1993. 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 it 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

Hydrocarbons, Intergovernmental relations, Ozone.

Dated: May 25, 1993.

Valdas V. Adamkus,

Regional Administrator.

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 YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (d) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(d) Approval—On November 15, 1992, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to the development of a process for assessing conformity of any federally-funded transportation and other federally funded projects in the nonattainment area.

* * * * *

[FR Doc. 93-14841 Filed 6-23-93; 8:45 am]

BILLING CODE 6560-50-P

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40 CFR Part 52

[MI13-01-5751; FRL-4664-9]

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is taking action to approve a revision to Michigan's State Implementation Plan (SIP) for ozone. USEPA's action is based upon a revision request which was submitted by the State to satisfy the requirements of section 174 of the Clean Air Act, as amended. Section 174 requires the State to establish and certify an organization which will review and update as necessary planning procedures adopted before November 15, 1990, and which will determine which agency or agencies will be responsible for developing, adopting, and implementing each element of the revised SIP.

DATES: This action will be effective August 23, 1993, unless notice is received by July 26, 1993, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the SIP revision and USEPA's analysis are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Telephone Michael Leslie at (312) 353-6680 before visiting the Region 5 Office.

Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Air Toxics and Radiation Branch, Regulation Development Section (AT-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353-6680.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On November 13, 1992, the Michigan Department of Natural Resources (MDNR) submitted to the USEPA a SIP revision, indicating the agency or agencies which will be responsible for developing, adopting, and implementing each element of the revised SIP. The State will establish and certify an organization, consisting of elected officials of the affected nonattainment areas, representatives of the State air quality planning agency and transportation planning agencies, and metropolitan planning organization. The organization will prepare the required components of the SIP.

Governor's Executive Order 1976-8 gave MDNR overall responsibility for the development, adoption, and the implementation of all control measures included in the Michigan SIP. MDNR retains overall responsibility for the Michigan SIP. Further, the Michigan Department of Transportation (MDOT) was given responsibility for managing the local transportation planning activities required by the State Air Pollution Act (Act 348, 1965, as amended).

The State's submittal contains three Memoranda of Understanding (MOU) for Michigan's three ozone nonattainment areas: the Detroit-Ann Arbor ozone nonattainment area, the

Muskegon ozone nonattainment area, and the Grand Rapids ozone nonattainment area.

In the Detroit-Ann Arbor ozone nonattainment areas, Southeast Michigan Council of Governments (SEMCOG) has been recertified as the Lead Planning Organization (LPO) for air quality planning in the Detroit metropolitan area. SEMCOG, in cooperation with MDNR and MDOT, is responsible for technical aspects as they relate to mobile sources in Southeast Michigan.

In the Muskegon ozone nonattainment areas, the West Michigan Shoreline Regional Development Commission (WMSRDC) has been certified as the LPO for air quality planning in the Muskegon metropolitan area. MDOT, acting through WMSRDC, is responsible for technical aspects as they relate to mobile sources in the Muskegon nonattainment area.

In the Grand Rapids ozone nonattainment areas, the Grand Rapids and Environs Transportation Study has been recertified as the LPO for air quality planning in the Grand Rapids metropolitan area. MDOT and MDNR, in cooperation with; the Grand Valley Metropolitan Council, the Macatawa Area Coordinating Council, and the Ottawa County Planning Commission where appropriate, are responsible for technical aspects of the SIP as they relate to mobile sources in the Grand Rapids nonattainment area.

The MDNR held a public hearing on the section 174 Planning Procedures on November 10, 1992.

II. Review Criteria/Results of Review

Section 174 of the CAA requires the State and affected local agencies in, among others, ozone nonattainment areas to prepare or revise SIP requirements. Section 174(b) further mandates that the preparation and revision of SIP provisions pursuant to section 108(e) of the CAA take into account the requirements of section 174. The General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498, 13559 (April 16, 1992)) suggests that States can satisfy the requirements of Section 174 through continued use of previously certified planning organizations or certification of new planning organizations.

III. Rulemaking Action

USEPA approves the revision to the Michigan's ozone SIP for section 174 Planning Procedures.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on August 23, 1993. However, if we receive notice by July 26, 1993, that someone wishes to submit adverse comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

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

SIP approvals under section 110 and subchapter I, part D of the 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 the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The CAA forbids USEPA 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).

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 August 23, 1993. 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

Intergovernmental relations, Ozone.

Dated: May 28, 1993.

Valdas V. Adamkus,

Regional Administrator.

PART 52—[AMENDED]

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

Authority: 42 U.S.C 7401–7671q.

Subpart X—Michigan

2. Section 52.1174 is amended by adding paragraph (b) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(b) Approval—On November 13, 1992, the Michigan Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to the re/certification of the planning organization responsible for developing, adopting, and implementing air quality plans for the State of Michigan.

* * * * *

[FR Doc. 93–14842 Filed 6–23–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 90–258, FCC 92–489]

Limited Transfers and Assignments of Applications in Rural Service Areas

AGENCY: Federal Communications Commission.

ACTION: Correction to summary of report and order.

SUMMARY: This document provides the Final Regulatory Analysis which was previously omitted from the Summary of the Report and Order in CC Docket 90–258 (FCC 92–489) (Report and Order), which was published on Tuesday, December 1, 1992 (57 FR

56859). The Report and Order amended the prohibition against the alienation of interests in cellular applications prior to the issuance of a construction permit.

EFFECTIVE DATE: December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph Weber, Mobile Services Division, Common Carrier Bureau (202) 632–6450.

SUPPLEMENTARY INFORMATION:

Background

The Report and Order which is the subject of this correction amended § 22.922 of the Commission's Rules to specify exceptions from the prohibition against transfers and assignments of interest in applications for cellular Rural Service Areas prior to the issuance of construction authorization.

Need for Correction

The summary of the Report and Order did not contain a reference to the Commission's compliance with the Regulatory Flexibility Act, as required by section 604(b) of the Regulatory Flexibility Act, 5 U.S.C. 604(b).

Correction of Publication

Accordingly, the publication on December 1, 1992, of the Report and Order and the final rules [92–489], which were the subject of FR Doc. 92–28999, is corrected as follows:

Add a new subheading and new paragraph 3 in column 2 on page 56859:

Final Regulatory Analysis

3. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's Final Analysis is as follows:

I. Need and Purpose of This Action

This Order modifies the rules to prevent unnecessary delays in processing cellular applications. The new rule adopted in this proceeding reflects our increased experience in regulating cellular carriers and furthers our objective of providing excellent service to the public in the most efficient, uncomplicated, timely, and courteous manner possible.

II. The Initial Regulatory Flexibility Analysis

There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant Alternatives Considered

The Notice in this proceeding proposed to exempt wireline cellular applicants from the requirements of section 22.922. Certain commenters expressed concern that enforcing different regulations upon wireline and non-wireline carriers would harm the non-wireline carriers competitively. Upon review, we determined that the establishment of equal treatment under our Rules for all applicants is the most efficient and fair manner to regulate the transfers of cellular applicants.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 93–14830 Filed 6–23–93; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 58, No. 120
Thursday, June 24, 1993

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

Agricultural Marketing Service

7 CFR Part 1098

[DA-92-41]

Milk in the Nashville, Tennessee, Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend for the month of July 1993 certain provisions of the Nashville, Tennessee, milk marketing order. The proposed suspension would make inoperative the requirement that producers be paid on the basis of a base and excess payment plan for the month of July 1993. A proprietary handler requested the suspension because the current provisions tend to discourage milk production at a time when milk production is declining.

DATES: Comments are due no later than 7 days after date of publication in the **Federal Register**.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P. O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would tend to encourage milk production during the month of July which is a month of declining milk production.

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

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

The Agricultural Marketing Agreement Act, as amended (7 U.S.C. 601–674) ("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 provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. 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.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Nashville, Tennessee, marketing area is being considered for July 1993.

1. In § 1098.61(a), the words "for each of the months of August through February".

2. In § 1098.61(a)(5), the words "in the months of August through February".

3. In § 1098.61, paragraph (b).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures by the July 1993 suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR § 1.27(b)).

Statement of Consideration

The proposed suspension would make inoperative the requirement that producers be paid on the base and excess plan for the month of July 1993. The proposal was submitted by Fleming Companies, Inc.(Fleming), a proprietary handler operating a distributing plant that is regulated under the Nashville order.

In support of its proposal, Fleming said the suspension is needed to remove a conflict which currently exists between the order provisions and the need for additional milk in this market for the month of July. The current order provisions provide that producers, for the months of March through July, be paid a base and excess price. The plan was designed to encourage milk production during the base-building months of September through January when a greater volume of milk is needed for fluid use, and to discourage additional production (excess milk) during the months of March through July when the additional milk production is not needed for fluid use.

Fleming said that marketing conditions have changed since those provisions were adopted in the Nashville order. In recent years, milk production during the month of July has been in short supply. In view of this, Fleming argues that production should not be discouraged during the month of July. Many non-member producers submitted letters stating that they support the request for the suspension.

Accordingly, it may be appropriate to suspend the aforesaid provisions for the month of July 1993.

List of Subjects in 7 CFR Part 1098

Milk marketing orders.

The authority citation for 7 CFR part 1098 continues to read as follows:

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

Dated: June 18, 1993.

L.P. Massaro,

Acting Administrator.

[FR Doc. 93–14860 Filed 6–23–93; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB92

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Four Ferns From the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for four plants: *Asplenium fragile* var. *insulare* (no common name (NCN)), *Ctenitis squamigera* (pauoa), *Diplazium molokaiense* (NCN), and *Pteris lidgatei* (NCN). *Asplenium fragile* var. *insulare* is currently known only from the island of Hawaii; *Pteris lidgatei* is known only from the island of Oahu. The two other species are reported from more than one island: *Ctenitis squamigera* is known from Oahu, Lanai, and Maui, and *Diplazium molokaiense* is known from Oahu and Maui. The four plant taxa and their habitats have been variously affected or are threatened by one or more of the following: Habitat degradation and/or predation by feral goats, sheep, cattle, axis deer, and pigs; and competition for space, light, water, and nutrients from alien plants. Because of the small number of extant individuals and their severely restricted distributions, populations of these taxa are subject to an increased likelihood of extinction from stochastic events. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. If made final, it would also support State regulations protecting these plants as endangered species. Comments and materials related to this proposal are solicited.

DATES: Comments from all interested parties must be received by August 23, 1993. Public hearing requests must be received by August 9, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

Asplenium fragile var. *insulare*, *Ctenitis squamigera*, *Diplazium molokaiense*, and *Pteris lidgatei* are endemic to the Hawaiian Islands. *Asplenium fragile* var. *insulare* is currently known only from the island of Hawaii and *Pteris lidgatei* is known only from the island of Oahu. The other two species are reported from more than one island: *Ctenitis squamigera* is known from Oahu, Lanai, and Maui, and *Diplazium molokaiense* is known from Oahu and Maui.

The vegetation of the Hawaiian Islands varies greatly according to elevation, moisture regime, and substrate. Major vegetation formations include forests, woodlands, shrublands, grasslands, herblands, and pioneer associations on lava and cinder substrates. There are lowland, montane, and subalpine forest types. Coastal and lowland forests are generally dry or mesic, and may be open- or closed-canopied, with the canopy generally under 10 meters (m) (30 feet (ft)) in height. Of the four fern taxa proposed for listing, three have been reported from lowland forest habitat. *Ctenitis squamigera* is typically found in lowland mesic forest, and *Pteris lidgatei* seems to be restricted to lowland wet forest. *Diplazium molokaiense* grows in lowland to montane forests in mesic to wet settings. Montane forests, occupying elevations between 1,000 and 2,000 m (3,000 and 6,500 ft) are dry to mesic on the leeward (southwest) slopes of Maui and Hawaii. On those islands, as well as Oahu and Lanai, mesic to wet montane forests occur on the windward (northeast) slopes and summits. The canopy of dry and mesic forests may be open or closed, and may exceed 20 m (65 ft) in height. *Asplenium fragile* var. *insulare* occurs in montane dry and mesic forest habitats. *Diplazium molokaiense* is also found in montane mesic forests, as well as montane wet forests. At high montane and subalpine elevations, above 2,000 m (6,500 ft) elevation, the forests are usually open-canopied, and exist in mosaic of grasslands and shrublands. Subalpine forests and associated ecosystems are known only from East Maui and the island of Hawaii. *Asplenium fragile* var. *insulare* occurs in subalpine dry forest and shrubland habitat (Gagne and Cuddihy 1990).

The land that supports these four plant taxa is owned by the State of Hawaii, the Federal government, and private entities. The State agencies that own land occupied by these taxa are the Department of Land and Natural Resources (including land within the natural area reserves system, forest reserves, and State parks) and the Department of Hawaiian Home Lands. Federally owned land occupied by these taxa consists of Hawaiian Volcanoes National Park, Pohakuloa Training Area on the island of Hawaii, and Schofield Barracks Military Reservation on Oahu. The latter two facilities are under jurisdiction of the U.S. Army.

Discussion of the Four Taxa Proposed for Listing

The Hawaiian plants now referred to as *Asplenium fragile* var. *insulare* were originally considered by William Hillebrand (1888) to be conspecific with *Asplenium fragile* from Central and South America. A subsequent treatment by Robinson (1913) considered the Hawaiian plants to be a distinct endemic species, *Asplenium rhomboideum* Brack. The currently accepted name *Asplenium fragile* var. *insulare*, was published by Morton (1947), who considered the Hawaiian plants to be distinct at the varietal level from the extra-Hawaiian plants of *Asplenium fragile*.

Asplenium fragile var. *insulare*, a member of the spleenwort family (Aspleniaceae), is a fern with a short suberect stem. The leaf stalks are 5 to 15 centimeters (cm) (2 to 6 inches (in)) long. The main axis of the frond is dull gray or brown, with two greenish ridges. The fronds are thin-textured, bright green, long and narrow, 23 to 41 cm (9 to 16 in) long, 2 cm (0.8 in) wide above the middle, and pinnate with 20 to 30 pinnae (leaflets) on each side. The pinnae are rhomboidal, 0.8 cm (0.3 in) wide, and notched into two to five blunt lobes on the side toward the tip of the frond. The sori (spore-producing bodies) are close to the main vein of the pinna, with one to two on the lower side and two to four on the upper side (Hillebrand 1888, Wagner and Wagner 1992). The Hawaiian fern species most similar to *Asplenium fragile* var. *insulare* is *Asplenium macraei*. The two can be distinguished by a number of

characters, including the size and shape of the pinnae and the number of sori per pinna (Wagner and Wagner 1992).

Asplenium fragile var. *insulare* was known historically from East Maui, where it was recorded from the north slope of Halekala and Kanahau Hill (Hawaii Heritage Program 1992a6, Hillebrand 1888). On Hawaii Island, the taxon was found historically below Kalaieha, Laumaia, and Puu Moana on Mauna Kea (HHP 1992a12, 1992a14, 1992a15), Puuwaawaa on Hualalai (HHP 1992a4), west of Keawewai, above Kipuka Ahiu on Mauna Loa (HHP 1992a3, 1992a5), and near Hilo (HHP 1992a2). This fern is now known from eight populations on Hawaii between 1,600 and 2,375 m (5,250 and 7,000 ft) elevation (HHP 1992a7, Shaw 1992). These populations are on Federal, State, and private land. The populations are located at Keanakolu, Puu Huluhulu, Pohakuloa Training Area, Kulani Correctional Facility, Keauhou, the Mauna Loa Strip in Hawaii Volcanoes National Park, Kapapala Forest Reserve, and the summit area of Hualalai (HHP 1992a1, 1992a7 to 1992a11, 1992a13; Shaw 1992; Paul Higashino, The Nature Conservancy of Hawaii, Daniel Palmer, naturalist, and Warren H. Wagner, Jr., University of Michigan, pers comms., 1992). The 8 known populations total about 295 plants (Shaw 1992; P. Higashino, D. Palmer, and W. Wagner, pers. comms., 1992). This fern is found in *Metrosideros* ('Ohi'a) Dry Montane Forest, *Dodonaea* ('A'ali'i) Dry Montane Shrubland, *Myoporum/Sophora* (Naio/Mamane) Dry Montane Forest, and 'ohi'a/*Acacia* (koa) forest (HHP 1992a9, Shaw 1992). *Asplenium fragile* var. *insulare* grows almost exclusively in lava tubes, pits, and deep cracks, with at least a moderate soil or ash accumulation, associated with mosses and liverworts. Infrequently, this fern has been found growing on the interface between younger 'a'a lava flows and much older pahoehoe lava or ash deposits (Shaw 1992). The primary threats to *Asplenium fragile* var. *insulare* are browsing by feral sheep (*Ovis aries*) and goats (*Capra hircus*) and competition with the alien plant *Pennisetum setaceum* (fountain grass). Stochastic extinction due to the relatively small number of existing individuals is also of concern.

Ctenitis squamigera was first published as *Nephrodium squamigerum* by Hooker and Arnott in 1832. The species was subsequently placed in the genera *Lastraea*, *Aspidium*, and *Dryopteris*. In 1947 it was transferred to the genus *Ctenitis*, resulting in the currently accepted combination *Ctenitis squamigera* (Degener and Degener 1957).

Ctenitis squamigera, a member of the spleenwort family (Aspleniaceae), has a rhizome (horizontal stem) 5 to 10 millimeters (mm) (0.2 to 0.4 in) thick, creeping above the ground and densely covered with scales similar to those on the lower part of the leaf stalk. The leaf stalks are 20 to 60 cm (8 to 24 in) long and densely clothed with tan-colored scales up to 1.8 cm (0.7 in) long and 1 mm (0.04 in) wide. The leafy part of the frond is thin, dark green, deltoid to ovate-oblong, and twice pinnate to thrice pinnatifid (leaflet sections). The sori are tan-colored when mature and in a single row one-third of the distance from the margin to the midrib of the ultimate segments (Degener and Degener 1957). *Ctenitis squamigera* can be readily distinguished from other Hawaiian species of *Ctenitis* by the dense covering of tan-colored scales on its fronds (Wagner and Wagner 1992).

Historically, *Ctenitis squamigera* was recorded from six islands, in the following areas: above Waimea on Kauai (HHP 1992b3); Kaluanui, southeast of Kahana Bay, Pauoa, Nuuanu, Niu, and Wailupe in the Koolau Mountains of Oahu (HHP 1992b4 to 1992b5, 1992b9 to 1992b12); at Kaluaaha Valley on Molokai (HHP 1992b6); in the mountains near Koele on Lanai (HHP 1992b7); in the Honokohau Drainage on West Maui (HHP 1992b1); and at "Kalua" (Kailua?) on Hawaii Island (HHP 1992b13). The seven populations that have been observed within the last 50 years are in the Waianae Mountains of Oahu, and on Lanai and East and West Maui. The two Waianae Mountain populations are in the East Makaleha/Kaawa area and at Schofield Barracks (HHP 1991, 1992b2; W. Wagner, pers. comm., 1992). On Lanai, *Ctenitis squamigera* is known from the Waiapaa-Kapohaku area on the leeward side of the island, and Lopa Gulch and Waiopa Gulch on the windward side (HHP 1991). The West Maui population is in Iao Valley (Joel Lau, HHP, pers. comm., 1992). The East Maui population is at Manawainui Stream, 3.5 kilometers (km) (2.2 miles (mi)) north of Kaupo Village (HHP 1992b8). The 7 known populations are on State, Federal, and private land and total approximately 80 plants (J. Lau and W. Wagner, pers. comms., 1992). This species is found in the understory of forests at elevations of 380 to 915 m (1,250 to 3,000 ft) (HHP 1991, 1992b8) in 'Ohi'a/*Diospyros* (Lama) Mesic Forest and diverse mesic forest (HHP 1991). Associated plant species include *Myrsine* (kolea), *Psychotria* (kopiko), and *Xylosma* (maua) (HHP 1991; J. Lau, pers. comm., 1992). The primary threats to *Ctenitis squamigera* are habitat degradation by feral pigs (*Sus scrofa*), goats, and axis deer (*Axis axis*); competition with alien plant species; and stochastic extinction due to the small number of existing populations and individuals.

Diplazium molokaiense was published by Winifred Robinson (1913) as a new name for the Hawaiian plants that had previously been referred to the extra-Hawaiian species, *Asplenium arboreum* Willd., by Hillebrand (1888).

Diplazium molokaiense, a member of the spleenwort family (Aspleniaceae), has a short prostrate rhizome. The leaf stalks are 15 to 20 cm (6 to 8 in) long and green or straw-colored. The frond is thin-textured, ovate-oblong, 15 to 50 cm (6 to 20 in) long and 10 to 15 cm (4 to 6 in) wide, truncate at the base, and pinnate with a pinnatifid apex. The sori are 0.8 to 1.3 cm (0.3 to 0.5 in) long and lie alongside the side veins of the pinnae (Hillebrand 1888, Wagner and Wagner 1992). *Diplazium molokaiense* can be distinguished from other species of *Diplazium* in the Hawaiian Islands by a combination of characters, including venation pattern, the length and arrangement of the sori, frond shape, and the degree of dissection of the frond (Wagner and Wagner 1992).

Historically, *Diplazium molokaiense* was found on five islands: at Kaholuamano on Kauai (HHP 1992c7); Makaleha on Oahu (HHP 1992c3); Kalae, Kaluaaha, Mapulehu, and the Wailau Trail on Molokai (HHP 1992c5, 1992c11 to 1992c13); Mahana Valley and Kaiholena on Lanai (HHP 1992c8, 1992c9); and Wailuku (Iao) Valley and Waikapu on West Maui (HHP 1992c1, 1992c4). However, within the last 50 years, it has been recorded from only one location on Oahu and three on East Maui. The Oahu population is at Schofield Barracks in the Waianae Mountains (HHP 1992c2). The three Maui populations are on the slopes of Haleakala: two populations on the north slope at Ainahou and Maliko Gulch (HHP 1992c6, 1992c10), and the third on the south slope at Waiopai Gulch (Robert Hobdy, Hawaii Division of Forestry and Wildlife, and J. Lau, pers. comms., 1992). The currently known populations of *Diplazium molokaiense* are between 850 and 1,680 m (2,800 and 5,500 ft) in elevation (HHP 1992c6, 1992c10) in lowland to montane habitats, including Montane Mesic 'Ohi'a/Koa Forest (R. Hobdy, pers. comm., 1992). The 4 populations are on private, State, and Federal land and total 23 individuals (R. Hobdy and W. Wagner, pers. comms., 1992). The primary threats to *Diplazium molokaiense* are habitat degradation by

feral goats, *Bos taurus* (cattle), and pigs; competition with alien plant species; and stochastic extinction due to the extremely small number of populations and individuals.

Cheilanthes lidgatei was described in 1883 on the basis of a specimen collected on Oahu. Hillebrand (1888) erected the genus *Schizostege* for this anomalous species. In 1897 it was placed in the genus *Pteris* by H. Christ, resulting in the currently accepted combination *Pteris lidgatei* (Wagner 1949).

Pteris lidgatei, a member of the maidenhair fern family (Adiantaceae), is a coarse herb, 0.5 to 1 m (1.6 to 3.3 ft) tall. It has a horizontal rhizome 1.5 cm (0.6 in) thick and at least 10 cm (3.9 in) long when mature. The fronds, including the leaf stalks, are 60 to 95 cm (24 to 37 in) long and 20 to 45 cm (8 to 18 in) wide. The leafy portion of the frond is oblong-deltoid to broadly ovate-deltoid, thick, brittle, and dark gray-green. The sori are apparently marginal in position, either fused into long linear sori, or more typically separated into distinct shorter sori, with intermediate conditions common (Wagner 1949). *Pteris lidgatei* can be distinguished from other species of *Pteris* in the Hawaiian Islands by the texture of its fronds and the tendency of the sori along the leaf margins to be broken into short segments instead of being fused into continuous marginal sori (Wagner and Wagner 1992).

Historially, *Pteris lidgatei* was found at Olokui on Molokai (HHP 1992d4) and Waihee on West Maui (HHP 1992d5). The species was also recorded historically at three locations in the Koolau Mountains of Oahu: Waiahole, Lulumahu Stream, and Wailupe (HHP 1992d1, 1992d2, 1992d6). Only one population has been seen within the past 50 years. This population, containing 13 plants, is on State-owned land in the Kaluanui Stream drainage on the windward side of the central Koolau Mountains at 530 to 590 m (1,750 to 1,930 ft) elevation (HHP 1992d3; W. Wagner, pers. comm., 1992). The Kaluanui population grows on steep stream banks in wet 'ohi'a forest with mosses and other ferns, including *Cibotium chamissoi* (hapu 2i), *Dicranopteris linearis* (uluhe), *Elaphoglossum crassifolium*, *Sadleria squarrosa* ('ama'u), and *Sphenomeris chusana* (pala'a) (HHP 1992d3). The primary threats to *Pteris lidgatei* are the alien plant *Clidemia hirta* (Koster's curse), habitat destruction by feral pigs, and stochastic extinction; because this fern is known from only one population, a single human-caused or natural event could destroy all remaining individuals.

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document, *Asplenium fragile* var. *insulare*, *Diplazium molokaiense*, and *Pteris lidgatei* were considered to be endangered. *Ctenitis squamigera* was considered to be extinct. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including all of the above taxa considered to be endangered or thought to be extinct. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposals are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), and February 21, 1990 (55 FR 6183). In these three notices, *Pteris lidqatei* was treated as a Category 1 candidate for Federal listing. Category 1 taxa are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In the 1980 and 1985 notices, *Asplenium fragile* var. *insulare*, *Ctenitis squamigera*, and *Diplazium molokaiense* were considered Category 1* species. Category 1* taxa are those which are possibly extinct. Because new information indicated their current existence, *Asplenium fragile* var. *insulare* (as *Asplenium fragile*) and *Diplazium molokaiense* were given Category 1 status in the 1990 notice. In that notice, *Ctenitis squamigera* was still considered a Category 1* species. However, because the species was rediscovered within the past 2 years, it is included in this proposed rule.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these taxa was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the present proposal constitutes the final 1-year finding for these taxa.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered species due to one or more of the five described in section 4(a)(1). The threats facing these four taxa are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Feral animal activity					Alien plants	Fire	Human impacts	Limited No.[1]
	Goats	Sheep	Cattle	Axis deer	Pigs				
Asplenium fragile var. *insulare*	X	X	.....	.....	.....	X	P	P	.....
Ctenitis squamigera	X	.....	.....	X	X	X	P	.....	X
Diplazium molokaiense	X	.....	X	.....	X	X	P	.....	X
Pteris lidgatei	.....	.....	.....	.....	X	X	.....	.....	X

X=Immediate and significant threat.
P=Potential threat.

[1] No more than 100 individuals and/or fewer than 10 populations.

These factors and their application to *Asplenium fragile* Presl var. *insulare* Morton (no common name (NCN)), *Ctenitis squamigera* (Hook. & Arnott) Copel. (pauoa), *Diplazium molokaiense* W.J. Robinson (NCN), and *Pteris lidgatei* (Baker) Christ (NCN) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Native vegetation on all of the main Hawaiian Islands has undergone extreme alteration because of past and present land management practices including ranching, deliberate animal and alien plant introductions, and agricultural development (Cuddihy and Stone 1990, Wagner *et al.* 1985). The primary threats facing the four taxa proposed for listing include ongoing and threatened destruction and modification of habitat by feral animals and competition with alien plants. All four proposed taxa are threatened by feral animals. Pigs, goats, sheep, and cattle were introduced either by the early Hawaiians or more recently by European settlers for food and commercial ranching activities. Over the 200 years following their introduction, their numbers increased and the adverse impacts of these ungulates on native vegetation have become increasingly apparent.

First introduced to Maui in 1793 (Stone and Loope 1987), goats became established on other Hawaiian islands by the 1820s (Cuddihy and Stone 1990, Culliney 1988). Far from controlling their numbers, the era of trade in goatskins (mid-1800s) saw the feral goat population increase into the millions (Culliney 1988). As a result of their agility, they were able to reach more remote areas than other ungulates (Culliney 1988). Feral goats now occupy a wide variety of habitats, from dry lowland forests to alpine grasslands, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Cuddihy and Stone 1990, Stone 1985, Stone and Loope 1987).

Three of the proposed fern taxas are threatened by habitat degradation caused by goats. On Oahu, goats contribute to the decline of a population of *Ctenitis squamigera* at East Makaleha/Kaawa in the Mokuleia region of the Waianae Mountains (HHP 1991). On Maui, large populations of feral goats persist on the south slope of Haleakala, outside of Haleakala National Park, where they threaten the population of *Diplazium molokaiense* at Waiopai (R. Hobdy, pers. comm., 1992). Goats have reduced the species' habitat at that site to small remnants. On the island of Hawaii, feral goats are also present in large numbers within Pohakuloa Training Area (PTA) in the saddle between Mauna Loa and Mauna Kea, where they threaten *Asplenium fragile* var. *insulare* through habitat degradation (J. Lau, pers. comm., 1992).

Feral sheep have become firmly established on the island of Hawaii (Tomich 1986) since their introduction almost 200 years ago (Cuddihy and Stone 1990). Like feral goats, sheep roam the upper elevation dry forests of Mauna Kea (above 1,000 m (3,300 ft)), including PTA, causing damage similar to that of goats (Stone 1985). The presence of sheep at PTA contributes to the degradation of the habitat of *Asplenium fragile* var. *insulare*.

Large-scale cattle ranching in the Hawaiian Islands began in the middle of the 19th century on the islands of Kauai, Oahu, Maui, and Hawaii. Ranches tens of thousands of acres in size developed on East Maui and Hawaii (Cuddihy and Stone 1990), where most of the State's large ranches still exist. Degradation of native forests used for ranching activities became evident soon after full-scale ranching began. The negative impact of cattle on Hawaii's ecosystems is similar to that described for goats and sheep (Cuddihy and Stone 1990, Stone 1985). Cattle ranching is the primary economic activity on the west and southwest slopes of East Maui, where a population of *Diplazium molokaiense* exists at Waiopai (R. Hobdy, pers. comm., 1992).

Habitat degradation caused by axis deer is now considered to be a major threat to the forests of Lanai (Culliney 1988). Deer browse on native vegetation, destroying or damaging the habitat. Their trampling removes ground cover, compacts the soil, promotes erosion, and open areas, allowing alien plants to invade (Cuddihy and Stone 1990, Culliney 1988, Scott *et al.* 1986, Tomich 1986). Extensive red erosional scars caused by decades of deer activity are evident on Lanai. Axis deer are presently actively managed for recreational hunting by the State Department of Land and Natural Resources. All three of the Lanai populations of *Ctenitis squamigera* are negatively affected to some extent by axis deer (HHP 1991).

Feral pigs have invaded primarily wet and mesic forests and grasslands of Kauai, Oahu, Molokai, Maui, and Hawaii. Pigs damage the native vegetation by rooting and trampling the forest floor, and encourage the expansion of alien plants in the newly tilled soil (Stone 1985). Pigs also disseminate alien plant seeds through their feces and on their bodies, accelerating the spread of alien plants through native forest (Cuddihy and Stone 1990, Stone 1985). On Oahu, populations of *Ctenitis squamigera*, *Diplazium molokaiense*, and *Pteris lidgatei* have sustained loss of individual plants and/or habitat as a result of feral pig activities. The following Oahu populations are threatened by pigs: *Ctenitis squamigera* at Schofield Barracks and nearby East Makaleha-Kaawa, *Diplazium molokaiense* at Schofield Barracks (HHP 1991; J. Lau, pers. comm., 1992), and, in Kaluanui Valley, the only extant population of *Pteris lidgatei* (HHP 1992d3; W. Wagner, pers. comm., 1992). On East Maui, feral pigs threaten populations of *Diplazium molokaiense* at both Ainahou and Waiopai (R. Hobdy and J. Lau, pers. comms., 1992).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although not currently known to be a factor, unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants could result from increased publicity and could seriously impact three of the taxa proposed for listing. *Ctenitis squamigera*, *Diplazium molokaiense*, and *Pteris lidgatei* each number fewer than 100 individuals and 10 populations, making them especially vulnerable to human disturbance. Such disturbance could promote erosion and ingression of alien plant species.

C. Disease or Predation

No evidence of disease has been reported for the four proposed taxa. Predation by feral goats and/or sheep has been documented for *Asplenium fragile* var. *insulare* at PTA (Shaw 1992). Because no fern colonies have been completely decimated by the animals, they apparently do not seek out this plant. However, further predation could occur if their preferred forage is not available. Predation by feral goats is a potential threat to the other two sizable known populations of this fern, at Keauhou and Kulani (Linda Cuddihy, Hawaii Volcanoes National Park, pers. comm., 1992).

D. The Inadequacy of Existing Regulatory Mechanisms

Two of the proposed taxa have populations located on privately owned land. All four also occur on State land, and three occur on Federal land. There are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these plants on private land. However, Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State Government agencies. State regulations prohibit the removal, destruction, or damage of plants found on State lands. However, the regulations are difficult to enforce because of limited personnel. Hawaii's Endangered Species Act (HRS, Sect. 195D–4(a)) states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Endangered Species Act [of 1973] shall be deemed to be an endangered species under the provisions of this chapter." Further, the State may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species (HRS, Sect. 195D–5(c)). Funds for these activities could be made available under section 6 of the Federal Act (State Cooperative Agreements). Listing of these four plant taxa would therefore reinforce and supplement the protection available under State law. The Act would also offer additional protection to these four taxa because if they were to be listed as endangered or threatened, it would be a violation of the Act for any person to remove, cut, dig up, damage, or destroy any such plant in an area not under Federal jurisdiction in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The small number of populations and of individual plants of these taxa increases the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant percentage of the individuals or the only known extant population. For example, *Pteris lidgatei* is known from a single population numbering 13 plants. Only 4 populations of *Diplazium molokaiense* are known, totaling 23 individuals. *Ctenitis squamigera* is known from seven populations, and *Asplenium fragile* var. *insulare* from eight populations. Three of the proposed taxa are estimated to number no more than 100 known individuals and the fourth (*Asplenium fragile* var. *insulare*) numbers fewer than 300 known individuals.

Three of the four fern taxa proposed for listing are threatened by competition with one or more alien plant species. Koster's curse, a noxious shrub first reported on Oahu in 1941, had spread through much of the Koolau Mountains by the early 1960s, and spread to the Waianae Mountains by 1970 (Cuddihy and Stone 1990). This shrub replaces native plants of the forest understory and poses a serious threat to the only remaining population of *Pteris lidgatei*, located in Kaluanui Valley in the Koolau Mountains (J. Lau, pers. comm., 1992). It also poses a threat to populations of *Ctenitis squamigera* and *Diplazium molokaiense* in the Waianae Mountains (HHP 1991; J. Lau, pers. comm., 1992).

Noxious alien plants such as *Schinus terebinthifolius* (Christmasberry) have invaded the dry to mesic lowland regions of the Hawaiian Islands. Introduced to Hawaii before 1911, Christmasberry forms dense thickets which shade out and displace other plants (Cuddihy and Stone 1990). Both of the Oahu populations of *Ctenitis squamigera*, the West Maui population, and one of the Lanai populations are negatively affected by this invasive plant, as is the population of *Diplazium molokaiense* at Schofield Barracks (HHP 1991; J. Lau, pers. comm., 1992). *Psidium cattleianum* (strawberry guava), a shrub or small tree, has become naturalized on all of the main Hawaiian islands except Niihau and Kahoolawe. Like Christmasberry, strawberry guava is capable of forming dense stands that exclude other plant species (Cuddihy and Stone 1990). This alien plant grows primarily in mesic and wet habitats and provides food for several alien animal species, including feral pigs and game birds, that disperse the plant's seeds through the forest (Smith 1985, Wagner *et al.* 1985). Strawberry guava is considered one of the greatest alien plant threats to Hawaii's wet forests and is known to pose a direct threat to the populations of *Ctenitis squamigera* and *Diplazium molokaiense* in the Waianae Mountains on Oahu (J. Lau, pers. comm., 1992). It also threatens the populations of *Ctenitis squamigera* on Lanai and East Maui (HHP 1991; J. Lau, pers. comm., 1992).

Fountain grass is a fire-adapted bunch grass that has spread rapidly over bare lava flows and open areas on the island of Hawaii since its introduction in the early 1900s. Fountain grass is particularly detrimental to Hawaii's dry forests because it is able to invade areas once dominated by native plants, where it interferes with plan regeneration, carries fires, and increases the likelihood of fires (Cuddihy and Stone 1990, Smith 1985). Fountain grass threatens the native vegetation at PTA, competing with *Asplenium fragile* var. *insulare* (J. Lau, pers. comm., 1992).

Toona ciliata (Australian read cedar) is a fast-growing tree that has been extensively planted and has become naturalized in mesic to wet forests (Wagner *et al.* 1990). This tree threatens populations of *Ctenitis squamigera* and *Diplazium molokaiense* in the Waianae Mountains of Oahu (HHP 1991; J. Lau, pers. comm., 1992). Those same populations are threatened by *Syzygium cumini* (Java plum), a large evergreen tree that forms a dense cover, excluding other species. Java plum is an aggressive invader of undisturbed lowland mesic and dry forests (Smith 1985). *Myrica faya* (firetree) has attracted a great deal of attention and concern for its recent explosive increase on several Hawaiian islands. It is capable of forming a dense, nearly monospecific stand (Cuddihy

and Stone 1990). Because of its ability to fix nitrogen, it outcompetes native species and enriches the soil so that other alien plants can invade (Wagner *et al.* 1990). The Lanai populations of *Ctenitis squamigera* are threatened by the invasion of firetree (HHP 1991; J. Lau, pers. comm., 1992). Although not yet widespread in the Hawaiian Islands, *Cinnamomum burmanii* (Padang cassia) could become a dominant component of Hawaiian mesic forests (J. Lau, pers. comm., 1992). A dense and enlarging stand of it threatens a population of *Ctenitis squamigera* on Lanai (HHP 1991).

Fire constitutes a potential threat to three of the proposed fern taxa growing in dry to mesic grassland, shrubland, and forests on the islands of Oahu and Hawaii. On Oahu, fire is a potential threat to *Ctenitis squamigera* and the population of *Diplazium molokaiense* on Schofield Barracks Military Reservation. These populations are located near an area currently utilized as a military firing range. Fires originating on the firing range have the potential of spreading into the native forest habitat of the two fern species (J. Lau, pers. comm., 1992). Fire is also a potential threat to the population of *Asplenium fragile* var. *insulare* at PTA on the island of Hawaii (Shaw 1992), where military exercise utilizing live ammunition are conducted. The presence of fountain grass at PTA increases the potential for fire. Habitat disturbance caused by human activities such as military construction and road building could also detrimentally impact *Asplenium fragile* var. *insulare* at PTA (Shaw 1992).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to propose this rule. Based on this evaluation, the preferred action is to list four taxa, *Asplenium fragile* var. *insulare*, *Ctenitis squamigers*, *Diplazium molokaiense*, and *Pteris lidgatei*, as endangered. Three of the 4 taxa proposed for listing either number no more than 100 individuals or are known from fewer than 10 populations. The four taxa are threatened by one or more of the following: habitat degradation and/or predation by feral goats, sheep, cattle, deer, and pigs, and competition from alien plants. Small population size and limited distribution make these taxa particularly vulnerable to extinction from stochastic events. Because these four taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical habitat is not being proposed for the four taxa included in this rule, for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is listed endangered or threatened. The service finds that designation of critical habitat is not presently prudent for these taxa. Such a determination would result in no known benefit to the taxa. All of the taxa have extremely low total populations and face anthropogenic threats. The publication of precise maps and descriptions of critical habitat in the Federal Register and local newspapers as required in a proposal for critical habitat would increase the degree of threat to these plants from take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. The listing of these taxa as endangered publicizes the rarity of the plants and, thus, can make these plants attractive to researchers, curiosity seekers, or collectors of rare plants. All involved parties and the major landowners have been notified of the general location and importance of protecting the habitat of these taxa. Protection of the habitat of the taxa will be addressed through the recovery process and through the section 7 consultation process.

There are three known Federal activities within the currently known habitat of the plants proposed for listing, involving the National Park Service and Department of Defense. One taxon is found in Hawaii Volcanoes National Park, where Federal law protects all plants from damage or removal. Three taxa are located on land owned or leased by the Department of Defense or on nearby State lands. Two species are found on Scholfield Barracks Military Reservation. Although military and ordnance training takes place on this federally owned property, the impact areas and buffer zones for these activities are outside the area where the taxa occur. One taxon is known from Phakuloa Training Area on the Island of Hawaii. The fern grows in areas unsuitable for infantry training (Shaw 1992). The Army is aware of the presence and location of this taxon, and any Federal activities that may affect the continued existence of these plants will be addressed through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for these taxa is not prudent at this time, because such designation would increase the degree of threat from vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of these taxa.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

A population of *Asplenium fragile* var. *insulare* is located in Hawaii Volcanoes National Park. Laws relating to national parks prohibit damage or removal of any plants growing in the parks. Another population of *Asplenium fragile* var. *insulare* is located within Pohakuloa Training Area. The fern grows in areas unsuitable for infantry training (Shaw 1992). The Army is aware of the location of this taxon, and any Federal activities that may affect the continued existence of these plants will be addressed through the section 7 consultation process. *Ctenitis squamigera* and *Diplazium molokaiense* are found on Schofield Barracks

Military Reservation. These plants are not located inside impact or buffer zones for ordnance training, and thus are not likely to be directly affected by military activities. There are no other known Federal activities that occur within the present known habitat of these four plant taxa.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered plants set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the four plant taxa proposed to be listed as endangered, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal with respect to any endangered plant for any person subject to the jurisdiction of the United States to import or export; transport in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale in interstate or foreign commerce; remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the taxa are not common in cultivation nor in the wild.

Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104, FAX 703/358–2281).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these four taxa;

(2) The location of any additional populations of these taxa and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these taxa; and

(4) Current or planned activities in the subject area and their possible impacts on these taxa.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for at least one public hearing on this proposal, if requested. Hearing requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (See **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Office (See **ADDRESSES** section).

Author

The primary authors of this proposed rule are Joan E. Canfield and Derral R. Herbst, Fish and Wildlife Enhancement, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749). Substantial data were contributed by Joel Lau of the Hawaii Heritage Program.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, and by adding a new family, "Adiantaceae—Maidenhair fern family," in alphabetical order, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•	•	•
Adiantaceae—Maidenhair fern family:						
Pteris lidgatei	None	U.S.A. (HI)	E		NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• •	•	•	•	•		•
Aspleniaceae—Spleenwort family:						
• •	•	•	•	•		•
Asplenium fragile var. *insulare*	None	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•		•
Ctenitis squamigera	Pauoa	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•		•
Diplazium molokaiense	None	U.S.A. (HI)	E		NA	NA
• •	•	•	•	•		•

Dated: May 14, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–14895 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 930236–3036]

Threatened Fish and Wildlife; Proposed Designation of Critical Habitat for the Steller Sea Lion

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

ACTION: Notice of public hearing and reopening of comment period on proposed rule.

SUMMARY: On April 1, 1993, NMFS proposed to designate critical habitat for the Steller sea lion under the Endangered Species Act (ESA), and provided a 60-day comment period on the proposed rule. NMFS announces that, due to a request for a public hearing, and another request to extend the comment period to allow for further review of the proposed designation, the comment period has been reopened, and a public hearing has been scheduled.

DATES: A public hearing has been scheduled for July 9, 1993. Written comments on the proposed designation must be received by NMFS on, or before, July 19, 1993.

ADDRESSES: The public hearing will be held at 1:30 p.m. at the Wilda Marston Theater at the Loussac Library, 3600 Denali Street, Anchorage, AK. Written comments should be addressed to Director, Office of Protected Resources, 1335 East-West Highway, room 8268, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael Payne, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, (301) 713–2322, or Dr. Steven Zimmerman, NMFS, Alaska Regional Office, Juneau, AK 99802, (907) 586–7235.

SUPPLEMENTARY INFORMATION: On April 1, 1993, NMFS proposed to designate critical habitat for the Steller sea lion under the ESA (58 FR 17181). Requests for public hearings on the proposed rule had to be received by NMFS by May 17, 1993. NMFS received a request for a public hearing on May 14, 1993, that was consigned by representatives of five organizations representing commercial fisheries interests. However, this request was withdrawn on May 28, 1993. Also on May 28, 1993, NMFS received a request from ARCO Alaska, Inc., to convene a public hearing on the proposed designation, and to extend the comment period for the proposed rule for 2 weeks.

To accommodate the requests by ARCO, Inc., NMFS will convene a public hearing at the Loussack Library in Anchorage, Alaska, on July 9, 1993. A summary of record of the hearing will be prepared. Participants are requested to provide written copies of testimony for the record. NMFS is hereby extending the comment period on the proposed rule to designate critical habitat for the Steller sea lion under the ESA to accommodate this public hearing until July 19, 1993.

Dated: June 18, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[FR Doc. 93–14864 Filed 6–23–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 120
Thursday, June 24, 1993

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

Forms Under Review by Office of Management and Budget

June 18, 1993.

The Department of Agricultural has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250 (202) 690–2118.

Revision

• Farmers Home Administration
7 CFR 1980–A, Guaranteed Loan Program (General)
FmHA 449–14, 30, 35, 36, 1980–19, 22, 41, 43, and 44
On occasion
Individuals or households; businesses or other for-profit; 119,635 responses; 239,430 hours
Jack Holston (202) 720–9736

• Farmers Home Administration
7 CFR 1980–B, Guaranteed Farmer Program Loans
FmHA 449–11, 1980–15, 24, 25, 38, 58, 64
On occasion
Individuals or households; State or local governments; farms; businesses or other for-profit; 158,140 responses; 235,427 hours
Jack Holston, (202) 720–9736

Extension

• Forest Service
Application for Prospecting Permit Form
RI–FS–2820–12
On occasion
Individuals or households; businesses or other for-profit; 20 responses; 5 hours
Leslie Vaculik, (406) 329–3592

Reinstatement

• Farmers Home Administration
7 CFR 1924–A, Planning and Performing Construction and Other Development
FmHA 1924–1, 2, 3, 5, 6, 7, 9, 10, 11, 12, 13, 18, 19, and CC–257
Recordkeeping; on occasion
Individuals or households; farms; businesses or other for-profit; non-profit institutions; small businesses or organizations; 391,108 responses; 138,045 hours
Jack Holston (202) 720–9736

New Collection

• Farmers Home Administration
7 CFR 1944–B, Housing Application Packaging Grants
Recordkeeping; on occasion
Individuals or households; State or local governments; non-profit institutions; 1,200 responses; 1,800 hours
Jack Holston, (202) 720–9736

• Human Nutrition Information Service
National Nutrient Data Base for Child Nutrition Programs
On occasion
Businesses or other for-profit; small businesses or organizations; 1,500 responses; 5,250 hours
Rena Cutrufelli, (301) 436–5639

Larry K. Roberson,
Deputy Department Clearance Officer
[FR Doc. 93–14861 Filed 6–23–93; 8:45 am]
BILLING CODE 3410–01–M

Cooperative State Research Service

Small Business Innovation Research Grants Program for Fiscal Year 1994; Solicitation of Applications

Notice is hereby given that under the authority of the Small Business Innovation Development Act of 1982 (Pub. L. 97–219), as amended (15 U.S.C. 638) and section 630 of the Act making appropriations for Agriculture, Rural Development, and Related Agencies programs for fiscal year ending September 30, 1987, and for other purposes, as made applicable by section 101(a) of Public Law 99–591, 100 stat. 3341, the U.S. Department of Agriculture (USDA) expects to award project grants for certain areas of research to science-based small business firms through Phase I of its Small Business Innovation Research (SBIR) Grants Program. This program will be administered by the Office of Grants and Program systems, Cooperative State Research Service. Firms with strong scientific research capabilities in the topic areas listed below are encouraged to participate. Objectives of the three-phase program include stimulating technological innovation in the private sector, strengthening the role of small businesses in meeting Federal research and development needs, increasing private sector commercialization of innovations derived from USDA-supported research and development efforts, and fostering and encouraging participation of women-owned and socially and economically disadvantaged small business concerns in technological innovation.

The total amount expected to be available for Phase I of the SBIR Program in fiscal year 1994 is approximately $3,000,000. The solicitation is being announced to allow adequate time for potential recipients to prepare and submit applications by the closing date of September 1, 1993. The research to be supported is in the following topic areas:

1. Forests and Related Resources
2. Plant Production and Protection
3. Animal Production and Protection
4. Air, Water and Soils
5. Food Science and Nutrition
6. Rural and Community Development
7. Aquaculture
8. Industrial Applications

The award of any grants under the provisions of this solicitation is subject to the availability of appropriations.

This program is subject to the provisions found at 7 CFR part 3403, as amended. These provisions set forth procedures to be followed when submitting grant proposals, rules

governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects. In addition, USDA Uniform Federal Assistance Regulations, as amended (7 CFR part 3015), Governmentwide Debarment and Suspension (Non-procurement) and Governmentwide Requirements for Drug-free Workplace (Grants) (7 CFR part 3017), New Restrictions on Lobbying (7 CFR part 3018), and Managing Federal Credit Programs (7 CFR part 3) apply to this program. Copies of 7 CFR part 3403, 7 CFR part 3015, 7 CFR part 3017, 7 CFR part 3018, and 7 CFR part 3 may be obtained by writing or calling the office indicated below.

The solicitation, which contains research topic descriptions and detailed instructions on how to apply, may be obtained by writing or calling the office indicated below. Please note that applicants who submitted SBIR proposals for fiscal year 1993 or who have recently requested placement on the list for fiscal year 1994 will automatically receive a copy of the fiscal year 1994 solicitation. Proposal Services Branch, Awards Management Division, Cooperative State Research Service, U.S. Department of Agriculture, Ag Box 2245, Washington, DC 20250–2245. Telephone: (202) 401–5048.

Done at Washington, DC, this 18th day of June 1993.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 93–14859 Filed 6–23–93; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

South Fork Granite Creek Timber Sale; Idaho Panhandle National Forests, Washington and Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: On July 10, 1992, notice was published in the Federal Register (FR 30712) that an environmental impact statement would be prepared to document the analysis and disclose the environmental impacts of proposed actions to harvest timber, build roads, improve existing stands of trees, and regenerate new stands of trees in TillicumCreek and South Fork of Granite Creek drainages. These drainages flow into the North Fork of Granite Creek at the eastern edge of the analysis area is located on the Priest Lake Ranger District, Idaho Panhandle National Forests.

That notice is hereby cancelled.

Analysis of this project began on schedule, but was cancelled because of the need to do more analysis prior to determining the scope and the purpose and need for the project.

DATES: This action is effective June 24, 1993.

FOR FURTHER INFORMATION CONTACT: David Asleson, NEPA Coordinator, Priest Lake Ranger District, HCR 5 Box 207, Priest River, ID 83856 (208) 443–2512.

Dated: June 17, 1993.

Kent Dunstan,

District Ranger, Priest Lake Ranger District, Idaho Panhandle National Forests.

[FR Doc. 93–14884 Filed 6–23–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Five Points Area Watershed, Macon, Houston, and Dooly Counties, GA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Regulations (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Five Points Area Watershed, Macon, Houston, and Dooly Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: Hershel R. Read, State Conservationist, Soil Conservation Service, Federal Building, Box 13, 355 East Hancock Avenue, Athens, Georgia 30601; telephone: 706–546–2116.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action, developed by the Soil Conservation Service, indicates that the project will not cause significant local, regional, or national impacts on the environment.

As a result of these findings, Hershel R. Read, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this Project.

The project purpose is watershed protection for improvement of water quality and includes reduction of agricultural animal waste related pollution and accelerated land treatment. The planned improvements include cost sharing and technical assistance to:

1. Develop and install 29 animal waste management plans that will include lagoons, fencing, pasture and hayland planting, stream crossing, stack houses, flush down systems, water supply wells, diversion/curbing, filter strips, collection basins, waste utilization pump and piping, and heavy use protection area.

2. Install water disposal systems, contour farming, filter strips, conservation tillage and crop residue use on about 11,550 acres of cropland.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Dr. Hershel R. Read.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: June 16, 1993.

Hershel R. Read,

State Conservationist.

[FR Doc. 93–14881 Filed 6–23–93; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 8129–01]

Klaus Westphal, Respondent; Decision and Order

On April 1, 1993, the Respondent petitioned, through his counsel, that the Decision and Order entered against him by default on April 27, 1989, and affirmed and made final by the then-Acting Under Secretary for Export Administration on May 24, 1989, be set aside, the Order vacated and the proceeding be resumed based on pleadings submitted with the petition.

On May 18, 1993, the Administrative Law Judge (ALJ) entered his recommendation that the petition of the

Respondent be denied. The recommended Decision of the ALJ, a copy of which is attached hereto and made a part hereof, adequately and properly sets forth both the relevant facts and the arguments of the parties to this matter. The recommended Decision of the ALJ has been referred to me for final action.

Based on my review of the entire record, I agree with the ALJ that good cause has not been shown to vacate the Final Order entered on May 24, 1989. Accordingly, I affirm the recommended Decision of the Administrative Law Judge. The Respondent's petition to set aside the Decision and Order on Default, to vacate the Order and to proceed on the basis of the submitted answer is denied.

This constitutes final agency action regarding this particular appeal.

Dated: June 18, 1993.

Sue E. Eckert,

Acting Under Secretary for Export Administration.

Order Denying Petition To Set Aside Default

A. Background

On April 1, 1993, counsel for Klaus Werner Erwin Westphal (the Respondent) petitioned pursuant to § 788.8(b) of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 [1991]) (the Regulations) that the Decision and Order entered against him by default in the above-captioned case on April 27, 1989, and affirmed and made final by the then-Acting Under Secretary for Export Administration on May 24, 1989,[1] be set aside, the Order vacated and that the proceeding be resumed on the basis of an answer to the December 22, 1988, charging letter issued against him. The proffered April 1993 answer to the charging letter, with which the Respondent now seeks to reopen this proceeding, is the first such answer to be submitted in this proceeding. The December 1988 charging letter, issued by the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (The Department or Agency), pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 [1991, Supp. 1992, and Public Law 103–10, March 27, 1993]) (the Act), originally alleged that the Respondent, in his capacity as managing director of Veeco GmbH, had committed four separate violations of § 787.6 of the Regulations. However, on April 21, 1989, Agency Counsel withdrew three of the alleged counts so that the Respondent, in his aforesaid managing director capacity, continued to be charged with a single violation of § 787.6 of the Regulations. This remaining allegation was that the Respondent, on December 23, 1983, had reexported from the Federal Republic of Germany to Czechoslovakia, a U.S.-origin Microetch Machine without having obtained from the Department the reexport authorization required by § 774.1 of the Regulations.

The Respondent admits both that he had received service of the original December 1988 charging letter and that he did not file an answer within thirty days after such service, as required by the Regulations. The Respondent's only communication in that period was an April 15, 1989, letter to the Department in which he reported that he was seeking counsel from officials and lawyers in connection with the charging letter.

As noted, on May 24, 1989, the Acting Under Secretary issued her Final Order affirming Administrative Law Judge Thomas W. Hoya's April 27, 1989, Decision and Order on Default recommending that the Respondent's export privileges be denied for a period of ten years. Now, four years after its issuance, the Respondent seeks to set aside the Acting Under Secretary's Final Order.

B. The Parties' Positions

The Respondent argues that the reasons now put forward for his failure to have appeared and answered the charging letter constitute good cause within the meaning of § 788.8(b) of the Regulations.[2] Asserted reasons include that, in 1989, the Respondent did not have sufficient knowledge of the English language to understand the charging letter and its implications; that, by letter, dated October 23, 1986, the Respondent's German counsel, Peter Kanis, had advised that a proceeding instituted against the Respondent in Germany by the Regional Tax Office concerning the instant December 1983 reexport to Czechoslovakia was being discontinued, thereby leading both the Respondent and his counsel to believe that the Respondent had been cleared of all charges concerning that transaction; that attorney Kanis, having reviewed the instant charging letter shortly after its receipt, by January 23, 1989, letter, had informed the Respondent that the matter was legally concluded in Germany and that the Respondent need only be concerned if he travelled to the United States, but had not conveyed to the Respondent the implications of his continuing to represent U.S. companies and of his continued handling of U.S.-origin goods;[3] and that the Respondent's above April 15, 1989, letter to the Department had resulted from attorney Kanis' advisement that the Respondent not reply to any of the questions, but that he merely confirm receipt of the charging letter and notify the Department of a change of address. In further support of his Petition, the Respondent cites difficulties assertedly experienced at the hands of a United States attorney he had retained at some undisclosed date in 1989. The Respondent had forwarded his file of original documents in this matter to this attorney who, in spite of the Respondent's asserted persistent early inquiries, did not take action on the Respondent's behalf and, in 1993, informed the Respondent that he no longer had possession of the original documents that had been delivered to him approximately four years before.

The Respondent now is motivated to seek vacation of the default Order because of recent business exigencies. As the Respondent represents, when the default Order was entered, he was a salesman and a 14 percent owner of the stock of CJT-Vacuum-Technik Produktions-& Vertriebs GmbH (CJT), in Germany. The Respondent and the majority owner of CJT, Peter Czermak, then consulted with several U.S. companies with whom CJT was dealing and were told that the Department's Order would not affect their ability to

[1] 54 FR 23241 (May 31, 1989). The Acting Under Secretary's Order provided that the Respondent and, in effect, all his business associates, be denied export privileges for a period of ten years commencing May 24, 1989.

[2] Section 788.8(b), Petition to Set Aside Default, is as follows:

(1) Procedure. Upon petition filed by a respondent against who a default order has been issued, which petition is accompanied by an answer meeting the requirements of § 788.7(b), the administrative law judge may, after giving all parties opportunity to comment, and for good cause shown, set aside the default and vacate the order entered thereon and resume the proceedings.

(2) Time limits. A petition under this section must be made either within one year of the date of entry of the order which the petition seeks to have vacated, or before the expiration of any administrative sanctions imposed thereunder, whichever is later.

Since the administrative sanctions imposed by the Under Secretary's Final Order have not yet expired, the Respondent's Petition is timely-filed under § 788.8(b)(2), above.

[3] Mr. Kanis' January 23, 1989, letter, in relevant part, was as follows:

This matter has been legally concluded in Germany and since the police power of the United States ends at its borders, it does not extend to Europe.

It is recommended, however, that should the possibility of your traveling to America arise, you retain an attorney there so that you do not run the risk of being detained on the basis of this proceeding upon entering the country.

export to CJT since they were doing business with CJT and not directly with the Respondent. On January 17, 1992, CJT entered into a joint German-based venture known as CKL Vacuum-Technik Vertriebs GmbH (CKL) with a U.S. company, Kurt J. Lesker Company (KJLC). The Respondent, Mr. Czermak and a representative of KJCL were named as Geschaftfuhrers (managers) of CKL. The Respondent also acted as a sales engineer for CKL. KJLC was not informed of the existence of the Order against the Respondent based on CJT's earlier discussions with the U.S. companies and had no actual knowledge of the Order until December 21, 1992. On that date, KJLC was informed by a vendor that the Department had denied the Respondent export privileges for a period of ten years. KJLC immediately stopped all exports to CKL pending investigation and consultation with counsel. As a result of the revelation concerning this Order, and subsequent discussions with business associates, the Respondent ended all relationships with CKL and with CJT, including termination of his sales engineer position and status as a manager with CKL and his stock ownership in CJT. The Respondent asserts that he first fully understood the nature and implications of the charging letter and the resultant Order in discussions with new counsel only in December 1992 and January 1993, and took immediate measures to pursue this Petition.

Summarizing, the Respondent basically argues that the Decision and Order on Default entered against him four years ago now should be set aside and the Order vacated because he had not understood the English language used in the charging letter and the charging letter's implications, and because he had been ineffectively represented by counsel both in Germany and in the United States.

Agency Counsel, in his May 4, 1993, Response to the Petition, asserts that neither of the Respondent's principal contentions based (1) on lack of understanding of the English language contained in the charging letter or its implications, and (2) the ineffective assistance assertedly rendered by German and U.S. counsel, constitute good cause to warrant setting aside the Decision and Order on Default entered herein.[4] As indicated by Agency Counsel, the respondent has acknowledged receipt of the charging letter and that he did not file an answer thereto within the time period permitted by the Regulations. Agency Counsel argues that, as the respondent does not claim the existence of newly-discovered evidence affecting allegations of the charging letter, and that, as the Respondent concedes, all the evidence submitted with his Petition was available to him at the time he received the charging letter, there is no good cause within the meaning of § 788.8(b) of the Regulations for reopening this proceeding.[5]

C. Discussion and Conclusions

With respect to the Respondent's contention that, as a resident of Germany, he had been unable to understand the charging letter because written in English, § 788.7(e) of the Regulations, entitled English Language Required, establishes that proceedings arising under the Act shall be conducted in the English language.[6] Knowledge of this provision's requisite, and the requirements of the Act and Regulations in general, must be imputed to the Respondent because the facts in question were open to discovery and it was his duty while engaged in the business of reexporting U.S.-origin equipment to inform himself of them. The Act, its implementing Regulations and the law, in general, cannot retain efficacy if subject to circumvention by Respondents who, having failed in their responsibility to become informed, consequently plead ignorance as a defense. As the facts here make clear, when finally motivated by the Order's impact, the Respondent, with his April 1 Petition and supporting documents, proved capable of penetrating the barriers of language, comprehension and even of time.

Similarly, I do not find the Respondent's assertions concerning ineffective representation by German and U.S. counsel to provide good cause for the relief sought. As the U.S. Court of Appeals held in *Nemaizer* v. *Baker*,[7] cited by Agency Counsel;

> * * * We have consistently declined to relieve a client * * * of the 'burdens of a final judgment entered against him due to the mistake or omission of his attorney by reason of the latter's ignorance of the law or other rules of the court, or his inability to efficiently manage his caseload.' *United States* v. *Cirami*, 535 F. 2d 736, 739 (2d Cir. 1976); *United States* v. *Erdoss*, 440 F.2d 1221 (2d Cir.), cert. denied sub nom *Horvath* v. *United States*, 404 U.S. 849, 92 S. Ct. 83, 30 L.Ed. 88 (1971); *Schwarz* v. *United States*, 384 F.2d 833 (2d Cir. 1967). This is because a person who selects counsel cannot thereafter avoid the consequences of the agent's acts or omissions. *Link* v. *Wabash Railroad Co.*, 370 U.S. 626, 633–34, 82 S. Ct. 1386, 1390, 8 L. Ed. 734 (1962) * * *
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> More particularly for our purposes, an attorney's failure to evaluate carefully the legal consequences of a chosen course of action provides no basis for relief from a judgment. See *(United States* v. *O'Neil*, 709 F. 2d (361) at 373 (5th Cir. 1983); *Chick Kam Choo v. Exxon Corp.)*, 699 F. 2d (693) at 696–97 (5th Cir.) (cert. denied sub nom. *Chick Kam Choo v. Esso Oil Co.*, 464 U.S. 826, 104 S. Ct. 98, 78 L. Ed. 2d 103 [1983]).

The above authority makes clear that the Respondent is bound by his selection of legal counsel and by the advice received therefrom, and that the asserted ineffectiveness of Respondent's German and U.S. attorneys in this matter cannot provide a basis for reopening this proceeding.

The Respondent's factual account does not support his contention that it was not until consultation with new counsel as late as December 1992 and January 1993 that he understood the nature and implications of the charging letter and Order and could take appropriate action in this proceeding. Any sense that the Respondent might have had in 1986 of having been cleared of all possible charges with respect to the subject transaction when notified of the discontinuation that year of the Regional Tax Office proceeding against him must have ended when he received the above January 23, 1989, correspondence from his German Attorney, Peter Kanis, after Mr. Kanis' review of the December 22, 1988, charging letter. Mr. Kanis, while noting that the matter had been legally concluded in Germany, left no doubt about the existence of a continuing legal obligation in the United States, from which the Respondent, in Europe, might feel secure "since the police power of the United States ended at its borders and did not extend to Europe." Mr. Kanis recommended, however, that should the Respondent travel to America, he retain an attorney there so that he did not risk being detained upon entering that country on the basis of this proceeding. Accordingly, having been advised by counsel in January 1989 that the charging letter that had been issued against him during the preceding month involved alleged violation of United States law of sufficient seriousness to possibly result in his detention should he travel to the United States, but that

[4] As Agency Counsel correctly indicates, there is no direct precedent for the granting of petitions to set aside default orders under § 788.8(b) of the Regulations. Accordingly, whether the Respondent has shown good cause to set aside the default order in this matter is one of first impression.

[5] Other arguments raised by Agency Counsel will be considered in the discussion.

[6] § 788.7(e) is as follows:

The answer, and all other documentary evidence, must be submitted in English or translations into English must be filed at the same time.

[7] 793 F.2d 58, 62 (C.A. 2, 1986).

the United States police power could not reach him in Germany, the Respondent elected not to respond to the charging letter.[8]

After the May 1989 Order was entered, the Respondent continued to evidence awareness of its significance. Subsequent to its entry, the Respondent and his senior shareholder in CJT, Peter Czermak, consulted with several U.S. companies with whom CJT did business and were reassured that the Order, for above-noted reasons, would not effect their ability to export to CJT. When, on January 17, 1992, the Respondent and Mr. Czermak, as principals of CJT, entered with KJLC into the joint venture, CKL, KJLC's principals were not informed of the existence of the Order, which the Respondent and Mr. Czermak saw fit to conceal, assertedly on the basis of their above consultations with the several U.S. companies.[9] The Respondent and two others were appointed managers of the new joint venture, and the Respondent also gained employment with CKL as a sales engineer. This arrangement might have continued indefinitely except that on December 21, 1992, a vendor informed KJLC that the Respondent had been denied export privileges for a period of ten years. As a result of this revelation and the discussions that followed, the Respondent discontinued all relationships with CKL and CJT, including termination of his manager's status and employment as a sales engineer with CKL and his stock ownership in CJT. Contrary to the Respondent's assertions, the record as outlined above indicates that he understood the implications of the Order well before December 1992 and January 1993. By his and Mr. Czermak's earlier consultations with the U.S. companies and subsequent concealment of the Order's existence from the partners in the joint venture, the Respondent had acted to circumvent its effect. It was only in December 1992, after the vendor unexpectedly disclosed the Order, causing events to close in, that the Respondent became motivated to try to go forward with this proceeding. I find from the above facts that the Respondent was moved to petition four years after default, not because he misunderstood the proceeding's implications, but because he felt the Order's delayed impact.[10]

As Agency Counsel points out, "* * * final judgments should not 'be lightly reopened.'"[11] The U.S. Supreme Court in *Ackermann* v. *United States*[12] noted, "There must be an end to litigation * * *, and free, calculated, deliberate choices are not to be relieved from."

Here, the charging letter was served and, although the Respondent had ample time and had been apprised by counsel of the seriousness of the allegations, he chose not to file an answer. I agree with Agency Counsel that this is not a case where there is a claim of newly-discovered evidence that might affect the allegations of the charging letter, and all material evidence the Respondent has submitted in support of his present Petition was available when the charging letter was served, except, of course, the effect on his career of the resultant Final Order. The Respondent, in 1989, freely chose not to answer the charging letter. His current and probably sincere regret over the resultant Order's sanctions and, consequently, his earlier failure to have timely responded to the charging letter, in the context of the above findings, does not provide "good cause" to vacate the final judgment entered herein in 1989. Accordingly, upon careful consideration it hereby is

Ordered That the Respondent's Petition to Set Aside the Decision and Order on Default, to Vacate the Order and to proceed on the submitted answer be, and the same hereby is, denied.

Dated: May 18, 1993.

Robert M. Schwarzbart,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Acting Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Acting Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 93–14924 Filed 6–23–93; 8:45 am]

BILLING CODE 3510–DT–M

[8] The Respondent's statement that attorney Kanis, in his January 1989 letter, had disserved the Respondent by not pointing out the implications of the Respondent's continuing to represent U.S. companies and to handle U.S.-origin goods is difficult to understand. Implicit in Mr. Kanis' letter is the premise that it might be difficult to do either if a fugitive from the United States.

[9] The Respondent, in not informing his new partners from KJLC about the outstanding Order denying him export privileges for ten years, for whatever reasons, withheld disclosure of a material fact and deprived those parties of any opportunity to exercise judgment concerning the Order's significance to the joint venture prior to its establishment. It is most unlikely that the Respondent would have so consulted and concealed without awareness of the Order's implications. The Respondent's concerns in this regard were vindicated by the reaction of the KJLC officials when they later learned of the Order.

[10] The Respondent understates his corporate roles in asserting that he did not understand until later the implications of the charging letter and Order on his position as a sales engineer. As a 14 percent shareholder of CJT and as a manager of CKL, he was a principal and/or senior official of these companies.

[11] *Nemaizer* v. *Baker*, 793 F.2d, *supra*, at 61.

[12] 340 U.S. 193, 198, 71 S.Ct. 209, 211–12 (1950).

International Trade Administration

(A–307–807 and A–821–804)

Antidumping Duty Orders: Ferrosilicon From Venezuela and the Russian Federation.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 24, 1993.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Kimberly Hardin, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230: (202) 482–1776 or 482–0371, respectively.

Scope of Orders

The merchandise subject to these antidumping duty orders is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages by weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this order. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. The HTSUS subheadings are provided for convenience and customs purposes. Our written description of the scope of this order is dispositive.

Antidumping Duty Orders

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on May 3, 1993, and May 13, 1993, respectively, the Department of Commerce (Department) made its final determinations that ferrosilicon from Venezuela and the Russian Federation is being sold at less than fair value (58 FR 27522, May 10, 1993, and 58 FR 29192, May 19, 1993, respectively). On June 16, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that such imports materially injure a U.S. industry.

Suspension of Liquidation

In accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of ferrosilicon from Venezuela and the Russian Federation. These antidumping duties will be assessed on all unliquidated entries of ferrosilicon from Venezuela and the Russian Federation entered, or withdrawn from warehouse, for consumption on or after December 29, 1992, the date on which the Department published its preliminary determination notices in the **Federal Register** (57 FR 61879 and 57 FR 61876, respectively). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposit for the subject merchandise.

Manufacturer/producer/exporter	Margin percentage
The Russian Federation:	
All manufacturers/producers/exporters	104.18
Venezuela:	
CVG-Venezolana de Ferrosilicio (CVG Fesilvin)	9.55
All others	9.55

Regarding the investigation of ferrosilicon from the Russian Federation, in its final determination, the Department found that critical circumstances exist with respect to exports of ferrosilicon from the Russian Federation. However, on June 16, 1993, the ITC notified the Department that retroactive assessment of antidumping duties is not necessary to prevent recurrence of material injury from massive imports over a short period. As a result of the ITC's determination, pursuant to section 735(c)(3) of the Act, we shall order Customs to terminate the retroactive suspension of liquidation and to release any bond or other security and refund any cash deposit required under section 733(d)(2) with respect to entries of subject merchandise entered or withdrawn from warehouse, for consumption prior to December 29, 1992.

This notice constitutes the antidumping duty order with respect to ferrosilicon from Venezuela and the Russian Federation, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

These orders are published in accordance with section 736(a) of the Act and 19 CFR § 353.21.

Dated: June 17, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-14920 Filed 6-23-93; 8:45 am]

BILLING CODE 3510-DS-P

Texas A&M University, Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 93-016. *Applicant:* Texas A&M University, College Station, TX 77843. *Instrument:* Submersible Fluorimeter and Accessories, Model AQUATRACKA MkIII. *Manufacturer:* Chelsea Instruments Ltd., United Kingdom. *Intended Use:* See notice at 58 FR 17862, April 6, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides (1) a single 4-decade logarithmic range for measuring widely varying chlorophyll densities and (2) deployment to a depth of 6000m. The National Oceanic and Atmospheric Administration and a private research institution advise that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-14921 Filed 6-23-93; 8:45 am]

BILLING CODE 3510-DS-F

National Oceanic and Atmospheric Administration

Endangered Species; Permits

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

ACTION: Issuance of an amendment to permit No. 823; Idaho Department of Fish and Game (P503C).

On February 17, 1993 notice was published (58 FR 8740) that an application (P503C) had been filed by the Idaho Department of Fish and Game (IDFG), to take listed Snake River fall and spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and listed Snake River sockeye salmon (*O. nerka*) for the purposes of scientific research as authorized by the Endangered Species Act (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

On April 1, 1993 (58 FR 18205), IDFG was issued Permit No. 823 under the authority of the ESA and the NMFS regulations governing listed fish and wildlife permits, authorizing three of seven projects proposed in their application.

Notice is hereby given that on June 16, 1993 IDFG was issued an amendment to Permit No. 823 for the above taking subject to certain conditions set forth therein.

Issuance of this Permit, as required by the ESA, was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of this Permit; (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This Permit was also issued in accordance with and is subject to the NMFS regulations governing listed species permits.

The application, Permit, Amendment, and supporting documentation are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503/230–5400).

Dated: June 16, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–14877 Filed 6–23–93; 8:45 am]

BILLING CODE 3510–22–M

[Docket No. 930650–3150]

Affirmation of Vertical Datum for Surveying and Mapping Activities

SUBAGENCY: National Ocean Service, Coast & Geodetic Survey, National Oceanic and Atmospheric Administration, DOC.

ACTION: Notice.

SUMMARY: This Notice announces a decision by the Federal Geodetic Control Subcommittee (FGCS) to affirm the North American Vertical Datum of 1988 (NAVD 88) as the official civilian vertical datum for surveying and mapping activities in the United States performed or financed by the Federal Government, and to the extent practicable, legally allowable, and feasible, require that all Federal agencies using or producing vertical height information undertake an orderly transition to NAVD 88.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Stem, N/CG1×4, SSMC3, Station 9357, National Geodetic Survey, NOAA, Silver Spring, Maryland 20910; telephone: 301–713–3230.

SUPPLEMENTARY INFORMATION: The Coast and Geodetic Survey (C&GS), National Geodetic Survey (NGS), has completed the general adjustment portion of the NAVD 88 project, which includes approximately 80 percent of the previously published bench marks in the NGS data base. The remaining "posted" bench marks which comprise approximately 20 percent of the total will be published by October 1993. Regions of significant crustal motion will be analyzed and published as resources allow.

NAVD 88 supersedes the National Geodetic Vertical Datum of 1929 (NGVD 29) which was the former official height reference (vertical datum) for the United States. NAVD 88 provides a modern, improved vertical datum for the United States, Canada, and Mexico. The NAVD 88 heights are the result of a mathematical least squares general adjustment of the vertical control portion of the National Geodetic Reference System and include 80,000 km of new U.S. Leveling observations undertaken specifically for this project.

NAVD 88 height information in paper or digital form is available from the National Geodetic Information Branch, N/CG174, SSMC3, Station 9202, National Geodetic Survey, NOAA, Silver Spring, Maryland, 20910; telephone: 301–713–3242.

Dated: June 21, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA.

[FR Doc. 93–14922 Filed 6–23–93; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title and OMB Control Number: DoD FAR Supplement, part 223, Environment, Conservation, Occupational Safety, and Drug-Free Workplace, and related clauses at 252.223; OMB Control Number 0704–0272

Type of Request: Reinstatement

Number of Respondents: 1,401

Responses per Respondent: 1

Annual Responses: 1,401

Average Burden per Response: 3.89 hours

Annual Burden Hours: 5,451

Needs and Uses: DoD FAR Supplement, part 223 prescribes policies and procedures for contracting for ammunition and explosives. The information generated by these requirements is used by Federal Government personnel to determine if contractors take reasonable precautions in handling ammunition and explosives so as to minimize the potential for mishaps.

Affected Public: Business or other for-profit, non-profit institutions, and small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: June 21, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14898 Filed 6–23–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title and OMB Control Number: DoD FAR Supplement, part 205, Publicizing Contract Actions, and the clause at 252.205–7000; OMB Control Number 0704–0286

Type of Request: Revision
Number of Respondents: 1,800
Responses Per Respondent: 1
Annual Responses: 1,800
Average Burden Per Response: 1.3 hours
Annual Burden Hours: 2,340
Needs and Uses: DoD FAR Supplement, part 205 and the clause at 252.205–7000, Provision of Information to Cooperative Agreement Holders, requires defense contractors, awarded a contract in excess of $500,000 to provide entities holding cooperative agreements with the Defense Logistics Agency (DLA), upon their request, a list of appropriate employees, their business address, telephone number, and area of responsibility, who have responsibility for awarding subcontracts under defense contracts. This language implements Section 957 of Public Law 99–500.
Affected Public: Businesses or other for-profit, non-profit institutions, and small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: June 21, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14899 Filed 6–23–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on August 11, 1993, and from 8:30 a.m. to 4:30 p.m. on August 12, 1993. The meeting will be held at the Monterey Plaza Hotel, 400 Cannery Row, Monterey, CA. The purpose of the meeting is to review planned changes in the Department of Defense's Student Testing Program and progress in developing paper-and-pencil and computerized enlistment tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management and Personnel), room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 695–5525, no later than August 2, 1993.

Dated: June 21, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14901 Filed 6–23–93; 8:45 am]

BILLING CODE 5000–04–M

Meetings

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Executive Committee of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review unresolved resolutions made by the Committee at the DACOWITS 1993 Spring Conference; review the Subcommittee Issue Agenda; review the proposed agenda for the DACOWITS 1993 Fall Conference; and discuss issues relevant to women in the Services. All meeting sessions will be open to the public.

DATES: September 13, 1993, 8:30 a.m.–4 p.m.

ADDRESSES: SECDEF Conference 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Captain Kari L. Everett, Office of the DACOWITS and Military Women Matters, OASD (Force Management and Personnel), the Pentagon, room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122.

Dated: June 21, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14902 Filed 6–23–93; 8:45 am]

BILLING CODE 5000–04–M

Performance Review Board Membership

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Board for the Defense Finance and Accounting Service.

EFFECTIVE DATE: July 15, 1993.

FOR FURTHER INFORMATION CONTACT: Beverley McDaris, Defense Finance and Accounting Service, DAO-Arlington, DFAS–CL–BJH, 1931 Jefferson Davis Highway, Arlington, VA 22240–5280.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

Gary Amlin, Deputy Director for Finance, Defense Finance and Accounting Service—Headquarters
John Barber, Director, Military and Civilian Pay Directorate (Finance), Defense Finance and Accounting Service—Headquarters
Charles Coffee, Director, Contract Pay and Disbursing Directorate (Finance), Defense Finance and Accounting Service—Headquarters
John Cooley, Director, Reporting and Performance Directorate (Accounting), Defense Finance and Accounting Service—Headquarters
William Daeschner, Deputy Director for Information Management, Defense Finance and Accounting Service—Headquarters
Carroll Dennis, Director for External Affairs and Management Support (Resources Management), Defense Finance and Accounting Service—Headquarters
Douglas Farbrother, Assistant Deputy Director for Resource Management, Defense Finance and Accounting Service—Headquarters
Lorraine Lechner, Deputy Director for Resource Management, Defense Finance and Accounting Service—Headquarters
John Mester, General Counsel, Defense Finance and Accounting Service—Headquarters
Daniel Turner, Deputy Director for Accounting, Defense Finance and Accounting Service—Headquarters
Arnold Weiss, Deputy Director for Business Information Management, Defense Finance and Accounting Service—Headquarters
Jay Williams, Director, Cleveland Center, Defense Finance and Accounting Service

Phyllis Hudson, Deputy Director, Cleveland Center, Defense Finance and Accounting Service
Ronald Hovell, Director, Columbus Center, Defense Finance and Accounting Service
Bernard Gardetto, Deputy Director, Columbus Center, Defense Finance and Accounting Service
John Nabil, Director, Denver Center, Defense Finance and Accounting Service
Jerome Coleman, Deputy Director, Denver Center, Defense Finance and Accounting Service
James McQuality, Director, Security Assistance Accounting Center, Defense Finance and Accounting Service—Denver Center
Michael Wilson, Director, Indianapolis Center, Defense Finance and Accounting Service
Thomas McCarty, Deputy Director, Indianapolis Center, Defense Finance and Accounting Service
Gregory Bitz, Director, Kansas City Center, Defense Finance and Accounting Service

Dated: June 21, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–14900 Filed 6–23–93; 8:45 am]

BILLING CODE 5000–04–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 93–4]

DOE's Management and Direction of Environmental Restoration Management Contracts

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning health and safety factors associated with DOE's management and direction of Environmental Restoration Management Contracts. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before July 26, 1993.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: June 21, 1993.

John T. Conway,

Chairman.

DOE's Management and Direction of Environmental Restoration Management Contracts

Dated: June 16, 1993.

The Board and its staff have been monitoring the efforts of the Department of Energy (DOE) in technically managing the Uranyl Nitrate Hexahydrate (UNH) stabilization project at the Fernald Environmental Management Project since DOE began preparations for operational testing in early 1992. The stabilization project was initiated after the UNH solution was declared waste in 1991. The purpose of the project is to process the UNH into a filter cake for interim nuclear waste storage onsite pending final disposition.

In addition to maintaining a focus on the technical aspects affecting safety at Fernald, the Board has a high interest in DOE's use of its new Environmental Restoration Management Contractor (ERMC) approach to defense nuclear waste storage, treatment, disposal, and site decommissioning/restoration at this site. Experience acquired at Fernald can prove valuable to the Department and its future ERMCs for defense nuclear sites. Of particular interest to the Board is how, under this approach, DOE and the ERMC will ensure adequate protection of the health and safety of the public and the onsite workers involved in storage and processing of nuclear waste at Fernald.

The Board's staff has visited Fernald to review the UNH stabilization project in five separate occasions since March 1992. Topics for review have included technical management arrangements, operator training, start-up test plans, radiation protection, nitrogen dioxide releases, and the testing of system operability. The Board forwarded observations from the March 1992 Fernald visit to the Assistant Secretary for Environmental Restoration and Waste Management (EM–1) in a letter dated July 8, 1992. Observations from a staff trip in April of this year were forwarded to EM–1 in a letter dated May 11, 1993. These reviews at Fernald have shown weaknesses in DOE's technical direction of contractor performance, the contractor's conduct of operations, and the level of knowledge of personnel. With respect to the first weakness, a lack of technical vigilance on the part of DOE-Fernald (DOE–FN) allowed the ERMC contractor to start operations at the UNH project in April 1993 without (1) conducting a DOE–FN-required readiness review and without (2) informing and obtaining the approval of either the DOE–FN manager or the DOE headquarters project office to start the operation.

Most recently, incidents involving the improper transfer of UNH solution into a treatment system sump, and the resultant release of approximately 30 gallons of UNH solution to the environment, have again shown how inadequate procedures, inadequate knowledge of systems and procedures on the part of operators, and absence of an appropriate level of discipline in the conduct of operations can contribute to unsafe operations. These incidents were logged in DOE's occurrence reporting system in reports ORO—WMCO–FMPC–1993–0027 AND ORO—WMCO–FMPC–1993–0028, respectively. Furthermore, the Board has noted recent events at other facilities under the cognizance of EM, including the Defense Waste Processing Facility at SRS and the Uranium Oxide Plant at Hanford, that appear to indicate fundamental safety problems resulting from defective discipline of operations.

The incidents at Fernald and at other sites, taken together, also suggest that DOE's technical management and oversight structure for ERMC contracts are in need of upgrading. As the defense nuclear complex moves more rapidly toward long-term storage, environmental restoration, and cleanup, new contractors at other sites will be engaged using the ERMC approach, as is being used at Fernald. Based upon observations of the Fernald project, the Board has concern stemming from health and safety considerations that: (1) DOE may not have sufficient numbers of competent, trained headquarters and field personnel to technically manage such contracts, and (2) contracts may be negotiated and signed before DOE has developed internal plans on how to carry out its technical management and oversight responsibilities.

The Board is aware that you have recently announced initiatives to reform DOE contract management. These initiatives are directed largely at more effective financial management and program implementation. The Board would encourage, in the interests of public and worker health and safety, that the planned review of contracting mechanisms and practices also encompass the DOE technical direction and oversight structure. The Board believes that competence and effectiveness in technical aspects of management are essential to assure that

contract services are provided in a manager which meets health and safety objectives.

The Board believes that DOE should formalize and strengthen its technical management of ERMC contracts. A straightforward step toward achieving this objective is for DOE to develop, in parallel with the drafting and negotiation of a new contract, a separate document which will provide detailed project and technical management plans and allocate qualified technical personnel to manage that contract at both HQ and the field location. Such a plan would in effect be a functions and responsibilities document. It would lay out management expectations for those assigned the technical monitoring, direction, and oversight of the contracted services, and identify the interfaces with other DOE resources managing the non-technical aspects of the contract. The contractor would normally not be allowed to commence operations involving radioactive materials until DOE's plan for technical management of site activities has been put into effect. This means, among other things, that the relevant DOE site and headquarters offices have been adequately staffed with qualified persons to provide competent technical direction, guidance, and oversight of the contractor's operations. In addition, the principles contained in applicable DOE Orders and in previous Board recommendations on such topics as DOE facility representatives (92–2), operational readiness reviews (92–6), and training (92–7) should be incorporated, where appropriate, into DOE's plan.

Such advance planning for technical management of ERMC contracts would have the following beneficial impacts: (1) Timely identification and commitment of adequate technical resources to manage new contracts and projects; (2) up front identification for DOE technical managers of expectations deriving from DOE responsibilities for protection of health and safety of workers and the public; and (3) assurance that DOE's technical line management and safety oversight organizations are involved early in the contracting process.

In summary, the Board believes that improvement of DOE's capability to provide technical management and oversight of ERMCs across a board front is necessary to ensure adequate protection of the public health and safety. Therefore, the Board recommends that:

1. DOE develop and implement a technical management plan for Fernald and all future ERMC contracts. For Fernald, the technical management plan should be developed and implemented expeditiously. For future ERMC contracts, such a plan should be readied prior to contractor selection, and should be implemented at the initiation of contracted services.

2. Each plan for technical management of contracted services include as a minimum:

(a) A clear statement of functions and responsibilities of those in DOE assigned the task of technical direction, monitoring, or oversight of the contracted efforts, both at headquarters and the relevant operations offices;

(b) Definition of the technical and managerial qualifications required of DOE's technical management staff at each level of responsible DOE line and oversight units;

(c) Identification of the principal interfaces with the non-technical DOE personnel involved in the contract management;

(d) Identification, by name, of the key technical personnel selected to perform the requisite technical direction, monitoring, and oversight functions;

(e) Identification of policies, practices, orders, and other key instructions that represent a basic framework to be used in DOE technical management of the contractor in ensuring public and work safety and adequate environmental protection; and

(f) A detailed program to ensure compliance with applicable statutes and DOE Orders, standards, rules, directives, and other requirements related to public and worker safety and environmental protection.

3. DOE consider the insights gained from addressing recommendations 1 and 2 above for ERMC contracts in pursuing the broader initiatives for reforming contract management you recently announced.

To assist DOE in resolving the broader-based safety issues addressed in the previous recommendations, the Board recommends that the following additional actions be taken at Fernald:

4. DOE headquarters complete an independent review of the recent incidents at Fernald, identifying the root causes for those incidents and the corrective actions required to remedy the underlying problems, and translate the Fernald findings into lessons learned applicable to other facilities.

5. DOE establish a clear process with an appropriate set of requirements and clear definitions of the line of authority for approval to start the UNH stabilization project. The set of requirements should identify the type and scope of readiness reviews DOE will require for the start of the UNH stabilization runs. For the type and scope of the reviews, consideration should be given to the standards set forth in previous Board recommendations on this subject (i.e. 90–4, 91–3, 91–4, 92–1, 92–3, and 92–6) and account for the known safety considerations for this operation. This process should also include identification of the appropriate DOE official(s) responsible for ensuring that public and worker health and safety are adequately protected and for giving final start-up approval.

6. DOE immediately establish a group of technically qualified Facility Representatives at Fernald to monitor the ongoing activities of daily operations at the site. DOE's "Guidelines for Establishing and Maintaining a Facility Representative Program at DOE Nuclear Facilities," issued in March, 1993, may be a useful basis for quickly establishing such a program at Fernald.

John T. Conway,

Chairman.

Appendix—Transmittal Letter to Secretary of Energy

John T. Conway, Chairman
A.J. Eggenberger, Vice Chairman
John W. Crawford, Jr.
Joseph J. DiNunno
Herbert John Cecil Kouts

Defense Nuclear Facilities Safety Board

625 Indiana Avenue, NW., Suite 700, Washington, DC 20004 (202) 208–6400

June 16, 1993.

The Honorable Hazel R. O'Leary,
Secretary of Energy, Washington, DC 20585.

Dear Secretary O'Leary: On June 16, 1993, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 93–4 which is enclosed for your consideration. Recommendation 93–4 deals with health and safety factors associated with DOE's management and direction of Environmental Restoration Management Contracts.

42 U.S.C. 228d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,

Chairman.

[FR Doc. 93–14894 Filed 6–23–93; 8:45 am]

BILLING CODE 6820–KD–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 26, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: June 18, 1993.

Cary Green,

Director, Information Resources Manogement Service.

Office of Vocational and Adult Education

Type of Review: New
Title: National Workplace Literacy Program Reporting Requirements
Frequency: Semi-annually
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions; small businesses or organizations
Reporting Burden:
Responses: 50
Burden Hours: 2,400
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: The data will be requested from awardees for the National Workplace Literacy Program. The data will be used to monitor performance through the grant period and assist ED program staff in determining the viability of the National Workplace Literacy program.

[FR Doc. 93–14874 Filed 6–23–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. F057]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of Consolidated Industries From the DOE Furnace Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Consolidated Industries (Consolidated) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's MBA series of furnaces.

Today's notice also publishes a "Petition for Waiver" from Consolidated. Consolidated's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Consolidated seeks to test using a blower delay time of 30 seconds for its MBA series of furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than July 26, 1993.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–057, Mail Stop EE–90, room 6B–025, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 586–3012.

FOR FURTHER INFORMATION CONTACT:
Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9127
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR Part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE

for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On April 7, 1993, Consolidated filed an Application for Interim Waiver regarding blower time delay. Consolidated's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Consolidated requests the allowance to test using a 30-second blower time delay when testing its MBA series of furnaces. Consolidated states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.8 percent. Since current DOE test procedures do not address this variable blower time delay, Consolidated asks that the Interim Waiver be granted.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988; 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Consolidated an Interim Waiver for its MBA series of furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations part 430, the following letter granting the Application for Interim Waiver to Consolidated was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, June 16, 1993.

Robert L. San Martin,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

June 16, 1993.

Mr. Gerald K. Gable,

Vice President of Engineering, Consolidated Industries Corporation, P.O. Box 7800, Corner of Brady and Concord, Lafayette, IN 47903–7800

Dear Mr. Gable: This is in response to your April 7, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for the Consolidated Industries (Consolidated) MBA series of furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; Ducane Company, 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Consolidated's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Consolidated will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Consolidated's Application for an Interim Waiver from the DOE test

procedure for its MBA series of furnaces regarding blower time delay is granted.

Consolidated shall be permitted to test its MBA series of furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below:

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of Sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Robert L. San Martin

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

April 7, 1993

Assistant Secretary of Conservation and Renewable Energy,

U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585

Gentlemen: This Petition for Waiver and Application for Interim Waiver is submitted in compliance with title 10 CFR 430.27. This request is for modification to the Test Procedures for Measuring the Energy Consumption of Furnaces found in appendix N to subpart B of part 430.

The current test procedure uses a 1.5 minute time delay between the burner start-up and the blower start-up. Consolidated Industries' MBA series of furnaces utilizes a 30 second non-adjustable fixed time delay between the burner ignition and blower start-up. For the MBA series of furnaces, Consolidated Industries is requesting that the fixed time delay be substituted for the current test procedure's 1.5 minute time delay.

We submit that the test procedure using 1.5 minute blower start-up time delay requires a bypass of the furnace safety limit switch and does not represent the true product performance and efficiency. The MBA furnace series has a light weight, compact heat exchanger that was designed to heat up very quickly with an ensuing blower start-up time optimized at 30 seconds. The advanced heat exchanger design along with improved operating controls has improved the efficiency of this furnace in such a way that the current standard does not credit Consolidated Industries for the true efficiency improvements to this furnace. The product performance will be more accurately depicted using the proposed ASHRAE Standard 103–1988 which accounts for the design flexibility and improvement without the penalty incurred by using the current test procedure. The test results show an average of 0.8% improvement in AFUE using the 30 second fixed time delay.

Other manufacturers have been granted similar waivers for similar reasons.

Data and documentation can be supplied at your request.

This waiver request letter has been sent to GAMA and gas furnace manufacturers that market similar products.

Sincerely,

Gerald K. Gable,

Vice President of Engineering, Consolidated Industries Corp.

[FR Doc. 93–14796 Filed 6–23–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket Nos. ER–93–157–000, et al.]

PacifiCorp, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 17, 1993.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER93–157–000]

Take notice that PacifiCorp, on June 14, 1993, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, an amendment to its filing under the above referenced docket.

Copies of the filing amendment were supplied to the owners of the Skookumchuck Project including Puget Sound Power & Light Company, The Washington Water Power Company and Portland General Electric Company.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Consumers Power Co.

[Docket No. ER93–695–000]

Take notice that on June 3, 1993, Consumers Power Company (Consumers) tendered for filing a revision to the annual charge rate for charges due Consumers from Northern Indian Public Service Company (Northern), under the terms of the Barton Lake-Batavia Interconnection Facilities Agreement (designated Consumers Power Company Electric Rate Schedule FERC No. 44).

The revised charge is provided for in Subsection 1.043 of the Agreement, which provides that the annual charge rate may be redetermined effective May 1, 1993 using year-end 1992 data with a new annual charge rate. As a result of the redetermination, the monthly charges to be paid by Northern were reduced from $17,277.00 to $16,917.00.

Consumers requests an effective date of May 1, 1993, and therefore requests waiver of the Commission's notice requirements.

Comment Date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. PacifiCorp

[Docket No. ER93–583–000]

Take notice that PacifiCorp on June 14, 1993, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a fully executed Joint Use and Interconnection Agreement (Agreement) dated May 20, 1993 between PacifiCorp and Dixie Escalante Rural Electric Association, Inc. (Dixie Escalante).

The Agreement provides for the installation, interconnection and joint use of transmission facilities to serve PacifiCorp's and Dixie Escalante's loads in Iron and Washington Counties, Utah. PacifiCorp submitted an unexecuted draft of the Agreement in its initial filing which was subsequently revised by Dixie Escalante and PacifiCorp.

PacifiCorp requests a waiver of prior notice pursuant to 18 CFR part 35.11 of the Commission's Rules and Regulations for an effective date not later than sixty days from the date that PacifiCorp's initial filing was received by the Commission.

Copies of this filing were supplied to Dixie Escalante, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Thermo Power and Electric, Inc.

[Docket No. QF85–110–003]

On June 3, 1993, and June 15, 1993, Thermo Power and Electric, Inc. (Applicant) tendered for filing supplemental information to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to the technical data and the ownership of the facility.

Comment Date: July 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Bangor Hydro-Electric Co.

[Docket No. ER93–606–000]

Take notice that on June 14, 1993, Bangor Hydro-Electric Company (Bangor) tendered for filing information requested by the Commission Staff as an amendment to its April 30, 1993 filing in this docket.

Comment Date: July 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Idaho Power Co.

[Docket No. ER93–148–000]

Take notice that on June 14, 1993, Idaho Power Company (IPC) tendered for filing Amendment to its filing in this matter to submit additional information regarding cost of service.

Comment Date: July 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Co.

[Docket No. ER93–491–001]

Take notice that on June 14, 1993, Idaho Power Company (IPC) tendered for filing a revision of rates and a refund report in the above-referenced docket with regard to Public Utility District No. 1 Snohomish County and City of Tacoma Department of Public Utilities Light Division.

Comment Date: July 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Columbus Southern Power Co.

[Docket No. ER93–637–000]

Take notice that American Electric Power Service Corporation, on behalf of Columbus Southern Power Company (CSP), on June 14, 1993, tendered for filing additional information in Docket No. ER93–637–000 to comply with a FERC Staff request.

A copy of the filing was served upon the City of Columbus, Ohio, American Municipal Power-Ohio Inc., and the Public Utility Commission of Ohio.

Comment Date: July 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Georgia Power Co.

[Docket No. EC93–15–000]

Take notice that on June 15, 1993, Georgia Power Company (GPC) tendered for filing an application for an Order pursuant to Section 203 of the Federal Power Act authorizing it to sell certain transmission facilities located in Georgia, to the City of Dalton, Georgia. GPC proposes to sell such facilities on July 1, 1993.

Comment Date: July 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Connecticut Light and Power Co.

[Docket No. ER93–482–000]

Take notice that on June 10, 1993, Connecticut Light and Power Company tendered for filing an amendment in the above-referenced docket.

Comment Date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corp.

[Docket No. ER93–670–000]

Take notice that on June 15, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Commission a signed Service Agreement between Niagara Mohawk and Orange & Rockland Utilities, Inc. (O&R) for sales of system capacity and/or energy or resource capacity and/or energy under Niagara Mohawk's proposed Power Sales Tariff in Docket No. ER93–313–000. Niagara Mohawk filed its Power Sales Tariff on January 11, 1993 and requested an effective date of March 13, 1993 for the Tariff. In its May 24, 1993 filing of the proposed Service Agreement with O&R, Niagara requests an effective date for this Service Agreement of May 24, 1993 the date of filing with FERC.

A copy of this filing has been served upon O&R and the New York State Public Service Commission.

Comment date: July 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corp.

[Docket No. ER93–690–000]

Take notice that on June 15, 1993, Niagara Mohawk Power Corporation (Niagara) tendered for filing with the Commission a signed Service Agreement between Niagara Mohawk and Delmarva Power for sales of system capacity and/or energy or resource capacity and/or energy under Niagara Mohawk's proposed Power Sales Tariff in Docket No. ER93–313–000. Niagara Mohawk filed its Power Sales Tariff on January 11, 1993 and requested an effective date of March 13, 1993 for the Tariff. In its May 25, 1993 filing of the proposed Service Agreement with Delmarva, Niagara Mohawk requests an effective date for the Service Agreement of May 25, 1993 the date of filing with FERC.

A copy of this filing has been served upon Delmarva and the New York State Public Service Commission.

Comment date: July 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corp.

[Docket No. ER93–657–000]

Take notice that on June 15, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Commission a signed Service Agreement between Niagara Mohawk and Long Island Lighting Company (LILCO) for sales of system capacity and/or energy or resource capacity and/or energy under Niagara Mohawk's proposed Power Sale Tariff in Docket No. ER93–313–000. Niagara Mohawk filed its Power Sales Tariff on January 11, 1993 and requested an effective date of March 13, 1993 for the Tariff. In its May 14, 1993 filing of the proposed Service Agreement with LILCO, Niagara Mohawk requests an effective date for this service Agreement of May 14, 1993 the date of filing with FERC.

A copy of this filing has been served upon LILCO and the New York State Public Service Commission.

Comment date: July 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Eagle Point Cogeneration Partnership

[Docket No. QF86–1061–004]

On May 19, 1993, and June 10, 1993, Eagle Point Cogeneration Partnership (Applicant) tendered for filing supplements to its filing in this docket.

The supplements provide additional information pertaining to the ownership and technical aspects of its cogeneration facility. No determination has been made that the submittals constitute a complete filing.

Comment date: July 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. San Joaquin Valley Energy Partners I, L.P.

[Docket Nos. QF87-354-002, QF87-634-003, QF87-689-004]

On June 14, 1993, San Joaquin Valley Energy Partners I, L.P. (Applicant) tendered for filing amendments to its filings in these dockets. No determination has been made that these submittals constitute complete filings.

The amendments provide additional information pertaining primarily to the ownership of the El Nido, Chowchilla II, and Madera facilities.

Comment date: July 9, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. Pacific Gas and Electric Co.

[Docket No. ER93-705-000]

Take notice that on June 11, 1993, Pacific Gas and Electric Company (PG&E) tendered for filing proposed changes in the rate schedule covering services rendered by PG&E under the agreement entitled "Comprehensive Agreement Between State of California Department of Water Resources (DWR) and Pacific Gas and Electric Company" (Comprehensive Agreement) dated April 22, 1982. The Comprehensive Agreement was initially filed under FERC Docket No. ER83-142-000 and was assigned Rate Schedule FERC No. 77.

The Comprehensive Agreement provides for firm transmission service between Points of Receipt and Points of Delivery as shown in its Table II-1 of Exhibit II. One rate schedule change is the addition of the Northern California Power Agency (NCPA) as a Point of Delivery with a maximum delivery of 100 MW to NCPA.

PG&E is also filing two Letter Agreements between the Parties for transmission studies to identify transmission and interconnection alternatives for DWR's proposed Los Banos Grandes Facilities Project and to provide for Firm Transmission Service for DWR's Coastal Branch Aqueduct Project.

Copies of this filing were served upon DWR and the California Public Utilities Commission.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

17. Orange and Rockland Utilities, Inc.

[Docket No. ER93-707-000]

Take notice that on June 11, 1993, Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988, in Docket No. ER88-112-000, an executed Service Agreement between Orange and Rockland and Reynolds Metals Company.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

18. New England Power Pool

[Docket No. ER93-708-000]

Take notice that on June 14, 1993, the New England Power Pool (NEPOOL) Executive Committee filed an amendment to the NEPOOL Agreement, dated as of May 1, 1993 (AMENDMENT), which changes provisions of the NEPOOL Agreement (NEPOOL FPC No. 2), dated as of September 1, 1971, as previously amended by twenty-eight amendments.

The NEPOOL Executive Committee states that the AMENDMENT is intended to modify capability responsibility and energy billing determinations for pool participant generation resources other than hydroelectric units, whose annual hours of operation are restricted by regulatory requirements, contract terms or engineering or operating constraints.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

19. Puget Sound Power & Light Co.

[Docket No. ER93-709-000]

Take notice that on June 14, 1993, Puget Sound Power & Light Company (Puget) tendered for filing an unsigned Emergency Interconnection Agreement between the United States of America Department of Energy—Bonneville Power Administration (BPA) and Puget dated as of June 10, 1993. Under the Agreement, Puget is to interconnect with BPA's substation in order to provide Puget with emergency backup service.

Copies of the filing were served upon BPA.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

20. Green Mountain Power Corp.

[Docket No. ER93-710-000]

Take notice that on June 14, 1993, Green Mountain Power Corporation (GMP) tendered for filing revised Service Agreements and Certificate of Concurrences under FERC Electric Tariff No. 2, known as GMP's Opportunity Transactions Tariff (Tariff). The revised Service Agreements allow FERC jurisdictional utilities to conduct transactions with GMP pursuant to the Tariff that includes exchange units. No terms or conditions of the Tariff are affected by the revised form of service agreement.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

21. Wisconsin Electric Power Co.

[Docket No. ER93-697-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on June 7, 1993, tendered for filing a Service Facilities Agreement between itself and the Village of Slinger, Wisconsin (Slinger). The Agreement provides for the establishment of a second delivery point.

Wisconsin Electric respectfully requests an effective date of coincident with the initial receipt of service through the new delivery point, which is estimated to occur on June 10, 1993. Wisconsin Electric is authorized to state that Slinger joins in the requested effective date.

Copies of the filing have been served on Slinger, The Wisconsin Public Power Inc. SYSTEM, and the Public Service Commission of Wisconsin.

Comment date: July 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-14851 Filed 6-23-93; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 6059-003, et al.]

Hydroelectric Applications [Hydro Development Group, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Applicatian:* Amendment to Project Design.

b. *Project No:* 6059–003.

c. *Date Filed:* 05/17/93.

d. *Applicant:* Hydro Development Group, Inc.

e. *Name of Project:* Fowler #7 Water Power Project.

f. *Location:* On the Oswegatchie River, in the Town of Fowler, St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John T. Bedard, P.O. Box 58, Dexter, NY 13634, (315) 639–6700.

i. *FERC Contact:* Mohamad Fayyad, (202) 219–2665.

j. *Comment Date:* July 26, 1993.

k. *Description of Amendment:* Licensee proposes to amend the license as follows: (1) Replace the original three generating units with newer more efficient units, which would increase the project's installed capacity by 555 kW and hydraulic capacity by 405 cfs; (2) Alter the forebay/intake configuration, install new trashracks, and install a downstream sluice to pass fish; (3) Other related modifications to project's structures; and (4) Extension of license term by 10 years.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

2 a. *Type of Application:* Subsequent License.

b. *Project No.:* 2490–001.

c. *Date Filed:* December 31, 1991.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Taftsville Project.

f. *Locatian:* On the Ottauquechee River in Windsor County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert de R. Stein, Central Vermont Public, Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773–2711.

i. *FERC Contact:* Charles T. Raabe (202) 219–2811.

j. *Deadline Date:* See attached paragraph D6.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D6.

l. *Description of Project:* The existing Taftsville Project's principal features consist of a dam structure, a powerhouse, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 500 kilowatts (kW), a hydraulic capacity range of 95 to 370 cubic feet per second (cfs), and an average annual generation of about 1.691 megawatt-hours (MWH).

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. The applicant would maintain 0.5- to 1-inch-height of water passing over the spillway and into two bypass reaches. This amount of water is equivalent to flows of 5 to 15 cfs. The bypass reaches are 100 feet long and 135 feet long.

In detail, the project is described as follows:

(1) A concrete gravity dam consisting of a spillway section, 194 feet long by 16 feet high, with a crest elevation of 637.12 feet mean sea level (msl), topped with 1.5-foot-high flashboards;

(2) A powerhouse, equipped with one vertical Kaplan hydroelectric generating unit with (a) a rated capacity of 500 kilowatts (KW); (b) a hydraulic capacity range of 95 to 370 cubic feet per second (cfs); (c) an average annual generation of 1.691 megawatthours (MWH); and (d) a gross head of 20 feet;

(3) An impoundment having (a) a surface area of 20.5 acres (AC); (b) a useable storage capacity of 30 acre-feet (AF); and (c) a normal headwater elevation of 638.6 feet msl and tailwater elevation of 618.6 feet msl;

(4) Three 46-kilovolt (kV), transmission lines; and

(5) Appurtenant facilities.

m. *Purpase of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This natice alsa consists of the following standard paragraphs:* B1 and D6. (August 9, 1993)

o. *Available Location of Applicatian:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT, 05701.

3 a. *Type of Applicatian:* Subsequent Minor License.

b. *Project Na.:* 2348–001.

c. *Date Filed:* December 17, 1991.

d. *Applicant:* Wisconsin Power and Light Company.

e. *Name af Praject:* Beloit Blackhawk Hydro Project.

f. *Location:* On the Rock River in Rock County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Cantact:* Mr. Norman E. Boys, Vice President, Power Production, Wisconsin Power and Light Company, P.O. Box 192, 222 West Washington Avenue, Madison, WI 53701, (608) 252–3086.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Deadline Date:* See paragraph D9. (August 10, 1993)

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description af Project:* The project as licensed consists of the following: (1) An existing concrete non-overflow dam, 38.5 feet long, with a sluiceway; (2) an existing reinforced concrete Tainter gate and stop-log section, 91.1 feet long, containing (a) two steel Tainter gates, each 30 feet long by 15.75 feet high, and (b) four foot stop-logs; (3) an existing needle section, 81.2 feet long; (4) an existing slide gate section, 101.6 feet long with nine slide gates; (5) an existing reservoir with a surface area of 485 acres and total storage volume of 3,255 acre-feet at the normal maximum surface elevation of 744.7 feet NGVD; (6) an existing concrete and brick powerhouse, approximately 37 feet by 34.5 feet, containing (a) a vertical shaft propeller turbine with a hydraulic capacity of 725 cfs, manufactured by Allis-Chalmers Company, and (b) a single three-phase, 60-cycle, generator, manufactured by Electric Machinery and rated at 480 kW; (7) and existing appurtenant facilities. No change are being proposed for this new license. The applicant estimates the average annual generation for this project would be 3,214 MWH. The dam and existing project facilities are owned by the applicant.

m. *Purpase of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This natice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Location af Applicatian:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Power and Light Company, P.O. Box 192, 222 West Washington, Avenue, Madison, WI or by calling (608) 252–3086.

4 a. *Type af Applicatian:* Preliminary Permit.

b. *Project No.* 11368–000.

c. *Date filed:* December 28, 1992.

d. *Applicant:* BAE Energy, Inc.

e. *Name of Project:* Sherburne Dam Hydroelectric Project.

f. *Location:* On Swift Current River in Glacier County, Montana, near the town of Browning. T.36N, R.15W., sections 21, 27, 28, 31, 32, 33, 34, 35 and 36.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Jerry Boggs, BAE Energy, Inc., Box D–9 DBSR, Cut Bank, MT 59427, (406) 873–2497.

Ted Sorenson, P.E., 550 Linden Drive, Idaho Falls, ID 83401, (208) 522–8069.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* August 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) An intake structure at the Bureau of Reclamation's Sherburne Dame; (2) a 3.25-mile-long existing canal; (3) a 15-inch-diameter, 0.75-mile-long penstock; (4) a powerhouse containing two generating units with a total installed capacity of 40,000 kW, producing an estimated average annual energy output of 90,000 MWH; (5) a tailrace; and (6) a 69-kV, 23-mile-long transmission line tying into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $85,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

5 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11369–000.

c. *Date filed:* December 28, 1992.

d. *Applicant:* BAE Energy, Inc.

e. *Name of Project:* Upper Saint Mary Canal Hydroelectric Project.

f. *Location:* On Saint Mary River in Glacier County, Montana, near the town of Browning. T.36N, R.14W., sections 27, 22, 15, 16, 10, 9, 3 and 4; T.37N, R.14W., sections 35, 34, 26, 25 and 24; T.37N. R.15W., sections 30 and 19.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Jerry Boggs, BAE Energy, Inc., Box D–9 DBSR, Cut Bank, MT 59427, (406) 873–2497.

Ted Sorenson, P.E., 550 Linden Drive, Idaho Falls, ID 83401, (208) 522–8069.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.

j. *Comment Date:* August 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) 8.5 miles of the Bureau of Reclamation's Upper Saint Mary Canal, to be enlarged; (2) an 84-inch-diameter, 1,700-foot-long penstock; (3) a powerhouse containing two generating units with a total installed capacity of 6,000 kW, producing an average annual energy output of 41,000 MWh; (4) a tailrace; and (5) a 69-kV, 5-mile-long transmission line tying into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $50,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11370–000.

c. *Dated filed:* December 28, 1992.

d. *Applicant:* BAE Energy, Inc.

e. *Name of Project:* Leishman Drop Hydroelectric Project.

f. *Location:* On the Saint Mary Canal system in Glacier County, Montana, near the town of Browning. T.37N, R.11W., sections 4, 5, 9 and 10.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Jerry Boggs, BAE Energy, Inc., Box D–9 DBSR, Cut Bank, MT 59427, (406) 873–2497.

Ted Sorenson, P.E., 550 Linden Drive, Idaho Falls, ID 83401, (208) 522–8069.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842

j. *Comment Date:* August 16, 1993

k. *Description of Project:* The proposed project would consist of : (1) A diversion structure; (2) a 1.5-mile-long penstock, to parallel the existing Saint Mary Canal; (3) a 9.5-foot-diameter, 0.25-mile-long penstock; (4) a powerhouse containing two generating units with a total installed capacity of 3,500 KW, producing an average annual energy output of 21,000 MWh; (5) a tailrace; and (6) a 12.5-kV, 3-mile-long transmission line tying into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $35,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to a local utility.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

7. a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11404–000.

c. *Date filed:* April 14, 1993.

d. *Applicant:* Wilton Hydro Electric Company, Inc.

e. *Name of Project:* Village Falls Hydro Electric Project.

f. *Location:* On the Souhegan River, near Merrimack, in Hillsboro County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Mr. Jason M. Hines, P.O. Box 76, Amherst, New Hampshire 03031, (603) 654–2016.

i. *FERC Contact:* Mary Golato (202) 219–2804.

j. *Comment Date:* August 16, 1993.

k. *Description of Project:* The proposed project would consist of: (1) an existing dam 20 feet high and 195 feet long; (2) an existing reservoir with a surface area of approximately 10 acres and a volume of 85 acre-feet; (3) a proposed 7-inch-diameter, 150-foot-long penstock; (4) a proposed powerhouse containing two turbine-generator units at a total rated capacity of 975 kilowatts; (5) a proposed 300-foot-long, 12.47 kilovolt transmission line; and (6) appurtenant facilities. The total average annual generation will be 3,000,000 kilowatthours. The cost of the studies is $45,000. The owner of the dam is Pennichuck Water Works, Inc.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

8 a. *Type of Application:* Transfer of License.

b. *Project No.:* 7664–011.

c. *Date Filed:* June 4, 1993.

d. *Applicant:* East Bench Irrigation District and Island Power Company, Inc.

e. *Name of Project:* Clark Canyon Dam.

f. *Location:* At the Bureau of Reclamation's Clark Canyon Dam on the Beaverhead River in Beaverhead County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Jay and Lance Bingham, Island Power Company, Inc., 5160 Wiley Post Way, suite 220, Salt Lake City, UT 84116, (801) 532–2520.

Jay Chamberlin, East Bench Irrigation District, 1100 Highway 41, Dillon, MT 59725, (406) 683–2307.

i. *FERC Contact:* Mark Hooper, (202) 219–2680.

j. *Comment Date:* August 2, 1993.

k. *Description of Transfer:* East Bench Irrigation District would like to transfer their license to Island Power Company, Inc. (Island). Island would then need to commence construction on or before September 17, 1993.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11413–000.

c. *Date Filed:* May 5, 1993.

d. *Applicant:* Bryant Mountain Hydroelectric Associates.

e. *Name of Project:* Bryant Mountain Hydroelectric Pumped Storage Project.

f. *Location:* Partially on lands administered by the Bureau of Land Management, approximately 3 miles northeast of the town of Malin, in Klamath County, Oregon. Sections 1, 2, 11, 12, and 14 in T41S, R12E; sections 22, 23, 26, 27, 35, and 36 in T40S, R13E; sections 19, 20, 29, 30, and 31 in T40S, R13E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bryant Mountain Hydroelectric Associates, Mr. Patrick E. Slattery, 20 Briargate Place, Greenville, South Carolina 29615, (803) 271–8112.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* August 23, 1993.

k. *Description of Project:* The proposed pumped storage project would consist of: (1) an 80-foot-high dam and 40-foot-high dam forming a 500-acre upper reservoir; (2) a 35-foot-diameter, 16,570-foot-long power tunnel connecting the upper reservoir with a lower reservoir; (3) a 65-foot-high dam forming the 570-acre lower reservoir; (4) a powerhouse containing four generating units with a combined installed capacity of 1,000 MW; (5) a 4-mile-long transmission line interconnecting with an existing Pacific Southwest transmission line; and (6) appurtenant facilities.

No new access roads will be needed to conduct the studies. The approximate cost of the studies would be $3,000,000.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Revise Recreation Plan.

b. *Project No.:* 349–029.

c. *Date filed:* May 26, 1993.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Project.

f. *Location:* Elmore, Coosa, and Tallapoosa Counties.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Barry Lovett, Alabama Power Company, 600 North 18th Street, Post Office Box 2641, Birmingham, AL 35291–0364, (205) 250–1268.

i. *FERC Contact:* Dan Hayes, (202) 219–2660.

j. *Comment Date:* August 5, 1993.

k. *Description of Project:* Alabama Company, licensee for the Martin Dam Project, has filed an application to revise its project recreation plan. The plan would change the recreation development scheme for the entire reservoir and the schedule of recreation development. The licensee believes the revision will minimize use conflicts, optimize recreation site maintenance and security operations by consolidating several currently planned sites, minimize impacts to wetland areas, and provide more convenient access to visitors. The plan will result in a change in land classifications.

l. *This notice also consists of the following standard paragraphs:* B, C2, and D2.

11 a. *Type of Application:* Major License.

b. *Project No.:* 10729–002.

c. *Date filed:* June 3, 1993.

d. *Applicant:* Murphy Hydro Company, Inc.

e. *Name of Project:* Murphy Dam Hydroelectric Project.

f. *Location:* On the Connecticut River, in Pittsburgh and Clarksville Townships, Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* John R. Asp, 33 Roosevelt Drive, Derby, CT 06418, (203) 732–3525.

i. *FERC Contact:* Mary C. Galato (202) 219–2804.

j. *Comment Date:* 60 days from the filing date in paragraph C. (August 2, 1993)

k. *Description of Project:* The proposed project consists of the following features: (1) an existing dam 2,100 feet long and 100 feet high; (2) an existing reservoir with a surface area of 2,020 acres and a gross storage capacity of 99,300 acre-feet; (3) an proposed 524-foot-long, approximately 8-foot-diameter penstock; (4) a proposed powerhouse containing one turbine-generator unit having a total generating capacity of 3.0 megawatts; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 12,400,000 kilowatthours. The dam and reservoir are owned by the State of New Hampshire and all proposed hydroelectric facilities would be owned and operated by Murphy Hydro Company, Inc.

l. With this notice, we are initiating consultation with the New Hampshire State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date and serve a copy of the request on the applicant.

12 a. *Type of Application:* Transfer of License.

b. *Project No.:* 7660–032.

c. *Date Filed:* May 14, 1993.

d. *Applicant:* Borough of Point Marion, Pennsylvania, and Noah Corporation.

e. *Name of Project:* Point Marion Lock and Dam Project.

f. *Location:* On the Monongahela River in Fayette County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Licensee Contacts:*

Louis Rudolph, Mayor, Borough of Point Marion, 15 Main Street, Point Marion, PA 15474, (412) 725–5256.

James B. Price, President, Noah Corporation, 120 Calumet Court, Aiken, SC 29801, (803) 642–2749.

i. *FERC Contact:* Patricia A. Massie, (202) 219–2681.

j. *Comment Date:* July 21, 1993.

k. *Description of Transfer:* The Borough of Point Marion, Pennsylvania, and Noah Corporation (joint licensees) jointly and severally apply for transfer of the license for the Point Marion Lock and Dam Project from Borough of Point Marion and Noah Corporation as joint licensees to Borough of Point Marion as the sole licensee.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to

file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these 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, 825 North Capitol Street, NE., Washington, DC 20426. A copy of a notice of intent, competing application, or 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.

D6. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (August 9, 1993 for Project No. 2490–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (September 21, 1993 for Project No. 2490–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to

which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (August 10, 1993 for Project No. 2348–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (September 24, 1993 for Project No. 2348–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: June 18, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14843 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–434–000]

Arkla Energy Resources Co.; Application

June 18, 1993.

Take notice that on June 7, 1993, Arkla Energy Resources Company (AER), 525 Milam Street, Shreveport, Louisiana 71101, filed in Docket No. CP93–434–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to UtiliCorp United, Inc. (UtiliCorp) certain of its jurisdictional pipeline facilities located in Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, AER proposes to abandon 204 miles of transmission line, one 615 horsepower compressor station, the Collinson Storage Field and appurtenant equipment and facilities. Certain minor facilities in Sumner County, Kansas, would be retained by AER, it is stated. AER also proposes to abandon jurisdictional services for Kansas customers provided through the facilities; individually certificated exchange and transportation services provided to Williams Natural Gas Company (Williams) under Rate Schedules XE–29, XE–30, XE–34, XT–27 and XT–28; and Rate Schedule G–2 sales service to Greeley Gas Company (Greeley).

AER states that UtiliCorp, through its Peoples Natural Gas Company division (PNG), currently owns and operates natural gas distribution facilities in Kansas and that PNG would operate the acquired facilities as a natural gas distribution utility to provide retail gas services to the current customers of Arkansas Louisiana Gas Company. It is further stated that PNG has advised that it will make available transportation or other substitute services to those customers currently receiving jurisdictional services through AER's Kansas facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 9, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) 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 permission and approval for the proposed abandonment are 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 AER to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14846 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–143–000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 18, 1993.

Take notice that on June 16, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, with proposed effective date of July 1, 1993:

First Revised Sheet No. 11
Original Sheet No. 11A
Fifth Revised Sheet No. 138
Second Revised Sheet No. 139

Carnegie states that it is filing the above tariff sheets as a limited application pursuant to section4 of the Natural Gas Act and the Commission's Order No. 636–A to permit Carnegie to flow through to its customers, on an interim basis, amounts direct billed to Carnegie by upstream pipelines as Account No. 191 costs and other costs authorized by the Commission to be direct billed Carnegie by upstream pipelines in conjunction with such upstream pipelines' restructuring under Order No. 636, including amounts direct billed to Carnegie pursuant to limited section 4 applications filed by Texas Eastern Transmission Corporation (Texas Eastern) in Docket No. RP93–112–000 on April 30, 1993, in Docket No. RP93–122–000 on May 26, 1992, and in Docket No. RP93–128–000 on May 28, 1993.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 25, 1993. Protests will be considered by the Commission in determing 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. 93–14849 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TQ93–6–22–000 and TM93–5–22–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 18, 1993.

Take notice that CNG Transmission Corporation (CNG), on June 15, 1993, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with proposed effective date of June 1, 1993:

1st Revised Thirty-First Revised Sheet No. 31
1st Revised Twenty-Third Revised Sheet No. 32
1st Revised Twenty-Seventh Revised Sheet No. 34
1st Revised Twenty-Second Revised Sheet No. 35

CNG states that the tariff sheets reflect the same rates that CNG filed in Docket No. TF93–4–22–000 on May 25, 1993. In a letter order issued June 7, 1993, the Commission rejected CNG's filing that included both a PGA and a TCRA rate change in a PGA interim adjustment as a violation of § 154.309 of its regulations.

CNG states that the instant filing is both an out-of-cycle PGA and a separate tracking filing to properly change both the PGA and TCRA components of CNG's rates.

CNG also seeks various waivers of the regulations to permit its filing to become effective as proposed.

CNG states that copies of the filing are being served upon CNG's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 25, 1993. 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. 93–14845 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11102–002]

Olson Electric Development Co., Inc. Withdrawal of Request

June 18, 1993.

By order of June 19, 1991, the Director, Division of Project Review, Office of Hydropower Licensing (Director), issued a preliminary permit to Olson Electric Development Co., Inc. (Olson) to study the feasibility of the proposed 1,300 kilowatt Middlesex Dam Project No. 1102, to be located on the Concord River in Lowell, Middlesex County, Massachusetts.[1] On March 31, 1993, the Director canceled the permit, citing Olson's failure to file a required six-month progress report.[2] On April 23, 1993, Olson filed a request for rehearing of the Director's action.

On April 22, 1993, the Director rescinded the cancellation of Olson's preliminary permit for Project No. 11102. On May 25, 1993, Olson accordingly withdrew its request for rehearing of the Director's March 31, 1993 order.

No one filed a motion in opposition to the notice of withdrawal, and the Commission took no action to disallow the withdrawal. Accordingly, pursuant to Rule 216 of the Commission's Rules of Practice and Procedure,[3] the withdrawal became effective on June 9, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14855 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–494–000]

Ozark Gas Transmission System; Application

June 18, 1993.

Take notice that on June 14, 1993, Ozark Gas Transmission System (Ozark), 1700 Pacific Avenue, Dallas, Texas 75201, filed in Docket No. CP93–494–000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction of metering and associated measurement and control facilities in Franklin County, Arkansas to provide a delivery point into the NOARK Pipeline System, Limited Partnership (NOARK), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

[1] 55 FERC ¶62,263.

[2] 62 FERC ¶62,228. Article 8 of the preliminary permit requires the permittee to file a progress report every six months during the term of the permit.

[3] 18 CFR 385.216.

Ozark states that it seeks this authorization to construct a six (6) inch meter run and associated measurement and control facilities to deliver natural gas to NOARK, located in Township 9N, Range 26W in Franklin County, Arkansas. According to Ozark, the construction of these facilities would provide Ozark's shippers with an additional outlet from which to market and/or transport natural gas. Ozark estimates that it would cost $96,100 to construct the proposed facilities, to be financed with equity funds and aid-in-construction funding from NOARK.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 9, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to 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 Ozark to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14848 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–497–000]

Tennessee Gas Pipeline Co.; Application

June 18, 1993.

Take notice that on June 16, 1993, Tennessee Gas Pipeline Company (Tennessee) P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP93–497–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange and transportation service it provides for Columbia Gas Transmission Company (Columbia Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that Columbia Gulf Transmission Company, Columbia Gas and Tennessee were authorized in Docket No CP85–388–000 to transport and exchange up to 115,000 Mcf of natural gas per day on a no fee basis. Tennessee has been providing its service under its Rate Schedule No. X–69, it is stated. Tennessee asserts that, by letter dated March 8, 1993, Columbia Gas has requested abandonment of this service.

Tennessee further states that no facilities will be abandoned in conjunction with the abandonment of this service.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 9, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) 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 therein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 Tennessee to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14847 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ93–4–43–000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 18, 1993.

Take notice that Williams Natural Gas Company (WNG) on June 15, 1993, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with proposed effective date of June 1, 1993:

Second Revised Fifteenth Revised Sheet No. 6

Second Revised Sixteenth Revised sheet No. 6A

Second Revised Seventeenth Revised Sheet No. 9

WNG states that it is filing an Out-of-Cycle Purchased Gas Adjustment filing to decrease its rates effective June 1, 1993 to reflect a decrease of $.0541 in the Cumulative Adjustment consistent with its revised service agreements approved July 17, 1992 in Docket No. GT92–21–000.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 25, 1993. 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. 93–14844 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2113–022, et al.]

In the Matter of Wisconsin Valley Improvement Co., Weyerhaeuser Paper Co., Tomahawk Power & Pulp Co., Nekoosa Papers, Inc., Consolidated Water Power Co., Wisconsin Public Service Corp.; Project Nos. 2113–022, 2212–001, 2239–004, 2255–003, 2256–001, 2291–001, 2292–001, 2476–001, 2590–001 Wisconsin/Michigan.

Wisconsin Valley Improvement Co., et al.; Intention To Conduct Public Scoping Meetings

June 18, 1993.

The Federal Energy Regulatory Commission (FERC) will hold public and agency scoping meetings on July 13, 15, and 16, 1993, pursuant to its preparation of an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) for the Wisconsin Valley Project No. 2113, Rothschild Project No. 2212, Kings Dam Project No. 2239, Centralia Project No. 2255, Wisconsin Rapids Project No. 2256, Port Edwards Project No. 2291, Nekoosa Project No. 2292, Jersey Project No. 2476, and Wisconsin River Division Project No. 2590 located on the Wisconsin River and its tributaries in Vilas, Wood, Oneida, Forest, Portage, Marathon, and Lincoln Counties, Wisconsin, and Gogebic County, Michigan.

In the May 6, 1993, **Federal Register**, the Commission published a notice of its intent to prepare an EIS for the above listed projects (58 FR 26969).

Scoping Meetings

FERC staff will conduct two public scoping meetings and one agency scoping meeting. The public scoping meetings are primarily for public input while the agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS. The times and locations of these meetings are as follows:

Public Scoping Meeting 1, Tuesday July 13, 1993, 7 p.m.–10 p.m., University of Wisconsin Marathon Center, North Hall 330, 518 South 7th Avenue, Wausau, WI 54401.

Public Scoping Meeting, Thursday July 15, 1993, 7 p.m.–10 p.m., James Williams Junior High School, 915 Acacia Lane, Rhinelander, WI 54501.

Agency Scoping Meeting, Friday July 16, 1993, 10:30 a.m., Wisconsin Department of Natural Resources, North Central District Headquarters, 107 Sutliff, Rhinelander, WI 54501.

To help focus discussions, a preliminary scoping document outlining subject areas to be addressed at the meeting will be distributed by mail to interested parties on the FERC mailing list. Copies of the preliminary scoping document will also be available at the scoping meetings.

Site Visits

Site visits will be held at the various projects; anyone with question regarding the site visits should contact the appropriate contact person listed below. All participants must furnish there own transportation. The date and time of the site visits are as follows:

Date/time	Project	Contact
Monday July 12, 1993, 8 a.m	Port Edwards, Nekoosa, Centralia	Richard Grund, Nekoosa Papers, 715–887–5481.
2:30 p.m	Wisconsin Rapids	Roy Urban CWPCo, 715–422–3481.
Tuesday July 13, 1993, 8 a.m.	Wisconsin River Division	Roy Urban, CWPCo, 715–422–3481.
11 a.m	Rothschild	William Dohr, Weyer- haeuser, 715–359–3101.
2 p.m	Big Eau Pleine	Phil Valipchka, WVIC 715–848–2976.
Wednesday July 14, 1993, 8 a.m	Spirit	Phil Valipchka, WVIC 715–848–2976.
1 p.m	Jersey	Ron Felix, WPSC, 715–536–7289.
2:30 p.m	Kings Dam	John Laughlin, Tomahawk Power & Pulp, 715–842–4613.
Thursday July 15, 1993, 8 a.m	Willow, Rice, Rainbow	Phil Valipchka, WVIC 715–848–2976.
Friday July 16, 1993, 2 p.m	Natural Lakes	Phil Valipchka, WVIC, 715–848–2976.
Saturday July 17, 1993, 8 a.m	Natural Lakes	Phil Valipchka, WVIC, 715–848–2976.

The location of the site visits will be as follows:

Project	Location
Port Edwards Nekoosa Centralia	Nekoosa Papers Mill Entrance, Point Bass Avenue and Market Street, Nekoosa, WI.
Wisconsin Rapids	CWPCO Power Services Parking Lot, 610 High Street, Wisconsin Rapids, WI.
Wisconsin River Division	Consolidated Papers Parking Lot, 2627 Whiting Road, Stevens Point, WI.
Rothschild	Weyerhaeuser Paper Company, 200 Grand Avenue, Wausau, WI.
Big Eau Pleine	Boat landing adjacent to fill on south end off CTH O: Big Eau Pleine Reservoir. Directions: From Mosinee go west on STH 153 to CTH O, go south on CTH O to the site.
Spirit	WVIC Office, 2301 North Third, Wausau, WI.
Jersey	Wisconsin Public Service Corporation, Jersey Dam Site. Directions: ⅛ mile north of CTH CC on northwest side of the village of Tomahawk.
Kings Dam	Tomahawk Power & Pulp, N1099 Kings Road, Tomahawk, WI. Directions: From STH 51 exit CTH D, west ⅛ mile to Kings Dam Road, north ½ mile to site.
Willow Rice Rainbow	WVIC Office, 2301 North Third, Wausau, WI.
Natural Lakes	Wisconsin DNR Office, 107 Sutliff, Rhinelander, WI.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue, (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views, (4) determine the relative depth of analysis for issues to be addressed in the EIS, and (5) identify resource issues that are not important and do not require detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the projects under consideration. Individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issued to be addressed in the EIS.

Participants wishing to make oral comments in the public meeting are asked to keep them to five minutes to allow everyone the opportunity to speak.

Persons choosing not to speak at the meetings, but who have views on the issues, may submit written statements for inclusion in the public record at the meeting. In addition, written scoping comments may be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, Dc 20426, until August 20, 1993. All correspondence should clearly show the appropriate caption on the first page as follows:

Wisconsin Valley Project No. 2113
Rothschild Project No. 2212
Kings Dam Project No. 2239
Centralia Project No. 2255
Wisconsin Rapids Project No. 2256
Port Edwards Project No. 2291
Nekoosa Project No. 2292
Jersey Project No. 2476
Wisconsin River Division Project No. 2590

All those that are formally recognized by the Commission as intervenors in the above projects' proceedings are asked to refrain from engaging the staff in discussions of the merits of the projects outside of any announced meetings.

Further, parties are reminded of the Commission's Rules of Practice and Procedure, which require parties or interceders (as defined in 18 CFR 385.2010) filing documents with the Commission, to serve a copy of the document on each person whose name is on the official service list for the proceeding. See 18 CFR 4.34(b).

For further information please contact Sabina Joe at (202) 219–1648.

Lois D. Cashell,

Secretary.

[FR Doc. 93–14850 Filed 6–23–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–55–NG]

Tennessee Gas Pipeline Co.; Application For Blanket Authorization To Export Natural Gas To Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application filed by Tennessee Gas Pipeline Company (Tennessee) on May 28, 1993, as amended June 17, 1993, requesting blanket authorization to export up to 100 Bcf of natural gas to Mexico over a two-year period. The authorization will begin on the date of first delivery after August 13, 1993, the expiration date of Tennessee's existing export authorization granted by DOE/FE Opinion and Order No. 434 on October 9, 1990 (1 FE ¶ 70,360). Tennessee states that it will use existing pipeline facilities to transport the gas, and that it will submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, July 23, 1993.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–056, FE–50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Susan K. Gregersen, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F–070, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0063.

Diane Stubbs, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: Tennessee is a Delaware corporation with its principal place of business located in Houston, Texas. Tennessee's export application will be reviewed under section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order Nos. 0204–111 and 0204–127. In deciding whether the proposed export arrangement is in the public interest, domestic need for the natural gas will be considered, and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE policy to promote competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangement. Parties, especially those who may oppose this application, should comment on these matters as they relate to the requested export authority. Tennessee asserts the domestic gas that would be exported under the proposed arrangement would not be needed in the United States market. Parties opposing this arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Anyone who wants to become a party to this proceeding and to have their written comments considered as the basis for the decision of the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of

intervention, and written comments must meet the requirements specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Tennessee's application is available for inspection and copying in the Office of Fuels Programs docket room 3F–056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 17, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–14917 Filed 6–23–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4669–8]

Charter Extension for Certain EPA Advisory Committees

Charters for the EPA advisory committees listed below are being extended to September 30, 1993, pending the completion of a comprehensive review by OMB of all Government advisory committees under the Federal Advisory Committee Act (FACA). This review is being conducted in accordance with Executive Order 12838, dated February 10, 1993, entitled "Termination and Limitation of Federal Advisory Committees" and OMB Bulletin No. 93–10, "Termination of Federal Advisory Committees." Pending the results of the review, renewal charters will be filed as appropriate. The EPA advisory committees being extended are:

Clean Air Scientific Advisory Committee

Drinking Water Disinfection By-Products Negotiated Rulemaking

Environmental Financial Advisory Board

Management Advisory Group to the Assistant Administrator for Water

Dated: June 14, 1993.

Kathy Petruccelli,

Management & Organization Division.

[FR Doc. 93–14814 Filed 6–23–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

June 17, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0392

Title: Sections 1.1401–1.1415, Pole Attachment Complaint Procedures

Action: Extension of a currently approved collection

Respondents: State or local governments and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 14 responses; 3 hours average burden per response; 42 hours total annual burden

Needs and Uses: Congress mandated pursuant to 47 U.S.C. 224 that the FCC ensures that the rates, terms and conditions under which cable television operators attach their hardware to utility poles are just and reasonable. Section 224 also mandates establishment of an appropriate mechanism to hear and resolve complaints concerning the rates, terms and conditions for pole attachments. Sections 1.1401–1.1415 contained in subpart J of part 1 were promulgated to implement section 224. Cable television system operators may file a Petition for Temporary Stay of actions to which would require the removal of facilities or termination of service or which would increase their rates pursuant to the requirements contained in § 1.1403. Section 1.1404 specifies the requirements for filing a complaint with the Commission. Responses and replies to complaints are governed by § 1.1407. States that regulate the rates, terms and conditions for pole attachments must certify to the Commission that they in fact regulate the rates, terms and conditions for pole attachments and have the authority to consider and do consider the interests of the subscribers of cable television services as well as the interests of the consumers of the utility service. The information will be used by FCC to hear and resolve complaints as mandated by section 224. Information filed pursuant to § 1.1404 will be used to determine the merits of the complaint including calculating the maximum rate under the Commission's formula, if applicable. If the collection of information is not conducted, the FCC will not be able to adequately comply with the Congressional mandate that the Commission ensure that the rates, terms and conditions under which cable television operators attach their hardware to utility poles are just and reasonable.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 93–14897 Filed 6–23–93; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Listing of Controlled Carriers Under the Shipping Act of 1984

AGENCY: Federal Maritime Commission.
ACTION: Amendments to list of controlled carriers.

SUMMARY: The Federal Maritime Commission is adding International Transport Enterprise Co. (GETDD) Ltd. and Shanghai Hai Hua Shipping Company to the list of controlled carriers, subject to the advance tariff filing and other regulatory requirements of section 9 of the Shipping Act of 1984. The Commission is also amending the nationality for the four former Soviet Union carriers that appear on the list.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001. (202) 523–5740.

SUPPLEMENTARY INFORMATION: Sections 3(8) and 9 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1702(8) and 1708, provide for the identification and regulation of certain state-controlled carriers operating in the waterborne foreign commerce of the United States. The Federal Maritime Commission ("Commission") has determined that International Transport Enterprise Co. (GETDD) Ltd. ("International Transport"), headquartered in Guangzhou, People's Republic of China ("PRC"), and Shanghai Hai Hua Shipping Company ("Shangha Hai"), headquartered in Shanghai, PRC, meet the definition of a controlled carrier under section 3(8) of the 1984 Act, and are, therefore, being added to the list of controlled carriers.

Upon inquiry by the Commission, International Transport responded that all of its assets are directly or indirectly owned by the PRC Government. Further, International Transport reported that the PRC Government has the right to appoint or disapprove the appointment of International Transport's board of directors, managers, and other principal officials. In addition, International Transport confirmed that it operates PRC-flag vessels.

Shanghai Hai did not respond to the Commission's inquiry on its status as a controlled carrier. The Commission has learned, however, that Shanghai Hai is owned and controlled directly or indirectly by the PRC Government and that the government has the right to appoint or disapprove the appointment of the carrier's board of directors, managers, and other principal officials.

The Commission is also amending the nationality for the four former Soviet Union carriers that appear on the list. Specifically, Baltic Shipping Company, Far Eastern Shipping Company, and Murmansk Shipping Company (Arctic Line) are Russian carriers and Black Sea Shipping Company is Ukrainian.

The Commission's list of controlled carriers was previously published in the **Federal Register** on June 20, 1989 (54 FR 25903). The amended list is shown below:

Baltic Shipping Company—Russia
Bangladesh Shipping Corp.—Bangladesh
Black Sea Shipping Company—Ukraine
Black Star Line—Ghana
Ceylon Shipping Corporation—Sri Lanka
China Ocean Shipping Co.—People's Republic of China
China Resources Transportation & Godown Co., Ltd.—People's Republic of China
Chu Kong Shipping Co., Ltd.—People's Republic of China
Compagnie Maritime Zairoise—Zaire
Compagnie Marocaine de Navigation (COMANAV)—Morocco
Compagnie Nationale Algerienne de Navigation—Algeria
Companhia de Navegacao Lloyd Brasileiro—Brazil
Compania Anonima Venezolana de Navegacion (Venezuela Line)—Venezuela
Compania Peruana de Vapores (Peruvian State Line)—Peru
Egyptian National Line—Egypt
Far East Enterprising Co. (H.K.), Ltd. (Farenco)—People's Republic of China
Far Eastern Shipping Company—Russia
Flota Bananera Ecuatoriana S.A.—Ecuador
Guangdong International Shipping Co., Ltd.—People's Republic of China
International Transport Enterprise Co. (GETDD) Ltd.—People's Republic of China
MISR Shipping Company—Egypt
Murmansk Shipping Company (Arctic Line)—Russia
National Shipping Corporation of the Philippines—Philippines
Nauru Pacific Line—Nauru
Nigerian National Shipping Line Limited—Nigeria
P.T. Djakarta Lloyd—Indonesia
Pakistan National Shipping Corporation—Pakistan
Pharaonic Shipping Co. (S.A.E.)—Egypt
Polish Ocean Lines—Poland
Romanian Shipping Company Constanta (NAVROM)—Romania
Shanghai Hai Hua Shipping Company—People's Republic of China
Shipping Corporation of India—India
Societe Nationale Malgache de Transports Maritimes—Madagascar
Sudan Shipping Line Limited—Sudan
Tientsen Marine Shipping Company—People's Republic of China
Transportes Navieros Ecuatorianos (Transnave)—Ecuador
Zhu Sheng Transportation Co., Ltd.—People's Republic of China

The process of identification and classification of controlled carriers is continuous. This list as shown will be amended as circumstances warrant.

By the Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 93–14856 Filed 6–23–93; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.
ACTION: Notice.

SUMMARY: The Board is inviting the public to nominate qualified individuals for appointment to its Consumer Advisory Council, which is comprised of representatives both of consumer and community interests and of the financial services industry. Seven new members will be selected for three-year terms that will begin in January 1994. The Board expects to announce the selection of new members by year-end 1993.

DATE: Nominations should be received by August 31, 1993.

ADDRESSES: Nominations should be submitted in writing to Dolores S. Smith, Associate Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. Information about nominees will be available for inspection upon request.

FOR FURTHER INFORMATION CONTACT: Bedelia Calhoun, Staff Specialist, Division of Consumer and Community Affairs, (202/452-6470); or for Telecommunications Device for the Deaf (TDD) users *only*, Dorothea Thompson (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was

established in 1976 at the direction of Congress to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial community. Members serve three-year terms that are staggered to provide the Council withcontinuity.

New members will be selected for terms beginning January 1, 1994, to replace members whose terms expire this year. **Nominations should include the address and telephone number of the nominee, information about past and present positions held, and a description of special knowledge, interests or experience related to consumer credit or other consumer financial services.** Persons may nominate themselves as well as other candidates.

The Board is interested in candidates who have some familiarity with consumer financial services and candidates who are willing to express their viewpoints. Candidates do not have to be experts on all levels of consumer financial services, but they should possess some basic knowledge of the area. In addition, they should be able to make the necessary time commitment to prepare for and attend meetings (usually two days long including committee meetings) three times a year.

In making the appointments, the Board will seek to complement the qualifications of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board expects to announce its selection of new members by year-end.

Council members whose terms end on December 31, 1993, are:

Veronica E. Barela, Executive Director, NEWSED Community Development Corporation, Denver, CO

Toye L. Brown, Deputy Secretary of Transportation and Construction, Boston, MA

Denny D. Dumler, President, CEO and Chairman Rocky Mountain BankCard System, Denver, CO

Donald A. Glas, President, First State Federal Savings and Loan Association, Hutchinson, MN

Joyce Harris, President & CEO, Telco Community Credit Union, Madison, WI

Julia E. Hiler, Executive Vice President, Sunshine Mortgage Corporation, Marietta, GA

Henry Jaramillo, Jr., President, Ranchers State Bank, P.O. Box 545, Belen, NM 87002

Other Council members, whose terms continue through 1994 and 1995, are listed below (together with the expiration date of each one's term of office).

Barry A. Abbott, Partner, Morrison & Foerster, San Francisco, CA, December 31, 1994

John R. Adams, Corporate Vice President and Compliance Officer, CoreStates Financial Corporation, Philadelphia, PA, December 31, 1994

John A. Baker, Senior Vice President, Equifax, Inc., Atlanta, GA, December 31, 1994

Mulugetta Birru, Executive Director Urban Redevelopment Authority of Pittsburgh, Pittsburgh, PA, December 31, 1994

D. Douglas Blanke, Director of Consumer Policy Office of the Attorney General, St. Paul, MN, December 31, 1995

Genevieve Brooks, Deputy Borough President, Office of the Bronx Borough, President, Bronx, NY, December 31, 1994

Cathy Cloud, Enforcement Program Director, National Fair Housing Alliance, Washington, DC, December 31, 1994

Michael D. Edwards, President, Prairie Security Bank, Yelm, Washington, December 31, 1994

Michael Ferry, Staff Attorney, Consumer Unit, Legal Services of Eastern, Missouri, Inc., St. Louis, MO, December 31, 1995

Norma L. Freiberg, Executive Director, New Orleans Neighborhood Development Foundation, New Orleans, LA, December 31, 1995

Lori Gay, Executive Director, Los Angeles Neighborhood Housing Services, Los Angeles, CA, December 31, 1995

Bonnie Guiton, Dean, McIntire School of Commerce University of Virginia, Charlottesville, VA, December 31, 1995

Gary S. Hattem, Vice President, Community Development Group Bankers Trust Company, New York, NY, December 31, 1994

Ronald A. Homer, Chairman and CEO, Boston Bank of Commerce, Boston, MA, December 31, 1995

Edmund Mierzwinski, Consumer Advocate, U.S. Public Interest Research Group, Washington, DC, December 31, 1994

Jean Pogge, Vice President, Development Deposits, South Shore Bank, Chicago, IL, December 31, 1994

John V. Skinner, President & CEO, Jewelers Financial Services, Inc., Irving, TX, December 31, 1994

Lowell N. Swanson, President (Retired), United Finance Co., Portland, OR, December 31, 1994

Michael W. Tierney, Director, Local Initiatives Support Corporation, Washington, DC, December 31, 1994

Grace W. Weinstein, Financial Writer and Consultant, Englewood, NJ, December 31, 1995

James L. West, President, Jim West Financial Group, Inc., Tijeras, NM, December 31, 1995

Robert O. Zdenek, National Congress for Community Economic Development, Washington, D.C., December 31, 1995

Board of Governors of the Federal Reserve System, June 18, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-14838 Filed 6-23-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 39409-24, August 31, 1982, as amended most recently in pertinent part at 58 FR 19137, April 12, 1993) is amended to reflect the transfer of the equipment and telecommunications function within the Bureau of Primary Health Care, Health Resources and Services Administration (HRSA).

Under HB-20, Organization and Functions, amend the Bureau of Primary Health Care (HBC), as follows:

(1) delete the functional statement for the Office of Data Management (HBC15) in its entirety and substitute the following: Office of Data Management (HBC15). Directs and coordinates all data systems management activities. Specifically: (1) Assists in the direction, the design, the development, and the monitoring of data systems and data collection activities; (2) represents the Director and the Associate Director for Evaluation, Research and Analysis on systems and data matters external to the Bureau; (3) conducts training for staff on data systems; (4) interfaces with all data systems support organizations; (5) coordinates data reporting to common PHS data systems.

(2) delete the functional statement for the Office of Operations and Management (HBC17) in its entirety and substitute the following: Office of Operations and Management (HBC17). Plans, directs, coordinates, and evaluates Bureau-wide administrative and management activities; coordinates and monitors program policy implementation; and maintains close liaison with officials of the Agency, the Office of the Assistant Secretary for Health, and the Office of the Secretary on matters relating to these activities. Specifically: (1) Provides or serves as liaison for providing program support services and resources, including procurement of equipment and supplies, printing, property, etc.; (2) provides leadership on intergovernmental activities of the Bureau which require central director or which cross program lines; (3) provides liaison between the Bureau Director and the Regional Health Administrator; (4) coordinates the activities of Headquarters program divisions and regional staff; (5) directs, conducts, and coordinates manpower management activities and advises on the allocation of personnel resources; (6) provides organization and management analysis, develops policies and procedures for internal operations, and interprets and implements the Bureau's management policies, procedures, and systems; (7) develops and coordinates program and administrative delegations of authority activities; (8) is responsible for the Bureau's paperwork management functions, including the development and maintenance of manual issuances; (9) is responsible for planning, directing, coordinating, and evaluating Bureau-wide grants management activities; (10) coordinates the development and processing of procurement activities and maintains liaison with the Division of Grants and Procurement Management, HRSA, and with the Office of the Assistant Secretary for Health; (11) develops and carries out a full range of financial management activities, including the development of the annual budget; (12) in cooperation with the Division of Personnel, HRSA, coordinates personnel activities for the Bureau; (13) conducts Bureau-wide activities associated with the management of national committees; (14) directs, designs, develops, and implements data systems; and (15) supervises the operation of the Bureau's Local Area Network and of the Bureau's Wide Area Network interfaces.

This transfer is effective upon the date of signature.

Dated: June 4, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–14880 Filed 6–23–93; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N–93–3641]

Office of Administration; Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 17, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: Report on Section 8 Program Utilization—New Construction, Substantial Rehabilitation, Section 202, Property Disposition, and Loan Management Set Aside.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The data collected will be used to monitor the following: the rate at which Section 8 programs are leased; minimized exposure to vacancy losses; project vacancy rates; identify and document cases where a reduction in the number of contracted units are leased to elderly, handicapped, or disabled tenants; and retrieve information to answer questions.

Form Number: HUD–52684.

Respondents: State or Local Government, businesses or other for-project, non-profit institutions and small businesses or organizations.

Frequency of Submission: Quarterly and annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–52684	31,937		1		.25		7,984

Total Estimated Burden Hours: 7,984.
Status: Revision.
Contact: James J. Tahash, HUD, (202) 708–3944; Angela Antonelli, OMB, (202) 395–6880.

Dated: June 17, 1993.

Proposal: Family Self-Sufficiency Addendum.

Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: The information collected on Form HUD–50058–FSS is used by HUD to evaluate the effectiveness of the program in helping families who have relied on Federal Housing Assistance to become economically independent.
Form Number: HUD–50058–FSS.
Respondents: States or Local Government.
Frequency of Submission: On occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–50058–FSS	600		60		.25		9,000

Total Estimated Burden Hours: 9,000.
Status: New.
Contact: Susan Loritz, HUD, (202) 708–0477; Angela Antonelli, OMB, (202) 395–6880.

Dated: June 1, 1993.

Proposal: Public Housing Management Assessment Program (PHMAP) Indicators.

Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: Indicators and Standards will be used to assess the management performance of Public Housing Agencies (PHAs), designate troubled PHAs and mod-troubled PHAs, address deficiencies through a memorandum of agreement for each troubled and mod-troubled PHA, and annually submit to Congress a report on the status of troubled and mod-troubled PHA's.
Form Number: HUD–50072.
Respondents: State or Local Governments and non-profit institutions.
Frequency of Submission: On occasion and recordkeeping.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
1–99 Unit PHAs	1,608		1		1.9		3,055
100–499 Unit PHAs	1,274		1		2.1		2,675
500–1,249 Unit PHAs	244		1		3.1		756
1,250–3,999 Unit PHAs	102		1		3.7		377
4,000+ Unit PHAs	40		1		4.5		180
Recordkeeping	3,268		1		.1		327

Total Estimated Burden Hours: 7,371.
Status: Reinstatement.
Contact: Wanda Funk, HUD, (202) 708–0970; Angela Antonelli, OMB, (202) 395–6880.

Dated: June 11, 1993.

Proposal: Mortgagee's Application for Partial Settlement (MF Mortgage).
Office: Housing
Description of the Need for the Information and Its Proposed Use: The data on form HUD–2537 is needed to process a partial claim settlement. The partial settlement immediately upon conveyance of title or assignment of the mortgage.
Form Number: HUD–2537.
Respondents: Businesses or other for-profit.
Frequency of Submission: On occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–2537	600		1		.166		100

Total Estimated Burden Hours: 100.
Status: Extension.
Contact: Randy M. Starcher, HUD, (202) 708–3448; Angela Antonelli, OMB, (202) 395–6880.

Dated: June 11, 1993.

Proposal: Public and Indian Housing Waiver of Eligibility Requirements for Police Officers and Security Personnel (FR–2972).
Office: Public and Indian Housing.
Description of the Need for the Information and Its Proposed Use: The rule amends 24 CFR, parts 905 and 960, permitting public housing agencies (PHA) and Indian Housing Authorities (IHA) to allow police officers and other security personnel not otherwise eligible for residence to occupy PHA/IHA dwellings under a plan designed to increase security for housing residents.
Form Number: None.
Respondents: State or Local Governments.
Frequency of Submission: On occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	800		1		2		1,600

Total Estimated Burden Hours: 1,600.

Status: New.

Contact: Earl Simons, HUD, (202) 708–0744; Angela Antonelli, OMB, (202) 395–6880.

Dated: June 10, 1993.

Proposal: Public Housing Drug Elimination Program-Technical Assistance—Notice of Funding Availability (NOFA).

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: The information is needed so that the applicants can apply and compete for funding opportunities under this NOFA. The information provided by the applicants will be reviewed by HUD and evaluated against rating criteria for possible funding. The applicants will be notified of their selection/rejection.

Form Number: None.

Respondents: Individuals or households, State or Local Governments and non-profit institutions.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection (Sections of NOFA Affected):							
3.1	400		1		24		9,600
4.1(b)	400		1		16		6,400
4.2	400		1		1		400
5.3	300		1		16		4,800

Total Estimated Burden Hours: 21,200.

Status: Revision.

Contact: Elizabeth A. Cocke, (202) 708–1197; Angela Antonelli, OMB, (202) 395–6880.

Dated: May 28, 1993.

Proposal: HOME Program Evaluation-Round I Data Collection.

Office: Policy Development and Research.

Description of the Need for the Information and Its Proposed Use: This evaluation will identify the effects of the HOME program's requirements on its implementation, including how the program is being administered and which housing units, household, and neighborhoods are being assisted. This first phase of data collections will survey representative of participating state and local governments and non-profit organizations.

Form Number: None.

Respondents: State or Local Governments and non-profit institutions.

Frequency of Submission: Other (Phase I of 3 Phase Survey).

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	554		1		.75		416

Total Estimated Burden Hours: 416.

Status: New.

Contact: Ruth Alahydoian, HUD, (202) 708–0640; Angela Antonelli, OMB, (202) 395–6880.

Dated: May 25, 1993.

[FR Doc. 93–14873 Filed 6–23–93; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Magazine Mountain Shagreen for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Magazine Mountain shagreen (*Mesodon magazinensis*). This species occurs in wooded talus slopes near the summit of Magazine Mountain, Logan County, Arkansas. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before August 15, 1993, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed

species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is the Magazine Mountain shagreen (*Mesodon magazinensis*), a small terrestrial snail known only from the summit slopes of Magazine Mountain, Logan County, Arkansas. This species was listed as threatened in 1989 due to its restricted range and potential threats to its known habitat.

The recovery objective of the proposed plan is to delist the Magazine Mountain shagreen. Delisting will be accomplished by establishing that the snail population is stable or increasing, and by establishing a management agreement with the Forest Service, the primary landowner, that ensures long-term protection of habitat.

This Plan is being submitted for agency review. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 15, 1993.

Robert Bowker,

Complex Field Supervisor.

[FR Doc. 93–14835 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Revised Recovery Plan for the Whooping Crane for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revised recovery plan for the whooping crane (*Grus americana*) which the Service listed as threatened with extinction in 1967 (FR Vol. 32, Number 48, March 11) and as endangered in 1970 (FR Vol. 35, Number 199, October 13). Critical habitat was designated in 1978 (FR Vol. 43, Number 94, May 15). Recovery is implemented cooperatively by Canada and the United States. This bird currently exists in 3 wild populations and at 5 captive locations, totaling approximately 240 individuals. The only self-sustaining population (136 individuals) winters on the Gulf of Mexico coast of Texas near Austwell and nests in the Northwest Territories of Canada. During migration, this population passes through Oklahoma, Kansas, Nebraska, South Dakota, Montana, and North Dakota. Nine birds reside in the Kissimmee Prairie of Florida where the Service is endeavoring to establish a nonmigratory population. An experimental migratory population exists in the Rocky Mountains area where eight birds winter in New Mexico and summer in Idaho, Wyoming, and Montana, migrating through Utah and Colorado. The Rocky Mountain population was established through foster-rearing, placing whooping crane eggs in sandhill crane nests. Whooping cranes occur in captivity at the: Patuxent Wildlife Research Center, Laurel, Maryland; International Crane Foundation, Baraboo, Wisconsin; San Antonio Zoological Gardens, San Antonio, Texas; Calgary Zoo, Calgary, Alberta, Canada; and Rio Grande Zoological Park, Albuquerque, New Mexico. The Service solicits review and comment from the public on this draft plan. The original recovery plan was approved January 23, 1980, and the first revision was approved December 23, 1986.

DATES: Comments on the draft recovery plan must be received on or before July 26, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, Whooping Crane Coordinator, P.O. Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–2914. Written comments and materials regarding the plan should be addressed to the Whooping Crane Coordinator at the above address. Comments and materials received will be available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. James C. Lewis, U.S. Fish and Wildlife Service biologist; at the above phone number or address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site-specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft revised recovery plan is the whooping crane (*Grus americana*) whose existence is threatened primarily by the destruction and/or degradation of suitable migration and wintering habitat. Other hazards include shooting, disease, predation, and collision with power lines and fences. The emphases for recovery action are to ensure continued growth of the population wintering in Texas, to build three captive populations to the level where they can produce sufficient young to use in reintroduction programs, and to

establish additional self-sustaining wild populations. Habitat preservation and maximizing genetic diversity in wild and captive populations are also important objectives of recovery. The objective of the recovery plan is to restore the species to the point that its continued existence is no longer endangered and it can be delisted. Downlisting criteria are presented in that draft plan. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 18, 1993.

James A. Young,

Regional Director.

[FR Doc. 93–14910 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–55–M

[RIN 1018]

Preparation of a Programmatic Environmental Impact Statement; on the Natural Community Conservation Plan/Habitat Conservation Plan To Maintain Viability of Habitats in the Coastal Sage Scrub Ecosystem for the California Gnatcatcher, a Federally Listed Threatened Species, and for the Cactus Wren and Orange-Throated Whiptail Lizard, Candidate Species for Federal Listing, in the Coastal and Central Subregion of Orange County, CA

AGENCY: Environmental Management Agency, County of Orange, California; Fish and Wildlife Service; Interior.

ACTION: Notice of intent and meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has been notified by the Emergency Management Agency, of the County of Orange (County), California, that the County intends to prepare a Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) to conserve coastal sage scrub (CSS) and adjacent habitats in the Coastal and Central Subregion of the County. The NCCP/HCP would be prepared pursuant to the State of California's Natural Community Conservation Planning Act of 1991 and the Endangered Species Act of 1973, as amended (Act). The proposed NCCP/HCP would identify those actions necessary to maintain the viability of the remaining CSS habitat for the three "target species" residing in CSS habitats. The target species are the threatened California gnatcatcher (*Polioptila californica californica*), and Category 2 candidate species the cactus wren (*Campylorhynchus brunneicapillus*) and orange-throated whiptail (*Cnemidophorus hyperythrus beldingi*). The NCCP/HCP would treat the three target species as listed species and would be subject to the standards set forth in section 10(a)(1)(B) of the Act 50 CFR 17.32(b) and 17.22(b). In addressing the habitat needs of the three target species, the NCCP/HCP would benefit other CSS species, and it would function as a multiple species, conservation plan that could establish the basis for maintaining the viability of the remaining CSS ecosystem at the community level.

If the NCCP/HCP is approved by the Service, the Service would authorize incidental take of the California gnatcatcher through the issuance of a section 10(a)(1)(B) permit. The NCCP/HCP coupled with an Implementation Agreement could form the basis for issuing an incidental take permit for the cactus wren and orange-throated whiptail lizard should these species be listed. If an alternative process for authorizing incidental take becomes available through the special rule for the gnatcatcher, proposed under section 4(d) of the Act, the County of Orange may request the Service to authorize take associated with the NCCP/HCP in accordance with the special rule. However, this alternative authorization would not alter the requirement that the NCCP/HCP be prepared consistent with the standards noted above.

DATES: A joint public scoping meeting will be held on the following date and at the specified location to discuss the Central and Coastal Subregion NCCP/HCP and the adjacent South Subregion NCCP/HCP: Tuesday July 7, 1993 (7 p.m.–9:30 p.m.) Irvine Ranch Water District Headquarters, 15600 Sand Canyon Avenue, Irvine, California 92716–6025.

Written comments related to the scope and content of the NCCP/HCP and Joint EIR/EIS will be accepted by the Service at the address below until 30 days after publication of this notice. A separate Notice of Intent is being published for the South Subregion NCCP/HCP and Joint EIR/EIS.

ADDRESSES: Information, comments, or questions related to preparation of the NCCP/HCP and Joint EIR/EIS and the National Environmental Policy Act process should be submitted to Mr. Gail Kobetich, California Planning Manager, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1803, Sacramento, CA 95825–1846.

FOR FURTHER INFORMATION CONTACT: Persons wishing to review background material may obtain it by contacting the County of Orange Environmental Management Agency, Planning and Zoning Administrator, 300 N. Flower Street, Santa Ana, CA 92702. Documents also will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m. Monday–Friday) at the above address or by telephone (714–834–6105).

Interested persons are encouraged to attend the public meeting to identify and discuss issues and alternatives that should be addressed in the EIR/EIS. The proposed agenda for the facilitated public scoping meeting includes a summary of the proposed action, status of and threats to subject species, tentative issues, concerns, opportunities, and alternatives.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1993, the Service issued a Final Rule declaring the California gnatcatcher to be a threatened species (50 CFR part 17). The Final Rule was accompanied by a proposed special rule, "Proposed Special Rule to Allow Take of the California Gnatcatcher", pursuant to section 4(d) of the Act. The purpose of the proposed special rule is to define the conditions under which take of the California gnatcatcher resulting from specific land use activities regulated by state and local government would not violate section 9 of the Act. In the proposed special rule the Service recognized "* * * the significant efforts undertaken by the State of California through the Natural Community Conservation Planning Act of 1991 * * *" and encouraged "* * * holistic management of listed species, like the coastal California gnatcatcher, and other sensitive species * * *." The Service declared its intent to permit incidental take of the California gnatcatcher associated with land use activities covered by an approved subregional Natural Communities Conservation Plan prepared under the Natural Community Conservation Plan Program, provided the Service determines that the subregional Natural Community Conservation Plan meets the issuance criteria of an incidental

take permit pursuant section 10(a)(1)(B) of the Act to 50 CFR § 17.32(b)(2). While the County of Orange currently intends to obtain the Service's approval of the NCCP/HCP through a section 10(a)(1)(B) permit, if the special rule, when finalized, provides an alternative process for take authorization, the County may request the Service's approval of the NCCP/HCP through the special rule process.

The County of Orange's proposed Coastal and Central Subregion NCCP/HCP and Joint EIR/EIS is being prepared pursuant to California's Natural Community Conservation Planning Act of 1991. The purpose of the statewide Natural Community Conservation Plan program is to provide for subregional and regional protection of natural diversity while allowing compatible and appropriate development within the Natural Community Conservation Plan subregion. The Natural Community Conservation Plan Program intends that these goals be achieved through the development and implementation of Natural Community Conservation Plans. The Program is designed to provide an alternative to current single species conservation efforts by formulating regional, natural community based habitat protection programs to protect the numerous species inhabiting each of the targeted natural communities. The Natural Community Conservation Plan process is sponsored jointly by the California Resources Agency and California Department of Fish and Game (CDFG), and conducted in cooperation with the Service pursuant to a Memorandum of Understanding between CDFG and the Service dated December 4, 1991.

Persons attending the Scoping Meeting will have an opportunity to discuss the specific CSS conservation goals and conservation planning alternatives, as well as other aspects of the proposed NCCP/HCP and related Joint EIR/EIS. Submittal of independent written comments is encouraged.

Dated: June 18, 1993.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 93–14866 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–55–M

[RIN 1018]

Preparation of a Programmatic Environmental Impact Statement; Natural Community Conservation Plan/Habitat Conservation Plan To Maintain Viability of Habitats in the Coastal Sage Scrub Ecosystem for the California Gnatcatcher, a Federally Listed Threatened Species, and the Cactus Wren and Orange-Throated Whiptail Lizard, Candidate Species in the South Subregion of Orange County, CA

AGENCY: Environmental Management Agency, County of Orange, California; Fish and Wildlife Service; Interior.

ACTION: Notice of intent and meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has been notified by the Emergency Management Agency, of the County of Orange (County), California, that the County intends to prepare a Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) to conserve coastal sage scrub (CSS) and adjacent habitats in the South Subregion of the County. The NCCP/HCP would be prepared pursuant to the State of California's Natural Community Conservation Planning Act of 1991 and the Endangered Species Act of 1973, as amended (Act). The proposed NCCP/HCP would identify those actions necessary to maintain the viability of the remaining CSS habitat for the three "target species" residing in CSS habitats. The target species are the threatened California gnatcatcher *(Polioptila californica californica)*, and Category 2 candidate species the cactus wren *(Campylorhynchus brunneicapillus)* and orange-throated whiptail *(Cnemidophorus hyperythrus beldingi)*. The NCCP/HCP would treat the three target species as listed species and would be subject to the standards set forth in section 10(a)(1)(B) of the Act, and 50 CFR § 17.32(b) and § 17.22(b). In addressing the habitat needs of the three target species, the NCCP/HCP would benefit other CSS species. It would function as a multiple species, conservation plan that could establish the basis for maintaining the viability of the remaining CSS ecosystem at the community level.

If the NCCP/HCP is approved by the Service, the Service would authorize incidental take of the California gnatcatcher through the issuance of a section 10(a)(1)(B) permit. The NCCP/HCP coupled with an Implementation Agreement could form the basis for issuing an incidental take permit for the cactus wren and orange-throated whiptail lizard should these species be listed. If an alternative process for authorizing incidental take becomes available through the special rule for the gnatcatcher, proposed under section 4(d) of the Act, the County may request the Service to authorize take associated with the NCCP/HCP in accordance with the special rule. However, this alternative authorization would not alter the requirement that the NCCP/HCP be prepared consistent with the standards noted above.

DATES: A joint public scoping meeting will be held on the following date and at the specified location to discuss the South Subregion NCCP/HCP and the adjacent Coastal and Central Subregion NCCP/HCP: Tuesday July 7, 1993, (7 p.m.–9:30 p.m.), Irvine Ranch Water District Headquarters, 15600 Sand Canyon Avenue; Irvine, California 92716–6025.

Written comments related to the scope and content of the NCCP/HCP and EIR/EIS will be accepted by the Service at the address below until 30 days after publication of this notice. A separate Notice of Intent is being published for the Coastal and Central Subregion NCCP/HCP and Joint EIR/EIS.

ADDRESSES: Information, comments, or questions related to preparation of the NCCP/HCP and Joint EIR/EIS and the National Environmental Policy Act process should be submitted to Mr. Gail Kobetich, California Planning Manager, U.S. and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1803, Sacramento, CA 95825–1846.

FOR FURTHER INFORMATION CONTACT: Persons wishing to review background material may obtain it by contacting the County Environmental Management Agency, Planning and Zoning Administrator, 300 N. Flower Street, Santa Ana, CA 92702. Documents also will be available for public inspection by appointment during normal business hours (8 a.m. to 5 p.m. Monday–Friday) at the above address or by telephone (714–834–6105).

Interested persons are encouraged to attend the public meeting to identify and discuss issues and alternatives that should be addressed in the EIR/EIS. The proposed agenda for the facilitated public scoping meeting includes a summary of the proposed action, status of and threats to subject species, tentative issues, concerns, opportunities, and alternatives.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1993, the Service issued a Final Rule declaring the California gnatcatcher to be a threatened species (50 CFR part 17). The Final Rule was

accompanied by a proposed special rule, "Proposed Special Rule to Allow Take of the California Gnatcatcher", pursuant to section 4(d) of the Act. The purpose of the proposed special rule is to define the conditions under which take of the California gnatcatcher, resulting from specific land use activities regulated by State and local government, would not violate section 9 of the Act. In the proposed special rule the Service recognized "* * * the significant efforts undertaken by the State of California through the Natural Community Conservation Planning Act of 1991 * * *" and encouraged "* * * holistic management of listed species, like the coastal California gnatcatcher, and other sensitive species * * *." The Service declared its intent to permit incidental take of the California gnatcatcher associated with land use activities covered by an approved subregional Natural Communities Conservation Plan prepared under the Natural Community Conservation Plan Program, provided the Service determines that the subregional Natural Community Conservation Plan meets the issuance criteria of an incidental take permit pursuant to section 10(a)(1)(B) of the Act and 50 CFR 17.32(b)(2). The County currently intends to obtain the Service's approval of the NCCP/HCP through a section 10(a)(1)(B) permit. However, if the special rule, when finalized, provides an alternative process for take authorization, the County may request the Service's approval of the NCCP/HCP through the special rule process.

The County's proposed South Subregion NCCP/HCP and Joint EIR/EIS is being prepared pursuant to California's Natural Community Conservation Planning Act of 1991. The purpose of the statewide Natural Community Conservation Plan Program is to provide for subregional and regional protection of natural diversity while allowing compatible and appropriate development within the Natural Community Conservation Plan subregion. The Natural Community Conservation Plan Program intends that these goals be achieved through the development and implementation of Natural Community Conservation Plans. The Program is designed to provide an alternative to current single species conservation efforts by formulating regional, natural community based habitat protection programs on a regional basis to protect the numerous species inhabiting each of the targeted natural communities. The Natural Community Conservation Plan process is sponsored jointly by the California Resources Agency and California Department of Fish and Game (CDFG), and is conducted in cooperation with the Service pursuant to a Memorandum of Understanding between CDFG and the Service dated December 4, 1991.

Persons attending the Scoping Meeting will have an opportunity to discuss the specific CSS conservation goals and conservation planning alternatives, as well as other aspects of the proposed NCCP/HCP and related Joint EIR/EIS. Submittal of independent written comments is encouraged.

Dated: June 18, 1993.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 93–14868 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Federal Geographic Data Committee (FGDC); Meeting on Means to Coordinate Activities to Develop the National Spatial Data Infrastructure

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: The FGDC is a co-convener of a meeting to discuss means by which Federal, State, and local governments, and the private sector can coordinate their activities to speed the development of the National Spatial Data Infrastructure (NSDI). The purpose of the meeting is to discuss options for developing these means. The discussion will focus on the roles of various sectors and organizations in developing the NSDI.

DATES: July 24–25, 1993. Meeting times are tentatively set for noon to 5 p.m. on July 24, and 8:30 a.m. to noon on July 25.

ADDRESSES: The meeting will be held in conference room 2 of the Inforum, 250 Williams Street, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Persons planning to attend the meeting or requesting background materials should provide their name and address to Marge Dunlap, FGDC Secretariat, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092; telephone (703) 648–4150; facsimile (703) 648–5755; Internet "gdc@usgs.gov".

SUPPLEMENTARY INFORMATION: Admittance will be limited to the seating available. Persons planning to attend the meeting should contact Ms. Dunlap at the above address.

The National Geo-Data Policy Forum was held in early May, 1993. Nearly 750 attendees debated various policy concerns related to the development and evolution of the NSDI. Issues such as public access, data fees, copyright, liability, privacy, and roles of government and the private sector were discussed in plenary, panel, and small group sessions. The need for a meeting to continue the dialog and to plan a mechanism to coordinate public and private sector activities was recommended by the participants at the Forum.

Among the agencies and organizations endorsing and participating in these continuing discussions are the Association of American Geographers, the Atlanta Regional Commission, the Environmental Systems Research Institute, the Intergraph Corporation, the National Center for Geographic Information and Analysis, the National States Geographic Information Council, and the Urban and Regional Information Systems Association. The annual conference of the Urban and Regional Information Systems Association will immediately follow the meeting.

Dated: June 16, 1993.

Allen H. Watkins,

Chief, National Mapping Division.

[FR Doc. 93–14865 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–31–M

Bureau of Land Management

Utah; Filing of State Indemnity Selection

On May 12, 1993, the State of Utah filed a state indemnity selection application, UTU–71695, to have 200.00 acres of Federally-owned land and interest in land transferred to the State of Utah pursuant to sections 2275 and 2276 of the Revised Statutes, as amended, (43 U.S.C. 851–852).

The lands containing the Federally-owned lands and interests in land included in this application are described as follows:

Salt Lake Meridian

T. 21 S.,R., 19 W.,
Sec. 29, W½SW¼, E½SE¼, SW¼SE¼.

The filing of this application segregates the Federally-owned lands and interests in land in the above-described lands from settlement, sale, location, or entry under the public land laws, including the mining laws but not the mineral leasing laws. This segregative effect shall terminate upon the issuance of a document of conveyance to these Federally-owned lands and interests in lands, or upon the application in the Federal Register of a notice of termination of the segregation,

or upon the expiration of two years from the date of the filing of this application, whichever occurs first.

JoAn Robbins,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–14862 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–DQ–M

[OR–020–4410–02; G3–265]

Proposed Amendment to the Andrews Management Framework Plan, Harney County, Oregon

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Notice of availability.

SUMMARY: A proposed amendment to the Andrews Management Framework Plan and Environmental Assessment has been prepared outlining a comprehensive plan for management of recreation on and access to public lands in the vicinity of the Loop Road on Steens Mountain in south central Harney County, Oregon. The preferred alternative would continue to keep the Steens Mountain Loop Road open in its entirety to allow motorized access to the major scenic attractions on Steens Mountain. The Loop Road would be covered with a gravel layer 4 to 6 inches thick to provide a roadbed which would hold up under the present levels of traffic and reduce maintenance costs. The Loop Road and secondary access roads to overlooks and campgrounds would be protected from the effects of heavy vehicle traffic and severe weather by application of bentonite clay as a binding agent to hold gravel on the roadway. The Loop Road would continue to be maintained to protect persons and property from undue damage which can be caused by a deteriorated roadbed. Several sources of rock would be developed to provide gravel for the Loop Road. These actions would continue to complement the status of the Steens Mountain Loop Road National Bank Country Byway. Proposed actions in the preferred alternative would also provide for protection and enjoyment of historical resources at the Riddle Brothers Ranch Historic District. Improved campground facilities would be provided along the southern segment of the Loop Road at the turnoff to the trail leading to Big Indian Gorge, for increased public enjoyment, health, and safety and to protect soil and vegetative resources. Facilities would be provided at overlooks to improve education/information opportunities as well as reduce impacts on the natural environment and improve public safety. Limited access would be allowed for motorized and non-motorized winter sports along the north segment of the Loop Road. Parking for a trailhead on newly acquired property near the mouth of Wildhorse Canyon would be developed with a trail leading up to the canyon.

DATES: The protest period for this proposed plan amendment will commence on June 30, 1993. Protests must be submitted to the Director of the BLM on or before July 30, 1993. Copies of the proposed plan amendment will be mailed to all known interested parties on the Steens mailing list by June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Glenn T. Patterson, Andrews Resource Area Manager, Bureau of Land Management, at the Burns District Office, HC–74, 12533 Highway 20 West, Hines, Oregon, 97738 or telephone (503) 573–5241. Additional copies of the proposed plan amendment can be obtained from the Burns District Office during regular office hours.

SUPPLEMENTARY INFORMATION: This action is announced pursuant to section 202(a) of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610. The planning amendment is subject to protest from any adversely affected party who participated in the planning process. A protest must be made in accordance with the provisions of 43 CFR 1610.5–2. Protests to the Director (760), Bureau of Land Management, 1849 C Street NW, Washington, DC 20240 must be post marked on or before July 30, 1993.

Dated: June 14, 1993.

Michael T. Green,

District Manager.

[FR Doc. 93–14833 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–33–M

[Docket No. UT–040–03–4212–14]

Intent to Amend the Vermillion Management Framework Plan, Kane County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) is proposing to amend the Vermillion Management Framework Plan (VMFP) and prepare the associated Environmental Assessment (EA) for lands located in Kane County, Utah.

DATES: The comment period for this proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before July 26, 1993.

FOR FURTHER INFORMATION CONTACT: Verlin L. Smith, Area Manager, Kanab Resource Area Office, 318 North 100 East, Kanab, Utah 84741. Existing planning documents and information are available at the above address or telephone (801) 644–2672. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the VMFP approved October 28, 1981, which includes public land in Kane County, Utah,. The purpose of the amendment would be to make identified lands within the city limits of Kanab, Utah, available for noncompetitive sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976 and the Omnibus Public Lands and National Forest Adjustments Act of 1988 (Public Law 100–699).

The lands identified for sale comprise 240 acres described as follows:

Salt Lake Meridian, Utah

T. 43 S., R. 6 W.,
Sec. 23, S½SE¼
Sec. 26, Lots 7, 8, S½SE¼NE¼, NE¼SW¼, E½SE¼.

The existing plan does not identify these lands for disposal. However, the City of Kanab has made a proposal to purchase the described public lands and this proposal appears to have merit and may be in the public interest. An EA will be prepared to analyze the impact of this proposal and alternatives.

G. William Lamb,

Acting State Director.

[FR Doc. 93–14863 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–DQ–M

California Desert District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public law 94–579, title IV, section 403, that a public meeting of the California Desert District Grazing Advisory Board will be held on Thursday, July 22, 1993 from 10 a.m. to 4 p.m. in the conference room of the California Desert Information Center, 831 Barstow Road, Barstow, California.

The agenda for the meeting will include:

—Wild Horse and Burro Management
—U.S. Fish and Wildlife Service Section 7 Consultations

—Rangeland Management and Improvements

—Rangeland Monitoring

The meeting is open to the public, with time allotted for public comment after each agenda subject has been presented.

Summary minutes of the meeting will be maintained in the California Desert District Office, 6221 Box Springs Boulevard, Riverside, California 92507, and will be available there for public inspection during regular business hours—7:45 a.m. to 4:30 p.m. (p.s.t.)—within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, California Desert District Office, Larry Morgan, 6221 Box Springs Boulevard, Riverside, California 92507, (909) 697–5370.

Dated: June 16, 1993.

Henri R. Bisson,

District Manager.

[FR Doc. 93–14872 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–40–M

[WY–920–41–5700; WYW91670]

Proposed Reinstatement of Terminated Oil and Gas Lease

June 17, 1993.

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW91670 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW91670 effective April 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 93–14879 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–22–M

[OR–943–2300–02; GP3–270; OR–48521]

Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 2,451.24 acres of acquired lands to surface entry, and 623.60 acres to mining, and mineral leasing. Of the balance, 227.64 acres are already open to mining and mineral leasing, and the mineral estate in 1,600 acres is not in Federal ownership.

EFFECTIVE DATE: August 2, 1993.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208, 503–280–7171.

SUPPLEMENTARY INFORMATION: 1. Under the authority of section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1715, the following described lands were acquired by the United States to be administered as public land under the jurisdiction of the Bureau of Land Management:

Willamette Meridian

T. 37 S., R. 24 E.,
Sec. 1, lots 1, 2, and 3, SW¼SW¼, and SE¼SE¼;
Sec. 2, lots 1 and 2;
Sec. 12, lots 2, 3, 5, and 6.
T. 33 S., R. 25 E.,
Sec. 36.
T. 34 S., R. 25 E.,
Sec. 35, S½SE¼;
Sec. 36, lots 4, 5, and 6.
T. 35 S., R. 25 E.,
Sec. 1, lots 3, 4, 5, 6, 11, and 12.
T. 33 S., R. 26 E.,
Sec. 16.
T. 34 S., R. 26 E.,
Sec. 10, SW¼;
Sec. 16, lot 1, NW¼, N½SW¼, and SE¼SW¼.

The areas described aggregate 2,451.24 acres in Lake County.

2. At 8:30 a.m., on August 2, 1993, the above described lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid existing applications received at or prior to 8:30 a.m., on August 2, 1993, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

3. At 8:30 a.m., on August 2, 1993, the following described lands will be opened to location and entry under the United States mining laws. Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts:

Willamette Meridian

T. 37 S., R. 24 E.,
Sec. 1, lot 1.
T. 34 S., R. 25 E.,
Sec. 35, lots 4, 5, and 6, and S½SE¼.
T. 35 S., R. 25 E.,
Sec. 1, lots 3, 4, 5, 6, 11, and 12.
T. 34 S., R. 26 E.,
Sec. 10, SW¼;
Sec. 16, lot 1 and SE¼SW¼.

The areas described aggregate 623.60 acres in Lake County.

4. At 8:30 a.m., on August 2, 1993, the lands described in paragraph 3 will be opened to applications and offers under the mineral leasing laws.

Dated: June 16, 1993.

Catherine H. Crawford,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–14875 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–33–M

[ID–943–02–4210–04; IDI–28559]

Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Central Idaho Title, Inc. as Trustee for FLEX Northwest, Inc., of McCall, Idaho, under section 206 of the Federal Land Policy and Management Act.

EFFECTIVE DATE: June 24, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384–3163.

1. In an exchange made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States.

Boise Meridian

T. 35 N., R. 2 E.,
Sec. 4, lots 3 and 4;
Sec. 5, lots 1 to 3, inclusive and SE¼NW¼

Comprising 244.59 acres of public land.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

T. 31 N., R. 3 W.,
Sec. 14, W½;
Sec. 23, SE¼NE¼ and E½SE¼;
Sec. 24, S½NW¼ and SW¼, less the east 70 ft. of the SE¼NW¼ and the east 70 ft. on the SW¼;
Sec. 25, S½ of lot 2.

Comprising 695.61 acres of private land.

The purpose of the exchange was to acquire non-Federal land which has high public values for recreation and wildlife. The public interest was well served through completion of the exchange. The values of the Federal and private lands in the exchange were each appraised at $200,000.

Dated: June 17, 1993.

Willima E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 93–14885 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–66–M

[NV–040–4210–03; N–57067]

Realty Action: Recreation and Public Purposes Act, White Pine County, NV

ACTION: Notice.

SUMMARY: The BLM Ely District Office is proposing to patent the below-listed public lands to White Pine County, Nevada, under the provisions of the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869, *et seq.* The subject lands will be used by the county for a non-hazardous solid waste disposal facility.

DATES: Written comments concerning this proposed realty action must be submitted and post marked no later than August 13, 1993. No public hearings concerning this realty action are scheduled at this time.

ADDRESSES: Written comments should be addressed to: Gene L. Drais, Area Manager, Egan Resource Area, Bureau of Land Management, Ely District, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Darrell Winter, Realty Specialist, at the above address or telephone (702) 289–4865.

SUPPLEMENTARY INFORMATION: The BLM Ely District is proposing to classify 480 acres for disposal to White Pine County, Nevada pursuant to the Recreation and Public Purposes Act for a non-hazardous solid waste disposal facility. The subject lands are located at:

Mount Diablo Meridian, Nevada

T. 17 N., R. 61 E.,
Sec. 23, SE¼NE¼, E½SE¼,
Sec. 24, SW¼NE¼, S½NW¼, SE¼, W½SE¼.

The subject lands are not needed for Federal purposes. Disposal to White Pine County is consistent with the Egan Resource Management Plan approved February 3, 1987, and would be in the public interest. The subject lands are within the Copper Flat grazing allotment. Approximately 56 AUMs would no longer be available as a result of this action. The permittee has been sent a two year notice.

The patent, when issued, will contain the following terms, conditions and reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States under the Act of August 30, 1890, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

4. Power line right-of-way N–5638 issued to Mt. Wheeler Power, Inc.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws except for disposal under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. This segregation shall be in effect until patent is issued or for 18 months. If, after 18 months following the effective date of classification, patent has not been issued, the segregative effect of the classification shall automatically expire and the lands classified shall return to their former status without further action by the authorized officer. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed classification and conveyance of the lands to the Area Manager, Egan Resource Area, address listed above. Any adverse comments will be reviewed by the State Director. In absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: June 11, 1993.

Kenneth G. Walker,

District Manager.

[FR Doc. 93–14834 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–HC–M

[ES 35121]

Transfer of Lands, Sawyer County, Wisconsin; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of legal description.

SUMMARY: This notice corrects the legal description previously published in the **Federal Register** on January 24, 1986, (51 FR 3265) for the transfer of submarginal lands (transferred to the Lac Courte Oreilles Band of Chippewa Indians) in Sawyer County, Wisconsin. Under T. 38 N., R. 7 W., the description that now reads "Sec. 6., W½W¼ (70.77)," should be corrected to read "Sec. W½NW¼ (70.77)."

If you have further questions or concerns, please contact A. Nate Felton at (703) 440–1548.

Denise P. Meridith,

State Director.

[FR Doc. 93–14854 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–GJ–M

[NV–060–4410–02]

Draft Tonopah Resource Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability. The Draft Tonopah Resource Management Plan (RMP) and Environmental Impact Statement (EIS) is available for a 90 day public review period. This is also a "Notice" of the consideration of 10 areas of critical environmental concern (ACECs) as discussed in the alternatives of this draft RMP.

SUMMARY: Pursuant to section 202(f) of the Federal Land Policy and Management Act (FLPMA) of 1976, section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, and Title 43 Code of Federal Regulations (CFR), part 1610, a draft RMP and EIS for the Tonopah Resource Area, Battle Mountain District, Nevada has been prepared and is available for review and comment.

The draft RMP and EIS describes and analyzes future options for managing approximately 6,091,101 acres of public land and mineral estate in Esmeralda County and Nye County, Nevada. It also examines the proposed designation of 10 ACECs and their restrictions on various resource uses within the Tonopah Resource Area.

Final approved decisions generated during this planning process will

supersede current land use planning guidance presented in the Tonopah Management Framework Plan (MFP) of 1983 and the Esmeralda-Southern Nye RMP of 1986. They are being developed to meet the changing public land use demands in the Tonopah Resource Area.

DATES: All written comments on the draft RMP and EIS must be submitted and postmarked no later than September 30, 1993. Oral and written comments may also be presented at five scheduled public meetings. All meetings will start at 7 p.m. each evening. A time limit may need to be placed on oral statements. The meeting dates and locations are listed below:

Tuesday, August 17, 1993, Carson City District Office, 1535 Hot Springs Road, suite 300, Carson City, Nevada.
Thursday, August 19, 1993, Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada.
Tuesday, August 24, 1993, Beatty Community Center, A Avenue, Beatty, Nevada.
Wednesday, August 25, 1993, Goldfield Community Center, corner of Crook and Euclid, Goldfield, Nevada.
Thursday, August 26, 1993, Tonopah Convention Center, 301 Brougher, Tonopah, Nevada.

ADDRESSES: Written comments should be addressed to: Tonopah Area Manager, Bureau of Land Management, P.O. Box 911, Tonopah, NV 89049. Copies of the draft document may be obtained through writing to the above address or by obtaining one in person at Building 102, Military Circle, Tonopah, Nevada.

FOR FURTHER INFORMATION CONTACT: Tonopah Area Manager at the above addresses or telephone (702) 482–7800.

SUPPLEMENTARY INFORMATION: The draft RMP and EIS was prepared as a single planning document to provide management goals, objectives and direction where needed for the Tonopah Resource Area. It will also bring forward valid existing management strategies from the current land use plans.

Four alternatives were considered in detail in the draft RMP and EIS. Alternative 1 is the No Action Alternative. Management is a continuation of the current level and systems of resource use as described in the Tonopah MFP and the Esmeralda-Southern Nye RMP. These land use plans contain a full array of multiple resource uses. However, because some resources and uses were not articulated in those plans, some of the management direction that is assumed for the No Action Alternative was derived by extrapolating from past management actions. Alternative 2 provides opportunities for private economic development and economic diversity through utilization of a wide range of resources. Lands will be made available for expansion and development while providing mitigation to sensitive resource values. Alternative 3 provides for private economic development and economic diversity which is constrained by environmental safeguards designed for the preservation and enhancement of environmental systems and for species diversity. Alternative 4 is the Preferred Alternative; it provides for the development of renewable and non-renewable resources while ensuring the preservation and enhancement of fragile and unique resources.

While the alternatives establish broad management guidelines and firm direction, considerable flexibility is maintained through continued site and project specific compliance with NEPA and other laws and regulations. This draft RMP is the first step in developing an approved plan that will provide management guidance to BLM for the next 20 years.

ACECs nominated by the public, as well as those recommended by BLM, that met the "relevance" and "importance" criteria as defined in 43 CFR 1610.7–2(a) resulted in 10 ACECs being considered for designation in the Tonopah Resource Area. The proposed sizes, resource limitations and their impacts have been analyzed in the alternatives of the draft RMP and EIS. Of the 10 potential ACECs, seven are identified in the Preferred Alternative. The following is a list of the ACECs and their size as discussed in the Preferred Alternative:

Amargosa-Oasis	490 acres.
Cane Man Hill	680 acres.
Lone Mountain	14,400 acres.
Lunar Crater	39,680 acres.
Railroad Valley	15,470 acres.
Rhyolite	460 acres
Tybo-McIntyre	80 acres

Because of the complexity of displaying the resource limitations of each proposed ACEC in this "Notice," we ask the public to refer to the Special Management Areas sections of each alternative, especially the Preferred Alternative, in the draft RMP and EIS.

Public participation has occurred throughout the RMP process to date. A "Notice of Intent" to do the RMP was filed in the **Federal Register** of February 12, 1990. Since that time, several public meetings and mailings were conducted to solicit comments and ideas. Comments presented throughout the process have been considered in the development of this draft RMP. Copies of the draft RMP and EIS may be obtained from the Tonopah Resource Area Office. Public reading copies will be available at the public libraries of Esmeralda and Nye Counties, all government document repository libraries and at the following BLM locations: Public Room, Office of External Affairs, Main Interior Building, room 5000, 18th and C Streets NW., Washington, DC; Nevada State Office, 850 Harvard Way, Reno, Nevada; Battle Mountain District Office, 50 Bastian Way, Battle Mountain, Nevada; and Tonopah Resource Area Office, 102 Military Circle, Tonopah, Nevada.

Background information and maps used in developing the draft RMP and EIS are available at the Tonopah Resource Area Office.

Dated: June 18, 1993.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93–14867 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–HC–M

[CO–942–93–4730–12]

Colorado: Filing of Plats of Survey

June 18, 1993.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., June 18, 1993.

The plat representing the dependent resurvey of portions of the east boundary, subdivisional lines, and Tract lines, and the subdivision of sections 23 and 24, T. 8 N., R. 88 W., Sixth Principal Meridian, Colorado, Group No. 946, was accepted April 27, 1993.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 19, 28, and 34, T. 8 N., R. 87 W., Sixth Principal Meridian, Colorado, Group No. 946, was accepted April 27, 1993.

The supplemental plat, correcting lots 2 and 14 in the NW¼ of section 22 on sheets 1 and 4, T. 4 S., R. 75 W., Sixth Principal Meridian, Colorado, was accepted May 25, 1993.

The supplemental plat, creating new lots 127, 128, 129 and 130, in the NE¼SW¼ section 18, T. 1 N., R. 71 W., Sixth Principal Meridian, Colorado, was accepted May 25, 1993.

The supplemental plat, correcting the bearing error between Cor. No's. 10 to 10A and 34 to 35, T. 14 S., R. 94 W., Sixth Principal Meridian, Colorado, was accepted May 25, 1993.

The supplemental plat, correcting the bearing error between Cor. No. 85 to Cor. No. 1, T. 14 S., R. 95 W., Sixth

Principal Meridian, Colorado, was accepted May 25, 1993.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat representing the metes-and-bounds survey of Lot 1, Section 12, T. 2 N., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 1035, was accepted May 27, 1993.

The plat representing the metes-and-bounds surveys of Lot 1, Section 12 and Lot 1, Section 33, T. 3 N., R. 76 W., Sixth Principal Meridian, Colorado, Group No. 1035, was accepted May 27, 1993.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 93–14883 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–JB–M

[CO–930–4214–10; COC–28792]

Proposed Withdrawal; Transfer of Jurisdiction; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw and transfer administrative jurisdiction of 40 acres of public land located within the Picket Wire Canyonlands. This 40-acre parcel was inadvertently omitted from Public Law 101–510 which transferred the Canyonlands from the Secretary of Defense to the Secretary of Agriculture for administration. This parcel will be closed to operation of all the public land laws including the mining and the mineral leasing laws and will be managed as a part of the Picket Wire Canyonlands. This notice will segregate the land for up to two years.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before September 22, 1993.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: The Department of Agriculture, Forest Service, has filed application to withdraw and transfer administrative jurisdiction of the following described public land from operation of all the public land laws, including the mining and the mineral leasing laws:

Sixth Principal Meridian

T. 28 S., R. 55 W.,
Sec. 17, SE¼NW¼.

The area described contains 40 acres of public land in Las Animas County.

The purpose of this proposed action is to withdraw and transfer administrative jurisdiction of a parcel of public land which was inadvertently omitted from Public Law 101–510 which created the Picket Wire Canyonlands and transferred them to the Department of Agriculture for management of palaeontological and archaeological features, wildlife, vegetation and aquatic life.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with the Bureau of Land Management Manual, section 2351.16B.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the **Federal Register**, the land will be segregated from operation of all of the public land laws, including the mining and the mineral leasing laws, unless the application is denied or cancelled or the withdrawal is approved prior to that date. This action does not authorize any temporary uses of this land.

Robert S. Schmidt,

Chief, Branch of Realty Programs.

[FR Doc. 93–14885 Filed 6–22–93; 8:45 am]

BILLING CODE 4310–JB–M

[OR–943–4210–05; GP3–263; OR–49274]

Filing of Application for State Indemnity Selections

AGENCY: Bureau of Land Management, Oregon.

ACTION: Notice.

SUMMARY: The State of Oregon has filed an application for selection of 329.91 acres of public lands for State Indemnity selections pursuant to sections 2275 and 2276 of the Revised Statutes, as amended (43 U.S.C. 851, 852), section 102(a) of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1701, 1712), and sec. 7 of the Taylor Grazing Act of 1934 (43 U.S.C. 315f).

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments in writing regarding the application for State Indemnity Selections of the lands described below. Any adverse comments will be reviewed by the State Director.

ADDRESSES: Submit comments to the Oregon/Washington State Director, BLM, Attn: Chief, Branch of Lands and Minerals Operations (943.3), P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Bill Bliesner, BLM Oregon State Office, 503–280–7157.

SUPPLEMENTARY INFORMATION: The State of Oregon has filed an application for selection of public lands for State Indemnity selections for the following described lands:

Willamette Meridian

T. 15 S., R. 6 W.,
Sec. 34, SE¼SE¼.
T. 16 S., R. 5 W.,
Sec. 12, SW¼NE¼ and NE¼NW¼.
T. 40 S., R. 8 W.,
Sec. 32, SE¼NE¼.
T. 9 S., R. 9 W.,
Sec. 19, W½ of lot 29.
T. 35 S., R. 14 W.,
Sec. 18, lot 1.
T. 19 S., R. 1 E.,
Sec. 26, W½NE¼NE¼ and NW¼NE¼.
T. 13 S., R. 3 E.,
Sec. 9, NE¼NE¼.
T. 32 S., R. 3 E.,
Sec. 19, lot 32.

The areas described aggregate 329.91 acres in Curry, Jackson, Josephine, Lane, Linn, and Lincoln Counties, Oregon.

Dated: June 11, 1993.

Champ C. Vaughan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–14876 Filed 6–23–93; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are

grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collections

(1) Systematic Alien Verification for Entitlements (SAVE) User Satisfaction Survey

(2) No form number. Immigration and Naturalization Service

(3) One-time survey

(4) State or local governments. This survey will be used to determine the satisfaction of SAVE program users, which consist of the State Benefit Granting Agencies

(5) 2,000 annual responses at .25 hours per response

(6) 500 annual burden hours

(7) Not applicable under 3504(h)

Public comment on these items is encouraged.

Dated: June 18, 1993.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 93–14840 Filed 6–23–93; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[93–057]

NASA Advisory Council; Space Science and Applications Advisory Committee; Space Station Science and Applications Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee; Space Station Science and Applications Advisory Subcommittee.

DATES: July 6, 1993, 8:30 a.m. to 5 p.m.; July 7, 1993, 8 a.m. to 5 p.m.; July 8, 1993, 8 a.m. to 5 p.m.; and July 9, 8 a.m. to 3 p.m.

ADDRESSES: J. Erik Jonsson Woods Hole Center, National Academy of Sciences, 314 Quissett Avenue, Woods Hole, MA 02543–0086.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond M. Reeves, Code US, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2150.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room, approximately 75, including members of the Subcommittee. The agenda for the meeting is as follows:

—Proposed Space Station Approach

—International Partner Elements

—User Input to Station Redesign Process

—Operations and Utilization

—Comparisons: Previous Space Station; User Requirements; Proposed Design

—International Coordination

—User Assessment

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: June 18, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93–14878 Filed 6–23–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before July 26, 1993.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 606–8498 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Guidelines and Application Forms for the Conferences Program

Form Number: Not applicable
Frequency of Collection: Twice annually
Respondents: Humanities institutions
Use: Application for funding
Estiated Number of Respondents: 58 per year
Frequency of Response: Once
Estimated Hours for Respondents to Provide Information: 60 hours per respondent
Estimated Total Annual Reporting and Recordkeeping Burden: 5,240 hours

Thomas S. Kingston,
Assistant Chairman for Operations.
[FR Doc. 93–14852 Filed 6–23–93; 8:45 am]
BILLING CODE 7536–01–M

Cooperative Agreement for a Literature Field Overview Study

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for a Literature Field Overview Study designed to target and define the changing needs of the Literature field. The study will be aimed at identifying and defining: (1) The field en masse and its components/affiliates; (2) the dynamic state and evolving needs of the field system; (3) the ways in which current programs and support activities view their relationship to audiences, writers, texts, and one another; and (4) goals and possible strategies for achieving them. Those interested in receiving the Solicitation package should submit a written request and include two (2) self-addressed labels, referencing Program Solicitation PS 93–17. Verbal requests for the Solicitations will not be honored.

DATES: Program Solicitation PS 93–17 is scheduled for release approximately July 12, 1993 with proposals due on August 12, 1993.

ADDRESS: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW. Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW. Washington, DC 20506 (202/682–5482).

William I. Hummel,
Director, Contracts and Procurement Division.
[FR Doc. 93–14882 Filed 6–23–93; 8:45 am]
BILLING CODE 7537–01–M

Humanities Panel Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* July 12, 1993.
Time: 9:00 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review applications for Public Challenge Grants program for the May 1, 1993 deadline, submitted to the Division of Public Programs, for projects beginning after December 1, 1993.

2. *Date:* July 16, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Classical, Medieval, and Renaissance Studies, submitted to the Division of Fellowship and Seminars, for projects beginning after January, 1994.

3. *Date:* July 19, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Anthropology, Sociology, and Psychology, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

4. *Date:* July 19, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in European History, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

5. *Date:* July 20, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Music, Dance, Theater, Film History and Criticism, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

6. *Date:* July 20, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in British Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

7. *Date:* July 21, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Romance Languages and Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

8. *Date:* July 21, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Religious Studies, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

9. *Date:* July 22, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Art History I, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

10. *Date:* July 22, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in Art History I, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

11. *Date:* July 26, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Anthropology, submitted to the Division of

Fellowships and Seminars, for projects beginning after January 1994.

12. *Date:* July 26, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for University Teachers applications in British Literature; Criticism; Rhetoric and Composition, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

13. *Dote:* July 26, 1993.
Time: 9:00 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for the Public Challenge Grants programs for the May 1, 1993 deadline, submitted to the Division of Public Programs, for projects beginning after December 1. 1993.

14. *Date:* July 27, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Languages and Literatures I, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

15. *Dote:* July 27, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Languages and Literatures II, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

16. *Dote:* July 29, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in American History I, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

17. *Date:* July 30, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for College Teachers and Independent Scholars applications in Art History II, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

18. *Date:* July 30, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for University Teachers applications in American History and Studies I, submitted to the Division of Fellowships and Seminars, for projects beginning after January, 1994.

19. *Dote:* July 30, 1993.
Time: 8:30 a.m. to 5 p.m.
Room: 430.
Program: This meeting will review Fellowships for University Teachers applications in Art History II, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1994.

David C. Fisher,
Advisory Committee Monogement Officer.
[FR Doc. 93–14853 Filed 6–23–93; 8:45 am]
BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Notice To Extend Expiration Dates of NSF Advisory Committees

Charters of the advisory committees listed below are scheduled to expire on June 30, 1993. This document serves to extend the expiration date of these committees so that a comprehensive review being conducted of NSF committees by NSF, OMB, and the GSA Committee Management Secretariat can be completed. This review is being conducted in accord with Executive Order 12838, dated 2–10–93, entitled "Termination and Limitation of Federal Advisory Committees" and OMB Bulletin No. 93–10, "Termination of Federal Advisory Committees". Upon completion of the review, new charters will be filed accordingly.

Therefore, in consultation with the GSA Committee Management Secretariat, I have determine that the renewal of the following committees until September 30, 1993, is necessary and in the public interest.

Advisory Committee for Astronomical Sciences
Advisory Committee for Atmospheric Sciences
Advisory Committee for Biological & Critical Systems
Advisory Committee for Biological Sciences
Advisory Committee for Chemical & Thermal Systems
Advisory Committee for Chemistry
Advisory Committee for Design & Manufacturing Systems
Advisory Committee for Earth Sciences
Advisory Committee for Education & Human Resources
Advisory Committee for Electrical & Communications Systems
Advisory Committee for Engineering
Advisory Committee for Industrial Innovation Interface
Advisory Committee for Mathematical Sciences
Advisory Committee for Mechanical & Structural Systems
Advisory Committee for Ocean Sciences
Advisory Committee for Physics
Advisory Committee for Polar Programs
Advisory Committee for Archaeology
Advisory Panel for Archaeometry & Systematic Anthropological Collections
Advisory Panel for Biochemistry & Molecular Structure & Function
Advisory Panel for Cell Biology
Advisory Panel for Cultural Anthropology
Advisory Panel for Decision, Risk & Management Science
Advisory Panel for Developmental Mechanisms
Advisory Panel for Ecology
Advisory Panel for Economics
Advisory Panel for Ecosystem Studies
Advisory Panel for Equipment & Facilities for Research at Biological Field Stations & Marine Labs
Advisory Panel for Ethics & Values Studies
Advisory Panel for Genetics & Nucleic Acids
Advisory Panel for Geography & Regional Science
Advisory Panel for History & Philosophy of Science
Advisory Panel for Human Cognition & Perception
Advisory Panel for Instrumentation & Instrument Development
Advisory Panel for Law & Social Science
Advisory Panel for Linguistics
Advisory Panel for Neuroscience
Advisory Panel for Physical Anthropology
Advisory Panel for Physiology and Behavior
Advisory Panel for Political Science
Advisory Panel for Population Biology
Advisory Panel for Social Psychology
Advisory Panel for Sociology
Advisory Panel for Systematic Biology
Alan T. Waterman Award Committee
Earth Sciences Proposal Review Panel
Materials Research Advisory Committee
Ocean Sciences Review Panel
Special Emphasis Panel in Science and Technology Infrastructure
Special Emphasis Panel in Science Resources Studies

Dated: June 21, 1993.

M. Rebecca Winkler,
Committee Monogement Officer.
[FR Doc. 93–14904 Filed 6–23–93; 8:45 am]
BILLING CODE 7555–01–M

Committee of Visitors of the Advisory Committee for Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Nome: Committee of Visitors of the Advisory Committee for Earth Sciences.
Date and Time: July 12 and 13, 1993; 8:30 a.m.-5 p.m.
Place: Room 1242, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Ian D. MacGregor, Section Head, Special Projects Section, Division of Earth Sciences, room 602, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–9591.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Petrology and Geochemistry Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 21, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–14905 Filed 6–23–93; 8:45 am]

BILLING CODE 7555–01–M

Committee of Visitors of the Advisory Committee for Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Dates and Times: July 15, 1993 (9 a.m. to 5 p.m.); July 16, 1993 (9 a.m. to 3 p.m.)

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Larry Suter, Program Director, Division of Research, Evaluation and Dissemination, room 1249, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) (357–7425).

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Studies and Indicators Program.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: June 21, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–14906 Filed 6–23–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice Of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems.

Dates and Times: July 14, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1151, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Brian J. Clifton, Program Director, ECS, room 1151, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9618.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Optical Communications proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 21, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–14903 Filed 6–23–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the Following meeting:

Name: Special Emphasis Panel in Undergraduate Education.

Date and time: July 12, 1993; 7:30 p.m. to 9 p.m., July 13, 1993; 8:30 a.m. to 5 p.m., July 14, 1993; 8:30 a.m. to 5 p.m., July 15, 1993; 8:30 a.m. to 3 p.m.

Place: The Grand Hotel, 2350 M Street, NW., Washington, DC 20037.

Type of Meeting: Closed.

Contact Person: Dr. Herbert Levitan, Section Head, National Science Foundation, 1800 G Street, NW., rm. 1210, Washington, DC 20550. Telephone: (202) 357–7292

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Undergraduate Course and Curriculum Development Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: June 21, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–14907 Filed 6–23–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Correction

Notice that the 54th meeting of the Advisory Committee on Nuclear Waste (ACNW) would be held on Friday, June 25, 1993, beginning at 8:30 a.m. was published in the **Federal Register** on Thursday, June 17, 1993 (58 FR 33470). The meeting schedule has been changed such that the meeting will now begin at 2 p.m. on June 25, 1993 and be continued until the conclusion of business on that day. If necessary the meeting will be continued on Saturday, June 26, 1993, 8:30 a.m. until the conclusion of business. The meeting will be held in room P–110, 7920 Norfolk Avenue, Bethesda, MD for both days of the meeting. All other items pertaining to this meeting remain the same as published previously. The entire meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Dr. John T. Larkins, Executive Director, ACNW (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m.

Dated: June 18, 1993.

John C. Hoyle,

Advisory Committee Monogement Officer.

[FR Doc. 93–14888 Filed 6–23–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority (Sequoyah Nuclear Plant Units 1 and 2); Exemption

I.

The Tennessee Valley Authority (the licensee) is the holder of Facility Operating License Nos. DPR–77 and DPR–79, which authorize operation of the Sequoyah Nuclear Plant Units 1 and

2, 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.

The facilities consist of two pressurized water rectors, Sequoyah Nuclear Plant Units 1 and 2, at the licensee's site located in Hamilton County, Tennessee.

II.

Title 10 CFR 50.60, "Acceptance criteria for fracture prevention measures for lightwater nuclear power reactors for normal operation," states that all lightwater nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR part 50. Appendix G to 10 CFR part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. 10 CFR 50.60(b) specifies that alternatives to the described requirements in Appendices G and H to 10 CFR part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low temperature overpressure transients that would produce pressure excursions exceeding the Appendix G P/T limits while the reactor is operating at low temperatures, the licensee installed a low temperature overpressure (LTOP) system. The system includes pressure relieving devices called Power Operated Relief Valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the Appendix G P/T limits. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pump starting, and shifting operating charging pumps) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint.

Based on information supplied by Westinghouse Electric Corporation, the licensee has determined that the generic methodology used by Westinghouse to calculate the LTOP setpoint for Sequoyah is deficient since it did not account for certain flow-induced differential pressures and piping losses. As a result, the analytical maximum pressure limits for LTOP events for a certain design basis condition exceed the pressure limits of the 10 CFR part 50 Appendix G curves. In addition, in order to start a reactor coolant pump, the operator must maintain a differential pressure across the reactor coolant pump seals. Hence, the licensee must operate the plant in a pressure window that is defined as the difference between the minimum required pressure to start a reactor coolant pump and the operating margin to prevent lifting of the PORVs due to normal operating pressure surges. The licensee LTOP analysis indicates that using the Appendix G safety margins to determine the PORV setpoint would result in a pressure setpoint within its operating window, but there would be no margin for normal operating pressure surges. Therefore, operating with these limits would likely result in the lifting of the PORVs during normal operation.

The licensee proposed that in determining the design setpoint for LTOP events for Sequoyah Units 1 and 2, the allowable pressure be determined using the safety margins developed in an alternate methodology in lieu of the safety margins currently required by Appendix G, 10 CFR part 50. Designated Code Case N–514, the proposed alternate methodology, is consistent with guidelines developed by the American Society of Mechanical Engineers (ASME) Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. Code Case N–514, "Low Temperature Overpressure Protection," has been approved by the ASME Code Committee. NRC has reviewed the Code Case and endorsement is expected soon.

An exemption from 10 CFR 50.60 is required to use the alternate methodology for calculating the maximum allowable pressure for the LTOP setpoint. By application dated June 5, 1993, the licensee requested an exemption from 10 CFR 50.60 for this purpose.

By letter dated June 14, 1993, the licensee supplied additional information that described administrative constraints that would be necessary to ensure that sufficient LTOP margins are maintained during certain evolutions, assuming that the exemption was not granted. The information showed that the operational constraints would preclude the use of administrative controls to ensure sufficient LTOP margins.

III.

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *".

The underlying purpose of 10 CFR 50.60 Appendix G is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code.

Appendix G of the ASME Code requires that the P/T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one quarter of the vessel wall thickness and a length of six times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Sequoyah reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the proposed ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110% of the P/T limits of the existing ASME Appendix G. This results in a safety factor of 1.8 on the principal membrane stresses. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on the principal membrane stresses, the proposed

criteria will provide adequate margins of safety to the reactor vessel during LTOP transients and will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements.

Using the licensee's proposed safety factors instead of Appendix G safety factors to calculate the LTOP setpoint will permit a higher LTOP setpoint than would otherwise be required and will provide added margin to prevent normal operating surges from lifting the PORVs. The result would be continued use of the present setpoint.

IV.

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2), such that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants the Tennessee Valley Authority an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the Appendix G curves for P/T limits are not exceeded by more than 10 percent in order to be in compliance with these regulations. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (58 FR 33676, June 18, 1993).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 18th day of June 1993.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–14887 Filed 6–23–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF GOVERNMENT ETHICS

Proposed Part-Time Career Employment Policy Directive

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice soliciting comments on a proposed Office of Government Ethics internal Part-Time Career Employment Program.

SUMMARY: The Office of Government Ethics is proposing to establish an internal program to promote part-time career employment within OGE. This program will be implemented in an internal agency personnel policy directive of the OGE Personnel Manual.

DATES: Comments must be received on or before July 26, 1993.

ADDRESSES: Comments should be sent to the Office of Government Ethics, Office of Administration, suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Mrs. Justine L. Norman. Mrs. Norman will also provide a copy of the proposed OGE policy directive, free of charge, upon request.

FOR FURTHER INFORMATION CONTACT: Mrs. Justine L. Norman, Office of Government Ethics, telephone (202/FTS) 523–5757, extension 1148; FAX (202/FTS) 523–6325.

SUPPLEMENTARY INFORMATION: The Federal Employees Part-Time Career Employment Act of 1978 (5 U.S.C. 3401 et seq.) requires that each agency establish and maintain a Part-Time Career Employment Program. The purposes of this program are to: promote the as yet not fully realized capabilities and potential of individuals in society who may possess great productive potential but are unable to work on a full-time basis; provide employment opportunities to handicapped individuals or others who require a reduced workweek; provide parents with opportunities to balance family responsibilities with the need for added income; provide older individuals with a gradual transition into retirement; and to assist students who must finance their own education or vocational training.

Guidance from the Office of Personnel Management (OPM) states that an agency's program under this law can be established in an internal policy directive. See Federal Personnel Manual, chapter 340, subchapter 1, paragraph 1–3. 5 U.S.C. 3402 and the OPM guidance provide that before such a directive can be issued in final, a notice is to be published in the **Federal Register** so that there is an opportunity for interested parties to present written comments and, where practicable, oral comments on the directive.

The Office of Government Ethics has determined to issue its final policy on Part-Time Career Employment, after publishing this notice in the **Federal Register**, as an internal policy directive, given the relatively small size and limited budget of this Agency. The directive will be in the OGE Personnel Manual, chapter 340, subchapter 1 on Part-Time Career Employment. A summary of the proposed directive follows.

The Office of Government Ethics' proposed policy directive describes the purpose for establishing a Part-Time Career Employment Program within OGE as well as the policy of the Agency for promoting part-time opportunities. Another proposed provision of the policy directive defines the terms frequently used in the directive. The criteria under which an individual may be excluded from the 16 to 32 hours per week tour of duty and health insurance prorating provisions are also described in the proposed directive. In addition, the proposed OGE directive outlines the plans and procedures that are to be used in connection with establishing or converting positions for part-time career employment. Another proposed provision addresses making changes to the work schedule/tour of duty of a part-time employee. It also stipulates that there is no specific prohibition against an individual holding two part-time positions either in the same or different agencies. A separate provision, as proposed, authorizes job sharing as an appropriate arrangement for meeting the needs of the Agency and employees.

Basic principles concerning position classification and pay are outlined in one proposed provision. Other proposed provisions describe entitlement for leave and holidays, how service credit is determined, and the various benefits that are afforded to eligible part-time employees. A further proposed provision of the OGE directive requires that the reassignment, detail, and/or promotion of a part-time employee be done in the same manner and under the same circumstances as other career or career-conditional employees. Another proposed provision states that a part-time employee will be placed in a separate competitive level from comparable full-time employees in a reduction in force situation and that when released from competitive level, they may only compete for other part-time jobs. As proposed, one provision allows the part-time employee the same protection as a full-time employee in the event of an adverse action and also states that they are covered by OGE's

grievance procedures. Another proposed provision states that paid straight- time hours worked by part-time employees will count against OGE's Full-Time Equivalent (FTE) personnel ceiling. Finally, the proposed directive sets forth the requirement for the continuing review and evaluation of OGE's Part-Time Career Employment Program which will be accomplished by the designated Part-Time Employee Program Coordinator.

Approved: June 15, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 93–14818 Filed 6–23–93; 8:45 am]

BILLING CODE 6345–01–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Receipt of Petition for Consultations With Russia, Belarus and Ukraine Pursuant to Section 406(d) of the Trade Act of 1974 and Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of receipt of petition for consultations with Russia, Belarus and Ukraine pursuant to section 406(d) of the Trade Act of 1974; request for public comment.

SUMMARY: The United States Trade Representative (USTR) is providing notice that it has received a petition filed by Eddy Potash, Inc., Horizon Resources Corporation, Mississippi Chemical Corporation and New Mexico Potash Corporation pursuant to section 406(d) of the Trade Act of 1974, codified at 19 U.S.C. § 436(d) (the Act). These companies, all U.S. producers of potassium chloride (KC1), have requested that the President initiate consultations with Russia, Belarus and Ukraine because they allege that imports of KC1 from these countries have caused market disruption (as defined in section 406(e) of the Act) to exist with respect to an article produced by a domestic industry. USTR invites written comments from the public on the information contained in this petition.

DATES: Written comments from the public are due on or before July 13, 1993.

FOR FURTHER INFORMATION CONTACT: Catherine A. Novelli, Director for Eastern Europe and Independent States, (0) 395–3074.

SUPPLEMENTARY INFORMATION: Eddy Potash, Inc., Horizon Resources Corporation, Mississppi Chemical Corporation and New Mexico Potash Corporation (collectively, the Petitioners) have filed a petition with USTR pursuant to section 406(d) of the Trade Act of 1974, 19 U.S.C. 436(d). In the petition, the Petitioners allege that imports of KC1 from Russia, Belarus and Ukraine are causing market disruption to exist such that the imports of KC1 from these countries are a significant cause of material injury, or threat thereof, to the domestic KC1 industry. Further, they urge the President to initiate consultations with these countries to alleviate such disruption. Pursuant to section 406(d)(), if the President determines that there are reasonable grounds to believe that imports of KC1 from these countries are causing market disruption, he shall initiate consultations with these countries pursuant to section 406(d). Section 406(e) of the Act defines market disruption to exist within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

Copies of the public version of the petition are available for public inspection in the USTR Reading Room: room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 0506. Appointments may be made from 10 a.m. to 1 noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (0) 395–6186.

Interested persons are invited to submit written comments on the information contained in this section 406(d) petition. Comments must be filed by July 13, 1993. Comments must be in English and provided in twenty copies to: Carolyn Frank, Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, room 414, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "Business Confidential" in a contrasting color ink at the top of each page on each of the twenty copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the file which is open to public inspection.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–14925 Filed 6–23–93; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32488; File No. SR–MSE–93–13]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Inc., Relating to Amendments to Its Certificate of Incorporation and Constitution To Effect a Name Change

June 18, 1993.

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 May 21, 1993, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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 MSE proposes to amend its Certificate of Incorporation and Constitution in order to change the name of the MSE to Chicago Stock Exchange, Inc., effective as of July 8, 1993.[1] The text of the proposed rule change is available at the Office of the Secretary, MSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] On June 16, 1993, the MSE submitted a separate proposal under Rule 19b-4, see File No. SR–MSE–93–16, to make conforming changes to its rules.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The MSE was originally organized as the Chicago Stock Exchange and opened for trading on May 15, 1882. It operated under the name of the Chicago Stock Exchange unit 1949, when it merged with the stock exchanges of St. Louis, Cleveland and Minneapolis-St. Paul to form the MSE. A decade later the New Orleans Stock Exchange became part of the MSE. From the very beginning of the MSE and through today, the support and encouragement of the business and financial communities of the midwest region has been vital to the continued success of the MSE.

The Exchange's influence extends far beyond the region, however. Advances in telecommunications have made MSE's activities truly national, and even international, in scope. Today, orders are sent to the MSE from all over the country and the MSE trades securities listed on all three major listing markets: The New York Stock Exchange, the American Stock Exchange and NASDAQ, for a total of 2,800 different securities. Measured by total dollar volume, the MSE is the largest stock exchange in the United States outside of New York and is the eleventh largest stock exchange in the world.[2]

Another important aspect of the MSE's business scope has been the establishment of clearing links with foreign exchanges such as the Vancouver and London Stock Exchanges, as well as SICOVAM, a securities depository located in Paris. MSE's systems innovations are recognized internationally as well. The Exchange has set up trading systems using its technology at the Amsterdam Stock Exchange, the Stock Exchange of Thailand and the Makati Stock Exchange in Manila, Philippines.[3]

In summary, the MSE has expanded far beyond its historically regional role to be a vital element in the nation's capital markets. In keeping with the MSE's expanding role, the members of the Exchange and the Board of Governors have deemed it advisable that the name of the Exchange be changed from the Midwest Stock Exchange, Inc. to the Chicago Stock Exchange, Inc.[4] The name would (1) reduce any outmoded regional connotation that may exist with the use of the current name, (2) better identify the location of the Exchange and (3) be in keeping with the way most of the major exchanges in the world are identified, i.e., by the city in which they are located.

The name change will become effective on July 8, 1993.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(1) of the Act in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The members of the Exchange overwhelmingly approved the name change at a special meeting of members held on May 11, 1993.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon submission pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR–MSE–93–13 and should be submitted by July 15, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14911 Filed 6–23–93; 8:45 am]

BILLING CODE 8010–01–M

[2] MSE ranked the stock exchanges based on their total dollar volume. Telephone conversation between J. Craig Long, Vice President, General Counsel and Secretary, MSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC. on May 27, 1993.

[3] Specifically, the MSE customized its MAX system to suit the foreign country's trading rules and then licensed the technology to these exchanges. Telephone conversation between J. Carig Long, Vice President, General Counsel and Secretary, MSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on June 2, 1993.

[4] The MSE is not changing the names of any of its subsidiaries at this time. Telephone conversation between J. Craig Long, Vice President, General Counsel and Secretary, MSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on May 27, 1993.

[Release No. 34–32489; File No. SR–MSE–93–16]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Inc., Relating to Amendments to Its Rules to Make Conforming Changes In Accordance With Its Name Change to Chicago Stock Exchange, Inc.

June 18, 1993.

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 16, 1993, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the 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 MSE proposes to amend its rules in accordance with the Exchange's name change.[1] The text of the proposed rule change is available at the Office of the Secretary, MSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make conforming changes to the rules of the Exchange to correspond with the Exchange's name change to Chicago Stock Exchange, Inc. in its Certificate of Incorporation and Constitution, which will be effective as of July 8, 1993.[2]

The MSE was originally organized as the Chicago Stock Exchange and opened for trading on May 15, 1882. It operated under the name of the Chicago Stock Exchange until 1949, when it merged with the stock exchanges of St. Louis, Cleveland and Minneapolis-St. Paul to form the MSE. A decade later the New Orleans Stock Exchange became part of the MSE. From the very beginning of the MSE and through today, the support and encouragement of the business and financial communities of the midwest region has been vital to the continued success of the MSE.

The Exchange's influence extends far beyond the region, however. Advances in telecommunications have made MSE's activities truly national, and even international, in scope. Today, orders are sent to the MSE from all over the country and the MSE trades securities listed on all three major listing markets: The New York Stock Exchange, the American Stock Exchange and NASDAQ, for a total of 2,800 different securities. Measured by total dollar volume, the MSE is the largest stock exchange in the United States outside of New York and is the eleventh largest stock exchange in the world.[3]

Another important aspect of the MSE's business scope has been the establishment of clearing links with foreign exchanges such as the Vancouver and London Stock Exchanges, as well as SICOVAM, a securities depository located in Paris. MSE's systems innovations are recognized internationally as well. The Exchange has set up trading systems using its technology at the Amsterdam Stock Exchange, the Stock Exchange of Thailand and the Makati Stock Exchange in Manila, Philippines.[4]

In summary, the MSE has expanded far beyond its historically regional role to be a vital element in the nation's capital markets. In keeping with the MSE's expanding role, the members of the Exchange and the Board of Governors have deemed it advisable that the name of the Exchange be changed from the Midwest Stock Exchange, Inc. to the Chicago Stock Exchange, Inc.[5] The name would (1) reduce any outmoded regional connotation that may exist with the use of the current name, (2) better identify the location of the Exchange and (3) be in keeping with the way most of the major exchanges in the world are identified, i.e., by the city in which they are located.

The name change, and the corresponding changes herein, will become effective on July 8, 1993.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(1) of the Act in that it helps to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the act and to comply, and to enforce compliance by its members, with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that no burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon submission pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR–MSE–93–16 and should be submitted by July 15, 1993.

[1] On May 21, 1993, the Exchange submitted File No. SR–MSE–93–13, proposing to amend the Certificate of Incorporation and Constitution of the Exchange to change the Exchange's name to Chicago Stock Exchange, Inc., to take effect on July 8, 1993.

[2] See File No. SR–MSE–93–13.

[3] MSE ranked the stock exchanges based on their total dollar volume. Telephone conversation between J. Craig Long, Vice President, General Counsel and Secretary, MSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on May 27, 1993.

[4] Specifically, the MSE customized its MAX system to suit the foreign country's trading rules and then licensed the technology to these exchanges. Telephone conversation between J. Craig Long, Vice President, General Counsel and Secretary, MSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on June 2, 1993.

[5] The MSE is not changing the names of any of its subsidiaries at this time. Telephone conversation between J. Craig Long, Vice President, General Counsel and Secretary, MSE, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on May 27, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14915 Filed 6–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19527; 812–8098]

Massachusetts Investors Trust, et al.; Application for Exemption

June 18, 1993.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Massachusetts Investors Trust, MFS Research Fund, Massachusetts Investors Growth Stock Fund, MFS Capital Development Fund, Massachusetts Cash Management Trust, MFS Fixed Income Trust, MFS Emerging Growth Fund, Massachusetts Financial High Income Trust, MFS Special Fund, MFS Total Return Fund, MFS Government Mortgage Fund, MFS Government Premium Fund, MFS Government Securities Fund, MFS Income & Opportunity Fund, MFS California Municipal Bond Fund, MFS High Yield Municipal Bond Fund, MFS Multi-State Municipal Bond Trust, MFS Managed Municipal Bond Trust, MFS Managed Sectors Fund, MFS Utilities Fund, MFS Municipal Bond Trust, MFS Worldwide Government Fund, MFS Worldwide Total Return Fund, MFS Lifetime Capital Growth Fund, MFS Lifetime Emerging Growth Fund, MFS Lifetime Worldwide Equity Fund, MFS Lifetime Gold & Natural Resources Fund, MFS Lifetime Government Mortgage Fund, MFS Lifetime Government Securities Fund, MFS Lifetime High Income Fund, MFS Lifetime Intermediate Income Fund, MFS Lifetime Municipal Bond Fund, MFS Lifetime Managed Sectors Fund, MFS Lifetime Money Market Fund, MFS Lifetime Total Return Fund, and MFS Institutional Trust (including all existing and future series thereof) (the "Trusts"); and future open-end management investment company (including all series thereof) for which Massachusetts Financial Services Company ("MFS"), Lifetime Advisers, Inc. ("Lifetime"), or any majority-owned subsidiary of MFS is the investment adviser or for which MFS Financial Services, Inc. ("FSI") or any majority-owned subsidiary of MFS is the principal underwriter; any existing open-end management investment company (and all existing and future series thereof) not currently advised by MFS, Lifetime, or any majority-owned subsidiary of MFS or underwritten by FSI or any majority-owned subsidiary of MFS for which MFS, Lifetime, or any majority-owned subsidiary of MFS may in the future serve as investment adviser or for which FSI or any majority-owned subsidiary of MFS may serve as principal underwriter (collectively, with the Trusts, the "Funds"); MFS, Lifetime, and FSI.

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to issue multiple classes of shares representing interests in the same portfolio of securities (the "Multiple Distribution System"), and to permit the Funds to assess and, under certain circumstances, waive, defer, or reduce a contingent deferred sales charge ("CDSC") on certain redemptions of their shares.

FILING DATE: The Application was filed on September 21, 1992, and amended on October 7, 1992, January 28, 1993, April 23, 1993, and June 18, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 13, 1993, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons that wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trusts are open-end management investment companies registered under the Act. MFS serves as the investment adviser to all the Trusts except those in the MFS Lifetime Investment Program; Lifetime serves as investment adviser to these Trusts. FSI is the principal underwriter for each Trust except Massachusetts Cash Management Trust ("MCM"), a money market fund, and MFS Institutional Trust ("MFIT"), a fund designed primarily for institutional investors. Each Trust (other than MFIT) also has entered into a shareholder servicing agreement with MFS Service Center, Inc. ("MFSC"), a wholly owned subsidiary of MFS, pursuant to which MFSC performs transfer agency and recordkeeping functions.

2. The Trusts, except for MCM, MFIT, and the Trusts in the MFS Lifetime Investment Program, currently are offered with a front-end sales load (except on sales of $1 million or more). The Trusts in the MFS Lifetime Investment Program currently are offered subject to a CDSC of up to six percent. MCM and MFIT currently are offered without a sales load, Some of the Trusts impose a rule 12b–1 fee.

3. Applicants propose to establish a Multiple Distribution System enabling each Fund to offer investors the option of purchasing shares (a) subject to a front-end sales load (except for MFS Lifetime Money Market Fund ("LMM") and for sales of $1 million or more) and, in some cases, a distribution and/or service fee pursuant to a rule 12b–1 plan ("Class A Shares"), (b) without a front-end sales load, but subject to a CDSC, a distribution fee and/or a service fee pursuant to a rule 12b–1 plan, and a conversion feature as described below ("Class B Shares"), or (c) without a front-end sales load, but subject to a CDSC (which is lower than, and for a shorter period of time than, the CDSC for the Class B shares), a distribution fee and/or service fee pursuant to a rule 12b–1 plan, but no conversion feature ("Class C Shares"). Any distribution arrangement of a Fund, including rule 12b–1 fees and front-end and deferred sales loads, will comply with article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

4. Applicants also seek authority to create one or more additional classes of shares in the future, the terms of which differ from the Class A, Class B, and Class C shares only in the following respects: (a) any such class may bear different or no service and distribution fees and any other cost relating to

implementing or amending the rule 12b–1 plan for such class, (b) any such class may bear any incremental difference in shareholder servicing fees,[1] (c) any such class may bear different class designation, (d) any such class will have exclusive voting rights with respect to any rule 12b–1 plan adopted exclusively with respect to such class except as provided in condition fifteen below, (e) any such class may bear any other incremental expenses subsequently identified that should be properly allocated to such class which shall be approved by the SEC pursuant to an amended order, (f) any such class may have different conversion features, (g) any such class may have different exchange privileges, (h) any such class may be sold under different sales arrangements, including selling only a particular type of investor and (i) any such class may bear different printing and postage expenses relating to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements ("Printing and Postage Expenses") relating to that class of shares.

5. After a shareholder's Class B shares remain outstanding for a specified period of time (not to exceed eight years), they will automatically convert to Class A shares of the same Fund at the relative net asset values of each of the classes and will thereafter be subject to the lower fee under the Class A rule 12b–1 plan. For purposes of conversion to Class A, all shares in a shareholder's account purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will be considered to be held in a separate sub-account. Each time any Class B shares in the shareholders's account convert to Class A, a proportional amount of Class B shares in the sub-account will also convert to Class A.

6. Any other class of shares may provide that shares in that class (the "Purchase Class") will, after a period of time, automatically convert into another class of shares (the "Target Class") on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge provided that after conversion, the converted shares would be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and/or service fee to which the Purchase Class shares were subject prior to the conversion. Such a conversion feature will be described in the relevant prospectus. (The term "Purchase Class" hereafter refers to any class of shares, including Class B shares, with a conversion feature.)

7. Any conversion of shares of one class to shares of another class is subject to the continuing availability of a ruling of the Internal Revenue Service or an opinion of counsel to the effect that the conversion of shares does not constitute a taxable event under federal income tax law. Any such conversion may be suspended if such a ruling or opinion is no longer available.

8. Under the Multiple Distribution System, all expenses incurred by a Fund will be borne proportionately by each class based on the relative net assets attributable to each such class, except for the different (a) distribution and service fees, and any other costs relating to implementing a rule 12b–1 plan or an amendment to such plan (including obtaining shareholder approval of a rule 12b–1 plan or an amendment to such plan), (b) Printing and Postage Expenses; and (c) possibly shareholder servicing fees (and any other incremental expenses properly attributable to a class which the SEC shall approve by an amended order) attributable to a class, which will be borne directly by each respective class.

9. To the extent exchanges are permitted, such exchanges will comply with all applicable provisions of rule 11a–3 under the Act.

10. Applicants also request relief to permit the Funds to assess a CDSC on certain redemptions of shares of Funds, and, as described below, to permit the Funds to waive, reduce, or defer the CDSC with respect to certain types of redemptions.[2] The amount of the CDSC to be imposed will depend on the amount of time since the investor purchased the shares being redeemed, as set forth in each Fund's prospectus. The amount of any applicable CDSC will be based upon the lower of the net asset value at the time of purchase or at the time of redemption as required by proposed rule 6c–10(a)(1)(i) of the Act. If a shareholder does not specify which class of shares of a Fund are to be redeemed, the following order of redemption will apply: (a) Shares of a Fund not subject to a CDSC and subject to the highest rule 12b–1 fee in effect on the date of redemption will be redeemed first (provided, however, that if such shares of the Fund are subject to the same rule 12b–1 fee then shares of the Fund without a conversion feature will be redeemed before shares of the Fund with a conversion feature), then (b) shares of the Fund subject to the lowest CDSC will be redeemed, provided that if such shares of the Fund are subject to the same CDSC, shares of the Fund with the highest rule 12b–1 fee in effect on the date of redemption will be redeemed first. If such shares of the Fund are subject to the same rule 12b–1 fee then shares of the Fund without a conversion feature will be redeemed before shares of the Fund with a conversion feature.

11. The Funds are also requesting the ability to waive or reduce the CDSC in the following instances: (a) On redemptions following the death, disability, or financial hardship of a shareholder, as relevant; (b) in connection with certain distributions from an IRA or other retirement plan as described below; (c) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (d) redemptions pursuant to the Funds' right to liquidate accounts or charge an annual small account fee; (e) redemptions of shares acquired as a result of investment of distributions from shares of a class of one Fund into shares of the same class of another Fund; and (f) in connection with shares sold to certain individuals or groups or in certain situations, as described below: (i) Officers of a Fund, provided the shares are resold to the Fund; (ii) any of the subsidiary companies of Sun Life Assurance Company of Canada ("Sun Life"), provided the shares are resold to the Fund; (iii) directors, officers, employees (including retired and former employees), and agents of Lifetime, MFS, Sun Life, or any of their subsidiary companies, and any trust, pension, profit-sharing, or any other benefit plan for such persons, provided that the shares are resold to the Fund; (iv) trustees and retired trustees of any

[1] The phrase "shareholder servicing fees" means fees paid by the Funds to their shareholder servicing agent for transfer agency, account maintenance, or dividend disbursing functions, or for administering dividend reinvestment or systematic investment plans. "Shareholder servicing fees" does not refer to service fees paid under a rule 12b–1 plan.

[2] Certain applicants are currently parties to CDSC exemptive relief. See Massachusetts Investors Trust, Investment Company Act Release Nos. 18044 (Mar. 14, 1991) (notice) and 18090 (Apr. 11, 1991) (order) (permitting certain investment companies to impose and, under certain circumstances, waive a CDSC on purchases of $1 million or more). See also, MFS Lifetime Gold & Natural Resources Fund, Investment Company Act Release Nos. 19266 (Feb. 16, 1993) (notice) and 19338 (Mar. 16, 1993) (order), Investment Company Act Release Nos. 18554 (Feb. 14, 1992) (notice) and 18607 (Mar. 11, 1992) (order), 16491 (July 22, 1988) (notice) and 16529 (Aug. 17, 1988) (order), and Lifetime Money Market Trust, 15515 (Dec. 31, 1986) (notice) and 15555 (Jan. 28, 1987) (order) (permitting investment companies in the MFS Lifetime Investment Program to impose and, under certain circumstances, waive a CDSC).

investment company for which FSI serves as principal underwriter, and to immediate family members of such individuals and their spouses, provided that the shares are resold to the Fund; (v) employees or registered representatives of any dealer that has a dealer agreement with FSI or any other subsidiary of MFS, immediate family members of such employee or representative and his or her spouse, and any trust, pension, profit-sharing, or any other retirement plan for the sole benefit of such employee or representative; (vi) clients of MFS Asset Management Group (or any other MFS organization that manages funds for institutional clients); (vii) in connection with the acquisition or liquidation of the assets of other investment companies or personal holding companies; (viii) where the amount invested through a dealer represents redemption proceeds from a registered open-end management investment company not distributed or managed by FSI or its affiliates, if such redemption has occurred no more than sixty days prior to the purchase of shares of the Fund and the shareholder either (a) paid an initial sales charge or (b) was at some time subject to, but did not actually pay, a deferred sales charge with respect to the redemption proceeds; (ix) insurance company separate accounts; (x) retirement plans where third party administrators of such plans have entered into arrangements with FSI or its affiliates provided that no commission is paid to dealers; and (xi) shares of a Fund purchased by 401(k) plans with more than 1,500 participants where the purchase is in an amount of $5 million or more and where the dealer and FSI enter into an agreement in which the dealer agrees to return any commission paid to it on the sale (or a *pro rata* portion thereof) if the shareholder redeems his or her shares within a certain time.

12. In connection with waiver category (b) above, the CDSC will be waived or reduced for redemptions in connection with (a) distributions to participants or beneficiaries of plans qualified under sections 401(a) or 401(k) of the Internal Revenue Code (the "Code"), as amended from time to time, custodial accounts under Code section 403(b)(7), individual retirement accounts ("IRA") under Code section 408(a),[3] deferred Compensation plans under Code section 457, and other employee benefit or retirement plans (collectively, "plans"), (b) return of excess contributions to these plans, and (c) distributions representing borrowings from these plans. (The Funds may, however, consider repayments of borrowings to constitute new sales for purposes of assessing a CDSC.) Further, the Funds may waive or reduce the CDSC with respect to investors that are tax-exempt employee benefit plans, in connection with redemptions as a result of the enactment or promulgation of any law or regulation pursuant to which continuation of the investment in the Funds would be improper. This proposed waiver or reduction would be subject to applicants' right to require an opinion of counsel to the effect that the continuation of such an investment would be improper.

13. In connection with waiver category (viii) above, applicants will take such steps as may be necessary to determine that the shareholder has not paid a deferred sales load, fee, or other charge in connection with the redemption of shares of the other open-end investment company, including, without limitation, requiring the shareholder to provide a written representation that neither a deferred sales load, fee, nor other charge was imposed upon the redemption, and, in addition, either (a) requiring such shareholder to provide an activity statement reflecting the redemption that supports the shareholder's representation or (b) reviewing a copy of the current prospectus of the other open-end investment company and determining that such company does not impose a deferred sales load, fee, or other charge in connection with the redemption of shares.

14. The Funds also request the ability to defer from time to time the CDSC for distributions representing borrowings from the plans mentioned in paragraph 11(b) above. Upon a borrowing from a plan, no CDSC will be assessed, but the length of time that the money is borrowed from the plan will not be included in calculating the amount of any CDSC upon any subsequent redemption.

15. If the Funds waive, defer, or reduce the CDSC for a particular class, such waiver, deferment, or reduction will be uniformly applied to all offerees in a class with similar qualifications. In waiving, deferring, or reducing a CDSC, the Funds will comply with the requirements of rule 22d-1 under the Act. If a Fund that has been waiving, deferring, or reducing its CDSC for a particular class pursuant to any items set forth above discontinues such waiver, deferment, or reduction, (a) such waiver, deferment, or reduction will continue to apply to shares of such Fund then outstanding, and (b) the disclosure in that Fund's prospectus relating to that class will be revised appropriately.

16. Applicants also propose to permit FSI to provide a credit (i.e., a reimbursement) for any CDSC paid by a redeeming shareholder followed by a reinvestment in any shares of the same class of the same Fund or, as permitted by FSI from time to time, the same class of another Fund, effected within such number of days of the redemption as may be specified, from time to time, in a Fund's prospectus (such number of days shall in no event be fewer than thirty days). Upon redemption thereafter, when calculating the amount of the CDSC (if any), the shares will be deemed to have been held for one continuous period from purchase through redemption and reinvestment until such shares are finally redeemed.

17. No CDSC will be imposed on shares issued prior to the date of the requested order except CDSCs imposed pursuant to the orders listed in footnote two; provided, however, that the above-described CDSC waivers, deferrals, and CDSC credit may apply to shares issued prior to the date of the requested order.

Applicants' Legal Conclusions

1. Applicants request an order under section 6(c) exempting the Funds' proposed issuance and sale of multiple classes of securities to the extent that such issuance and sale might be deemed to result in a "senior security" within the meaning of section 18(g) of the Act and be prohibited by section 18(f)(1), and to violate the equal voting provisions of section 18(i).

2. The creation of multiple classes does not present the concerns that section 18 was designed to address. The proposed arrangement does not involve borrowings, affect any Fund's existing assets or reserves, nor increase the speculative character of any Fund shares. The Funds' capital structures under the proposed arrangement will not induce any group of shareholders to invest in higher risk securities to the detriment of any other group of shareholders since the investment risks of each Fund will be borne equally by all of its shareholders.

3. Mutuality of risk will be preserved with respect to each class of shares in

[3] Because the process of transferring accounts among IRA customers may take up to thirty days, the CDSC may be waived or credited where assets in excess of the amount requested are erroneously transferred into or from a Fund account, provided, however, that the redemption or reinvestment of the excess amount occurs no more than thirty days from the date of the transfer. In addition, in conformity with Federal tax laws, an IRA account may be revoked within a certain number of days of the initial purchase. In such case, the CDSC may be waived.

a Fund. Further, (a) since each class of shares will be redeemable at all times, (b) since no class of shares will have any preference or priority over any other class in the Fund, and (c) since the similarities and dissimilarities of the classes of shares will be disclosed in the Funds' prospectuses, investors will not be given misleading impressions as to the safety or risk of any class of shares, and the nature of the shares will not be rendered speculative.

4. The Funds' capital structures under the proposed arrangement will not enable insiders to manipulate expenses and profits among the various classes of shares since the Funds are not organized in a pyramid fashion and since all the expenses and profits of a particular Fund (except the different fees of any rule 12b–1 plan applicable to a class of shares, any higher incremental shareholder servicing fees, and Printing and Postage Expenses attributable to a class of shares and any other incremental expense subsequently identified that should be properly allocated to a particular class which shall be approved by the SEC pursuant to an amended order) will be borne *pro rata* by all the shares of the Fund, irrespective of class, and all shareholders will have equal voting rights except with respect to matters pertaining to the 12b–1 plans and related agreements. The concerns that a complex capital structure may facilitate control without equity or other investment and may make it difficult for investors to value the securities of the Funds are not present.

5. The proposed arrangement will permit the Funds to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs. Moreover, owners of each class of shares may be relieved of a portion of the fixed costs normally associated with investing in mutual funds since such costs would potentially be spread over a greater number of shares than they would be otherwise.

Applicants' Multiple Class Conditions

Applicants agree that the order of the SEC granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and be identical in all respects, except as set forth below. The only differences among the various classes of shares of the same Fund will relate solely to: (a) The impact of the different distribution and service fee payments associated with any rule 12b–1 plan relating to a particular class of shares and any other costs relating to the implementation of such Plan or any amendments thereto (including obtaining shareholder approval of such Plan or any amendment thereto) which will be borne solely by shareholders of such classes, any incremental shareholder servicing fees attributable solely to a particular class of shares of the Fund, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (b) the voting rights on matters that pertain to rule 12b–1 plans except as provided in the condition fifteen below; (c) the different exchange privileges of each class of shares; (d) the designation of each class of shares of the Fund; (e) the differences in conversion features of each class of shares; and (f) any differences in Printing and Postage Expenses of each class of shares.

2. The trustees of each Fund, including a majority of the trustees who are not "interested persons" of the Fund, as that term is defined in section 2(a)(19) of the Act ("Independent Trustees"), will approve the Multiple Distribution System for a particular Fund prior to its implementation by such Fund. The minutes of the meetings of the trustees of each Fund regarding the deliberations of the trustees with respect to the approvals necessary to implement the Multiple Distribution System will reflect the reasons for the trustees' determination that the proposed Multiple Distribution System is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts among the interests of the various classes of shares. The trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. MFS, Lifetime, and FSI will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, MFS, Lifetime, and FSI, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. The trustees of the Funds will receive quarterly and annual statements concerning distribution and service expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or service of a particular class of shares will be used to support any distribution or service fee charged to that class. Expenditures not related to the sale or service of a particular class will not be presented to the trustees to support any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review of the Independent Trustees in the exercise of their fiduciary duties.

5. Dividends paid by the Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that (a) distribution and services payments associated with any rule 12b–1 plan relating to a particular class or shares (and any other costs relating to implementing the rule 12b–1 plan for such class or an amendment to such plan including obtaining shareholder approval of the rule 12b–1 plan for such class or any amendment to such plan) will be borne exclusively by that class; (b) any incremental shareholder servicing fees relating to a particular class will be borne by that class; (c) Printing and Postage Expenses relating to a particular class will be borne exclusively by that class; and (d) any other incremental expenses subsequently identified that should be properly allocated to a particular class which shall be approved by the SEC pursuant to an amended order will be borne exclusively by such class.

6. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses between the various classes has been reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the staff of the SEC, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with the respect to such reports, following request by the Funds which the Funds agrees to make, will be

available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the SEC, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Regional Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System," as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among such classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition six above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition six above. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

8. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

9. FSI will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Funds with respect to the Multiple Distribution System will be set forth in guidelines that will be furnished to the trustees as part of the materials setting forth the duties and responsibilities of the trustees.

11. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, conversion features, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will present each class of shares separately.

12. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to their rule 12b–1 distribution or service plans in reliance on the exemptive order.

13. Purchase Class shares will convert into Target Class shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

14. The initial determination of the Printing and Postage Expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Fund, including a majority of the Independent Trustees. Any person authorized to direct the allocation and disposition of the monies paid or payable by the Fund to meet Printing and Postage Expenses shall provide to the board of trustees, and the board of trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

15. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Target Class. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to Federal taxation. In accordance with condition three, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the adviser and the principal underwriter. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

Applicants' CDSC Condition

Applicants agree that any order granting the requested relief shall be subject to the following condition:

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (see Investment Company Act Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14914 Filed 6–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19528; 812–8046]

Mutual Fund Group, et al.; Application for Exemption

June 18, 1993.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Mutual Fund Group ("MFG"), The Chase Manhattan Bank, N.A. ("Chase"), Olympus Investment Trust ("Olympus"), and Olympus Asset Management Company ("OAMC").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from section 15(f)(1)(A).

SUMMARY OF APPLICATION: Applicants seek relief from section 15(f)(1)(A) to permit OAMC, the investment adviser of Olympus, to sell its investment advisory business to Chase, the investment adviser of MFG. Without the requested exemption, MFG would have to reconstitute its board to meet the 75% non-interested director requirement of section 15(f)(1)(A) in order to comply with the safe harbor provisions of section 15(f).

FILING DATES: The application was filed on May 21, 1993. Applicants have agreed to file an amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 13, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, the issues contested. Any person may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. MFG, 125 West 55th Street, New York, New York 10022. Chase, One Chase Manhattan Plaza, New York, New York 10081. Olympus and OAMC, 1925 Century Park East, Los Angeles, California 90067.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. MFG is an open-end investment company registered under the Act. MFG consists of 16 series, some of which are diversified, and others (the "Vista Funds") which are non-diversified. Chase serves as the investment manager of each of the Vista Funds.

2. Olympus is a diversified open-end investment company registered under the Act consisting of six series (the "Olympus Funds") OAMC serves as the investment manager of each of the Olympus Funds. It is a subsidiary of Associated Financial Group, Inc., formerly known as Associated Planners Group, Inc. ("AFG").

3. In March 1993, AFG and OAMC entered into an asset purchase agreement (the "Agreement") with Chase. Under the Agreement, OAMC will transfer to Chase all of its books and records relating to furnishing investment advisory services or other activities involving the Olympus Funds together with the opportunity to render management services to the Olympus Funds (the "Advisory Assets"). In connection with the Agreement and the transactions contemplated thereby, certain other agreements have been entered into, including: (a) A non-competition agreement by and among Chase, OAMC, and AFG; (b) a dealer retention agreement by and between Vista Broker-Dealers Services, Inc. and Associated Securities Corp., formerly known as Associated Planners Securities Corporation; and (c) a services agreement by and between Chase and Associated Securities Corp.

4. In consideration of the sale of the Advisory Assets and for the performance of other obligations and the execution of certain other documents, including the services agreement and non-competition agreement, Chase will pay to OAMC or its designees: (a) $700,000 for the Advisory Assets and the performance of the obligations under the Agreement; (b) $600,000 for the execution of the non-competition agreement and the performance of the obligations thereunder; and (c) $700,000 for the execution of the services agreement and the performance of the obligations thereunder. Applicants seek an exemption to permit OAMC to rely on the safe-harbor provision of section 15(f) to receive consideration in connection with the sale of its investment advisory business.

5. The consummation of the Agreement is subject to, among other things, approval of the shareholders of each relevant Olympus Fund of a plan of reorganization by and between MFG and Olympus. The MFG board of trustees approved the plan of reorganization on April 1, 1993, and the Olympus board of trustees approved it on April 2, 1993.

6. The plan of reorganization provides for: (a) Acquisition by MFG's Vista Growth and Income, Vista Capital Growth, Vista U.S. Government Income, and Vista Tax-Free Income Funds of substantially all of the assets and certain liabilities of Olympus's Stock, Growth, Investment Quality Bond, and National Tax-Free Funds, respectively, and the acquisition by MFG's Vista Equity Income and Vista California Intermediate Tax-Free Bond Funds of all of the assets and liabilities of Olympus's Equity Income and California Intermediate Tax-Free Bond Funds, in exchange for shares of each corresponding Vista Fund; (b) the distribution of these Vista Fund shares to the shareholders of the Olympus Funds in liquidation of the Olympus Funds; and (c) Olympus's termination under state law.

Applicants' Legal Analysis

1. Section 15(f) of the Act provides a safe-harbor that permits an investment adviser to receive "any amount of benefit" in connection with the "assignment" of its investment advisory contract with a registered investment company if the requirements of that section are satisfied. Section 15(f)(1)(A) requires that, for three years after the transaction, at least 75% of the directors of the investment company (or its successor, if the assignment results from the sale of the company's assets to another investment company) are not interested persons, within the meaning of section 2(a)(19), of the investment adviser of such company, or of the predecessor investment adviser. Applicants request an exemption from section 15(f)(1)(A) because the sale by OAMC of its investment advisory business with respect to the Olympus Funds may be deemed an assignment within the meaning of the Act and

applicants will not meet the 75% requirements.

2. The Olympus board of trustees currently is comprised of one interested person of OASMC and Chase ("Interested Trustee"), and three non-interested persons ("Non-Interested-Trustees"). The MFG board of trustees currently is comprised of two Interested Trustees, and four Non-Interested Trustees. To comply with section 15(f)(1)(A) following consummation of the Agreement, MFG would have to add two Disinterested Trustees (thus creating an eight-person board), or reduce the number of interested Trustees from two to one. If MFG were to add two Non-Interested Trustees, a vote of shareholders would be required pursuant to section 16(a), which requires at least two-thirds of a fund's directors to have been elected by shareholders.[1] MFG otherwise would not be required to hold a shareholders meeting to consummate the transactions contemplated by the Agreement and the plan of reorganization.

3. Section 15(f)(3)(B) provides that if, as here, the assignment of an investment advisory contract results from the merger, of, or sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, such discrepancy in size shall be considered by the SEC in determining whether, or to what extent, to grant exemptive relief pursuant to section 6(c) from section 15(f)(1)(A). As of April 30, 1993, Olympus has assets of $127.25 million, as compared to MFG's assets of approximately $3.6 billion. The assets of Olympus are approximately 3.5% of the assets of MFG. Applicants assert that the contemplated transaction involves an acquisition by an investment company with assets "substantially greater" than the assets of the acquired fund.

4. Applicants assert that it is appropriate for the assets of MFG, as opposed to each of its series, to be taken into account when considering the "substantially greater" test set forth in section 15(f)(3)(B). Applicants contend that any other conclusion would be inconsistent with the literal language of section 15(f)(3)(B), which refers to the sale of assets of one "investment company" to another "investment company with assets substantially greater in amount." MPG is the investment company involved in the transaction and, in fact, the MFG board must authorize the transaction on behalf of each of its series. In any event, if the transaction were viewed on a series by series basis, applicants believe that the transaction still would be consistent with the policies of the Act.

5. For the reasons stated above, applicants assert that the requested relief is necessary and appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the Act, as required by section 6(c).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14913 Filed 6–23–93; 8:45 am]

BILLING CODE 8010–01–M

[1] At present, two members of the MFG board have not been elected by shareholders. Adding two additional trustees without a shareholder vote would bring the number to four, comprising 50% of the board.

[Release No. 35–25829]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 18, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Intereрested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 12, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company, et al. (70–7937)

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia 30346, and its public utility subsidiaries, Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, Georgia Power Company ("Georgia"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, Gulf Power Company ("Gulf"), 500 Bayfront Parkway, Pensacola, Florida 32521, Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, Savannah Electric and Power Company ("Savannah"), 600 Bay Street East, Savannah, Georgia 31401, and Southern Electric Generating Company ("SEGCO"), 600 North 18th Street, Birmingham, Alabama 35291, a subsidiary of Alabama and Georgia (collectively, "Applicants"), have filed a post-effective amendment to their application-declaration under sections 6(a), 6(b) and 7 of the Act and Rule 50(a)(5) thereunder.

By Commission order dated March 31, 1992 (HCAR No. 25507) ("1992 Order"), the Applicants were authorized, among other things, to issue and sell, from time-to-time through March 31, 1994, up to the aggregate principal amounts of $500 million for Southern, $450 million for Alabama, $800 million for Georgia, $100 million for Gulf, $140 million for Mississippi, $6 million for Savannah, and $100 million for SEGCO: (1) Short-term and/or term loan notes to banks; (2) commercial paper to dealers; and/or (3) short-term non-negotiable promissory notes to public entities in connection with the financing of certain pollution control facilities through the issuance by such public entities of their revenue bond anticipation notes.

Alabama, Georgia and Savannah now propose to increase the authority provided in the 1992 Order to $530 million, $1.2 billion and $70 million, respectively, and the Applicants (other than Southern) propose to extend such authority through March 31, 1996. Southern is not requesting any increase in its existing borrowing authority or any extension thereof.

It is further proposed that borrowings from banks may have maturities of up to three years from the date of borrowing and may not be prepayable or may be prepaid only with a premium not in excess of 8% of the principal amount thereof. All other terms and conditions of such borrowings shall be as described in the 1992 Order.

Allegheny Power System, Inc. (70–7960)

Allegheny Power System, Inc. ("APS"), 12 East 49th Street, New York, New York 10017, a registered holding company, has filed a post-effective amendment to its declaration under sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

By order dated June 3, 1992 (HCAR No. 25549) ("Order"), the Commission authorized APS to issue and sell, through December 31, 1993, up to 3.5 million shares of its authorized and unissued common stock, par value $2.50 per share ("Common Stock"), under the competitive bidding procedures of Rule 50 of the Act as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623), or in a negotiated sale to underwriters pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5).

APS now proposes to extend, through December 31, 1994, the period during which it may issue and sell the remaining 1.52 million shares of the 3.5 million shares of Common Stock previously authorized by the Order. In addition, APS proposes to issue and sell up to an additional 3 million shares of Common Stock under the competitive bidding procedures of Rule 50 of the Act as modified by the Commission's Statement of Policy dated September 2, 1982 (HCAR No. 22623), or in a negotiated sale to underwriters pursuant to an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5). APS has requested that it be authorized to begin negotiations with potential underwriters to sell the additional Common Stock. It may do so.

Proceeds from the sale of the Common Stock may be used: (1) To repay short-term debt; (2) to make capital contributions to APS's direct, and advances to its indirect, subsidiary companies for use by them to finance construction, to acquire property and for their other general corporate purposes; (3) to acquire notes or stock of such subsidiary companies; (4) to repurchase shares of APS's common stock in order to fund its Dividend and Stock Purchase Plan ("Plan") in lieu of issuing additional new shares of common stock pursuant to such Plan; and (5) for other general corporate purposes.

The Southern Company, et al. 70–8203

The Southern Company ("Southern"), a registered holding company, and its wholly owned subsidiary service company, Southern Company Services, Inc. ("Services"), both located at 64 Perimeter Center East, Atlanta, Georgia 30346, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

Services proposes to incur indebtedness and issue notes, through December 31, 1996, in an aggregate principal amount up to $200 million at any time outstanding in any of the following manners.

Services proposes to issue and sell notes ("Notes") to a lender or lenders other than Southern. The Notes may have terms of up to 30 years, contain sinking funds and bear interest at a rate or rates not to exceed 3½ percentage points per annum over the rate for United States Treasury securities of corresponding maturity at the time the lender or lenders commit to purchase the particular issue. Services may engage an agent to place the Notes for a commission not in excess of ½ of 1% of the principal amount borrowed, payable upon the closing.

Services further proposes that it may effect short-term or term-loan borrowings under one or more revolving credit commitment agreements. Short-term borrowings under such agreement or agreements would have maximum maturity of one year; term loans would have maturities up to 10 years. It is expected that the borrowings would be evidenced by a "grid" promissory note ("Grid Note") to be dated the date of the initial borrowing and the date of each borrowing thereafter the Grid Note is not outstanding.

The proposed revolving credit borrowings would bear interest at rates to be negotiated with the lending bank or banks. It is anticipated that borrowings under the proposed revolving credit commitment agreements would be at rates per annum not in excess of (1) The lender's prime or base ("Prime") rate plus 1%; (2) the lender's certificate of deposit ("CD") rate plus 1¾%; and (3) the lender's LIBOR plus 2%. Based upon current rate quotations, and assuming full utilization of the commitments, the maximum anticipated effective cost of such borrowings would be 7.00% per annum for the Prime rate option, 4.50% per annum for the CD rate (three months) option and 5.25% per annum for the LIBOR (three months) option. Services also may negotiate separate rates for particular borrowings, an option Services would pursue only if the resulting rates are considered more favorable than those otherwise available under the commitments. In addition, it is expected that Services will be obligated to pay a commitment fee not in excess of ½ of 1% per annum of the unused portion of each lending bank's commitment.

Services also proposes that it may effect short-term borrowings from other banks up to certain specific amounts. These bank borrowings will be evidenced by notes to be dated as of the date of such borrowings and to mature in not more than three years after the date of issue, or by "grid" notes evidencing all outstanding borrowings from each bank to be dated as of the date of the initial borrowing and to mature in not more than three years after the date of issue. Generally, borrowings from the banks will be prepayable in whole, or in part, without penalty or premium, and will be at rates per annum not in excess of the Prime rate, the CD rate plus ¾%, and LIBOR plus 1%. Services also may negotiate separate rates for, and/or agree not to prepay, particular borrowings if it is considered more favorable to Services. Compensation for the credit facilities, not to exceed ½ of 1% per annum of the amount of the facilities, is expected to be provided by balances or comparable fees in lieu of balances.

Services also proposes to issue and Southern proposes to acquire notes ("Southern Notes"). The Southern Notes will bear interest at a rate equal to the average effective interest cost of Southern's outstanding obligations for borrowed money on the date of issue as authorized by the Commission or, if no such obligations are outstanding at the time, at the rate or rates at which Southern may borrow under its existing lines of credit as authorized by Commission order dated March 31, 1992 (HCAR No. 25507). Southern proposes to guarantee Services' borrowings from third parties.

Services proposes to use the proceeds to fund the general requirements of its business, including the possible refunding of outstanding indebtedness. Services will not use the proceeds of borrowings authorized hereunder to refund outstanding indebtedness unless the estimated present value savings derived from the net difference between interest payments on a new issue of comparable securities and those securities refunded is on an after tax basis greater than the estimated present value of all redemption, tendering and issuing costs, assuming an appropriate discount rate.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–14912 Filed 6–23–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2653]

Illinois (And Contiguous Counties in Indiana); Declaration of Disaster Loan Area

Cook County and the contiguous counties of DuPage, Kane, Lake, McHenry, and Will in Illinois, and Lake County in Indiana constitute a disaster area as a result of damages caused by severe storms, hail and flooding which occurred on June 7 and 8, 1993. Applications for loans for physical damage may be filed until the close of business on August 16, 1993 and for economic injury until the close of business on March 17, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, suite 300, Atlanta, GA 30308.
or other locally announced locations.
The interest rates are:

For physical damage:	*Percent*
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 265311 for Illinois and 265411 for Indiana. For economic injury the numbers are 792200 for Illinois and 792300 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 17, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–14871 Filed 6–23–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2650]

New York (and Contiguous Counties in Connecticut & New Jersey); Declaration of Disaster Loan Area

Westchester County and the contiguous counties of Bronx, Putnam, and Rockland in New York; Fairfield County in Connecticut; and Bergen County in New Jersey constitute a disaster area as a result of damages caused by a fire in the Country Club Cooperative Apartments in the Town of Greenburgh on May 23, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 16, 1993 and for economic injury until the close of business on March 15, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Fl., Niagara Falls, NY 14303.

or other locally announced locations.
The interest rates are:

For physical damage:	*Percent*
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.625
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 265005 for New York; 265105 for Connecticut and 265205 for New Jersey. For economic injury the numbers are 791900 for New York; 792000 for Connecticut and 792100 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 15, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–14870 Filed 6–23–93; 8:45 am]

BILLING CODE 8025–01–M

Interest Rates

The interest rate on section 7(a) Small Business Administration direct loans (as amended by Public Law 97–35) and the SBA share of immediate participation loans is 7 percent for the fiscal quarter beginning July 1, 1993.

On a quarterly basis, the Small Business Administration also publishes an interest rate called the optional "peg" rate (13 CFR 122.8–4(d)). This rate is a weighted average cost of money to the government for maturities similar to the average SBA loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. For the July–September quarter of FY 93, this rate will be 6 percent.

Charles R. Hertzberg,

Assistant Administrator for Financial Assistance.

[FR Doc. 93–14869 Filed 6–23–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–038]

Annual Certification of Cook Inlet Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), the Coast Guard may certify, on an annual basis, a voluntary advisory group in lieu of a Regional Citizens' Advisory Council for Cook Inlet, Alaska. This certification allows the advisory group to monitor the activities of oil tankers and facilities under the Cook Inlet Program established by the Act. The purpose of this notice is to inform the public that the Coast Guard has recertified the alternative voluntary advisory group for Cook Inlet, Alaska.

EFFECTIVE DATE: June 1, 1993 through May 31, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice Jackson, Project Manager, Marine Environmental Protection Division, (G–MEP–3), (202) 267–0500, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION: As part of the Oil Pollution Act of 1990 (section 5002), Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, (the Act), 33 U.S.C. 2732, to foster the long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

Section 5002(o) of the Act (33 U.S.C. 2732(o)) permits an alternative voluntary advisory group to represent the communities and interests in the vicinity of the oil terminal facilities in Cook Inlet, in lieu of a council of the type specified in 33 U.S.C. 2732(d), if certain conditions are met. The Act requires that the group enter into a contract to ensure annual funding and receive annual certification by the President that it fosters the general goals

and purposes of the Act and is broadly representative of the community and interests in the vicinity of the terminal facilities. Accordingly, in 1991, the President granted certification to the Cook Inlet Regional Citizens' Advisory Council.

The authority to certify alternative advisory groups was subsequently delegated to the Commandant of the Coast Guard, and redelegated to the Chief, Office of Marine Safety, Security and Environmental Protection. The Coast Guard recertified the Cook Inlet Regional Citizens' Advisory Council as an alternative voluntary advisory group on September 16, 1992 (57 FR 42802).

Recertification

By letter dated June 3, 1993, the Chief, Office of Marine Safety, Security and Environmental Protection certified that the Cook Inlet Regional Citizens' Advisory Council qualifies as an alternative voluntary advisory group under the provisions of 33 U.S.C. 2732(o). This recertification terminates on May 31, 1994.

Dated: June 15, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–14891 Filed 6–23–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD 93–039]

Annual Certification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: Under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), the Coast Guard may certify, on an annual basis, a voluntary advisory group in lieu of a Regional Citizens' Advisory Council for Prince William Sound, Alaska, This certification allows the advisory group to monitor the activities of oil tankers and facilities under the Prince William Sound Program established by the Act. The purpose of this notice is to inform the public that the Coast Guard has recertified the alternative voluntary advisory group for Prince William Sound, Alaska.

EFFECTIVE DATE: July 1, 1993 through June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Janice Jackson, Project Manager, Marine Environmental Protection Division, (G–MEP–3), (202) 267–0500, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION: As part of the Oil Pollution Act of 1990 (section 5002), Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990, (the Act), 33 U.S.C. 2732, to foster the long-term partnership among industry, government, and local communities in overseeing compliance with environmental concerns in the operation of crude oil terminals and oil tankers.

Section 5002(o) of the Act (33 U.S.C. 2732(o)) permits an alternative voluntary advisory group to represent the communities and interests in the vicinity of the oil terminal facilities in Prince William Sound, in lieu of a council of the type specified in 33 U.S.C. 2732(d), if certain conditions are met. The Act requires that the group enter into a contract to ensure annual funding certification by the President that it fosters the general goals and purposes of the Act and is broadly representative of the community and interests in the vicinity of the terminal facilities. Accordingly, in 1991, the President granted certification to the Prince William Sound Regional Citizens' Advisory Council.

The authority to certify alternative advisory groups was subsequently delegated to the Commandant of the Coast Guard, and redelegated to the Chief, Office of Marine Safety, Security and Environmental Protection. The Coast Guard recertified the Prince William Sound Regional Citizens' Advisory Council as an alternative voluntary advisory group on April 14, 1992 (57 FR 14442).

Recertification

By letter dated June 09, 1993, the Chief, Office of Marine Safety, Security, and Environmental Protection certified that the Prince William Regional Citizens' Advisory Council qualifies as an alternative voluntary advisory group under the provisions of 33 U.S.C. 2732(o). This recertification terminates on June 30, 1994.

Dated: June 15, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–14892 Filed 6–23–93; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 18, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0058
Form Numbers: ATF F 5120.25
Type of Review: Extension
Title: Application to Establish and Operate Wine Premises
Description: ATF F 5120.25 is used to establish the qualifications of an applicant for a bonded wine cellar of winery. The applicant certifies the intention to produce and/or store a specified amount of wine and take certain precautions to protect it from unauthorized use.
Respondents: Businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents: 1,620
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: On occasion
Estimated Total Reporting Burden: 810 hours

OMB Number: 1512–0144
Form Numbers: ATF F 2736 (5100.12)
Type of Review: Extension
Title: Specific Transportation Bond—Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six
Description: ATF F 2736 (5100.12) is a specific bond which protects the tax liability on distilled spirits and wine while in transit from one type of bonded facility to another. The bond identifies the shipment, the parties, the date, and the amount of the bond coverage.
Respondents: Businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents: 1
Estimated Burden Hours Per Respondent: 1

Frequency of Response: On occasion
Estimated Total Reporting Burden: 1 hour
OMB Number: 1512–0156
Form Numbers: ATF F 2987 (5210.8)
Type of Review: Extension
Title: Computation of Tax and Agreement to Pay Tax on Puerto Rican Cigars and Cigarettes
Description: ATF F 2987 (5210.8) is used to calculate the tax due on cigars and cigarettes manufactured in Puerto Rico and shipped to the U.S. The form identifies the taxpayer, cigars or cigarettes by tax class and a certification by a U.S. Customs official as to the amount of shipment, and that the shipment has been released to the U.S.
Respondents: Businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents: 30
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 150 hours

OMB Number: 1512–0199
Form Numbers: ATF F 5110.30
Type of Review: Extension
Title: Drawback on Distilled Spirits Exported
Description: ATF F 5110.30 is used by persons who export distilled spirits and wish to claim a drawback of taxes already paid in the U.S. The form describes the claimant, spirits for tax purposes, amount of tax to be refunded, and a certification by the U.S. Government agent attesting to exportation.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 100
Estimated Burden Hours Per Respondent: 2 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 10,000 hours

OMB Number: 1512–0398
Form Numbers: ATF F 2093 (5200.3) and ATF F 2098 (5200.16)
Type of Review: Extension
Title: Application for Permit Under 26 U.S.C. Chapter 52—Manfacturer of Tobacco Products or Proprietor of Export Warehouse (ATF F 2093); and Application for Amended Permit Under 26 U.S.C. 5712—Manufacturer of Tobacco Products or Proprietor of Export Warehouse (ATF F 2098)
Description: These forms and any additional supporting documentation are used by tobacco industry members to obtain and amend permits necessary to engage in business as a Manufacturer of Tobacco Products or Proprietor of Export Warehouse.
Respondents: Businesses of other for-profit
Estimated Number of Respondents: 334
Estimated Burden Hours per Respondent:
AFT F 2093—2 hours
ATF F 2098—1 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 501 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–14857 Filed 6–23–93; 8:45 am]

BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 17, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 1120–SF
Type of Review: New collection
Title: U.S. Income Tax Return for Settlement Funds (Under Section 468B)
Description: Form 1120–F is used by settlement funds to report income and taxes on earnings of the fund. The fund may be established by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120–SF to determine if income and taxes are correctly computed.
Respondents: Businesses or other for-profit
Estimated Number of Respondents/Recordkeepers: 1,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—17 hours, 56 minutes
Learning about the law or the form—2 hours, 23 minutes
Preparing the form—5 hours, 35 minutes
Copying, assembling, and sending the form to the IRS—48 minutes
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 29,720 hours

OMB Number: 1545–0416
Form Number: IRS Form 5302
Type of Review: Extension
Title: Employee Census
Description: This form is used in conjunction with Forms 5300 and 5307 when applying to IRS for a determination letter stating the pension or profit-sharing plan of the employer meets the requirements of section 401(a) of the Internal Revenue Code (IRC). The data submitted allows the IRS to determine that the plan does not discriminate in favor of the prohibited group.
Respondents: Businesses or other for-profit, small businesses or organizations
Estimated Number of Respondents/Recordkeepers: 52,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—10 hours, 31 minutes
Learning about the law or the form—42 minutes
Preparing, copying, assembling, and sending the form to the IRS—54 minutes
Frequency of Response: On occasion
Estimated Total Reporting/Recordkeeping Burden: 629,720 hours
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–14858 Filed 6–23–93; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review.

June 18, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0130

Form Number: IRS Form 1120S, Schedule D, and Schedule K–1

Type of Review: Revision

Title: U.S. Income Tax Return for an S Corporation, Capital Gains and Losses and Built-In Gains, and Shareholder's Share of Income, Credits, Deductions, etc.

Description: Form 1120S, Schedule D (Form 1120S), and Schedule K–1 (Form 1120S) are used by an S corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule K–1 is used to report to shareholders their share of the corporation's income, deductions, credits, etc. IRS uses the information to determine the correct tax for the S corporation and its shareholders.

Respondents: Farms, businesses or other for-profit, small businesses or organizations

Estimated Number of Respondents/ Recordkeepers: 1,651,196

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying assembling, and sending the form to the IRS
1120S	62 hrs, 40 min	18 hrs, 32 min	34 hrs, 20 min	4 hrs, 1 min.
Sched. D	9 hrs. 20 min	4 hrs, 13 min	9 hrs, 13 min	1 hr, 20 min.
Sched. K–1	14 hrs, 21 min	9 hrs. 37 min	14 hrs, 0 min	1 hr, 12 min.

Fequency of Response: Annually

Estimated Total Reporting/ Recordkeeping Burden: 381,814,602 hours

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880 Office of Management and Budget room 3001, New Executive Office Building Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–14916 Filed 6–23–93; 8:45 am]

BILLING CODE 4830–01–M

Customs Service

Application For Recordation of Trade Name: "REDCO SALES CO."

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "REDCO SALES CO.," used by Redco Sales Co., located at 872 Belville Blvd., Naples, Florida 33942.

The application states that the trade name is used in connection with multi-purpose protective glasses used in the medical and safety industries. It is also sold to the general public as a retail sales item. This product is molded from polycarbonate plastic.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATES: Comments must be received on or before August 23, 1993.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Cooper, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington DC 20229 (202–482–6960).

Dated: June 15, 1993.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 93–14837 Filed 6–23–93; 8:45 am]

BILLING CODE 4820–02–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 120
Thursday, June 24, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:03 a.m. on Tuesday, June 22, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of certain insured banks.

Request by a financial institution relating to the cross-guaranty provisions of the Federal Deposit Insurance Act.

Recommendations regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: The Howard Savings Bank, Livingston, New Jersey (Case No. 505–05435–93–BOD)

Memorandum re: The Howard Savings Bank, Livingston, New Jersey (Case No. 508–03519–93–BOD)

Matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Eugene A Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: June 22, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–15064 Filed 6–22–93; 3:43 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 93–13827.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, June 24, 1993, 10:00 a.m., Meeting Open to the Public.

Proposed Revisions to Definition of "Member" of a Membership Association (11 CFR 100.8(b)(4)(iv), 114.1(e). (Continued from meeting of June 17, 1993).

DATE AND TIME: Tuesday, June 29, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–15062 Filed 6–22–93; 3:12 pm]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 33855, June 21, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Wednesday, June 23, 1993.

CHANGES IN THE MEETING: The following topic has been deleted from the agenda during the open portion of the meeting.

- Final Membership Regulation.

The Board determined that agency business required that no earlier notice of these changes in the subject matter of the meeting was practicable.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR. Doc. 93–14980 Filed 6–22–93; 10:30 am]

BILLING CODE 6725–01–M

federal register

Thursday
June 24, 1993

Part II

Department of Agriculture

Farmers Home Administration

7 CFR Part 1980
Certified Lender Program; Interim Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

RIN 0575 AB33

Certified Lender Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule, with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to establish a Certified Lender Program (CLP), to provide lenders a simplified application for guaranteed loans of $50,000 or less, and to reduce the paperwork burden on all lenders applying for FmHA guaranteed Farmer Programs loans. This action is necessary to streamline the application process, improve the acceptability of the Guaranteed Program to the public, and comply with Congressional mandate. The intended effect is to expand the use of guaranteed funds and reduce the need for more costly direct funds. FmHA also amends its guaranteed Farmer Programs regulations to adopt appraisal standards for the purpose of guaranteed lending and servicing. The regulatory revisions are needed to reflect the current appraisal industry standards brought about by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

DATES: Interim rule effective July 26, 1993. The reporting requirements contained in this regulation will not become effective until approved by the Office of Management and Budget (OMB). Written comments must be submitted on or before July 26, 1993.

ADDRESSES: Submit written comments, in duplicate, to the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steven K. Ford, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 690–0451.

SUPPLEMENTARY INFORMATION:

Classification

This interim rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be nonmajor because it will not result in an annual effect on the economy of $100 million or more.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR part 3105, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Operating Loans and Farm Ownership Loans are excluded with the exception of nonfarm enterprise activity from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.406—Farm Operating Loans
10.407—Farm Operating Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (E.O.) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the E.O.

Discussion of Interim Rule

This interim rule implements sections 15 and 18 of the Agricultural Credit Improvement Act of 1992 (Act) (7 U.S.C. 1983a and 1989). Section 15 requires simplified applications for FmHA guaranteed loans of $50,000 or less. Section 18 of the Act establishes a Certified Lender Program (CLP) for guaranteeing operating loans. The Act requires FmHA to issue such interim regulations as are necessary to implement these sections within 180 days of enactment. This action also streamlines the application and approval process for all guaranteed Farmer Programs loans. Now that the Agency has established a history with guaranteed lending, the CLP will provide those high volume lenders with a proven record of success with reduced application requirements, faster approval time, and reduced cost and paperwork. All lenders will benefit similarly from the simplified application for guaranteed loans of $50,000 or less.

Currently, FmHA has an Approved Lender Program (ALP) which was designed to eliminate much of the paperwork associated with guaranteed loans and provide faster approval for those lenders. However, this program does not require any prior experience or proven ability to properly process and service FmHA guaranteed Farmer Programs loans. This allows many unqualified lenders to hold ALP status and causes some FmHA officials to overscrutinize loan applications. Therefore, ALP lenders have not experienced the intended benefits of the program. Complaints are still being received from lenders, borrowers, and FmHA offices on the amount and redundancy of paperwork required by the program.

To address this problem, FmHA assembled a Guaranteed Overview Task Force to examine the Guaranteed Program forms and regulations and provide specific recommendations to the Administrator to streamline and focus the program. The task force was composed of 38 individuals from 12 States, with subgroups to address specific issues. Subgroups surveyed another 196 FmHA loan officers in the field to provide a broad base of input. Concerns and suggested improvements received from lenders have also been incorporated into these revisions.

After the task force recommendations were approved by the FmHA Administrator, Congress enacted the Agricultural Credit Improvement Act of 1992 which included a CLP program for guaranteed lenders of operating loans and a simplified application for guaranteed loans of $50,000 or less. Most of the requirements in the Act were consistent with the task force recommendations; however, the Act only permits FmHA to implement the CLP program for Guaranteed Operating (OL) loans as an interim rule. Since lenders frequently request Farm Ownership (FO) loans and Soil and Water (SW) loans along with OL loans/lines of credit, FmHA plans to expand

the CLP program to FO and SW loans with a future proposed rule.

The task force was concerned that FmHA requires the same amount of paperwork and analysis for small loans as required for large ones. Lenders contend, and FmHA's loan costs support, that small loans are unprofitable for the lender. This results in strong lender resistance to making small guaranteed loans, which are a major portion of the Agency's insured loan portfolio. The task force stated that standards should be relaxed for small loans. By requiring the Agency to simplify applications for guaranteed loans of $50,000 or less, Congress supports lenders' concerns.

The task force recommended that FmHA emphasize its relationship with the lender and minimize contact with the borrower. The lender has the responsibility to make and service guaranteed loans. Lenders have complained that current FmHA regulations require the Agency to make direct contact with the borrower. Borrowers frequently do not understand what the forms and letters from FmHA mean and must ask the lender for an explanation. This is time consuming for the lender and the borrower. Therefore, we are eliminating all unnecessary contact with the guaranteed borrower. It is the position of the Agency that since the borrower is the lender's customer, the lender shall be the contact person for the borrower. Privacy Act notifications previously sent to the loan applicant by FmHA now will be included in the application form, which the loan applicant must sign. The Privacy Act Notice, Form FmHA 410–10, currently sent to financial institutions when FmHA requests information directly, will no longer be required for Farmer Programs guaranteed loans since FmHA will only be requesting information through the lender. The Interest Assistance information letter, which is sent to the loan applicant, will be deleted since notification of the Interest Assistance Program also will be included in the loan application.

The task force recommended FmHA revise its definition of an eligible lender, as it applies to Farmer Programs loans, to include any lender regulated by and in good standing with a State or Federal government body. This change is necessary to include certain State run entities that are active agricultural lenders but were not eligible for FmHA guarantees.

The task force also recommended that the Agency establish a CLP to replace the ALP. The Act did not mention any relationship between the ALP and CLP. FmHA plans to replace the ALP with the CLP by removing the FmHA State Director's authority to enter into new ALP agreements with lenders and letting existing agreements expire over the next two years. This will be accomplished with separate proposed and final rules. Until this transition is completed, the two programs will be handled as follows:

Existing ALP lenders will continue to be governed by the existing lender's agreements and by Exhibit A to subpart B of part 1980 of this chapter. Once they apply and are accepted as a CLP lender, they may not submit applications for Operating Loans as an ALP lender.

Once ALP lenders are approved to become CLP lenders, a new lender's agreement will be executed to cover OL loans.

There is no requirement for ALP lenders to apply for CLP status prior to expiration of the current agreement.

During the transition period, the application requirements for ALP and CLP lenders will be identical; however, FmHA will continue to conduct a file review of loans from ALP lenders within 90 days from the date of closing.

Farm Credit System (FCS) offices currently receive automatic ALP status if they meet acceptable loss rates on their entire agricultural loan portfolio. This special consideration was included in the ALP to facilitate the reorganization of the FCS. Since the FCS has completed much of its reorganization, this special consideration is no longer necessary. Therefore, under the CLP, FmHA proposes to treat each Farm Credit System Association as a separate lender and each association will be required to meet the same CLP eligibility requirements as commercial banks.

Section 18 (c)(2) of the Act (7 U.S.C. 1989 (c)(2)) states "the Secretary shall certify a lending institution that meets such criteria as the Secretary may prescribe in regulations * * *." Eligibility requirements to become a CLP lender are set forth in § 1980.190 of subpart B of part 1980. Much of the criteria for ALP lenders will be adopted into the CLP; however, to improve consistency under the CLP, the FmHA State Director will no longer have the authority to establish optional criteria. Requirements for experience, guaranteed loan volume, training, loss rates, and overall financial strength of the lending institution have been added or strengthened as follows:

FmHA is requiring the CLP lender to have closed 10 FmHA guaranteed Farmer Programs loans with 5 of such loans having been closed within past 24 months. The ALP program has no requirement for lender experience with FmHA guaranteed loans. Larger volume lenders are more familiar with the policies and procedures of the program. This experience requirement will ensure only those lenders who have a demonstrated ability to process FmHA guaranteed loans receive preferred treatment. We believe this number of loans is sufficient to warrant the added responsibility and reduced application requirements, but not too large to exclude smaller local lenders. This requirement will encourage lenders to use the program. It is also consistent with the Agency's goal to promote a partnership with the private sector and use available funds for borrowers who are unable to obtain commercial credit.

FmHA also is requiring the CLP lender to maintain an acceptable loss rate on guaranteed Farmer Programs loans made during the past 7 years. Under the ALP, there is no mandatory loss requirement that the lender must maintain. The loss rate will be established in FmHA Instruction 440.1 by the Administrator and adjusted periodically. We propose to initially establish this loss rate at 7 percent. By enforcing a maximum loss rate, FmHA will be able to insure only the most capable lenders receive and retain CLP status which gives lenders added authority and flexibility. Lenders will be encouraged to submit quality loans for guarantees and discouraged from using the program to guarantee poorly performing loans already in their portfolio. To arrive at the minimum loan volume and maximum loss rate, FmHA examined historical data using several different rates and formulas. By setting the loss rate at 7 percent over 7 years, and applying the loan volume restrictions, FmHA has limited CLP status to the top 16 percent of FmHA lenders who are holding 60 percent of the current Agency portfolio.

Additionally, the CLP lender must designate a person to process and service FmHA guaranteed Farmer Programs loans and have these persons attend FmHA training sessions at least every 12 months. The ALP program requires the lender to attend training but does not specify prior training or minimum time requirements. As the Agency moves toward training and monitoring lenders instead of monitoring individual loans, we must ensure the lenders have the experience to perform the required loan making and servicing responsibilities. Therefore, the CLP training requirement is stricter than the ALP training requirement.

The lender also must maintain an acceptable financial strength rating as measured and reported by a lender

rating service selected by the Administrator. The ALP has no such requirement. The Agency plans to contract with a lender rating service and adopt the rating system established by that service. With this requirement, the Agency is ensuring that the bank has an acceptable management team, is not likely to fail, and will continue to be able to make and service loans in the future. Previous experience with failed financial institutions has indicated that poor loan servicing practices contributed to the failures. Also, lenders in weak financial condition are more likely to submit loans of unacceptable risk. Reviewing financial information submitted by the lender would not be a viable option as FmHA employees are not trained or experienced in evaluating the strength of a bank.

Currently, FmHA may guarantee up to 90 percent of a Farmer Programs loan, whether or not an ALP lender is involved. The Act states that FmHA shall guarantee 80 percent of a loan made under the CLP program. FmHA has interpreted the limitation in the Act to be a floor; therefore, all guarantees issued under the CLP program will be no less than 80 percent but not more than 90 percent.

To further minimize the paperwork associated with the CLP program, FmHA also has extended the term of the agreements over the current ALP limit. Once approved, the CLP agreements will be effective for 5 years. Currently, ALP agreements are effective for 2 years, after which the lender must reapply for ALP status and resubmit updated information to the FmHA State Director. Annual reviews of all CLP lenders will be conducted by the State Director to ensure compliance with loss rates, loan processing and servicing standards, and other requirements. If the CLP lender is not complying with one or more of the requirements set out in the regulations, the State Director may revoke that lender's CLP status. The lender may continue to submit applications, but as a non-CLP lender. The Agency's ability to monitor CLP lenders will not be impaired by extending these terms. To renew their CLP status, the lender will submit a written request for renewal along with updated information. This application will enable the State Director to conduct a more thorough review of the lender.

As an additional benefit for CLP lenders, FmHA proposes to extend the term of guaranteed lines of credit from 3 years to 5 years. Also, CLP lenders will not be required to receive FmHA approval for readvancing funds in future years of lines of credit. This will improve the acceptability of the guaranteed operating lines of credit since the lender will not be required to submit an application for a new line of credit after three years, will have less paperwork, and will be able to provide the farmer with operating funds with fewer delays.

The Act states that as a condition of CLP certification, the lender must service the loans using standards not less stringent than generally accepted banking standards. FmHA currently requires all lenders making guaranteed Farmer Programs loans to service loans using, as a minimum, standard lending practices. No changes to FmHA regulations were necessary to comply with this requirement.

The Act also requires the Secretary to permit the CLP lender to make appropriate certifications relating to creditworthiness, repayment ability, adequacy of collateral, and feasibility of the farm operation. However, the Act states that this certification does not affect the responsibility of the Secretary to certify eligibility, review financial information, and otherwise assess an application. To avoid confusion over who has responsibility to assess a loan applicant's eligibility and determine repayment capacity and adequacy of security, FmHA has not included these additional certifications in Forms FmHA 1980–25, "Farmer Programs Application," or 1980–22, "Lender Certification." The CLP lender will be permitted to certify that their loan file contains records to support the projected cash flow and will not be required to submit these records with the application.

To address lender complaints of excessive paperwork burden associated with the guaranteed program, the task force recommended that FmHA modify the procedure for accepting and approving applications. The Agency agreed with the recommendation. These changes are not limited to the CLP. Currently, FmHA has four different application forms and several other separate required certification statements which must be submitted by lenders applying for guaranteed loans. FmHA has received complaints that these forms are often confusing and request identical information. Therefore, these forms and certifications have been consolidated into a single application, Form FmHA 1980–25, "Farmer Programs Application," which is appendix G to subpart A of part 1980 of this chapter. This application will gather needed information only once. Lenders will benefit by knowing that the application they submit is complete. Furthermore, approved and certified lenders and all lenders requesting guarantees of $50,000 or less will be relieved of certain documentation requirements normally associated with the application process.

As part of the new application process, the option to file a preliminary application has been removed. Instead, FmHA will allow the County Committee to review partially completed applications, provided they contain sufficient information to make an eligibility determination. The preliminary application was rarely used for Farmer Programs loans. Also, with the new application form and streamlined process, preliminary applications will be unnecessary.

Four lender's agreements (Form FmHA 449–35, Form FmHA 1980–38, and Attachments 1 and 2 to Exhibit A to subpart B of part 1980) will be consolidated into a single lender's agreement, Form FmHA 1980–38. This lender's agreement will be used by both CLP and non-CLP lenders applying for guaranteed loans and lines of credit. The agreement will be signed only once and will govern all loans/lines of credit guaranteed while the agreement is in effect. This will reduce the paperwork necessary to make a guaranteed loan and create less confusion.

Also, Form FmHA 1980–38 is revised and renamed "Agreement for Participation in Farmer Programs Guaranteed Loan Programs of the United States Government." These revisions reflect a standardized format and terms drafted by the Office of Management and Budget to be used for all Federal guaranteed credit programs. (See the "Agreement for Participation in Single Family Housing Guaranteed/ Insured Loan Programs of the United States Government" in the proposed revision to OMB Circular No. A–129 at 57 FR 52907–10, November 5, 1992.) The new agreement will allow lenders who participate in several different Federal programs a common set of requirements and conditions, where not program specific. For example, standards for the lender's origination and closing of the loan are added. Also, a provision is added to require the lender to notify FmHA of any change in the lender's status, e.g. solvency, address, corporate structure, debarment or suspensions, etc. Other standard terms adopted concern: personnel available for consultation, lender knowledge of FmHA program requirements, lender employee qualification, facilities, lender delinquency on Federal debt, collateral appraisal, processing of payments, insurance, escrow accounts, Agency review of lender operations, conformance to standards, list of

Agency regulations, and duration and modification of agreement. No new substantive standards are imposed. Many requirements contained in 7 CFR part 1980, subparts A and B or existing lender's agreements are only restated and/or clarified.

In addition, the agreement has been revised to provide a more general description of servicing responsibilities and procedures with references to the appropriate sections of 7 CFR 1980, subparts A and B. The more detailed descriptions have been moved to the regulation texts. Movement of these requirements from the lender's agreement to the regulations does not lessen the lender's responsibility for compliance with the requirements. The processing requirements for the lender's sale of the guaranteed portion of the loan is covered by 7 CFR 1980.119. The handling of bankruptcy cases is detailed at 7 CFR 1980.144. The processing of liquidation and loss claims is now contained in 7 CFR 1980.146. Procedures for handling protective advances are found at 7 CFR 1980.136, and loan servicing is described at 7 CFR 1980.130.

The Agency is revising its practice in 7 CFR 1980.130 to require a non-CLP lender to obtain FmHA's written agreement before the lender allows proceeds from the disposition of collateral, such as machinery, equipment, furniture, or fixtures to be used to acquire replacement collateral. Current lender agreements provide a blank space to be filled in by the County Supervisor as to the value of replacement collateral which can be obtained with security proceeds without written concurrence of FmHA. Since the new Form FmHA 1980–38 will be executed only once and will cover all of a lender's Farmer Programs guaranteed loans thereafter, a uniform rule was necessary. CLP lenders will not be required to obtain FmHA's written concurrence for such use of security proceeds.

The Agency also is taking the opportunity to clarify the conflict of interest provision in its lender's agreement. The Agency has received many questions asking whether the prohibited "substantial financial interest" includes business dealings with the guaranteed loan borrower. The form has been revised to specifically include business dealings which is particularly important in the small lending institutions with which FmHA deals. Questions have also arisen concerning the shareholder who holds a very small percentage of the bank's outstanding shares, but whose shares are of substantial value. The Agency is attempting to prohibit relationships with persons who have some influence over lending practices. Very small shareholders have no such influence and should not create a conflict of interest under the lender's agreement. The form, applicable to Farmer Programs guaranteed loans only, therefore, is revised to require the lender to certify only that its officers, directors, principal stockholders and other principal owners do not have prohibited relationships with any guaranteed borrower. 7 CFR 1980.13 has been revised accordingly to require the lender to provide FmHA notice with regard to possible conflicts of interest.

To further simplify the approval and closing process, information contained in Form FmHA 449–14, "Conditional Commitment for Guarantee," will be incorporated into Form FmHA 1980–15. The new Form FmHA 1980–15 will be renamed "Conditional Commitment (Farmer Programs)" and will be used for both loans and lines of credit. Conditions required by subpart B of this chapter are incorporated into the text of this form to prevent the possibility of omission; however, no new conditions are added.

Along with the form revisions, more flexibility will be given to lenders to document their verification of borrowers' debts and nonfarm income. Any suitable verification will be accepted. FmHA will require verification on only those debts of $1000 or more. Most operations requiring guaranteed loans are not impacted by such small debts, so these small debts require unnecessary burden. This revision will significantly reduce paperwork for lenders, but will not have any significant impact on FmHA loss payments due to the $1000 threshold.

In addition, lenders applying for a guarantee on subsequent loans in the same crop year may submit an abbreviated application. Frequently, lenders must increase the ceiling on a line of credit or finance the purchase of machinery soon after a guaranteed loan has been closed. Instead of requiring the lender to supply identical information, only that data which is different from the original application will be required. The lender will certify that the revised cash flow projection has a positive cash flow, the loan/line of credit will be adequately secured, the loan applicant is in compliance with the loan agreements, and all applicable certifications made when the original guaranteed loan was made are still valid.

The documentation CLP lenders are required to submit to demonstrate compliance with the various environmental provisions is modified to require only the specific information FmHA must have to make its determinations. Since it is the lender's loan, FmHA will have very limited contact with the borrower and will no longer have the detailed knowledge of the borrower's operation. The new application form requires the CLP lender to provide information on farm buildings, water quality standards, wetland and highly erodible land compliance, and hazardous substances. This is information which can only be obtained from a site visit and is available to the lender who has responsibility for the site visit. According to the Act, FmHA must permit certified lenders to make certification that the borrower is in compliance with all requirements of law, including environmental law. FmHA's duties under environmental law with relation to non-CLP lenders was not affected by the Act.

FmHA currently must approve or reject a completed application within 45 days. FmHA has received complaints from several lenders regarding the excessive time required for FmHA to respond to applications. These complaints have been the biggest problem in the guaranteed program. FmHA, therefore, is reducing the 45-day time frame to 30 calendar days for applications from non-CLP lenders. CLP lenders will be notified within 14 calendar days of a completed application as required by the Act. Also, the task force recommended that within 5 calendar days of receipt of an application, FmHA notify the lender if the application is incomplete and request additional information. This is an increase from the current 3-day requirement under the ALP. Further, FmHA will respond within 14 calendar days to requests from non-CLP lenders to advance on the second and third years of a line of credit. This is a new deadline recommended by the task force. With the modified application requirements, FmHA expects the data received from the lenders to be better organized and easier to review, thereby making these ambitious requirements achievable.

As FmHA relaxes its requirements for the information lenders must submit for a complete application, reporting and monitoring must be strengthened to avoid additional losses. Maintaining an accurate accounting of collateral is a critical function of the loan servicer. FmHA, therefore, will require CLP lenders to submit loan status reports semiannually, on March 31 and September 30 each year. This will

improve the accuracy of the Agency's data for management use and reporting.

The Act requires the Secretary to monitor the performance of each CLP lender at least annually. FmHA's monitoring of lenders' files will be conducted semiannually. For CLP lenders, 20 percent of the outstanding guaranteed portfolio will be reviewed each year. For non-CLP lenders, 40 percent of the lender's outstanding portfolio will be reviewed. When selecting the files to be reviewed, the priority selection criteria described in § 1980.130 will be used to ensure closer supervision is given to those loans for which a loss is likely. The review will evaluate the lender's procedures for servicing farm borrowers.

Additionally, County Supervisors will no longer approve loss claims. All loss claims must now be approved by the FmHA State Director, The Agency anticipates that this change will improve the Agency's consistency and internal controls, but will not delay the approval time for the loss claims.

Finally, the Agency believes it is imperative to conform FmHA regulations to the present appraisal environment brought about by Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73, 103 Stat. 183 (1989) (12 U.S.C. 3348). FmHA must immediately amend its appraisal regulations to protect the public's interest through adoption of the USPAP standards, and to provide direction to both FmHA field staff who administer the program and commercial lenders that participate.

Title XI of FIRREA directed the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision to publish appraisal rules for federally related transactions within each of their jurisdictions. The Resolution Trust Corporation and the Farm Credit Administration published final rules that substantially incorporated the elements of FIRREA and USPAP into their appraisal regulations. The FIRREA legislation was passed in reaction to the tremendous losses being suffered in the savings and loan industry. These regulatory agencies, however, have adopted rules which exempt the financial institutions from the regulatory agency appraisal requirements when the transaction is guaranteed or insured by a Federal agency, such as the FmHA. In those cases where the loan is guaranteed by a Federal agency, the financial regulator requires only that the lender comply with the guaranteeing agency's appraisal requirements. This change was adopted to avoid the potential of lenders having to obtain multiple appraisals to satisfy the particular appraisal requirements of the various guaranteeing and regulatory agencies. However, not all lenders obtaining FmHA guaranteed loans are regulated by the above-mentioned regulatory agencies. Those lenders regulated by other regulatory agencies must have begun using USPAP standards by January 1, 1993. In addition, OMB Circular A–129, dated January 11, 1993, requires, in part, that all Federal agencies apply USPAP standards to appraisals in guaranteed loan situations. For these reasons, it is essential that FmHA immediately initiate appraisal procedures that reflect the USPAP standards. The 30-day comment period will afford the public an opportunity to submit comments on the appropriateness of appraisal changes prior to FmHA's adoption of the appraisal requirements as a final rule.

Major items changed in this rule because of the FIRREA legislation and FmHA's desire to implement it in the lest burdensome way possible include:

Primary security is defined to clarify that lenders need not incur the expense of obtaining appraisals on property mortgaged to the lender by the borrower strictly in a precautionary fashion as "additional security." This will eliminate a potential cost disincentive to prudent lenders that obtain loan security beyond that required for FmHA approval of the guarantee. Chattel appraisal requirements are discussed separate from real estate appraisals to avoid potential confusion. The circumstances for obtaining chattel appraisals are clarified as is the basis for property valuation.

Real estate appraisal requirements are changed to set forth a threshold level of $100,000 before a real estate appraisal must be performed by a State Certified General Appraiser and require appraisal reports completed in accordance with USPAP. The financial regulators have adopted rules that allow for a statement of value, rather than a formal appraisal in accordance with USPAP, for transactions under $100,000. However, FmHA cannot adopt this same approach without causing undue risk to the public. FmHA's guaranteed farm borrowers are required by law to be unable to obtain non-guaranteed credit, which means the FmHA guaranteed borrowers are inherently high risk by commercial standards. It would be imprudent on FmHA's part not to require a formal appraisal in connection with these borrowers because this would expose FmHA to greater losses due to inadequately secured loans. However, because of the relatively small loan amounts involved. FmHA is allowing these appraisals to be performed by either a state licensed or a state certified general appraiser.

Requirements that FmHA internal reviews of lender real estate appraisals be conducted in accordance with Standard 3 of USPAP, and stipulations that the FmHA State Director is responsible for developing a framework to monitor and document guaranteed appraisal compliance and activities within their state, also are being implemented. Some small corrections to references are also included in this interim rule.

List of Subjects in 7 CFR Part 1980

Administrative practice and procedure, Agriculture, Business and industry, Loan programs—Housing and community development, Loan programs—Community facilities, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 7 U.S.C. 4201 note; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Section 1980.6 is amended by adding, in alphabetical order, the abbreviation "CLP—Certified Lender Program" in paragraph (b), and by revising the definitions for "Finance Office", "Guaranteed line of credit", and "Guaranteed loan", by removing the definitions for "Conditional Commitment for Contract of Guarantee (Line of Credit) (Form FmHA 449–15)", and "Lenders Agreement (Form FmHA 449–35 (or 1980–68 or 1980–71) or Form FmHA 1980–38)" and by adding new definitions for "Conditional Commitment (Farmer Programs) (Form FmHA 1980–15)" and "Lenders Agreement (Forms FmHA 449–35, 1980–38, 1980–68, or 1980–71)" in paragraph (a), to read as follows:

§ 1980.6 Definitions and abbreviations.

(a) * * *

Conditional Commitment (Farmer Programs) (Form FmHA 1980–15). FmHA's advice to the lender that the material it has submitted is approved subject to the completion of all conditions and requirements set forth in "Conditional Commitment (Farmer Programs)."

* * * * * *

Finance Office. The office which maintains the FmHA financial records. It is located at 1520 Market Street, St. Louis, Missouri 63103.

* * * * *

Guaranteed line of credit. Loan advances made and serviced by a lender subject to a maximum amount agreed to by the lender and FmHA which is specified in Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," and for which FmHA has entered into a Form FmHA 1980–38, "Agreement for Participation in Farmer Programs Guaranteed Loan Programs of the United States Government."

Guaranteed loan. A loan made and serviced by a lender for which FmHA has entered into a Form FmHA 449–35, Form FmHA 1980–38, Form FmHA 1980–68, or Form FmHA 1980–71, "Lender's Agreement," and for which FmHA has issued a Form FmHA 449–34 (or Form FmHA 1980–69 or Form FmHA 1980–72), "Loan Note Guarantee."

* * * * *

Lender's Agreement (Forms FmHA 449–35, 1980–38, 1980–68, or 1980–71). The signed agreement between FmHA and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee or Contract of Guarantee is issued. Form FmHA 1980–38 is used for Farmer Programs loans only and will be referred to as "Lender's Agreement" even though its full title is "Agreement for Participation in Farmer Programs Guaranteed Loan Programs of the United States Government."

* * * * *

3. Section 1980.11 is amended in the sixth sentence by revising the title of Form FmHA 1980–15 from "Conditional Commitment for Contract of Guarantee" to "Conditional Commitment (Farmer Programs)."

4. Section 1980.13 is amended by revising the introductory text of paragraph (b), and paragraphs (b)(2), (b)(4) and (c) to read as follows:

§ 1980.13 Eligible lenders.

* * * * *

(b) *An eligible lender is:* Any Federal or State chartered bank, Farm Credit Bank, other Farm Credit System institution with direct lending authority, Bank for Cooperatives, Savings and Loan Association, Building and Loan Association, or mortgage company that is part of a bank-holding company. These entities must be subject to credit examination and supervision by either an agency of the United States or a State. Eligible lenders may also include credit unions that are subject to credit examination and supervision by either the National Credit Union Administration or a State agency or an insurance company that is regulated by a State or National insurance regulatory agency. For Farmer Programs loans, an eligible lender will include any lending organization regulated by, and in good standing with, a State or Federal government body. Only those lenders listed in this paragraph are eligible to make and service guaranteed loans, and such lenders must be in good standing with their licensing authority and have met licensing, loan making, loan servicing, and other requirements of the State in which the collateral will be located and the loan making and/or loan servicing office requirements in paragraph (b)(3) of this section. A lender must have the capability to adequately service the loan for which a guarantee is requested.

* * * * *

(2) *Lender notification.* Each lender will inform FmHA whether it qualifies for eligibility under this section and which agency or authority, if any, supervises such lender. This information will be furnished to FmHA on Form FmHA 1980–25, "Farmer Programs Application," with such proofs as FmHA may require.

* * * * *

(4) *Conflict of interest.* FmHA shall determine whether such ownership or business dealings are sufficient to likely result in a conflict of interest. For possible lender/borrower conflict of interest, see paragraph V of Form FmHA 449–35 or paragraph B.5. of Form FmHA 1980–38. All lenders will, for each proposed loan, inform FmHA in writing and furnish such additional evidence as FmHA requested as to whether and the extent that:

(i) For those loans covered by Form FmHA 449–35, the lender or its principal officers (including immediate family) or the borrower or its principals or officers (including immediate family) hold any stock or other evidence of ownership in the other; or

(ii) For Farmer Programs loans covered by Form FmHA 1980–38, the lender or its officers, directors, principal stockholders or other principal owners or the borrower or its officers, directors, stockholders or other owners have any business dealings with, or hold any stock or other evidence of ownership in, the other.

* * * * *

(c) *Substitution of lenders.* With written concurrence of FmHA, another eligible lender may be substituted for a lender who holds an outstanding Conditional Commitment provided the borrower, loan purposes, scope of project and loan terms remain unchanged. (See subpart E of this part.)

4A. Section 1980.20 is amended by revising the last sentence of the introductory text of paragraph (a) to read as follows:

§ 1980.20 Loan Guarantee limits.

(a) * * * Also, except in regards to D&D and DARBE guaranteed loans (see Subpart E of this part), the maximum loss covered by Form FmHA 449–34 or Form FmHA 1980–27 can never exceed the lesser of:

* * * * *

5. Section 1980.46 is amended by revising paragraph (a)(1) and the introductory text of paragraph (a)(2) to read as follows:

§ 1980.46 Right to Financial Privacy Act of 1978.

(a) * * *

(1) Except for Farmer Programs loans, within 3 days of the receipt of a pre-application or complete application from a lender for a guarantee for a loan, FmHA will forward Form FmHA 410–7, "Notification to Applicant on Use of Financial Information From Financial Institution," to those applicants desiring loan assistance. If notification is made upon receipt of a pre-application, notification will not be made upon receipt of an application for the same applicant. For Farmer Programs loans, this notification is included in Form FmHA 1980–25, "Farmer Programs Application," and therefore, Form FmHA 410–7 need not be sent to the loan applicant.

(2) Except for Farmer Programs loans, notification must also be given to the lender and other financial institutions to which FmHA makes a direct request for financial records. For Farmer Programs loans, this notification is included in Form FmHA 1980–25, and therefore, Form FmHA 410–7 need not be sent to the lender. The notification to the lender and other financial institutions will read as follows:

* * * * *

6. Section 1980.60 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1980.60 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.

(a) *Lender certification.* For Farmer Programs loans, Form FmHA 449–34 or Form FmHA 1980–27 will not be issued until the lender certifies to the applicable conditions below by executing Form FmHA 1980–22, "Lender Certification." For all other

loans, Form FmHA 449–34 will not be issued until the lender certifies that:

* * * * *

7. Section 1980.61 is amended by revising paragraphs (a), (b)(1), (b)(3), (b)(4), and (d) to read as follows:

§ 1980.61 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee and Assignment Guarantee Agreement.

(a) *Lender's Agreement.* If FmHA finds that all requirements have been met:

(1) Except for Farmer Programs loans, the lender and FmHA will execute Form FmHA 449–35. The original will be delivered to FmHA and a signed duplicate original will be retained by the lender. There will be a Form FmHA 449–35 executed for all loans and lines of credit guaranteed by FmHA.

(2) For Farmer Programs loans, a new lender's agreement (Form FmHA 1980–38) does not need to be executed for each loan.

(i) Eligible lenders (non-CLP or non-ALP) must execute the most current version of Form FmHA 1980–38. The original will be kept in the County Office operational file for that lender.

(ii) ALP lenders must have executed an ALP lender's agreement (Attachments 1 or 2 of Exhibit A of Subpart B of this part). The original will be kept in the State Office with a copy in the County Office operational file.

(iii) CLP lenders must have executed the most current version of Form FmHA 1980–38. The original will be kept in the State Office with a copy in the County Office operational file.

(iv) Outstanding guarantees will be governed by the provisions of the lender's agreement in effect at the time the guarantee was issued; therefore, all expired lender's agreements must be retained in the State and/or County Office operational file.

(3) In all cases, the lender's agreement will be executed no later than the time the Loan Note Guarantee or Contract of Guarantee is signed.

(b) * * *

(1) Upon receipt of the Form FmHA 449–35 or Form FmHA 1980–38, and after all requirements have been met, FmHA will execute Form FmHA 449–34. All original(s) will be provided to the lender and attached to the note(s). A conformed copy with copies of notes attached will be retained by FmHA.

* * * * *

(3) If a lender has selected the multi-note system as provided in paragraph III A 2 of Forms FmHA 449–35, FmHA 1980–68, and FmHA 1980–71, or § 1980.119 of subpart B of this part, a Loan Note Guarantee will be prepared and attached to each note the borrower issues. All the notes will be listed on Form FmHA 449–34.

(4) If the lender request a series of new notes to replace previously issued guaranteed notes as provided in paragraph III A (b) of Forms FmHA 449–35, FmHA 1980–68, and FmHA 1980–71, or § 1980.119 of subpart B of this part, the County Supervisor (State Director for B&I) may reissue the new Loan Note Guarantee in exchange for the original Loan Note Guarantee.

* * * * *

(d) *Assignment Guarantee Agreement.* In the event the lender assigns the guaranteed portion of the loan to a holder(s) in accordance with the provision of the applicable subpart, the lender, holder, and FmHA will execute Form FmHA 449–36. The original of the agreement(s) will be provided to the holder with conformed copy(s) to the lender and FmHA. If the lender desires to assign a part(s) of the guaranteed loan to a holder(s), an Assignment Guarantee Agreement will be executed for each assigned portion. Attached to the Assignment Agreement will be a copy of the borrower's note(s) and a copy of the Loan Note Guarantee. Line of credit agreements evidencing advances made under lines of credit will not be sold or assigned except as provided in paragraph I.C.4. of Form FmHA 1980–38 and § 1980.119 of subpart B of this part.

* * * * *

8. Section 1980.62 is revised to read as follows:

§ 1980.62 Lender's sale or assignment of guaranteed portion of loan.

Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in paragraph III of Form FmHA 449–35 or § 1980.119 of subpart B of this part. Only guaranteed portions of loans not in payment default as set forth in the terms of the debt instruments may be sold. Should the lender know at the time the loan application is being prepared that it plans to sell or assign any part of the guaranteed portion of the loan as provided in Form FmHA 449–35 or § 1980.119 of subpart B of this part, the lender will provide this information with the application of FmHA. Line of Credit agreements evidencing advances made under lines of credit will not be sold or assigned except as provided in paragraph I.C.4. of Form FmHA 1980–38 and § 1980.119 of subpart B of this part.

9. Section 1980.63 is amended by revising paragraph (a) to read as follows:

§ 1980.63 Defaults by borrower.

(a) Refer to paragraph X of Form FmHA 449–35 or I.D.6. of Form FmHA 1980–38.

* * * * *

10. Section 1980.64 is amended by revising paragraph (a) to read as follows:

§ 1980.64 Liquidation.

(a) *Reference.* Refer to paragraph XI of Form FmHA 449–35 or paragraph I.D.6. of Form FmHA 1980–38.

* * * * *

11. Section 1980.65 is revised to read as follows:

§ 1980.65 Protection advances.

Refer to paragraph XII of Form FmHA 449–35, or for Farmer Programs Loans, § 1980.136 of subpart B of this part.

12. Section 1980.66 is revised to read as follows:

§ 1980.66 Additional loans or advances.

Refer to paragraph XIII of Form FmHA 449–35, or paragraph I.D.6.(b) of Form FmHA 1980–38.

13. Section 1980.83 is amended by revising paragraph (a) to read as follows:

§ 1980.83 FmHA forms.

(a) *FmHA forms incorporated in this subpart.* Forms FmHA 449–34, FmHA 449–35 and FmHA 449–36 are incorporated in this subpart, made a part hereof, and appear as appendices A, B, and C in the Federal Register. Forms FmHA 1980–27, FmHA 1980–38, FmHA 1980–15, FmHA 1980–25, FmHA 1980–24, "Request for Interest Assistance/Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender," and FmHA 1980–64, "Interest Assistance Agreement (Farmer Programs)," are incorporated in this subpart and are made a part hereof and appear as appendices D, E, F, G, H, I, and J of 7 CFR part 1980, subpart A. Copies of the forms may be obtained from any FmHA office.

* * * * *

14. Section 1980.84 is amended by revising paragraph (b)(4) to read as follows:

§ 1980.84 Replacement of loss, theft, destruction, mutilation, or defacement of Form FmHA 449–34, "Loan Note Guarantee," Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)" or Form FmHA 449–36, "Assignment Guarantee Agreement."

* * * * *

(b) * * *

(4) In those cases where the guaranteed loan was closed under the provisions of paragraph III(A)(2) of Form FmHA 449–35 or § 1980.119 of subpart B of this part, known as the

"Multi-Note System," FmHA will not attempt to or participate in the obtaining of replacement notes from the borrower. It will be the responsibility of the holder to bear costs of note replacement if the borrower agrees to issue a replacement instrument. Should such note be replaced, the terms of the note cannot be changed. (See paragraph III(A)(2)(b) of Form FmHA 449–35 or § 1980.119 of subpart B of this part for general conditions for reissued notes.) If the evidence of debt has been lost, stolen, destroyed, mutilated or defaced, such evidence of debt must be replaced before FmHA will replace any instruments.

* * * * *

15. Appendix E to subpart A of part 1980 is revised to read as follows:

APPENDIX E—AGREEMENT FOR PARTICIPATION IN FARMER PROGRAMS GUARANTEED LOAN PROGRAMS OF THE UNITED STATES GOVERNMENT

The purpose of this Agreement is to establish the Lender as an approved participant in the Farmer Programs Guaranteed Loan Programs of the Farmers Home Administration (FmHA), U.S. Department of Agriculture. This Agreement provides the terms and conditions for originating and servicing such loans, including lines of credit.

Participating Lender ("Lender"): _____

Tax Identification Number: _____

Business Address: _____

Telephone Number: _____

Complete the appropriate section indicating participation/non-participation in the Certified Lender Program.

	Offices affected by agreement		States affected by agreement
	All [_]	As listed below [_]	
Participating in the Certified Lender Program ("CLP")			
Not Participating in the Certified Lender Program			

Read this Agreement in its entirety and sign in the space on the last page. Your signature indicates consent with this Agreement.

Part I—General Requirements

A. Duties and Responsibilities of FmHA ("Agency")

1. *Payment of Claims.* FmHA agrees to make payment on its claims in accordance with the terms of the guarantee and Agency regulations in 7 CFR 1980, subparts A and B. The maximum loss payment may not exceed the amount determined in the guarantee, including the percentage of principal and any accrued interest. The guarantee is supported by the full faith and credit of the United States and is uncontestable except under the circumstances of fraud or misrepresentation of which the Lender has actual knowledge at the execution of the guarantee or which the Lender participates in or condones. (See 7 CFR 1980.107.)

2. *Personnel Available for Consultation.* FmHA shall make personnel available for consultation on interpretations of Agency regulations and guidelines. The Lender may consult with Agency personnel regarding unusual underwriting, loan closing, and loan liquidation questions.

B. General Requirements for the Lender

1. *Eligibility to Participate.* The Lender must meet the requirements set forth in 7 CFR 1980.13 and be approved by FmHA to be a participant in the Farmer Programs Guaranteed Loan Programs.

2. *Knowledge of Program Requirements.* The Lender is required to obtain and keep itself informed of all program regulations and guidelines, including all amendments and revisions. The Lender must establish and maintain adequate and written internal policies for loan origination and servicing to meet these requirements. These policies will be subject to review upon request by FmHA.

3. *Notification.* The Lender shall immediately notify FmHA in writing if the Lender:

- Becomes insolvent;
- Has filed for any type of bankruptcy protection, has been forced into involuntary bankruptcy, or has requested an assignment for the benefit of creditors;
- Has taken any action to cease operations, or to discontinue servicing or liquidating any or all of its portfolio guaranteed by FmHA;
- Has changed its name, location, address, tax identification number, or corporate structure;
- Has been debarred, suspended, or sanctioned in connection with its participation in any Federal guaranteed program; or
- Has been debarred, suspended, or sanctioned by any Federal or State licensing or certification authority.

4. *Employee Qualifications.* The Lender shall maintain a staff that is well trained and experienced in origination and loan servicing functions, as necessary, to ensure the capability of performing all the acts within its authority.

5. *Conflict of Interest.* The Lender certifies that its officers or directors, principal stockholders (except stockholders in a Farm Credit Bank or other Farm Credit System (FCS) institutions with direct lending authority that have normal stock/share requirements for participating), or other principal owners do not have, or will not have, a substantial financial interest in, or business dealings with, any guaranteed loan borrower. The Lender also certifies that neither any borrower nor its officers or directors, stockholders, or other owners have a substantial financial interest in the Lender. If the borrower is a member of the Board of Directors of a Farm Credit Bank or other FCS institution with direct lending authority, the Lender certifies that an FCS institution on the next highest level will independently process the loan request and will act as the Lender's agent in servicing the account.

6. *Facilities.* The Lender shall operate its facilities and branch offices in a prudent and businesslike manner.

7. *Reporting Requirements.* The Lender recognizes that FmHA, as guarantor, has a vital interest in ensuring that all acts performed by the Lender regarding the subject loans are performed in compliance with this Agreement and Agency regulations. Information on the status of guaranteed loans is necessary for this purpose, as well as to satisfy budget and accounting reporting required by the Department of the Treasury and the Office of Management and Budget. The Lender agrees to provide FmHA with all the data required under Agency regulations and any additional information necessary for FmHA to monitor the health of its guaranteed loan portfolio, and to satisfy external reporting requirements.

The Lender also agrees to provide to FmHA, as requested by the Agency or as required by regulation, copies of audited financial statements, reports on internal controls, copies of compliance audits, and such other information that may be required for FmHA to properly monitor the Lender's performance.

C. Underwriting Requirements

1. *Responsibility.* The Lender is responsible for originating, servicing, and collecting all guaranteed Farmer Programs loans in accordance with Agency regulations.

2. *Origination Process*—a. *General Eligibility.* The Lender shall make a preliminary determination whether loan applicants meet the general eligibility requirements of the Farmer Programs Guaranteed Loan Programs. FmHA will make the final determination.

b. *Delinquency on Federal Debt.* The Lender shall determine whether the loan applicant is delinquent on any Federal debt. The Lender shall use credit reports and any other credit history to make this determination. If the loan applicant is delinquent on a federal debt, processing of the application may only continue in accordance with Agency regulations.

c. *Appraisals of Collateral.* The Lender shall ensure that the value of any collateral property or property to be purchased is determined by a qualified appraiser, including a State licensed or certified appraiser when required by law or regulation.

d. *Change in Borrower's Condition.* Before FmHA issues a loan guarantee, the Lender will certify that there has been no adverse change(s) in the borrower's condition, financial or otherwise, during the time period from issuance of a Conditional Commitment to issuance of the guarantee of the loan. This certification by the Lender must address all adverse changes and be supported by financial statements of the borrower and its guarantors which are not more than 90 days old at the time of certification. For use in this provision alone, the term "Borrower" includes any member, joint operator, partner or stockholder. (See 7 CFR 1980.117.)

e. *Limitation on Guarantee.* Any note requiring the payment of interest on interest will not be guaranteed. Default charges, late charges of any kind, and/or interest accrued on interest charges will not be covered by the guarantee.

3. *Loan Closing*—a. *Lender's Fee.* The Lender will submit the required guarantee fee with the Guaranteed Loan Closing Report.

b. *Lender's Use of Funds.* The Lender agrees funds for the particular loan or line of credit will be used only for the purposes authorized in 7 CFR 1980, subparts A and B as set forth in Form FmHA 1980–15.

c. *Loan Closing.* All loans guaranteed by the Agency shall be closed by attorneys, escrow companies, escrow departments of lending institutions, or other person(s) or entities skilled and experienced in conducting loan closings. The Lender shall:

- Ensure that documents, including the mortgage and any security agreements, chattel mortgages, or equivalent documents relating to it have been properly signed, are valid and contain terms enforceable by the Lender;
- Ensure that all security with appropriate lien priorities is obtained in accordance with Form FmHA 1980–15, and Agency regulations;
- Ensure that all closing documents required to be recorded are recorded accurately, in the appropriate offices, and in a timely and accurate manner;
- Ensure that security interests are perfected in collateral according to applicable regulatory requirements and procedures;
- Ensure that all required hazard insurance is obtained in accordance with Agency regulations;
- Collect all fees and costs due and payable by the borrower in the course of the loan transaction and disburse payment directly to the parties for services rendered; and
- Ensure that all loan proceeds are used as authorized.

The entire loan will be secured equally with the same security and the same lien priority for both the guaranteed and unguaranteed portions of the loan, under the assurance that the unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

4. *Lender's Sale or Assignment of Guaranteed Loan*—The Lender may retain all of any guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of loan(s) to the applicant or borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate. The Lender may market all or part of the guaranteed portion of the loan at or after loan closing only if the loan is not in default as set forth in the terms of the note. A line of credit may only be marketed by participation. Refer to 7 CFR 1980.119 for further guidelines.

D. Servicing Requirements

1. *Responsibilities.* The Lender will service the entire loan as mortgagee and/or secured party of record in a reasonable and prudent manner, notwithstanding the fact that another (Holder) may hold a portion of the loan. The Lender will obtain compliance with the covenants and provisions in the note, security instruments, and any other agreements, and notify FmHA and the borrower of any violations. Specific responsibilities are described in 7 CFR 1980.130.

2. *Negligent Servicing.* The guarantee cannot be enforced by the Lender to the extent a loss results from a violation of usury laws or negligent servicing regardless of when FmHA discovers such violation or negligence. Negligent servicing is defined as the failure to perform services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes both a failure to act and also not acting in a timely manner to include actions taken up to the time of loan maturity or until a final loss is paid. (See 7 CFR 1980.11.)

3. *Payments.* Payments from the borrower shall be processed upon receipt according to 7 CFR 1980.119, and may include escrow premiums for hazard insurance and real estate taxes. The Lender shall promptly disburse to any Holder(s) their pro rata share thereof which has been determined according to their respective interests in the loan, less only the Lender's servicing fee.

4. *Collateral*—a. *Insurance.* The Lender shall ensure that adequate insurance is maintained in accordance with Agency regulations, including the maintenance of hazard insurance containing a loss payable clause in favor of the Lender as the mortgagee or secured party.

b. *Escrow Accounts.* The Lender may establish separate escrow accounts. All escrow accounts must meet applicable Federal and State laws and regulations, and must be fully insured by the FDIC.

c. *Inspection.* The Lender shall inspect the collateral as often as necessary to properly service the loan and ensure the collateral is being properly maintained.

d. *Taxes.* The Lender shall ensure that taxes, assessments, or ground rents against or affecting collateral are paid.

5. *Delinquent Accounts*—a. The Lender will notify FmHA using Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status," when a borrower is 30 days past due on a payment or if the borrower has not provided the required financial statements to the Lender or is otherwise in default. The Lender will continue to submit Form FmHA 1980–44 every 60 days until the default is resolved, and will notify the Agency when the default is resolved. A meeting will be arranged by the Lender with the borrower and FmHA to resolve the problem. Actions taken by the Lender, with written concurrence of FmHA, may include but are not limited to, any curative actions contained in subpart B of 7 CFR part 1980 or liquidation.

b. The loan may be reamortized, rescheduled, or written down only with the agreement of any Holder(s) of the guaranteed portion of the loan, and only with FmHA's written agreement.

c. The Lender will negotiate in good faith to resolve any problem in order to allow the borrower to cure a default, where reasonable. The Lender agrees that if liquidation of the account becomes imminent, the Lender will consider the borrower for Interest Assistance under Exhibit D of subpart B of 7 CFR part 1980, and request a determination of the borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the loan until 60 days after eligibility of the borrower to participate in the Interest Assistance Program has been established.

d. Debt Writedown. (Refer to 7 CFR part 1980, subpart B, 1980.125.) The maximum amount of loss payment associated with a loan/line of credit agreement which has been written down will not exceed the percent of the guarantee multiplied by the difference between the outstanding principal and interest balance of the loan before the writedown and the outstanding balance of the loan after the writedown. The Lender will use Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to request an estimated loss payment to receive its pro rata share of any loss sustained. Interest will be paid to the date of the check on all debt writedown claims.

e. The Lender must participate in any farm credit mediation program of any State in accordance with the rules of that system and 7 CFR part 1980, subpart B, 1980.126.

f. When the borrower has not made payment of principal or interest due on the loan for 60 days or more or the Lender has

failed to give the Holder(s) its pro rata share of any payment made by the borrower within 30 days of receipt of the payment, the Holder may request the lender to repurchase the unpaid guaranteed portion of the guaranteed loan. If the Lender chooses not to repurchase, FmHA will purchase the unpaid principal balance. Upon FmHA's repurchase, the lender will liquidate the account or reimburse FmHA the amount of the repurchase within 180 days of FmHA's repurchase. See 7 CFR 1980.119 for further guidance on repurchasing loans from Holder(s).

6. *Default/Liquidation*—a. *Protective Advances.* Protective advances must constitute a debt of the borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $3,000 made by a CLP Lender. For non-CLP Lenders, the amount is $500. Refer to 7 CFR 1980.136.

b. *Additional Loans or Advances.* Except as provided for in each Borrower's loan agreement, the Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

c. *Future Recovery.* After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the Lender, will be pro-rated between FmHA and the Lender. FmHA will be paid the amount recovered in proportion to the percentage it guaranteed for the loan.

d. *Transfer and Assumption Cases.* Refer to 7 CFR 1980.123. If a loss occurs upon the completion of a transfer and assumption for less than the full amount of the debt and the transferor debtor (including Guarantors) is released from personal liability, the Lender, if it holds the guaranteed portion, may file an estimated Report of Loss on Form FmHA 449–30, "Loan Note Guarantee Report of Loss," to recover its pro rata share of the actual loss at that time. In completing Form FmHA 449–30, the amount of the debt assumed will be entered as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of transfer and assumption, if not assumed by the transferee, will be entered in the appropriate space on Form FmHA 449–30.

e. *Bankruptcy.* The Lender is responsible for protecting the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings. Loss payments on bankruptcy cases will be processed according to the terms described in 7 CFR 1980.144.

f. *Liquidation.* If the Lender concludes that liquidation of a guaranteed loan account is necessary due to default or third party actions which the borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. All liquidations must receive prior concurrence by the appropriate FmHA official. Refer to 7 CFR 1980.146 for specific guidance on the procedures for liquidation.

7. *Servicer.* If the lender contracts for servicing of guaranteed Farmer Programs loans, the lender is not relieved of responsibility for proper servicing of the loans.

E. Agency Reviews of Lender's Operations

FmHA shall have the right to conduct reviews, including on-site reviews, of the Lender's operations and the operations of any agent of the Lender, for the purpose of verifying compliance with this Agreement and Agency regulations and guidelines. These reviews may include, but are not limited to: audits of case files; interviews with owners, managers, and staff; audits of collateral; and inspections of the Lender's and/or its agents underwriting, servicing, and liquidation guidelines. The Lender and/or its agents shall provide access to all pertinent information to allow the Agency, or any party authorized by the Agency, to conduct such reviews.

F. Conformance to Standards

1. *Standards.* The Lender shall conform to the standards outlined in this Agreement and Agency regulations for participation in Farmer Programs Guaranteed Loan Programs. CLP lenders must maintain compliance with the criteria set forth in 7 CFR 1980.190. The Agency shall determine Lender adherence to the standards based on:

- Adequacy in meeting requirements for origination, servicing, and liquidation of loans and lines of credit, including protection of collateral;
- Satisfaction of the reporting requirements of the Agency;
- Success in operating in a sound and prudent businesslike manner;
- Portfolio performance compared to overall performance of the Farmer Program Guaranteed Loan Programs; and
- Results of on-site reviews of the underwriting and/or servicing performed by the Lender.

2. *Determination of Non-Conformance.* The Agency shall carefully consider the circumstances and available facts in determining whether there is a pattern of Lender non-conformance with applicable standards. FmHA shall determine the propriety of any decision made by the Lender based on the facts available at the time the specific action was taken. It is understood by the Agency and intended by this Agreement that the Lender has the authority to exercise reasonable judgment in performing acts within its authority. However, FmHA reserves the right to question any act performed or conclusion drawn that is inconsistent with this Agreement or Agency regulations.

3. *Agency Action.* If the Lender is determined to be in non-conformance with any Federal law, State law, Agency regulation or guideline, or the terms of this Agreement, FmHA reserves the right to take action in accordance with its laws and regulations.

4. *Lender Right of Appeal.* FmHA shall provide the Lender an opportunity to appeal, in accordance with Agency regulations at 7 CFR part 1980, subpart A, adverse actions taken by the Agency.

Part II—List of Agency Regulations and Guidelines Designation of Lender Authority to Perform Certain Acts

A. List of Agency Regulations

The following is a list of FmHA regulations, which, along with any future amendments consistent with this Agreement, contain the information necessary for the Lender to be in compliance with Agency requirements.

1. 7 CFR part 1980 subpart A—General
2. 7 CFR part 1980 subpart B—Farmer Program Loans

B. Authority to Perform Certain Acts

Lenders participating in the CLP may be granted special authority to certify compliance with certain statutory or regulatory requirements. 7 CFR 1980.190 describes authorities and responsibilities for CLP lenders.

Part III—Duration and Modification

A. Duration and Termination

1. *Duration of Agreement.* For CLP lenders, this Agreement is valid for five years unless terminated by the Lender or FmHA as described below or revoked according to 7 CFR 1980.190. For non-CLP lenders, this Agreement will be valid indefinitely unless terminated by the Lender or FmHA as described below.

2. *Modification of Agreement.* This Agreement may be modified or extended only in writing and by consent of all parties.

3. *Termination by FmHA.* This agreement may be terminated by FmHA in accordance with Agency regulations.

4. *Termination by the Lender.* This Agreement may be terminated by the Lender by providing 30 days written notice to FmHA.

5. *Effect of Termination on Responsibilities and Liabilities.* Responsibilities or liabilities that existed before the termination of the Agreement with regard to outstanding guarantees will continue to exist after termination unless the Agency expressly releases the Lender from such responsibilities or liabilities in writing. The Lender shall remain obligated to service and liquidate the guaranteed loans remaining in the portfolio unless and until FmHA or the Lender transfers the loans. These requirements concerning loan management by the Lender and rights of the Agency under this Agreement shall remain in effect whether the Agreement is terminated by the Lender or FmHA.

B. Entire Agreement

This Agreement, Parts I through IV inclusive, and any regulations or guidelines incorporated by reference, shall constitute the entire Agreement. There are no other agreements, written or oral, regarding the terms in this Agreement which are or shall be binding on the parties.

Part IV—Endorsement

The undersigned certifies that they have read and understand the requirements in this agreement, and in 7 CFR part 1980, subparts A and B, and agree to the participation requirements and other provisions of this Agreement.

Notice. Requests for Guarantee and any notices or actions are expected to be initiated through the following FmHA County Offices:

_____

_____

_____

_____

_____

_____

_____

Lender: Complete this block of Section IV.

XXI. LENDER_____

(Name)

_____

(IRS I.D. Tax No.)

By_____

(Signature)

_____

(Name Typed or Printed)

Title_____

Date _____

ATTEST: _____

This block of Section IV will be completed by FmHA.

The effective date of this Agreement is _____

The expiration date of this Agreement is _____

UNITED STATES OF AMERICA

Farmers Home Administration

By_____

(Signature)

_____

(Name Typed or Printed)

Title_____

Date_____

USDA—FmHA
Form FmHA 1980–38

16. Appendix F to Subpart A of part 1980 is revised to read as follows:

USDA-FmHA
Form FmHA 1980–15
(Rev. 6–93)

FORM APPROVED
OMB NO. 0575–0079

APPENDIX F—CONDITIONAL COMMITMENT

[Farmer Programs]

TO: LENDER	TYPE OF LOAN ☐FO ☐SW ☐OL ☐OL/LOC

APPENDIX F—CONDITIONAL COMMITMENT—Continued

[Farmer Programs]

LENDER MAILING ADDRESS	NAME OF LOAN APPLICANT
	FmHA CASE NUMBER
CITY, STATE, AND ZIP CODE	PRINCIPAL AMOUNT OF LOAN/LINE OF CREDIT $

From an examination of information supplied by the Lender on the above proposed loan/line of credit, the County Committee certification or recommendation, if required, and other relevant information deemed necessary, it appears that the transaction can be properly completed.

Therefore, the United States of America acting through the Farmers Home Administration (FmHA) hereby agrees that, in accordance with applicable provisions of the FmHA regulations published in the Federal Register and related forms, it will execute Form FmHA 449–34, "Loan Note Guarantee." or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)", as appropriate, subject to the conditions and requirements specified in said regulations and included below.

The guarantee fee payable by the Lender to FmHA will be the amount as specified in the regulations on the date of this Conditional Commitment.

The interest rate for the loan/line of credit is _____% ☐ fixed, ☐ variable, which cannot exceed the rate the lender charges his average farm customer. If a variable rate is used, it cannot change more than _____.

A Loan Note Guarantee or Contract of Guarantee will not be issued until the Lender certifies to conditions in Form FmHA 1980–22 "LenderCertification" that there has been no adverse change(s) in the Loan Application's financial condition, nor any other adverse change in the Loan Applicant's condition during the period of time from FmHA's issuance of the Conditional Commitment, (Farmer Programs) to issuance of the Loan Note Guarantee or Contract of Guarantee.

Unless indicated in the section "Additional Conditions and Requirements." the purposes for which the loan funds will be used are as set out on the Farmer Programs Application.

The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the Loan Applicant for Interest Assistance under Exhibit D of 7 CFR Part 1980, Subpart B, and request a determination of the Loan Applicant's eligibility by FmHA, The Lender may not initiate foreclosure action on the loan until 60 calendar days after a determination has been made with respect to the eligibility of the Loan Applicant to participate in the Interest Assistance Program.

INTEREST ASSISTANCE REQUIREMENTS

☐ N/A The subject guaranteed loan/line of credit does have Interest Assistance.

☐ INTEREST ASSISTANCE

The subject guaranteed loan/line of credit has been approved for participation in the Interest Assistance program. Interest Assistance during the first annual operating plan period will be _____percent per annum of average outstanding principal. The Maximum Rate of Interest Assistance Available (MRIAA) under this commitment is _____ percent per annum of average outstanding principal balance. Interest Assistance is available under this commitment for a period not to exceed _____ years. Availability of Interest Assistance is subject to the loan being closed in accordance with the conditions of this commitment and with FmHA regulations. Interest Assistance availability is also subject to the execution of Form FmHA 1980–64, "Interest Assistance Agreement" and compliance with the conditions of that agreement. Conditions include the requirement that the rate of Interest Assistance be adjusted annually based on an analysis of the borrower's need for Interest Assistance, with which the lender is required to perform and obtain FmHA concurrence.

Public reporting burden for this collection of informotion is estimated to average 30 minutes per response, including the time for reviewing instructions, seorching existing data saurces, gothering and maintoining the dato needed, ond completing and reviewing the collectian of infarmation. Send comments regarding this burden estimate or any other aspect of this collection of infarmatian, including suggestions for reducing this burden, to Department of Agriculture, Cleorance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwark Reduction Project (OMB No. 0575–0079), Washington, DC 20503. Please DO NOT RETURN this farm to either of these oddresses. Forward to FmHA only.

REQUIREMENTS FOR LOANS SECURED BY CHATTELS

(A) All collateral for the loan, i.e., livestock, farming and other equipment, crops, other farm products, supplies, inventory, accounts and contract rights, and general intangibles, must be accounted for on a disposition or collateral control sheets. An assignment will be obtained on all USDA crop and livestock program payments. All collateral pertains to that now owned and hereafter acquired. A yearly accounting and reconciliation with the Security Agreement is required.

(B) The Lender's financing statement must cover the proceeds and products of collateral and the following statement must be included: "Disposition of the collateral is not authorized hereby."

FOR OPERATING LOANS(S)/LINE OF CREDIT REQUIREMENTS

For an Operating Loan/Line of Credit(s), prior to any advances for the second or third plan year. Non-Certified Lenders must submit a copy of the borrower's income and expenses for the previous year, the projected cash flow for the borrower's operation for the upcoming operating cycle, a current financial statement a/k/a balance sheet, and a certification that the borrower is in compliance with the provisions of the Line of Credit Agreement and the income and expenses for the previous year have been accounted for. All of the above items are to be submitted to the County Supervisor for written approval.

GENERAL REQUIREMENTS

Lender agrees that any provisions in its security instruments, including promissory notes, security agreements, financing statements, deeds of trust, or other forms used by the lender to evidence or secure a loan to a guaranteed loan applicant, which do not comply with 7 CFR Parts 1980–A and B; are unenforceable by the lender without the written concurrence of FmHA. Such provision and enforcement are hereby waived by the lender.

The Lender agrees that FmHA has not nor will certify to the validity, accuracy, legality, or enforceability of any note, security agreement, financing statement, deed of trust or other form which Lender has provided to FmHA, the providing of such forms being for informational purposes only.

HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

(A) This commitment is conditional upon loan proceeds not being used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity.

(B) All guaranteed lenders will be required to monitor compliance of these requirements as part of their servicing responsibilities. During loan servicing contacts the borrower's compliance is to be reviewed and analyzed. If the borrower violates 7 CFR Part 1940. Subpart G, Exhibit M requirements, the loan will be in default.

(C) ☐ N/A The loan applicants farm properties do not contain any highly erodible land, wetland, or converted wetland.

☐ The lender will for all applicants having highly erodible land, wetland, or converted wetlands on their farm properties, include the following provisions in its loan instruments:

PROMISSORY NOTES

Borrower recognizes that the loan described in this note will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, subject to 7 CFR Part 1940, Subpart G, Exhibit M.

MORTGAGES OR DEEDS OF TRUST

"Borrower further agrees that the loan(s) secured by this instrument will be in default should any loan proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, as further explained in 7 CFR Part 1940, Subpart G, Exhibit M."

SECURITY AGREEMENT

"Default shall also exist if any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, as further explained in 7 CFR Part 1940. Subpart G, Exhibit M."

ADDITIONAL CONDITIONS AND REQUIREMENTS

(1) Purpose for which guaranteed loan funds will be used:

(2) Security required for the guaranteed loan:

(3) Type and frequency of financial reports required by FmHA but not required by the Lender:

(4) Other requirements: (Insert any additional conditions or requirements in this space or on an attachment referred to in this space, otherwise insert "NONE".)

This conditional commitment becomes null and void unless the conditions are accepted by the Lender and Loan Applicant and will expire on _____ unless the time is extended in writing by FmHA, or upon the Lender's earlier notification to FmHA that it does not desire to obtain an FmHA guarantee. Any negotiations concerning these conditions must be completed by that time. Once this instrument is executed and returned to FmHA, no major change of conditions or approved loan purpose as listed on the Form FmHA 1910–1, "Farmer Programs Application" will be considered.

UNITED STATES OF AMERICA
FARMERS HOME ADMINISTRATION

By: _____

FmHA: _____

_____

(Date)

ACCEPTANCE OR REJECTION OF CONDITIONS

To: Farmers Home Administration (FmHA)

The condition(s) of Form FmHA 1980–15 outlined on previous pages:

1. ☐ are *acceptable* and the undersigned Lender intends to proceed with the loan transaction and to request issuance of Form FmHA 449–34, "Loan Note Guarantee," or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," as applicable, at the appropriate time.

2. ☐ are *acceptable,* but not for other reasons as the undersigned Lender does not desire a Form FmHA 449–34, "Loan Note Guarantee," or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," as applicable. We withdraw our guaranteed loan application.

3. ☐ are *not acceptable,* and for that reason the undersigned Lender does not desire a Form FmHA 449–34. "Loan Note Guarantee," or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," as applicable. If you desire FmHA to withdraw your guaranteed loan application, check the following box ☐ WITHDRAW APPLICATION. If you do not withdraw the guaranteed loan application, a formal rejection letter notifying you or your appeal rights will be forthcoming.

4 ☐ are *not acceptable* but would be acceptable if the following changes were made:

Lender hereby certifies that it will comply with the requirements and regulations of 7 CFR Part 1980, Subparts A and B and Form FmHA 1980–38 "Agreement For Participation In Farmer Program Guaranteed Loan Programs of the United States Government."

If block number "1" above is checked:

(a) It is understood that the following information may now be released upon request: Name and address of applicant, name and address of lender, amount of loan, and general purpose of loan.

(b) It is anticipated that Form FmHA 449–34, "Loan Note Guarantee" or Form FmHA 1980–27, "Contract of Guarantee (Line of Credit)," as applicable, will be requested in approximately _____days.

NOTE TO LENDER: Complete and execute the Acceptance or Rejection of Conditions as indicated above on the copy of this form and return it to FmHA.

_____

(Name of Lender)

By: _____

(Signature of Lender)

_____

(Date)

[1] Insert the period prescribed in the applicable FmHA regulations.
[2] Insert expiration date. (Allow sufficient time for processing and issuance of the forms.)
[3] Return completed and signed copy of this form to FmHA office from which it was received.

17. Appendix G to subpart A of part 1980 is revised to read as follows:

USDA–FmHA
FORM FmHA 1980–25
(Rev. 6–93)

APPENDIX G—FARMER PROGRAMS APPLICATION

TO REQUEST INITIAL and/or SUBSEQUENT GUARANTEED LOAN/LINE OF CREDIT:

Complete Parts 1, 2, and 3 of the application
Review Part 4, and sign and date where indicated
Review Part 5
Complete all applicable areas of Part 6
To Request Interest Assistance, provide the information requested in Part 7
Provide the information required in Parts 9 and 10
Complete Parts 11 and 12
Review Parts 13
Complete and sign Part 14
*Attach a Lender's Loan Narrative including a brief history of the operation and support for the guarantee request.

TO REQUEST SUBSEQUENT GUARANTEED LOAN/LINE OF CREDIT IN THE SAME OPERATING CYCLE:

When a borrower received a guaranteed loan and needs additional funds, complete the following Parts:

Blocks 1, 2, 3, and 4 of part 1
Review Part 4, and sign and date where indicated
Complete all applicable areas of Part 6
To Request Interest Assistance, provide the information requested in Part 7
Complete Part 11 and 12
Review Part 13
Complete and Sign Part 14

TO REQUEST INTEREST ASSISTANCE ON EXISTING GUARANTEED LOAN(S):

Complete Blocks 1, 2, 3, and 4 of Part 1
Review Part 4, and sign and date where indicated
Provide the information requested in Part 7
Complete Part 8

Provide the information required in Part 10
Complete Part 11
Review Part 13
Complete and sign Part 14

Public reporting burden for this collection of information is estimated to average 2 hours per response for each applicant and 4 hours per response for each lender including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575–0079), Washington, D.C. 20503, Please DO NOT RETURN this form to either of these addresses. Forward to FmHA only.

BILLING CODE 3410–07–M

USDA-FmHA
FORM FmHA 1980-25
(Rev. 6-93)

FORM APPROVED
OMB NO. 0575-0079

39b

FARMER PROGRAMS APPLICATION

PART I

TYPE OF ASSISTANCE BEING REQUESTED

1 GUARANTEE

☐ GUARANTEED LOAN

☐ INITIAL ☐ SUBSEQUENT

☐ SUBSEQUENT LOAN WITHIN SAME OPERATING YEAR

$_____ (ORIGINAL LOAN AMOUNT) _____ (LOAN CLOSING DATE)

☐ INTEREST ASSISTANCE ON EXISTING LOAN

(RESERVED FOR FUTURE USE)

2 TYPE OF LOAN APPLICATION ☐ Individual ☐ Partnership ☐ Corporation ☐ Cooperative ☐ Joint Operation

3. NAME OF LOAN APPLICANT	Have you conducted business under another name during the last 5 years? If so, indicate names.	4. Social Security/Tax ID No.
Show official name without abbreviations unless the abbreviation is a part of the official name. For individuals, partnerships, or joint operations, show name(s) followed by d/b/a and trade name used, if any.	County	Telephone Number
Mailing Address	City, State, and Zip Code	

Appl. _____
Spouse _____

Have you, as an individual, or any member of an entity loan applicant obtained a Direct or Guaranteed loan from FmHA?	☐ Yes	☐ No	☐ N/A
a. If yes, was the loan paid in full?	☐ Yes	☐ No	☐ N/A
b. Was the loan debt settled or were you ever released from personal liability as part of a debt settlement action?	☐ Yes	☐ No	☐ N/A
c. If a guaranteed loan, did the government pay the lender a loss claim?	☐ Yes	☐ No	☐ N/A
d. Are you, as an individual or any member of an entity application, deliquent on any federal debt? (Examples of debt include delinquent taxes, ASCS loans, education loans, etc.; If "Yes", explain on a separate sheet)	☐ Yes	☐ No	☐ N/A

RECEIVERSHIP - BANKRUPTCY — Has the loan applicant or any member of the proposed entity ever been in receivership, been discharged in bankruptcy, or filed a petition for reorganization in bankruptcy? ☐ Yes ☐ No If "Yes" give names, dates and details and explain on a separate sheet.

ARE YOU, THE LOAN APPLICANT, FARMING OR RANCHING NOW?	IF NOT, WHEN DID YOU, THE LOAN APPLICANT OPERATE A FARM?	NUMBER OF YEARS EXPERIENCE OPERATING A FARM
☐ Yes ☐ No	_____ 19. ___	_____

(FOR INDIVIDUAL LOAN APPLICANT ONLY)

Dates of Birth of Persons in Household	Applicant	Spouse	Others
MARITAL STATUS.....	☐ MARRIED	☐ SEPARATED	☐ UNMARRIED (including single, divorced, and widowed)

Are you a citizen?	Are you a veteran?	IF "YES", INDICATE
☐ Yes ☐ No	☐ Yes ☐ No	DATE OF SERVICE FROM TO BRANCH

(FOR COOPERATIVE, CORPORATION, PARTNERSHIP, OR JOINT OPERATION LOAN APPLICANTS ONLY)

The following information must be provided for all members, stockholders, partners and joint operators and submitted with this application

1) Name, address, social security number, principal occupation, and a current financial statement not more than 90 days old
2) Is each person a U.S. Citizen?
3) Percentage of ownership, control of entity, or number of shares
4) Must be assured that members, partners, etc. can meet personal obligations. Obtain personal cash flows, if necessary.
5) Provide evidence of existence:
   a) Copy of any charter or partnership/joint operation agreement
   b) Any articles of incorporation and by laws
   c) Any certificate of evidence of current registration (good standing)
   d) Copy of resolution adopted by members, partners, etc. to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

NOTE: Personal guarantees from all stockholders, all owners having an interest in the corporation, all members of a cooperative, all partners of partnerships, and all members of joint operations generally will be required.

PART 2 39c

COMPLETE THE FINANCIAL STATEMENT BELOW
OR
MARK THIS BOX ☐ AND ATTACH A SIGNED LOAN APPLICANTS FINANCIAL STATEMENT DATED_____

FINANCIAL STATEMENT AS OF DATE OF APPLICATION

(Show property owned and debts owed by applicant)

LIST ALL PROPERTY OWNED					LIST ALL DEBTS OWED		
CURRENT FARM ASSETS				$VALUE	CURRENT FARM LIABILITIES		$ AMOUNT
Cash Savings ($) Checking ($)					Accounts and Notes Payable (Creditor & Due Date)	Past Due	
Other Invest. (Time Cert $) (Other $)							
Accounts and Notes Receivable							
Crops and Feed	Units	Value Per Unit					
Livestock to be sold	Units	Units Weight	Value Per Unit				
					CCC Loan (Security) (Due Date)		
					Current Portion of Principal Due on:		
					Intermediate Liabilities		
					Long Term Liabilities		
Growing Crops	Acres		Cost Acres		Accrued Interest on:		
					Accounts and Notes Payable		
					Intermediate Liabilities		
					Long Term Liabilities		
					Accrued Taxes		
Supplies & Prepaid Expenses					Income Tax & Social Security		
Leases					Other: (judgements, liens, etc.)		
Other					Accrued Rent/Lease Payments		
TOTAL CURRENT FARM ASSETS ▶					TOTAL CURRENT FARM LIABILITY ▶		
INTERMEDIATE FARM ASSETS					INTERMEDIATE FARM LIABILITIES (Portion due beyond 12 months)		
Accounts & Notes Receivable beyond 12 months					Creditor	Due Date / Int Rate / Amount Delinquent	
Breeding Livestock	Units		Value Per Unit				
Machinery, Equipment, Vehicles							
Cash Value, Life Ins (Face Amt $)					CCC Grain Reserve		
CCC Grain Reserve (Qty) (Value/Unit)					Facilities Pmt $		
Coop Stock					Loan Secured by Life Insurance		
Other					Other		
TOTAL INTERMEDIATE FARM ASSETS ▶					TOTAL INTERMEDIATE FARM LIABILITIES ▶		
LONG TERM FARM ASSETS (Farm Real Estate)					LONG TERM FARM LIABILITIES (Portion due beyond 12 months)		
Total Acres	Dates Purchased		Cost		Creditor	Due Date / Int Rate / Amount Delinquent	
Coop Stock							
Equity in Partnerships/Corporations/Joint Operations/Cooperatives							
Other					Other		
TOTAL LONG TERM FARM ASSETS ▶					TOTAL LONG TERM FARM LIABILITIES ▶		
TOTAL FARM ASSETS ▶					**TOTAL FARM LIABILITIES ▶**		

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FINANCIAL STATEMENT (continued)						
NON FARM ASSETS	$ VALUE	NON FARM LIABILITIES				$ AMOUNT
Real Estate		Nonfarm accounts payable				
Car, Recreational Vehicles, etc.						
Household goods						
Cash value of Life Insurance						
Stocks, bonds, and other						
Nonfarm Business		Nonfarm notes payable				
		Name of Creditor	Due Date	Interest Rate	Annual Instal.	Principal Balance
		TOTAL NONFARM LIABILITIES ▶				
		TOTAL LIABILITIES ▶				
TOTAL NONFARM ASSETS ▶		NET WORTH ▶				
TOTAL ASSETS ▶		TOTAL LIABILITIES AND NET WORTH ▶				

PART 3

If you OWN or plan to acquire any land complete the following: (Use a separate sheet, if necessary)

GENERAL DESCRIPTION OR ASCS FARM NO. (5) (Include Counties)	OWNER'S NAME	TOTAL ACRES	CROP ACRES

If you RENT or plan to rent complete the follow: (Use a separate sheet, if necessary)

GENERAL DESCRIPTION OR ASCS NO. (5) (Include Counties)	LANDLORD NAME	TOTAL ACRES	CROP ACRES	LEASE TERMS	WRITTEN LEASE Yes or No

PART 4

LOAN APPLICANT

(1) FOOD SECURITY ACT OF 1985 (P.L. 99–198) CERTIFICATION

The loan applicant certifies that he/she, as an individual, or any member, stockholder, partner or joint operator entity applicant, he/she has not been convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance since December 23, 1985 in accordance with the Food Security Act of 1985 (Public Law 99–198).

(2) STATEMENT REQUIRED BY THE PRIVACY ACT

The Farmers Home Administration (FmHA) is authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.); and Title V of the Housing Act of 1949, as amended (42 U.S.C. 1471 et. seq.), or other Acts administered by FmHA to solicit the information requested on FmHA applications forms.

Disclosure of information requested is voluntary. However, failure to disclose certain items of information requested including your Social Security Account or Federal Identification Number may result in a delay in the processing of an application or its rejection.

The principal purposes for collecting the requested information are to determine eligibility for FmHA credit or other financial assistance, the need for interest credit or other servicing actions, for the serving of your loan, and for statistical analysis. Information provided may be used outside of the Department of Agriculture for the following purposes:

1. Release to interested parties who submit requests under the Freedom of Information Act.
2. To provide the basis for borrower success stories in Department of Agriculture news releases.
3. Referral to the appropriate law enforcement agency as set forth in 40 FR 38924 (1975).
4. Referral to employers, businesses, landlords, creditors or others to determine repayment ability and eligibility for FmHA programs.
5. Referral to a contractor providing services to FmHA in connection with your loan.
6. Referral to a credit reporting agency.
7. Referral to a person or organization when FmHA decides such referral is appropriate to assist in the collection or servicing of the loans.
8. Referral to a Federal Records Center for storage.

Every effort will be made to protect the privacy of applicants and borrowers.

FEDERAL EQUAL CREDIT OPPORTUNITY ACT STATEMENT

The Federal Equal Credit Opportunity Act Prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity

to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency which administers compliance with this law concerning Farmers Home Administration is the Federal Trade Commission, Pennsylvania Avenue at Sixth Street N.W., Washington, D.C. 20580.

WARNING

All information supplied to Farmers Home Administration (FmHA) by you or your agents in connection with your loan application may be released to interested third parties, including competitors, without your knowledge or consent under the provisions of the Freedom of Information Act (5 U.S.C. 522).

Much information not clearly marked "Confidential" may routinely be released if a request is received for same. Further, if we receive a request for information which you have marked "Confidential" the Federal Government will have to release the information unless you can demonstrate to our satisfaction that release of the information would be likely to produce substantial competitive harm to your business or would constitute a clearly unwarranted invasion of personal privacy. Also, forms, consultant reports, etc., cannot be considered confidential in their entirety if confidential material contained therein can reasonably be segregated from other information.

Information submitted may be made available to the public during the time it is held in Government files regardless of the action taken by FmHA on your application.

(3) CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, **Federal Register** (pages 4722–4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment

The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, had the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

The prospective lower tier participant further agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

Nothing contained in the foregoing shall be constructed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph 5 of this section, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

(A) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(B) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

TEST FOR CREDIT CERTIFICATION

(4) I am unable to provide the needed items on my own account, and I am unable to obtain the necessary credit for such items from other sources upon terms and conditions which I can reasonably fulfill, without a Loan Guarantee. **I certify that the statements made by me in this application are true, complete and correct to the best of my knowledge and belief and are made in good faith to obtain a loan.**

(5) The undersigned Loan applicant, upon signing this loan/line of credit application, certifies that I have received the previous notifications and will accept and comply with the conditions stated thereon:

WARNING

Section 1001 of Title 18, United States Code Provides: "Whoever, in any matter within the jurisdiction of any Department or Agency of the United States knowingly and willfully falsifies, conceals or covers up . . . a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years or both"

Date _____

(SIGNATURE OF LOAN APPLICANT)

(ADDITIONAL SIGNATURES REQUIRED, IF ANY)

ATTEST:_____(SEAL)

PART 5

(1) NOTIFICATION TO APPLICANT ON USE OF FINANCIAL INFORMATION FROM FINANCIAL INSTITUTION

Pursuant to Title XI, (1113(b)) of Public Law 95–630, your application for a government loan or loan guaranty authorizes the Farmers Home Administration in connection with the assistance you seek, to obtain financial information about you contained in financial institutions. No further notice of subsequent access to this information shall be provided during the term of the loan or loan guaranty.

As a general, financial records obtained pursuant to this authority may be used only for the purpose for which they were originally obtained. However, they may be transferred to another agency or department if the transfer is to facilitate a lawful proceeding, investigation, examination or inspection directed at the financial institution in possession of the records (or another legal entity not a customer). The records may also be transferred and used (1) by counsel representing a government authority in a civil action arising from a government loan, loan guaranty, or loan insurance agreement and (2) by the Government to process, service or foreclosure a loan or to collect on an indebtedness to the Government resulting from a customer's default.

FmHA reserves the right to give notice of a potential civil, criminal, or regulatory violation indicated by the financial records to any other agency or department of the Government with jurisdiction over that violation, such agency or department may then seek access to the records in any lawful manner.

(2) the United States Department of Agriculture, acting through the Farmers Home Administration, has complied with the applicable provisions of Title XI, Public Law 95–630, in seeking additional information regarding the above loan applicant pursuant to 7 CFR Part 1980, Subpart A, 1980.46(a)(2).

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PART 6

REQUEST NO. ____ of ____ FOR LOAN NOTE GUARANTEE and/or CONTRACT OF GUARANTEE FOR A LINE OF CREDIT:

PRINCIPAL AMOUNT OF LOAN/LINE OF CREDIT CEILING $	LOAN TYPE ☐ FO ☐ OL ☐ SW ☐ OL/LOC

INTEREST RATE ☐ FIXED ____% ☐ VARIABLE	PERCENT GUARANTEE REQUESTED ____%	REPAYMENT PERIOD ____YEARS	REQUEST INTEREST ASSISTANCE IF YES, NUMBER OF YEARS ☐ YES ☐ NO ____

PROPOSED REPAYMENT TERMS:

PURPOSES FOR WHICH GUARANTEED LOAN FUNDS WILL BE USED:	LOAN PURPOSE AMOUNT
	$
	$
	$

SECURITY PROPOSED (INCLUDE THAT ON HAND AND THAT TO BE ACQUIRED)

ITEM DESCRIPTION	APPRAISED VALUE	LIEN POSITION	AMT PRIOR LIEN	AMT OF COLLATERAL VALUE
	$		$	$
	$		$	$
	$		$	$
TOTALS	$		$	$

REQUEST NO. ____ FOR LOAN NOTE GUARANTEE and or CONTRACT OF GUARANTEE FOR A LINE OF CREDIT:

PRINCIPAL AMOUNT OF LOAN/LINE OF CREDIT CEILING $	LOAN TYPE ☐ FO ☐ OL ☐ SW ☐ OL/LOC

INTEREST RATE ☐ FIXED ____% ☐ VARIABLE	PERCENT GUARANTEE REQUESTED ____%	REPAYMENT PERIOD ____YEARS	REQUEST INTEREST ASSISTANCE IF YES, NUMBER OF YEARS ☐ YES ☐ NO ____

PROPOSED REPAYMENT TERMS:

PURPOSES FOR WHICH GUARANTEED LOAN FUNDS WILL BE USED:	LOAN PURPOSE AMOUNT
	$
	$
	$

SECURITY PROPOSED (INCLUDE THAT ON HAND AND THAT TO BE ACQUIRED)

ITEM DESCRIPTION	APPRAISED VALUE	LIEN POSITION	AMT PRIOR LIEN	AMT OF COLLATERAL VALUE
	$		$	$
	$		$	$
	$		$	$
TOTALS	$		$	$

NOTE: IF ADDITIONAL GUARANTEES NEED TO BE REQUESTED, MAKE A COPY OF THIS PAGE AND ATTACH TO THIS APPLICATION. GUARANTEE REQUESTS NEED TO BE NUMBERED CONSECUTIVELY.

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PART 7

REQUIREMENTS WHEN INTEREST ASSISTANCE IS REQUESTED

a) Attach a copy of the proposed debt repayment schedule for each loan which shows principal and interest payments at the proposed interest rate before interest assistance

b) For lines of credit and operating loans for annual operating purposes, attach a copy of a monthly cash flow budget (as defined in paragraph III B of Exhibit D of 7 CFR Part 1980, Subpart B.)

c) Attach a completed copy of attachment 2 to Exhibit D of 7 CFR Part 1980, Subpart B "Interest Assistance Worksheet/Needs Test".

PART 8

REQUEST (S) for INTEREST ASSISTANCE on the following existing loan (s) :

ORIGINAL LOAN AMT/LINE OF CREDIT CEILING	$ _____	$ _____	$ _____
ORIGINAL LOAN CLOSING DATE			
FmHA LOAN NUMBER	_____	_____	_____
MATURITY DATE OF ORIGINAL LOAN			
HAS THE LOAN BEEN FULLY ADVANCED?	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO
NUMBER OF YEARS INTEREST ASSISTANCE REQUESTED FOR?	_____ year (s)	_____ year (s)	_____ year (s)
PROPOSED INTEREST RATE (BEFORE INTEREST ASSISTANCE)	☐ fixed ____ % ☐ variable	☐ fixed ____ % ☐ variable	☐ fixed ____ % ☐ variable
AS OF DATE _____ CURRENT PRINCIPAL BALANCE	$ _____	$ _____	$ _____
CURRENT UNPAID INTEREST	$ _____	$ _____	$ _____
HAS THIS LOAN BEEN PREVIOUSLY COVERED BY AN INTEREST RATE BUYDOWN OR INTEREST ASSISTANCE AGREEMENT?	☐ YES ☐ NO	☐ YES ☐ NO	☐ YES ☐ NO

PART 9

ADDITIONAL REQUIREMENTS

NON-CERTIFIED LENDERS - The following information and/or documents listed below are submitted for FmHA's consideration and attached with this application.

APPROVED AND CERTIFIED LENDERS AND ALL LENDERS SUBMITTING APPLICATIONS OF $50,000 OR LESS - The following information and/or documents listed below are not required to be submitted with this application. The exception listed in item 9, however, only applies to certified lenders. The file may be examined by FmHA at anytime during the regular business hours, before or after FmHA responds to this request for guarantee.

1) Credit Report
2) A copy of the proposed loan/line of credit "Loan Agreement". This loan agreement must contain as a minimum all of the required items in 7 CFR Part 1980, Subpart B, 1980.113.
3) A copy of the appraisal report for any chattel and/or real estate security.
4) Verification of all debts greater than $1000. Lender may submit: a) Form 440-32, "Statement of Debts and Collateral", b) Lender's own form, or c) any other document verification.
5) Verification of non-farm income. Lender may submit: a) Form 1910-5 "Verification of Employment", b) Lender's own form, c) W-2, d) Earnings statement from employer, or e) any other documented verification.
6) A copy of any lease, contract, or agreement entered into by the loan applicant which may be pertinent to the consideration of the application.
7) A copy of the development plan, if applicable, which includes any drawings and specifications if the guaranteed loan is being requested for construction, major repairs, or major land development.
8) Production and Financial history records for the last five (5) years. This is to include:
   a) Actual production/yields
   b) Actual income and expenses data (farm and non-farm)
   c) Financial Statements a/k/a Balance Sheets
9) Form AD 1026 from ASCS.

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Part 10—Requirements for Cash Flow Projections

The Loan Applicant's cash flow projections and/or typical plan of operation have been prepared in accordance with 7 CFR part 1980, subpart B, 1980.113, and are attached to this document. Either Form FmHA 431–2 "Farm & Home Plan" or cash flow forms ordinarily used by the lender, which contain the same information as the Farm & Home Plan, are acceptable. If loan terms exceeds one year, cash carryover cannot be used in calculating debt service margin in a typical year plan.

Part 11—Financial Summary

Complete the financial summary tables (A and B) based on the Loan Applicant's cash flow projections.

TABLE A.—BALANCE AVAILABLE FOR DEBT REPAYMENT TABLE

A. Gross farm income	$_____
B. Gross non-farm income	$_____
C. Total farm operating expenses (excluding interest)	$_____
D. Family living expenses	$_____
E. Income and social security taxes	$_____
F. Net cash income (A+B−C−D−E)	$_____
G. Cash carryover on hand beginning of plan period	$_____
H. Loans/line of credit ceiling advanced during period of plan	$_____
I. Total available (F+G+H)	$_____
J. Capital expenditures	$_____
K. Balance available for debt repayment (I−J) (line K)	$_____

Table B.—Debt Repayment Table

To whom owed	Amount due without interest assistance (principal & interest)	Amount due with interest assistance (principal & interest)	Date due
Total(s)	(L)		

Percent debt reserve margin (line item K divided by block L)_____.....$.....%.
Minimum 110% positive cash flow requirement as per 7 CFR part 1980, subpart B, 1980.106(b)(17).
If less than 110% consider the interest assistance program.

Part 12—Environmental Information (CLP Lenders Only)

The undersigned lender certifies that proper investigations have been conducted to support the following conclusions:

1. Floodplains. Does the Property contain existing structures (i.e. farm dwellings and/or service buildings) or does the proposal involve development (i.e. construction channeling, or other alterations) located within the 100-year floodplain, as defined by FEMA floodplain maps, SCS soil surveys, or other documentation?

☐ YES ☐ NO

2. State Water Quality Standards. Did the investigation indicate the operation does not conform to State Water Quality standards?

☐ YES ☐ NO

3. Historical/Archaeological Sites. Does the property contain structures over 50 years old, structures with significant architectural features, or does the property have any historical significance which may make it eligible for the National Register of Historic Places.

☐ YES ☐ NO

4. Wetlands and Highly Erodible Land.

a. Will the proposed plan of operation contribute to the erosion of highly erodible land or the conversion of wetlands?

☐ YES ☐ NO

b. Has ASCS confirmed that the applicant currently holds an eligible status with respect to the HELC and WC provisions of the Food Security Act?

☐ YES ☐ NO

c. Will loan funds be used to drain, dredge, fill, or otherwise manipulate a wetland. Also, will loan funds be used for an activity which impairs or reduces the flow, circulation, or reach of water?

☐ YES ☐ NO

5. Hazardous Substances. For this proposal, has a "due diligence" investigation with respect to underground storage tanks and contamination from hazardous substances indicated any contamination?

☐ YES ☐ NO

If "yes" please describe on an attachment or contact the County Office.

Part 13—Certified and Non-Certified Lenders

The undersigned Lender certifies the following and requests issuance of a guarantee in the subject case.

1. The loan will be properly closed and/or line of credit agreement will be properly executed and the required security obtained. The construction, relocation, repairs, or other development will be completed in accordance with approved drawings and specifications.

2. The borrower has marketable title to security property now owned (and will obtain such title to any additional property to be acquired with loan funds), subject only to the instruments securing the loan to be guaranteed and any other exceptions set forth below:

3. Security property now owned and any acquired is considered adequate security for the loan to be guaranteed. If inadequate, state why you believe the borrower's operating plans will permit the borrower to pay the guaranteed loan or lines of credit in full within the period specified. The security instruments will be properly filed or recorded prior to, or simultaneously with, the issuance of the guarantee; except that if security property is yet to be acquired in a jurisdiction in which an after acquired property clause is not valid, a security instrument covering such property will be obtained as soon as appropriate and legally permissible.

4. Loan funds will be used for FmHA-approved purposes.

5. Proper hazard and any other required insurance will be obtained or is now in effect, as applicable.

6. The lender will provide a completed Form FmHA 1980–19, "Guaranteed Loan Closing Report," and a check for the amount of the guarantee fee prior to issuance of the guarantee, if applicable.

7. Restrictions and disclosure of lobbying activities. If any funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to guarantee a loan, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

8. Before a guarantee is issued by FmHA, The lender will certify to conditions in Form 1980–22, "Lender Certification."

9. The requirements of following sections of 7 CFR part 1980, subpart A have or will be met as applicable.

A. 7 CFR 1980.40 *Environmental requirements*

B. 7 CFR 1980.41 *Equal Opportunity and nondiscrimination requirements*

C. 7 CFR 1980.42 *Flood or mudslide hazard area precautions*

D. 7 CFR 1980.43 *Clean Air Act and Water Pollution Control Act requirements*

E. 7 CFR 1980.44 *Natural Historic Preservation Act of 1966*

F. 7 CFR 1980.45 *Other Federal, State, and local requirements*

The loan applicant and/or lender must be in compliance with this section effective with the date of issuance of the Loan Note Guarantee or Contract of Guarantee.

10. The undersigned: (a) considers the proposed loan or line of credit to be sound and within the borrower's repayment ability, (b) believes that all applicable requirements in 7 CFR part 1980, subparts A and B have been or will be met and (c) will not make the loan or advances under the line of credit without an FmHA guarantee.

11. In connection with Interest Assistance Requests the Lender certifies that:

A. The amount of interest resulting from the percentage of interest which FmHA agrees to pay will be permanently canceled as it becomes due and that no attempt will be made to collect that portion of the debt from the borrower.

B. The lender's reduction in interest charged to the borrower will result in a reduced payment schedule for the borrower and a projected positive cash flow (as defined in paragraph III D of this Exhibit D to 7 CFR part 1980, subpart B) throughout the term of the Interest Assistance Agreement.

12. In connection with subsequent loan requests in the same operating cycle when a borrower has a recently closed guaranteed loan and needs additional funds, the Lender certifies that the revised cash flow projection has a positive cash flow, the loan/line of credit will be adequately secured, and the loan applicant is in compliance with the loan agreements and all applicable certifications made when the original guaranteed loan was made, are still valid.

13. If loan funds are to be used at or after the time of loan closing for construction, substantial repairs, or major land development, certification(s) on Form FmHA 449–11, "Certification of Acquisition or Construction," will be furnished to FmHA as soon as possible on any such construction, repair or land development.

14. Certification regarding debarment, suspension, and other responsibility matters—primary covered transactions.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR § 3017.510, Participants' responsibilities. The regulations were published as part IV of the January 30, 1989, **Federal Register** (pages 4722–4733). Copies of the regulations may be obtained by contacting the Department of Agricultural agency offering the proposed covered transaction.

The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out on this form. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," and "voluntarily excluded," as used in this clause, had the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

The prospective primary participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

The prospective primary participant further agrees by submitting this form that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph 5 of this section (14), if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

A. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or contract under a public transaction; violation of Federal, or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property;

(c) are not presently indicated for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph (A)(b) of this certification; and

(d) have not within a three-year period receding this application/proposal had one or more public transactions (Federal, State, or Local) terminated for cause or default.

B. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

15. Appraisals. "I certify that this institution will be in compliance with the real estate appraisal requirements found in 7 CFR § 1980.113.

Part 14—Lenders Signature

This Application is being filed as:

☐ CERTIFIED LENDER

☐ NON-CERTIFIED LENDER

☐ APPROVED LENDER

The application is governed by the Lender Agreement dated _____

Name of Lender _____

Lender IRS, I.D. Tax No.: _____

Lender Address _____

Telephone Number __

Contact Person __

(Name/Title)

Warning

Section 1001 of Title 18, United States Code Provides: "Whoever, in any matter within the jurisdiction of any Department or Agency of the United States knowingly and willfully falsifies, conceals or covers up . . . a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years or both"

(Signature of Lender)

Date: __

By: __

Title: __

Subpart B—Farmer Program Loans

18. Section 1980.101 is amended by revising paragraph (a) to read as follows:

§ 1980.101 Introduction.

(a) *Policy.* This subpart, supplemented by subpart A of this part, contains regulations for making the following Farmer Programs loans guaranteed by the Farmers Home Administration (FmHA): Operating (OL) (both loans and lines of credit), Farm Ownership (FO), and Soil and Water (SW) loans. It also contains regulations concerning the servicing of these loans as well as the servicing of Emergency (EM) and Recreation (RL) loans, which are no longer guaranteed by FmHA. It is the policy of FmHA to guarantee loans made to qualified applicants without regard to race, color, religion, sex, national origin, martial status, age or physical/mental handicap, providing the applicant can execute a legal contract. These regulations apply to lenders, holders, borrowers, FmHA personnel, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans. Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to FmHA employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter. Applicants for this assistance are required to identify any known relationship or association with an FmHA employee. Exhibit A provides policies and procedures for the Approved Lender Program. § 1980.190 of this subpart contains the policies and procedures for the Certified Lender Program (CLP) for Guaranteed OL loans. Any modifications contained in Exhibit A of this subpart or § 1980.190 of this subpart will prevail over other provisions of this subpart. Exhibit C provides an Application Processing guide for lenders packaging applications under this subpart. Exhibit D provides policies and procedures for an Interest Assistance Program applicable for Guaranteed OL loans including lines of credit, Guaranteed FO loans and Guaranteed SW loans. Exhibit E provides policies and procedures for an Interest Rate Reduction Program for a demonstration project to purchase Farm Credit System family-size inventory farms. Exhibit F provides the procedures for the recapturing of shared appreciation when a lender requests a writedown on the debt. Exhibit G contains the policies and procedures modifying the Guaranteed OL loan regulations (Loan Note Guarantees Only), as described in § 1980.175 of this subpart, which implements the provisions of Public Law 101–82, the Disaster Assistance Act of 1989.

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19. Section 1980.106 is amended by revising the words "Table K of the Farm and Home Plan" in the first sentence of paragraph (b)(17)(iii) to read "Table K of Form FmHA 431–2, "Farm and Home Plan," and by revising paragraph (b)(1) and the introductory text of paragraph (b)(17) to read as follows:

§ 1980.106 Abbreviations and definitions.

* * * * *

(b) * * *

(1) *Applicant.* For guaranteed Farmer Programs loans, the lender will be considered the applicant. The party applying to the lender for a loan will be considered the loan applicant.

* * * * *

(17) *Positive cash flow.* A positive cash flow must indicate that all of the anticipated cash farm and non-farm income equals or exceeds all the anticipated cash flows plus the planned reserve for the planned period. Production records and prices used in the preparation of a positive cash flow will be in accordance with § 1980.113 of this subpart. A positive cash flow must show that a borrower will be at least able to:

* * * * *

20. Section 1980.113 is revised to read as follows:

§ 1980.113 Receiving and processing applications.

The County Supervisor will provide assistance in connection with loan/line of credit application processes. The degree of this assistance will be determined by the lender's experience with FmHA guaranteed processing, the lender's farm lending experience, and the complexity of the proposal. The lender should contact the local FmHA office serving the area where the farming operation is conducted for guidance and assistance in preparing the application and for obtaining the guarantee. The County Supervisor will provide copies of all applicable FmHA forms and regulations.

(a) *Complete application.* For lenders who are submitting applications under the CLP, see § 1980.190 of this subpart. ALP and CLP lenders and all lenders submitting applications for guarantees of $50,000 or less will only be required to submit Form FmHA 1980–25, "Farmer Programs Application," with the applicable attachments and sections completed. When this information is submitted, these lenders are certifying that all information required by this section is maintained in their loan file. A complete application from non-CLP lenders will consist of:

(1) *Form FmHA 1980–25.* The lender shall complete all applicable items and

provide supporting documentation where requested.

(2) *Verification of non-farm income, if any.* The lender may use Form FmHA 1910–5, "Request For Verification of Employment," or any other documentation.

(3) *Credit bureau report, where available, and other pertinent information concerning an applicant's credit history obtained by the lender.*

(4) *A copy of any lease, contract or agreement entered into by the applicant which may be pertinent to the consideration of the application, or when a written lease is not obtainable, a statement setting forth the terms and conditions of the agreement will be included in the loan docket.*

(5) *Verification of all debts of $1,000 or more.* The lender may use Form FmHA 440–32, "Request for Statement of Debts and Collateral," or any other documentation.

(6) *Proposed loan agreement or line of credit agreements between the applicant and lender.* Loan Agreements or Line of Credit Agreements will include *at least the following:*

(i) Any improved management practices to be implemented.

(ii) Requirements for accounting and recordkeeping and periodic financial reporting.

(iii) A list of security for the loan/line of credit and plans for at least an annual accounting for security.

(iv) Limitations on purchase or sale of assets and prohibitions against assuming liabilities of others.

(v) Purposes for which loan funds or funds advanced under the line of credit will be used.

(vi) Interest rate and term(s) for the loan.

(vii) If the loan applicant is not a sole proprietorship, restrictions and limits on compensation of officers and owners, patronage refunds, dividend payments, or distribution of net income. Also, restrictions on consolidations and mergers or other circumstances if the applicant is a corporate entity.

(7) *Financial and production history to support the cash flow projections.* This history shall include 5 years of farm and non-farm income and expenses, 5 years of crop and livestock production history, and 5 years of balance sheets. If 5 years of records are not available, the lender must document the reason. The cash flow will be documented in sufficient detail to adequately reflect the overall condition of the operation. The projected income and expenses are to be based on the loan applicant/borrower's proven record of production and financial management.

(i) Lenders will use the following sources of price information to develop operation forecast projections:

(A) Futures market price less the recognized basis points for the area, documented by date, location, time and degree of use.

(B) Government loan rates, *i.e.*, Agricultural Stabilization and Conservation Service (ASCS) target prices.

(C) Published current market prices.

(D) The negotiated price in any forward contract.

(E) Prices developed by the State land grant university for the time of crop sale.

(F) For specialty crops, the average of three previous years' prices, only if the above data is not available.

(ii) Lenders will use the following guidelines for estimating yields when developing operating plans. These are to be used only as guidelines. Deviations from historical performance may be acceptable if specific to the changes in the operation, adequately justified, and acceptable to the FmHA approval official.

(A) For existing farmers, actual production/yields for the past 5 years will be utilized.

(B) For those farmers with less than a 5-year production/yield history, the actual production history will be utilized.

(C) For farmers whose actual history is insufficient to provide an accurate estimate, consider the use of ASCS records, Cooperative Extension Service (CES) data, State averages, County averages or any other reliable sources of information that are agreeable with the lender and the applicant.

(D) When an accurate projection cannot be made because the applicant's production history has been affected by a disaster(s) declared by the President or designated by the Secretary of Agriculture, the following applies:

(*1*) County average yields will be used for the disaster year(s). If the applicant's disaster year(s) are less than the County average yields, County average yields will be used for that year(s). If County average yields are not available, State average yields will be used.

(*2*) To calculate a historical average yield to be used in developing a projected plan of operation, the applicant may exclude the crop year with the lowest actual or County average yield, providing the applicant's yields were affected by disasters during at least 2 of the past 5 years immediately preceding the planned year.

(iii) When the loan applicant has or will have a farm plan developed in conjunction with a proposed or existing FmHA insured loan, there must be consistency in the data between the two plans.

(8) *Appraisals.* The need for an appraisal is determined by the type of security, and whether it is primary or additional security. Primary security is defined as the minimum amount of collateral needed to fully secure a proposed loan on a dollar for dollar basis. Additional security is defined as collateral in excess of that needed to fully secure the loan. A lender's statement of value on Form FmHA 1980–25 is sufficient for additional security.

(i) *Chattel Appraisals.* An appraisal of primary chattel security is required on initial and subsequent loans if the latest appraisal is no longer current. A current appraisal is defined as not more than 12 months old on the date of loan approval. An appraisal is not normally required for loans or lines of credit for annual production purposes that are secured by crops or livestock, except when a loan note/line of credit guarantee is requested late in the current production year and actual yields can be reasonably estimated.

(A) *Chattel appraisal techniques.* The appraised value of chattel property will be based first on public sales of the same, or similar, property in the market area. In the absence of public sales, reputable publications reflecting market values may be used.

(B) *Chattel appraisal reports.* Appraisal reports may be on Form FmHA 440–21, "Appraisal of Chattel Property," or on any other appraisal forms containing at least the same information.

(C) *Appraiser qualifications.* The appraiser must be able to demonstrate to the FmHA official's satisfaction that they posses sufficient experience and/or training to establish market (not retail) values.

(ii) *Real estate appraisals.* A real estate appraisal is required when real estate will be primary security. If the real estate has been appraised within one year of obligation of guarantee authority, FmHA officials may accept the existing appraisal if the appraisal was properly completed, and there have been no significant changes in the market or on the subject real estate.

(A) *Appraisal reports and appraiser qualifications.* Real estate appraisal reports must be completed in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal may be completed in a narrative format, or by using any form that meets USPAP standards. The appraisal report must disclose the appraiser's basis for

adjustments to the comparable sales properties. Appraisals must be completed by qualified appraisers as described in paragraph (a)(8)(ii)(B) of this section.

(B) *Transactions requiring state certified general appraiser.* On loan transactions greater than $100,000, which includes principal plus accrued interest through the closing date, the appraisal must be completed by a state certified general appraiser. However, the lender has the option of using either a state certified general or state licensed appraiser on loan transactions of $100,000 or less. A loan transaction is defined as any loan approval or servicing action.

(9) *The lender's plan for servicing the loan/line of credit and any plan for providing management assistance to the borrower, including the steps necessary to see that the requirements of the loan agreement are met.*

(10) *Form AD–1026, "Highly Erodible Land and Wetland Conservation Certification," as specified in Exhibit M to Subpart G of Part 1940 of this chapter.*

(11) *Cooperative, corporation, partnership, or joint operation applicants.* If the applicant is a cooperative, corporation, partnership, or joint operation, the following additional information will be obtained and included in the loan docket:

(i) A complete list of members, stockholders, partners, or joint operators showing the address, citizenship, principal occupation, and the number of shares and percentage of ownership or of stock held in the cooperative or corporation, by each, or the percentage of interest held in the partnership or joint operation, by each.

(ii) A current personal financial statement from all members of a cooperative, joint operators of a joint operation, partners of a partnership, or stockholders of a corporation.

(iii) A current financial statement from the cooperative, corporation, partnership, or joint operation itself.

(iv) A copy of the cooperative's or corporation's charter, or any partnership or joint operation agreement, any articles of incorporation any bylaws, any certificate or evidence of current registration (good standing), and a resolution(s) adopted by the Board of Directors or members of stockholders authorizing specified officers of the cooperative, corporation, partnership, or joint operation to apply for and obtain the desired loan and execute required debt, security, and other instruments and agreements.

(b) *Subsequent Loans.* Lenders applying for a subsequent OL loan within the same operating cycle may complete an abbreviated Form FmHA 1980–25 if the conditions listed in paragraphs (b)(1) and (2) of this section can be met. See Form FmHA 1980–25 for the appropriate parts to be completed.

(1) There has been no material change in the borrower's financial position since the previous OL guarantee was issued.

(2) The scope of the borrower's operation has not changed and the proposed loan will not alter the scope of the operation, *e.g.*, no new enterprises will be added, and the size of the operation will not significantly increase.

21. Section 1980.114 is amended by revising the introductory text, by adding paragraph F. to the *Administrative* text, and by revising paragraph E. to the *Administrative* text, to read as follows:

§ 1980.114 FmHA evaluation of applications.

When the County Supervisor receives a complete application, the proper independent investigations, inspections, and appraisal reviews will be made to determine whether the applicant is eligible, whether the proposed loan/line of credit is for authorized purposes, whether there is reasonable assurance of a positive cash flow projection, and whether there is sufficient collateral and equity. The determinations will be recorded on Form FmHA 449–23, "Guaranteed Loan Evaluation (Farmer Programs)." This evaluation is for the benefit of FmHA, not the lender. The County Supervisor will notify the lender within 5 calendar days if an application submitted is incomplete. This requirement is contingent upon the availability of a County Supervisor during the prescribed timeframe, and employment ceilings affecting FmHA.

* * * * *

Administrative

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E. Follow the requirements of subpart G of part 1940 of this chapter. If an environmental problem exists on the property, the County Supervisor may need to visit the farm to complete the review required by subpart G of part 1940 of this chapter. The County Supervisor's determination of whether an environmental problem exists will be based on any indication by the lender on Form FmHA 1980–25 that there is such a problem, and the County Supervisor's personal knowledge and investigation of environmental resources available in the County Office.

F. Document in the casefile the date on which the application is considered complete.

22. Section 1980.115 is revised to read as follows:

§ 1980.115 County Committee review.

The County Committee will review loan applications to determine whether the loan applicants meet FmHA eligibility requirements. Applications do not need to be complete before they are reviewed by the County Committee; however, all information relating to the eligibility must be received. The County Supervisor will promptly notify both the lender and loan applicant in writing of the County Committee's determination. (See *Administrative* paragraph B of this section.)

(a) *Favorable action.* If the County Committee finds the applicant eligible, the members will sign Form FmHA 440–2, "County Committee Certification or Recommendation." This form will be retained in the County Office file. When the loan applicant has been determined eligible for assistance and additional information becomes available before issuance of the conditional commitment that indicates the original determination may be in error, the loan applicant will be reconsidered by the County Committee taking the new information into account. The County Committee will then recertify whether or not the applicant continues to meet eligibility requirements by the use of Form FmHA 440–2. Proper notification as to action taken will be sent to the lender.

(b) *Unfavorable action.* If the County Committee finds the applicant ineligible, the members will complete Form FmHA 440–2 and the County Supervisor will inform the lender and the loan applicant in writing of FmHA's decision of the reasons for disapproval and of their opportunity for an appeal as set out in subpart B of part 1900 of this chapter.

Administrative

A. After the application is complete and the County Committee certification is obtained, the County Supervisor will:

1. Prepare Form FmHA 1940–3, "Request for Obligation of Funds—Guaranteed Loans," in accordance with the Forms Manual Insert (FMI).

2. Prepare Form FmHA 1980–15, "Conditional Commitment (Farmer Programs)." In no case will Form FmHA 1980–15 be executed prior to the determination of guarantee authority for the loan/line of credit. Any special conditions of approval will be listed in the space provided on the form, including requirements for security, improved management practices, and the type and frequency of financial reports required by FmHA but not required by the lender. An attachment to the forms may be used if necessary.

3. Forward the loan docket to the appropriate approval official if the loan/line of credit is not within the County Supervisor's approval authority.

B. The approval official will:

1. Forward the loan docket to the appropriate approval official if the loan/line of credit exceeds the State Director's approval authority or when the State Director needs assistance in handling any complaints of noncompliance.

2. Approve or disapprove all guaranteed applications not later than 30 calendar days (14 calendar days for CLP Lenders) after receipt of completed applications, execute Form FmHA 1940–3, and distribute the copies in accordance with the FMI. In order to meet the prompt approval requirement when guarantee authority is temporarily exhausted and the loan will be approved, Form FmHA 1940–3 must be signed. When funds are exhausted, a Conditional Commitment for Guarantee will not be executed until such time as funds become available and have been obligated in connection with the guarantee request.

3. After loan funds have been obligated, the lender will be sent Form FmHA 1980–15. The following, and any other special conditions will be set forth on Form FmHA 1980–15. An attachment to the form may be used, if necessary.

a. Requirements for security and, when appropriate, a requirement for the lender to obtain an assignment on all USDA crop and livestock program payments.

b. Type and frequency of financial reports required by FmHA but not required by the lender.

c. Improved management practices relating to highly erodible land and conversion of wetlands found in Exhibit M of subpart G of part 1940 of this chapter.

4. return Form FmHA 1980–15 to the County Supervisor for execution and proper distribution.

23. Section 1980.116 is revised to read as follows:

§ 1980.116 Review of requirements

The lender, after reviewing approval conditions and security requirements as set forth in Form FmHA 1980–15, will complete and execute the "Acceptance or Rejection of Conditions" and return a copy to the County Supervisor. If the conditions cannot be met, the lender and applicant may propose alternatives to the County Supervisor. These alternatives will be considered and the lender will be advised of FmHA's decision to accept or reject the alternatives. If accepted, Form FmHA 1980–15 will be so revised. If rejected, the County Supervisor will notify the loan application and the lender in writing within 10 calendar days of FmHA's decision as set out in subpart A of part 1910 of this chapter, of all the specific reasons for the decision, and advise them of their opportunity for appeal as set out in subpart B of part 1900 of this chapter, and in accordance with § 1980.80 of subpart A of this part.

24. Section 1980.117 is amended by removing the introductory text; by adding paragraphs (a), (b), (c), and (d); and by revising Administrative paragraphs A and B to read as follows:

§ 1980.117 Conditions precedent to issuance of the Loan Note Guarantee or Contract of Guarantee.

(a) *Lender certification.* Prior to issuing Form FmHA 449–34 or Form FmHA 1980–27, the lender must certify to the conditions in § 1980.60 of subpart A of this part. This will be done by the execution of Form FmHA 1980–22, "Lender Certification."

(b) *Inspections.* The lender will notify FmHA of any scheduled field inspections during construction and after issuance of the Loan Note Guarantee or Contract of Guarantee. FmHA may attend such field inspections. Any inspections or review conducted by FmHA, including those with the lender, are for the benefit of FmHA only and not for other parties of interest. FmHA inspections do not relieve any parties of interest of their responsibilities to conduct necessary inspections, nor can these parties rely on FmHA's inspections in any manner.

(c) *Execution of form.* The lender has executed and delivered to FmHA Form FmHA 1980–38, "Agreement for Participation in Farmer Programs Guaranteed Loan Programs of the United States Government." See § 1980.61 of subpart A of this part for proper execution of this form. Form FmHA 1980–38 will be signed only once and will govern all loans/lines of credit guaranteed while the agreement is in effect.

(d) *Plans for marketing.* The lender advises FmHA of its plans to sell or assign any part of the loan as provided in Form FmHA 1980–38.

Administrative

* * * * *

A. Consult with the lender and applicant concerning any changes made to the initially issued or revised Form FmHA 1980–15. A copy of Form FmHA 1980–15 and any amendments will be included in the file.

B. Review the loan agreement between the borrower and lender which provides for the periodic submission of financial statements to the County Supervisor. An annual analysis report of the farming operation will be required. In line of credit cases, the County Supervisor will review with the non-CLP lenders, the requirement that the lender is to submit a current financial statement and cash flow prepared in accordance with § 1980.113 of this subpart for prior approval of advances made in the second and third years of a line of credit.

* * * * *

25. Section 1980.118 is amended by paragraph (d), and by revising paragraphs (b), (c) and Administrative paragraph A. to read as follows:

§ 1980.118 Issuance of Lender's Agreement, Loan Note Guarantee, Contract of Guarantee, and Assignment Guarantee Agreement.

* * * * *

(b) A guaranteed portion of the loan may not be sold by the lender until the loan has been fully disbursed to the borrower. The guaranteed portion of a line of credit will never be sold or assigned by the lender except as provided in part III of Form FmHA 1980–38.

(c) Each Loan Note Guarantee issued will contain the statement "This Loan Note Guarantee is issued under the Lender's Agreement dated _____." The date will be the same date entered in Part IV of Form FmHA 1980–38.

(d) Each Contract of Guarantee issued will contain the statement "This Contract of Guarantee is issued under Lender's Agreement dated _____." The date will be the same date entered in Part IV of Form FmHA 1980–38.

Administrative

A. *Section 1980.61(a).* For non-CLP lenders, the original Form FmHA 1980–38 will be kept in the County Office. For CLP lenders, the original Form FmHA 1980–38 will be kept in the State Office, with copies distributed to the appropriate County Office.

* * * * *

26. Section 1980.119 is added to read as follows:

§ 1980.119 Lender's sale or assignment of Guaranteed loan.

The lender may retain all of any guaranteed loan. The lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of loan(s) to the loan applicant or borrower or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. The lender may market all or part of the guaranteed portion of the loan at or after loan closing only if the loan is not in default as set forth in the terms of the note. A line of credit may only be marketed by participation. The lender may proceed as follows:

(a) *Disposition.* Prior to full disbursement, completion of construction, and acquisitions, disposition of the guaranteed portion of a loan may be made only with a prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisitions, the guaranteed portion of the loan may be disposed of as provided for in this section.

(b) *Assignment.* The lender may assign all or part of the guaranteed portion of any loan to one or more holders by using Form FmHA 449–36,

"Assignment Guarantee Agreement." As specified on this form, holder(s), upon written notice to the lender and FmHA, may reassign the unpaid guaranteed portion of the loan. On assignment notification, the assignee is responsible for all rights and obligations of the holder(s) as set forth on Form FmHA 449–36.

(c) *Multi-note System.* The holder receives from the lender the borrower's Form FmHA 449–34 and the attached executed note(s). The lender retains all rights under the security instruments (including personal and/or corporate guarantees) for the protection of the lender and the United states notwithstanding any contrary provisions under State law.

(1) At loan closing. The lender will provide for no more than 10 notes, unless the borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. FmHA will provide the lender with Form FmHA 449–34 for each of the notes.

(2) After loan closing. Upon written approval by FmHA, the lender may issue a series of new notes replacing previously issued guaranteed note(s), not to exceed the amount specified in paragraph (c)(1) of this section. FmHA will then provide the lender with a new Loan Note Guarantee to be attached to the new notes in exchange for the original Loan Note Guarantee which will be cancelled by FmHA. The following conditions must be met:

(i) The borrower agrees and executes the new notes.

(ii) The interest rate does not exceed the interest rate in effect when the loan was closed.

(iii) The maturity of the loan is not changed.

(iv) FmHA will not bear any expenses that may be incurred in reference to such re-issuance of notes.

(v) There is adequate collateral securing the note(s).

(vi) The secured lien priority remains the same.

(d) *Participations.* Participation occurs at the sale of an interest in the loan in which the lender retains the note, the collateral securing the note, and all responsibility for loan servicing and liquidation. The lender is required to retain a minimum of 10 percent of the total guaranteed loan[s] amount in its portfolio. The amount required to be retained must be from the unguaranteed portion of the loan. Participation with a lender by any entity does not make that entity a holder or a lender.

(e) *Rights and obligations.* Upon the lender's sale of the guaranteed portion of the loan, the holder will assume all rights of the Loan Note Guarantee pertaining only to the portion of the loan purchased. Lenders will remain bound to all obligations indicated in the Loan Note Guarantee, Form FmHA 1980–38, and the FmHA regulations.

(f) *Resale by Holder.* Upon written notice to the lender, the holder(s) may resell the unpaid guaranteed portion of the loan.

(g) *Lender Repurchase.* The lender has the option to repurchase the unpaid guaranteed portion of the loan from the holder(s) within 30 days of written demand by the holder(s) when: The borrower has not made payment of principal or interest due on the loan for 60 days or more; or the lender has failed to give the holder(s) its pro rata share of any payment made by the borrower within 30 days of receipt of payment. The repurchase by the lender will be for an amount equal to the unpaid guaranteed portion of the principal and accrued interest, less the lender's servicing fee. The Loan Note Guarantee will not cover the note interest to the holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. The lender will accept an assignment without recourse from the holder(s) upon repurchase. The lender is encouraged to repurchase the loan in order to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The lender will notify the holder(s) and FmHA of its decision.

(h) *FmHA Repurchase.* If the lender does not repurchase as provided by paragraph (g) of this section, FmHA will purchase, from the holder(s), the unpaid principal balance of the guaranteed portion together with accrued interest to the date of repurchase, within 30 days after written demand to FmHA, from the holder(s). Upon FmHA's repurchase, the lender will liquidate the account or reimburse FmHA the amount of the repurchase within 180 days of FmHA's repurchase. The Loan Note Guarantee will not cover the note interest to the holder on the guaranteed loan(s) accruing after 90 days from the date of the demand letter to the lender requesting the repurchase. Such demand will include a copy of the written demand made upon the lender.

(1) The holder(s), or its duly authorized agent, will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the originals of the Loan Note Guarantee and note properly endorsed to FmHA or the original of the Assignment Guarantee Agreement which has been properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will retain all rights of the holder(s). In its demand, the holder will specify the amount due including unpaid principal, unpaid interest to the date of demand, and interest which has accrued from the date of demand to the proposed payment date. FmHA will verify the amount of the unpaid principal and interest with the lender. Unless otherwise agreed to by FmHA, such proposed payment will ordinarily be within 30 days from the date of the demand to FmHA.

(2) FmHA will promptly notify the lender of the holder(s) demand for payment. The lender will promptly provide FmHA a current statement which has been certified by an appropriate authorized officer of the lender, of the unpaid principal and interest then owed by the borrower on the loan, and the amount due the holder(s).

(3) Any discrepancy between the amount claimed by the holder(s) and the information submitted by the lender must be resolved by the lender and the holder(s) before payment will be approved by FmHA. FmHA will not participate in resolution of any such discrepancy. Such a conflict will suspend the 30-day payment requirement. Upon receipt of the appropriate information, FmHA will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the State Director and the check(s) will then be sent to the holder(s).

(4) The lender further agrees that any purchase by FmHA does not change, alter, or modify any of the lender's obligations to FmHA specified in the loan or guarantee, nor does the purchase waive any of FmHA's rights against the lender. FmHA will have the right to set-off all lender's rights which have been passed along to FmHA from the holder against FmHA's obligation to the lender under the Loan Note Guarantee.

(5) Servicing fees assessed by the lender to a holder can only be collected from payment installments received by the lender from the borrower. When FmHA repurchases from a holder, FmHA will pay the holder only the amounts due to the holder. FmHA will not reimburse the lender for any servicing fees which have been assessed to the holder and not collected from the borrower. No service fee shall be charged to FmHA, and no such fee can be collectible from FmHA.

(6) The lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

27. Section 1980.122 is amended in the third sentence by removing the words "Form FmHA 449–35 or," and in the fourth sentence by removing the words "'Request Interest Assistance/ Interest Rate Buydown/Subsidy Payment to Guaranteed Loan Lender.'"

28. Section 1980.123 is amended by revising the words "410–1 'Application for FmHA Services,'" to "1980–25" in paragraph (b), by revising the reference "Form FmHA 410–1" to "Form FmHA 1980–25" in the last sentence of paragraph (c), by revising the reference "§ 1980.113(d)(9)(ii)" to "§ 1980.113 (a)(8)(ii)" in paragraph (h), and by removing the words "and, for new borrowers, FmHA 1980–50," in the last sentence of *Administrative* paragraph C.

29. Section 1980.125 is amended by revising paragraphs (c)(4) and (d)(4) to read as follows:

§ 1980.125 Debt write down.

* * * * *

(c) * * *

(4) Any amount recaptured will be shared on a pro-rata basis between the lender and FmHA as provided in Form FmHA 1980–38.

* * * * *

(d) * * *

(4) As provided by paragraph I.D.3. of Form FmHA 1980–38, the lender will remit to the holder the holder's pro-rata share of any estimated loss claim payments made by FmHA after the writedown.

* * * * *

30. Section 1980.130 is revised to read as follows:

§ 1980.130 Loan servicing.

The lender will service the entire loan as mortgagee and/or secured party of record in a reasonable and prudent manner, notwithstanding the fact that a holder may hold a portion of the loan. The lender will obtain compliance with the covenants and provisions in the note, security instruments, and any other agreements, and notify FmHA of any violations. Specific requirements include:

(a) Assuring that the borrower complies with all laws and ordinances which are applicable to the loan, the collateral, and/or operation of the farm.

(b) Obtaining the lien coverage and lien priorities specified by the lender and agreed to by FmHA and properly recording or filing lien or notice instruments in order to obtain and maintain such lien priorities during the existence of the guarantee by FmHA. In no case will FmHA pay a loss claim on the portion of a loss which results from a lender's failure to obtain a perfected security interest in the loan collateral.

(c) Obtaining assignments on all USDA crop and livestock program payments when required.

(d) Assuring that the borrower obtains marketable title to the collateral.

(e) Assuring that the borrower and any party liable for the loan is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

(f) Providing the FmHA County Office with loan status reports on Form FmHA 1980–41, "Guaranteed Loan Status Report." The non-CLP lender must submit these reports annually as of December 31. The CLP lender must submit these reports as of March 31 and September 30 each year.

(g) Obtaining financial statements from each borrower and guarantor at least annually. The lender is responsible for preparing an analysis of the farming operation, taking any servicing actions if required, and providing copies of the statements and a record of action to the FmHA office at least annually.

(h) Monitoring the use of loan funds to assure they will not be used for any unauthorized purpose, including any purposes that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands either to produce an agricultural commodity or to make the production of an agricultural commodity possible, as further explained in Exhibit M of subpart G of part 1940 of this chapter

(i) Assuring that the borrower has not converted loan security. If so, FmHA and the lender will determine whether the potential recovery will be cost effective. If it is determined that the recovery will be cost effective, the lender must pursue the conversion.

(j) Assuring that the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation.

(k) Assuring that proceeds from the sale or other disposition of collateral are accounted for and applied in accordance with the lien priorities on which the guarantee is based. Except as provided in § 1980.190(c) of this section, a lender may allow proceeds from the disposition of collateral, such as machinery, equipment, furniture, or fixtures to be used to acquire replacement collateral of similar nature and value only with written agreement from FmHA.

(l) Assuring that insurance loss payments, condemnation awards, or similar proceeds are applied to debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or acquiring needed replacement collateral with the written approval of FmHA.

(m) Seeing that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made; and that FmHA agrees to the overall development schedule.

Administrative

A. The lender has the responsibility for loan servicing and protecting the collateral. Prompt follow-up on delinquent payments and early recognition of problems are keys to resolving many delinquent loans. Contacts with the borrower, when determined necessary by the County Supervisor, will be made with the lender present.

B. The County Supervisor is responsible for monitoring the lender's servicing activities as follows:

1. Semi-annually, FmHA will conduct a review of each lender's loan files. A minimum of 40 percent of each non-CLP lender's outstanding guaranteed Farmer Programs loans will be reviewed annually. The lender will be reminded of the lender's responsibilities in servicing the loan as required in Form FmHA 1980–38 when deficiencies are noted. This review will be thoroughly documented in the loan file and any deficiencies will be discussed with the lender and the discussion will be confirmed in writing with a copy to the State Director through the District Director. Loans will be selected for review according to the following priority:

a. The most recent loans closed by the lender and not yet reviewed.

b. Delinquent loans or loans which the lender or FmHA has identified as high risk.

c. Loans in which the funds were used to refinance the lender's own debt.

d. Other loans.

2. Contact the State Office when the case file review indicates the lender or the borrower has failed to fulfill any of the loan approval conditions and the resulting problem cannot be resolved by the County Supervisor and the lender.

3. Take the action required to assist the lender in servicing a delinquent account.

4. Use an office management system for guaranteed loans to assure the lender submits required information to FmHA. The following information shall be reviewed and proper follow-up actions initiated.

a. Borrower's year-end balance sheet.

b. Form FmHA 1980–41.

c. Submission of an annual analysis.

d. Submission of Form FmHA 1980–44, "Guaranteed Loan Borrower Default Status." (Required when the borrower is 30 days past due and cannot get current within 60 days; the report is to be submitted every 60 days by the lender to the County Office and the County Office is to forward the original to the Finance Office.)

e. Submission of any other financial reports required on the Conditional Commitment by the approving official.

f. Verification that the County Office has a tracking system for field reviews on at least 20 percent of each CLP lender's and 40 percent of each non-CLP lender's guaranteed caseload.

g. Other required information.

5. Review the borrower's projected cash flow statement and supporting income and expense summary to determine the progress of the borrower and the soundness of the plan. The County Supervisor will respond within 14 calendar days to requests from non-CLP lenders to make advances for future year's expenses on lines of credit. The lender will submit a copy of the borrower's income and expenses for the previous year, the projected cash flow for the borrower's operation for the upcoming operation cycle, and a certification that the borrower is in compliance with the provisions of the line of credit agreement and the income and expenses for the previous year have been accounted for.

6. Contact, at least annually, all lenders with active shared appreciation agreements for borrowers who have received debt writedown. When making this contact, the County Supervisor will ascertain if any collection has been made from property covered by such agreement. Findings will be recorded in the County Office file. If any unauthorized collection is made by the lender, a report will be forwarded to the State Director.

C. The State Director will approve all debt writedowns. Approval will be evidenced by a letter to the lender with a copy to the borrower and signed by the State Director.

D. The District Director will:

1. Provide guidance and assistance to the County Supervisor in monitoring guaranteed loans/lines of credit.

2. Review all field visit reports and make recommendations or comments and transmit them to the State Director, if necessary.

3. In the case of a debt writedown, the District Director will review for concurrence and forward to the State Director as appropriate.

E. County Supervisors are authorized to approve or concur in:

1. Alterations in the approval conditions which will not prejudice the Government's interest.

2. Any replacement of collateral for the loan/line of credit.

3. All lien coverage and lien priorities on the collateral established by the lender before issuance of the Loan Note Guarantee or Contract of Guarantee.

4. Any deferral, rescheduling, or reamortization of the loan.

5. For debt writedown, the County Supervisor will recommend State Director approval through the District Director.

6. The use of proceeds from the disposition of collateral complying with the provisions of paragraph (k) of this section.

31. Section 1980.131 is added to read as follows:

§ 1980.131 Appraisal review.

The State Director or designee(s) will:

(A) Provide for the framework of the real estate appraisal review and monitoring function and the documentation thereof;

(b) Perform appraisal reviews in accordance with the requirements of Standard 3 of the USPAP and perform at least one appraisal review per fiscal year for either each appraiser, or each lending institution that prepares, or uses, a real estate appraisal for the guaranteed program in a given fiscal year; and

(c) Provide appraisal training and guidance to assist State and field office personnel in making guaranteed approval decisions and serve as a resource to approval and underwriting officials performing administrative appraisal reviews, as needed.

32. Section 1980.136 is revised to read as follows:

§ 1980.136 Protective advances.

Protective advances are advances made by a lender when the borrower is in liquidation or close to being liquidated to protect or preserve the collateral itself from loss or deterioration. Protective advances include advances made for property taxes, annual assessments, ground rent, hazard or flood insurance premiums affecting the collateral, and other expenses necessary to preserve or protect the security. Attorney fees are not a protective advance.

(a) FmHA written authorization is required on all protective advances in excess of $3,000 made by a CLP lender. For non-CLP lenders, the amount is $500.

(b) Protective advance requests requiring FmHA approval must be accompanied by a repayment plan showing adequate repayment ability for the advance and all other debts. If a feasible repayment plan cannot be developed, a liquidation plan will be submitted with the protective advance request.

(c) The County Supervisor is authorized to approve protective advances up to $10,000 and will consult with the lender on future servicing of the account. The State Director is authorized to approve protective advances in excess of $10,000. Such protective advances must be approved in writing by the County Supervisor or State Director.

(d) Protective advances must constitute a debt of the borrower to the lender and be secured by the security instrument(s).

(e) It is not intended that protective advances be made in lieu of additional loans.

32A. Section 1980.139 is revised to read as follows:

§ 1980.139 Termination of Loan Note Guarantee or Contract of Guarantee.

See paragraph 12 of Form FmHA 449–34, or paragraph 6 of Form FmHA 1980–27.

33. Section 1980.144 is amended by removing *Administrative* paragraph D; by redesignating *Administrative* paragraphs E, F, and G as D, E, and F, respectively; by revising the parenthetical phrase at the end of newly redesignated *Administrative* paragraph E from "(Refer to paragraph X C of Form FmHA 449–35 or Form FmHA 1980–38)." to read "(Refer to § 1980.119 of this subpart)."; and by revising the introductory text of paragraph (a), paragraph (d), and newly redesignated *Administrative* paragraph F to read as follows:

§ 1980.144 Bankruptcy

(a) *General.* In bankruptcies, there are two separate proceedings: liquidation and reorganization under the bankruptcy court's protection. It is the lender's responsibility to protect the guaranteed loan debt and all collateral securing the loan in bankruptcy proceedings (refer to § 1980.130 of this subpart). These responsibilities include, but are not limited to:

* * * * *

(d) *Loss payments.* (1) *Estimated loss payments.* If a borrower has filed for protection under a reorganization bankruptcy, the lender will request a tentative estimated loss payment of accrued interest and principal written off. This request can only be made after the bankruptcy plan is confirmed by the court. The lender will be entitled to accrued interest up to the date the confirmed plan becomes effective. Only one estimated loss payment is allowed during the reorganization bankruptcy. All subsequent claims during reorganization will be considered revisions to the initial estimated loss. A revised estimated loss payment may be processed by FmHA at its option in accordance with any court-approved changes in the reorganization plan. At the time the performance under the confirmed reorganization plan has been completed, the lender is responsible for providing FmHA with documentation necessary to review and adjust if necessary the estimated loss claim to reflect actual principal and interest reduction on any part of the guaranteed debt determined to be unsecured. The lender will use Form FmHA 449–30 to request an estimated loss payment and to revise an estimated loss payment during the course of the reorganization

plan. The estimated loss claim and any revisions of the claim will be accompanied by supporting legal documentation. Form FmHA 1980–44 will be submitted by the lender to the County Office at the beginning of and upon completion of the reorganization plan.

(2) *Interest loss payments.* (i) Interest loss payments for any court-ordered interest rate reduction sustained during the period of the reorganization plan will be processed in accordance with paragraph (d)(1) of this section. Interest loss claims will be filed on the anniversary date of the first payment under the confirmed plan and will include interest accrual to that date.

(ii) Interest loss payments sustained after the reorganization plan is completed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction extending beyond the period of the reorganization plan.

(iii) Form FmHA 449–30 will be completed to compensate the lender for the difference in interest rates specified on the Guaranteed Contract and the rate of interest specified by the bankruptcy court.

(3) *Final loss payment.* (i) Final loss payments will be processed when the loan is liquidated.

(ii) If the loan is paid in full without an additional loss, the Finance Office will close out the estimated loss account at the time notification of payment in full is received.

(4) *Payment application.* The lender must apply estimated loss payments first to the unsecured principal of the guaranteed portion of the debt and then to the unsecured interest of the guaranteed portion of the debt. If a court attempts to direct payments to be applied otherwise, the lender will notify the FmHA servicing office immediately.

(5) *Overpayments.* Upon completion of the reorganization plan, the lender will provide FmHA with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. As a result of the reorganization, if the actual loss sustained is greater than the estimated loss payment, the lender will submit a revised estimated loss form in order to obtain payment of the additional amount owed by FmHA. If the actual loss payment is less than the estimated loss, the lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of the payment of the estimated loss.

(6) *Protective advances.* Authorized protective advances may be included with the estimated loss payment associated with the reorganization bankruptcy, provided they were incurred in connection with liquidation of the account prior to the borrower filing bankruptcy. Protective advances during a bankruptcy reorganization are not authorized. As a result of a liquidation action, if approved protective advances were made prior to the borrower having filed bankruptcy, the protective advances and accrued interest will be entered on Form FmHA 449–30.

(7) *Legal fees.* Legal fees of any kind incurred to defend the bank's claim during the bankruptcy proceedings are not covered by the guarantee. Also, proceeds received from the sale of collateral during bankruptcy cannot be used to pay legal fees.

Administrative

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F. All loss claims must be approved by the State Director. The County Supervisor will accept Form 449–30 from the lender, review the form for accuracy, and forward the form to the State Director for approval. The State Director will submit Form FmHA 449–30 to the Finance Office.

34. Section 1980.145 is amended by revising paragraphs (a) and (b), and *Administrative* paragraph A to read as follows:

§ 1980.145 Defaults by borrower.

(a) See paragraph I.D.6. of Form FmHA 1980–38.

(b) The lender will prepare current financial information including a cash flow and will schedule a meeting with the County Supervisor and the borrower to discuss possible solutions including Interest Assistance to resolve the borrower's financial problems.

* * * * *

Administrative

A. The County Supervisor will review and distribute Form FmHA 1980–44 in accordance with the preparation instructions in the FMI upon receipt of the lender's default notification in accordance with paragraph I.D.5. of Form FmHA 1980–38. The County Supervisor will coordinate and process any request for FmHA to purchase (as outlined in § 1980.119 of this subpart) when the holder(s) is located in close proximity to the local lender. If any holder is located outside the area, the State Director will designate an employee to handle the repurchase arrangements. If the employee is not the County Supervisor, the County Supervisor will be notified of the transaction.

* * * * *

35. Section 1980.146 is revised to read as follows:

§ 1980.146 Liquidation.

If the lender concludes that liquidation of a guaranteed loan account is necessary due to default or third party actions which the borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the lender with FmHA. All liquidations must receive prior concurrence by the County Supervisor. The District Director or State Office will be consulted on complex cases for advice. When FmHA concurs with the lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the lender and the matter will be handled as follows:

(a) The lender will liquidate the loan unless FmHA, at its option, decides to carry out the liquidation. FmHA will exercise the option to liquidate only when there is reason to believe the lender's liquidating plan is not likely to provide a reasonably adequate recovery. If FmHA liquidates, all of the requirements for liquidating an FmHA insured loan will be followed (see subpart A of part 1955, subpart A of part 1962 and subpart A of part 1965 of this chapter). When FmHA exercises the option to liquidate, the State Director or designee will be the approval official. When such a decision is made, the approval official will submit Form FmHA 1980–45, "Notice of Liquidation Responsibility," to the Finance Office.

(b) When the decision to liquidate is made, the lender may proceed to purchase the guaranteed portion of the loan from the holder(s). The holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

(c) If the lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid its pro rata share of the proceeds from liquidation of the collateral first.

(d) The liquidation and loss claim will be handled as follows:

(1) *Lender's proposed method of liquidation.* The lender may use any method of liquidation customary to the farm lending industry so long as the method will result in the maximum collection possible on the debt. Within 30 days following the decision to liquidate, the lender will advise FmHA in writing of its proposed detailed method of liquidation. This is called a liquidation plan and will provide FmHA with the following:

(i) Proof of the lender's ownership of the guaranteed loan promissory note(s),

line of credit agreement(s) and related security instruments.

(ii) a list of borrower's assets including real and personal property, fixtures, claims, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, together with notice of which items are serving as collateral for the guaranteed loan.

(iii) A proposed method of maximizing the collection of debts. The lender should also specify how to collect any remaining loan balances of the guaranteed loan(s). After all loan collateral has been liquidated, possibilities for judgements will be determined.

(iv) The lender will obtain an independent appraisal report on all collateral securing the loan which will reflect the current market value and potential liquidation value. The appraisal report is to allow the lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the lender. Both the lender and FmHA recover this cost from the first collateral sales proceeds received, each taking half of the proceeds until the cost of the appraisal is recovered. The funds that are collected as recovery of an appraisal fee will be forwarded to the Finance Office along with Form FmHA 1980–40, "Reverse of Report of Liquidation Expense."

(v) An estimate of time necessary to complete the liquidation. When the lender is conducting a liquidation that the lender estimates will take longer than 90 days and owns any of the guaranteed portion of the loan, the lender will request a tentative loss estimate by submitting to FmHA an estimate of the loss claim that will occur upon liquidation of the loan. The estimated loss claim will be submitted with the liquidation plan.

(vi) In cases where the lender becomes aware that the borrower has converted loan security, FmHA and the lender will determine whether the potential recovery will be cost effective. The lender must address in the liquidation plan whether the recovery will be pursued.

(2) *FmHA's response to lender's liquidation plan.* The County Supervisor will have approval authority for the lender's liquidation plan. FmHA will inform the lender in writing whether it concurs with the lender's liquidation plan within 30 days upon receipt of such plan from the lender. If FmHA needs additional time to respond to the liquidation plan, it will inform the lender of an alternate deadline for the response. Should FmHA and the lender not agree on the lender's liquidation plan, negotiation will take place between FmHA and the lender to resolve any disagreement. Should FmHA opt to conduct the liquidation, FmHA will proceed as follows:

(i) The lender will transfer to FmHA all rights and interests necessary to allow FmHA to liquidate the loan. In this event, the lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

(ii) FmHA attempt to obtain the maximum amount of proceeds from the liquidation.

(iii) FmHA may choose one or any combination of the usual commercial methods of liquidation.

(3) *Acceleration.* The lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the debt is necessary, including giving any notices and taking any other required legal action. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the lender, as the case may be.

(4) *Liquidation—accounting and reports.* When the lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, final costs, and any additional procedures necessary for successful completion of liquidation. The County Supervisor will accept or reject the accounting reports as submitted by the lender. When FmHA is the holder of a portion of the guaranteed loan, the lender will transmit to FmHA any payment received from the borrower, including the pro rata share of liquidation or other proceeds, using Form FmHA 1980–43, "Lender's Guaranteed Loan Payment." When FmHA liquidates, the lender will be provided with similar reports (with copies to the District and State FmHA offices).

(e) Form FmHA 449–30 will be used to calculate the estimated and final loss. The State Director has approval authority for all loss claims. If approved, the State Director will submit Form FmHA 449–30 to the Finance Office, with copies to the District and County Office. The Finance Office will forward loss payment checks within 10 days of receipt of the request to the County Supervisor for delivery to the lender.

(1) *Estimated loss payments.* Estimated loss payments may be approved by FmHA only after the lender has received FmHA's approval of the liquidation plan, debt writedown plan, or a reorganization plan which has been approved by the bankruptcy court. FmHA agrees to pay an estimated loss, provided the lender applies the payment to the outstanding principal balance owed on the guaranteed debt. The lender will discontinue interest accrual on the defaulted loan at the time the estimated loss claim is approved by FmHA. The estimate will be prepared and submitted by the lender on Form FmHA 449–30, using the appraisal value as opposed to the amount received from the sale of the collateral. Estimated loss payments will be inserted under "Amount Due Lender" on Form FmHA 449–30. The Director, Finance Office, will forward loss payment checks within 30 days of receipt of the request.

(2) *Final loss payments.* In all liquidation cases, final settlement will be made with the lender after the collateral is liquidated. FmHA will have the right to recover any losses it paid under the Guarantee from the borrower or any other liable party.

(i) After the lender has completed liquidation, FmHA may audit the account and will determine the actual loss upon receipt of the final accounting and Report of Loss. If FmHA has any questions regarding the amount set forth in the final Report of Loss, it will investigate the matter. The lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, the loss claim will be tentatively approved in the space provided on the form for that purpose. If a lender's final loss claim is either denied or reduced, the County Supervisor will notify the lender in writing within 10 days of FmHA's decision, of all the reasons for the decision, and advise the lender of its opportunity for an appeal as set out in § 1980.80 of subpart A of this part and subpart B of part 1900 of this chapter.

(ii) In those instances where the lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss monies advanced as protective advances, including any accrued interest resulting from the protective advances. Payment will be made by FmHA when the final Report of Loss is approved.

(iii) Final loss payments will be made within 30 days after review of the accounting of the collateral.

(iv) When the lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

(A) If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owed by FmHA to the lender. If FmHA has conducted the liquidation, it will provide an accounting and Report of Loss to the lender and will pay the lender in accordance with the Loan Note Guarantee.

(B) If the loss is less than the estimated loss, the lender will reimburse FmHA for the overpayment plus interest at the note rate from the date of overpayment.

(3) *Future recovery.* The County Supervisor will establish a follow-up to contact lenders in writing who have received final loss claim payments to report any collections made on the guaranteed loans. Such follow-up will be made annually for 5 years after the final loss claim is paid. The County Supervisor will report the results of the follow-up to the State Director no later than 10 working days after the end of the fiscal year. The State Director will consolidate the County Office reports and report the results to the Administrator by November 1 of each year. The information to be reported will be: lender, borrower, case number, loss claim amount, amount collected, and amount submitted to FmHA.

(4) *Maximum amount of interest payment.* Notwithstanding any other provisions of this subpart, the amount payable by FmHA to the lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, any loss which occurred by accrued interest will be covered by the guarantee only to the date FmHA accepts responsibility for the liquidation. Any loss occasioned by accrued interest will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the lender, provided it proceeds expeditiously with the liquidation plan approved by FmHA, except when an estimated loss claim is filed. If a lender files an estimated loss claim, the lender will discontinue interest accrual on the defaulted loan when the estimated loss claim is approved by FmHA. The balance of any accrued interest payable to the lender will be calculated on the final Report of Loss form.

(5) *Application of FmHA loss payment.* The estimated loss payment shall be applied as of the date of such payment. The total amount of the loss payment drafted by FmHA will be applied by the lender on the guaranteed portion of loan debt. However, such application does not release the borrower from liability. Such amounts are only to compensate the lender for the loss. In all cases, a final Form FmHA 449–30 prepared and submitted by the lender must be processed by FmHA in order to close out files.

(6) *Income from collateral.* Any net rental or other income that has been received by the lender from the collateral will be applied on the guaranteed loan debt.

(7) *Liquidation costs.* Certain reasonable liquidation costs will be allowed during the liquidation process. Reasonable is defined as the prevailing rate charged in the area for like services. These liquidation costs will be submitted as part of the liquidation plan. Such costs will be deducted from gross proceeds from the disposition of collateral, unless the costs have been previously determined by FmHA to be protective advances. Therefore, if liquidation never occurs or if liquidation is conducted by someone other than the lender (a bankruptcy trustee, for example), there can be no allowable liquidation costs. If circumstances have changed after submission of the liquidation plan which require a revision of liquidation costs, the lender will obtain FmHA's written concurrence prior to proceeding with any proposed changes. No in-house expenses of the lender will be allowed. In-house expenses include, but are not limited to: employee's salaries, staff lawyers, travel, and overhead.

(8) *Foreclosure.* The lender is responsible for determining who the necessary parties are to any foreclosure action or who should be named on a deed of conveyance taken in lieu of foreclosure. When the conveyance is received and the property is liquidated, the net proceeds will be applied to the guaranteed loan debt. If FmHA has repurchased the guaranteed portion of the loan from the holder, the lender must obtain FmHA's concurrence to any foreclosure action to be taken by the lender; however, FmHA will not be considered to be a necessary party to the action or otherwise required to join in.

36. Section 1980.175 is amended by revising the introductory text of paragraph (b) and paragraph (f)(2) to read as follows:

§ 1980.175 Operating loans.

* * * * *

(b) *Loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR part 1308, which is Exhibit C to subpart A of part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the Loan Note Guarantee or the Contract of Guarantee in any crop year, the individual or entity shall be ineligible for a guaranteed loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Loan applicants will attest on Form FmHA 1980–25, that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

* * * * *

(f) * * *

(2) Except for lines of credit made under the CLP program, all advances on a line of credit must be made within 3 years from the date of the Contract of Guarantee. For lines of credit made under the CLP program, all advances must be made within 5 years from the date of the Contract of Guarantee.

* * * * *

37. Section 1980.185 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 1980.185 Soil and water loans.

* * * * *

(b) *Soil and Water loan eligibility requirements.* In accordance with the Food Security Act of 1985 (Pub. L. 99–198) after December 23, 1985, if an individual or any member, stockholder, partner, or joint operator of an entity is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance (see 21 CFR part 1308, which is Exhibit C of subpart A of part 1941 of this chapter and is available in any FmHA office, for the definition of "controlled substance") prior to the issuance of the Loan Note Guarantee in any crop year, the individual or entity shall be ineligible for a loan guarantee for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and the four succeeding crop years. Applicants will attest on Form FmHA 1980–25, that as individuals or that its members, if an entity, have not been convicted of such crime after December 23, 1985. In addition, the following requirements must be met:

* * * * *

38. Section 1980.190 is added to read as follows:

§ 1980.190 Certified Lender Program—Operating loans.

(a) *General.* This section provides policies and procedures for the Certified Lender Program (CLP) for guaranteed Operating Loans (OL) described in § 1980.175 of this subpart. The objectives are to minimize the time required for certified lenders to obtain responses to requests for guarantees, permit maximum use of forms normally used by the lender, permit lenders to certify compliance rather than providing verifications, and give additional flexibility to those lenders with a proven ability to process and service Farmers Home Administration (FmHA) guaranteed loans. FmHA will make the final determination on eligibility, loan purposes and repayment terms. Form FmHA 1980–38 will serve as the "Lender's Agreement" for guarantees issued by FmHA under this section.

(1) *Authority.* The authorizations contained in this section provide:

(i) Methods for initial approval period, subsequent approval period(s) and revocation of CLP status;

(ii) Methods a CLP lender will use to process, service and conclude guaranteed OLs;

(iii) Methods FmHA will use to consider a CLP lender's request for guarantee and monitor guaranteed OL loan activities.

(2) *Policy.* The purpose of the CLP program is to enable not larger than family farm owners and/or operators to establish or continue a credit relationship with a commercial agricultural lender in situations where the lender could not otherwise extend credit.

(3) *List of lenders.* The County Supervisor will maintain a current list of lenders who express a desire to participate in the guaranteed program. This list will be made available to farmers upon request.

(b) *Lender approval, subsequent approval period(s), monitoring and revocation of CLP status.* Lenders who meet the required and other criteria may be granted CLP status for a period not to exceed 5 years by the State Director for the State in which the lender is authorized to do business. All initial and any subsequent approvals of the CLP status will be in the form of an agreement signed by the State Director and the lending institution. The agreement will be Form FmHA 1980–38. The agreement will not apply to branches or suboffices of the lender unless specifically named in the agreement. The CLP status of any lender may be revoked by the FmHA State Director as outlined in paragraph (b)(3) of this section. State Directors will keep their respective FmHA County and District Offices fully informed, by use of State supplements, of the names and addresses of all lending institutions, branches or suboffices that hold CLP status. The name of each CLP lender's designated person or agricultural loan officer who will process and service guaranteed loans for the CLP lender will be included.

(1) *Lender approval.* Any lender who desires to apply for CLP status must also be an "Eligible Lender" as defined in § 1980.13(b) of Subpart A of this part. Lenders who meet this requirement and desire CLP status will prepare a written request to the State Director for the State in which they desire to have CLP status. The written request will address each item of the required criteria outlined in paragraphs (b)(1) (i) through (viii) of this section and may be accompanied by any supporting evidence or other information the lender believes will be helpful to the State Director in making a decision on the application for CLP status. Any FmHA County, District or State Office may provide a lender who desires to apply for CLP status a complete copy of Subparts A and B of this part, and will assist in completion of the request. The State Director will make any necessary investigation or inquiry to determine accuracy of information and notify the lender within 15 days of receipt of a request that the request is approved, denied, or requires additional information. Other than as noted in this paragraph, before a State Director approves a lender for CLP status, the lender must:

(i) Provide evidence of being an "Eligible Lender" as defined in subpart A of this part.

(ii) Provide information to show that loan losses—net of recovery—do not exceed the CLP Loss Rate. The CLP Loss Rate will be periodically established by the Administrator, FmHA, and published in Exhibits B to FmHA Instruction 440.1. This Instruction is available in any FmHA office. The CLP Loss Rate equals the amount of guaranteed OL, FO, and SW total loss claims paid on loans made in the past 7 years divided by the total loan amount of the OL, FO, and SW loans guaranteed in the past 7 years.

(iii) Have the capacity to process and service FmHA guaranteed OL loans/lines of credit.

(iv) Designate a person(s) who will process and service FmHA guaranteed OL loans/lines of credit. The lender must certify that this person(s) has attended FmHA loan processing and servicing training sessions within the previous 12 months, or that the person(s) will attend such training prior to the lender's submission of the first guarantee request under the CLP program. The lender must also agree to send the designated person(s) to future FmHA training sessions at least annually.

(v) Agree to use forms acceptable to FmHA for processing, analyzing, securing and servicing FmHA guaranteed loans/lines of credit. Copies of financial statements, cash flow plans, budgets, loan agreements, analysis sheets, collateral control sheets, security and other forms to be used must be submitted for FmHA acceptability with request for CLP status. See § 1980.109 and § 1980.113 of this subpart for required forms.

(vi) Agree to abide by all applicable conditions of Form FmHA 1980–22 for all loan guarantees.

(vii) Have closed a minimum of 10 FmHA guaranteed loans or lines of credit and closed 5 FmHA guaranteed loans or lines of credit (not including readvances on lines of credit) within the past 2 years.

(viii) Have an acceptable financial strength rating as reported by a lender rating service selected by the Administrator, FmHA.

(2) *Sebsequent approval period(s).* Renewal of Form FmHA 1980–38 is not automatic.

(i) Lender Responsibilities—A lender must submit a written request for renewal of Form FmHA 1980–38. The request must be submitted to FmHA at least 60 days prior to the expiration of the existing Form FmHA 1980–38. The request must contain at least the following:

(A) A formal request for a new 5-year designation as a CLP Lender.

(B) A brief summary of the lender's CLP lending activity. The summary must include the dollar amount and number of FmHA guaranteed Farmer Programs loans in the lender's portfolio and the number and dollar amount of all FmHA guaranteed Farmer Programs loans the lender processed as a CLP lender.

(C) Information to indicate that FmHA guaranteed Farmer Programs net loan losses (reflecting any future recovery) do not exceed the CLP loss rate.

(D) A current update of the data required in paragraph (b)(1) of this section and any proposed changes in the designated person(s) for processing guaranteed loans, forms used, or operating methods used in FmHA guaranteed Farmer Programs loan processing and servicing.

(ii) FmHA Responsibilities:

(A) Upon receipt of a lender's renewal request, the State Director will complete a review of the information submitted by the lender. The State Director will also review the lender's CLP performance and consult with appropriate District and County Office personnel.

(B) FmHA must notify a lender of any additional information needed to process a CLP renewal request within 14 days of receipt of the request.

(C) The State Director will determine whether the lender continues to meet the CLP criteria set forth in this section, and whether a new Form FmHA 1980–38 can be executed.

(D) The State Director will notify the lender in writing of approval, or conditions the lender must meet for approval, or reasons for denial of the request for renewed CLP status. Lenders will be advised of their appeal or review rights as set out in subpart B of part 1900 of this chapter and in accordance with § 1980.80 of subpart A of this part.

(E) FmHA must notify the lender of the approval or denial of the renewal request at least 30 days after receiving a completed request for renewal.

(3) *FmHA monitoring and revocation of CLP status.* CLP status will lapse upon expiration of any 5-year period unless the lender obtains a new agreement under this section.

(i) The State Director will designate certified lenders in accordance with the terms and conditions of this section and Form FmHA 1980–38, and is responsible for managing the CLP program within the State and the following:

(A) Establishing an operational file for each CLP lender in the State Office. The file will include Form FmHA 1980–38 and all information related to the lender's CLP activities.

(B) Providing all County Offices named in Part IV of Form FmHA 1980–38 with a copy of the agreement and complete application material approved in connection with CLP status.

(C) Monitoring CLP lenders' loan making and servicing activities to determine compliance with the CLP agreement and subparts A and B of this part pertaining to guaranteed OL loans/lines of credit. This includes assuring that lender files are reviewed in accordance with this section.

(D) Conducting a review of each CLP lender's performance at least annually.

(E) Assuring that effective training sessions are conducted for CLP lender personnel at least annually.

(F) Taking appropriate action against a lender when justified, including revocation of CLP status for the reasons specified in paragraph (b)(3)(iv) of this section, and initiation of Suspension or Debarment action in accordance with subpart M of part 1940 of this chapter. The lender must be notified, in writing, of any such actions taken.

(ii) The District Director will assist the State Director in monitoring CLP performance, and will monitor County Office administration of the CLP program.

(iii) The County Office will normally be the primary contact point for CLP activities. The County Supervisor is responsible for:

(A) Establishing an operational file for each CLP lender in the office jurisdiction, which will include a copy of the Form FmHA 1980–38, the forms accepted in conjunction with CLP designation, documentation of the results of reviews of the lender's loans, and any other information relative to the lender's CLP activity in that Country Office.

(B) Processing CLP requests for guarantees.

(C) Reviewing CLP lender loan files in accordance with paragraph (d)(3) of this section, unless the State Director delegates this responsibility to another official.

(D) Advising the State Director of CLP lender performance at least annually, and immediately upon discovery of deficiencies in file reviews.

(iv) The State Director may revoke the lender's CLP status at any time for due cause. Cause for revocation of CLP status is limited to any of the following:

(A) The lender's FmHA guaranteed farm loan loss rate exceeds the CLP loss rate.

(B) Failure to maintain "required criteria" as approved in the application for CLP status.

(C) Changes in ownership.

(D) Failure to properly process and/or service FmHA guaranteed Farmer Programs loans.

(E) Violation of the terms of the Form FmHA 1980–38.

(F) Failure to correct cited deficiencies in loan documents within 30 days of notification by FmHA of the deficiencies.

(G) Knowingly submitting false information to FmHA when requesting a guarantee, or basing a guarantee request on information known to be false.

(H) Failure to submit status reports (as required by Form FmHA 1980–38 and this section) in a timely manner.

(v) A lender which has lost CLP status may continue to submit loan guarantee requests, but only as a non-CLP lender. When CLP status is revoked, FmHA will work with the lender, when possible, to help it regain CLP status. When Form FmHA 1980–38 is terminated under paragraph (b)(3)(iv)(G) of this section (knowingly submitting false information), National Office concurrence must be obtained prior to returning the lender to CLP status.

(c) *CLP lender responsibilities to process, service and liquidate Guaranteed OL loans/lines of credit.* (1) *Processing.* Before accepting an application for a guaranteed loan or line of credit, the CLP lender will review subparts A and B of this part. The lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth for OL loans/lines of credit in § 1980.175 of this subpart. All requests for guaranteed loans or lines of credit will be processed under subparts A and B of this part except as modified by this section.

(i) If the lender concludes that an application will be considered, a written statement of basis for the conclusion will be placed in the applicant's file maintained by the lender addressing each of the loan eligibility requirements in § 1980.175(b) of this subpart.

(ii) The CLP lender will only be required to submit Form FmHA 1980–25 with the applicable attachments and sections completed. The CLP lender is certifying that all information required by § 1980.113 of this subpart is maintained in its loan file.

(iii) CLP lenders will process all guaranteed OL loans/lines of credit as a "complete application" by obtaining and completing all required items described in § 1980.113 of this subpart.

(iv) CLP lenders are responsible for meeting the lender's requirements contained in Exhibit M to subpart G of part 1940 of this chapter.

(v) A guaranteed OL loan/line of credit loan will not be closed by a CLP lender prior to receipt of Form FmHA 1980–15 and the determination that all conditions, including the execution of Form FmHA 1980–22, can be met.

(vi) The CLP lender will be responsible for fully securing the OL loan or line of credit under § 1980.175(g) of this subpart.

(vii) CLP lenders may consult with the FmHA County Supervisor at any time during the processing and will make all material relating to any guarantee application available to FmHA for review upon request.

(2) *Servicing.* CLP lenders will be fully responsible for servicing, protecting, and accounting for the collateral for all loans/lines of credit guaranteed. A CLP lender may allow proceeds from the disposition of collateral, such as machinery, equipment, furniture, or fixtures to be used to acquire replacement collateral o

a similar nature and value without written agreement from FmHA.

(3) *Liquidation of loans/lines of credit.* Any liquidation of guaranteed OL loans/lines of credit will be completed by the lender. Loss claims will be submitted in accordance with the CLP agreement on Form FmHA 449–30. The Report of Loss will be accompanied by supporting information to outline disposition of all security and proceeds pledged to secure the loan/line of credit.

(d) *FmHA responsibilities.*—(1) *Evaluation.* (i) FmHA will complete the evaluation described in § 1980.114 of this subpart in any case where the approval official determines an independent analysis is needed before approval or denial of a request for guarantee.

(ii) The FmHA County Supervisor will complete the environmental review required by subpart G of part 1940 of this chapter and will review each request for a guarantee, and immediately contact the CLP lender within five working days if the information is not clear or is inadequate for County Committee review.

(iii) FmHA may, on a case by case basis, request additional information from the CLP lender or review the CLP lender's loan file if needed to determine whether the applicant is eligible, the loan/line of credit is for authorized purposes, there is reasonable assurance of repayment ability, and sufficient collateral and equity is available. Requests for additional information shall only be made in situation when, because of the unique characteristic of the loan request, an eligibility or approval decision cannot be made.

(2) *Notification.* FmHA will make the final determinations on the eligibility of applicants for a guaranteed OL loan/line of credit, and the purposes and terms of such loan/lines of credit. The CLP lender will be notified of FmHA's eligibility and approval decision within 14 calendar days of receipt of a completed application.

(3) *Monitoring.* FmHA will monitor each CLF lender's guaranteed loan/line of credit files to assure that the lender is complying with requirements of this subpart. The FmHA official who conducts these reviews will document the review in the FmHA County Office file. Any discrepancies noted and not resolved will be discussed with the lender and confirmed in writing with a copy to the State Director through the District Director. State Directors may establish additional reviews and reporting systems as necessary to insure the guaranteed program complies with subparts A and B of this part. Semi-annually, FmHA will conduct a review of each lender's loan files. A minimum of 20 percent of each CLP lender's outstanding guaranteed Farmer Programs loans will be reviewed annually. The lender will be reminded of the lender's responsibilities in servicing the loan as required in Form FmHA 1980–38 when deficiencies are noted. Any deficiencies will be discussed with the lender and the discussion will be confirmed in writing with a copy to the State Director through the District Director. Loans will be selected for review according to the following priority:

(i) The most recent loans closed by the lender and not yet reviewed.

(ii) Delinquent loans or loans which the lender or FmHA has identified as high risk.

(iii) Loans in which the funds were used to refinance the lender's own debt.

(iv) Other loans.

(e) *Percent of guarantee.* All guarantees issued under the CLP program will be no less than 80 percent but not more than 90 percent.

(f) *Relationship with Approved Lender Program.* (outlined in Exhibit A of this subpart)

(1) All existing ALP agreements will continue to be followed until they expire, are revoked, or are replaced by Form FmHA 1980–38.

(2) All existing loans will continue to be serviced as provided in the Lender's Agreement under which the loan was approved.

(3) ALP lenders will continue to be governed by the servicing and reporting requirements in the existing ALP agreements.

(4) ALP lenders may, at any time, apply for CLP status. If CLP status is approved, the lender's ALP designation will be considered expired for OL loans/lines of credit, and the lender will be so notified in writing by FmHA.

(5) Lenders may apply for both an OL loan/line of credit under the CLP program, and an FO or SW loan under the ALP program using the same application.

(g) *Reporting requirements.* The CLP lender will be responsible for providing FmHA with the following information on the loan and borrower:

(1) A year end balance sheet for each borrower.

(2) Form FmHA 1980–41 as of March 31 and September 30 each year.

(3) For lines of credit, a certification stating that a projected cash flow has been developed and is feasible, that the borrower is in compliance with the provisions of the line of credit agreement, and the previous year income and expenses have been accounted for.

39. Exhibit A to Subpart B of part 1980 is amended by revising the words "Lender's Agreement (Line of Credit)" to "Agreement for Participation in Farmer Programs Guaranteed Loan Programs of the United States Government" in the second sentence of the introductory text of part I. and by revising paragraph A. of part III and the second sentence of the introductory text of part IV. to read as follows:

Exhibit A to Subpart B—Approved Lender Program—Farm Ownership, Soil and Water and Operating Loans

* * * * *

III. ALP Lender Responsibilities to Process, Service and Liquidate Guaranteed OL, SW and FO loans

A. *Processing.* Before accepting an application for a guaranteed loan or line of credit, the ALP lender will review Subparts A and B of this part. If the lender concludes that an application will be considered, a written statement of basis for the conclusion will be placed in the applicant's file maintained by the lender addressing each of the loan eligibility requirements in §§ 1980.175(b); 1980.180(b) or 1980.185(b) of this subpart. The lender must abide by limitations on loan purposes, loan limitations, interest rates, and terms set forth for OL loans/lines of credit and FO and SW loans in §§ 1980.175, 1980.180 and 1980.185 of this subpart. All requests for guaranteed loans or lines of credit will be processed under Subparts A and B of this part except as modified by this Exhibit. The ALP lender will, for each application for a guaranteed loan or line of credit, obtain a Form FmHA 1980–25, "Farmer Programs Application," signed by the loan applicant. ALP lenders will process all guaranteed OL loans/lines of credit or SW or FO loans as a "complete application" by obtaining and completing all required items described in § 1980.113 of this subpart. ALP lenders are responsible for meeting the lender's requirements contained in Exhibit M to Subpart G of Part 1940 of this chapter. An ALP lender will only be required to submit Form FmHA 1980–25 and information on crops, livestock and financial condition on forms previously approved for use under paragraph II A of this Exhibit and, with any supportive information attached, to FmHA for making application for a guarantee. A guaranteed OL loan/line of credit or SW or FO loan will not be closed by an ALP lender prior to receipt of Form FmHA 1980–15, "Conditional Commitment (Farmer Programs)," and

the determination that all conditions, including the certification required by § 1980.60 of subpart A of this part can be met. The ALP lender will be responsible for fully securing the OL loan or line of credit under § 1980.175(g), FO loan under § 1980.180(f) or SW loan under § 1980.185(f) of this subpart. ALP lenders may consult with the FmHA County Supervisor at any time during the processing and will make all material relating to any guarantee application available to FmHA for review upon request. The relationship between ALP and CLP is described in § 1980.190(f) of this subpart.

* * * * *

IV. * * * The FmHA County Supervisor will complete the required environmental review and will review each Form FmHA 1980–25, compare material with the County Office copy of ALP agreement, approved forms and methods, and immediately contact the ALP lender within three working days if the information is not in accordance with the approved agreement, is not clear or is inadequate for County Committee review. * * *

* * * * *

40. Exhibit D to Subpart B of part 1980 is amended by revising the words "part 1980" to "this part" in the second sentence of part I.; by revising the words "by FmHA" to "by the Farmers Home Administration (FmHA)" in the first sentence of the second unidentified paragraph of part II.; by revising the reference "§ 1980.113 (d)(8)" to "§ 1980.113" in paragraphs B., D., and F. and the words "the Farm and Home Plan" to "Form FmHA 431–2, 'Farm and Home Plan,'" in the first sentence of paragraph D.(3) of part III.; by removing the words, "'Interest Assistance Worksheet/Needs Test,'" from paragraph A. and by adding the words "of this Exhibit" following the reference "Attachment 2" in the last (unidentified) paragraph of part VI.; by adding the words "of this Exhibit" following the reference "paragraph VIII E" in the last sentence of paragraph F. of part VIII; by adding the words "of Subpart A of this part" following the reference "§ 1980.61" in the introductory text of paragraph B of part IX.; by adding the words, in quotes, "Lender's Agreement," following the reference "Form FmHA 449–35" in the first sentence of paragraph G. of part XIII; and by revising part V., paragraph D. of part VIII., and the fourth sentence of paragraph E. of part XIII to read as follows:

Exhibit D of Subpart B—Interest Assistance Program

* * * * *

V. Requests for Interior Assistance

A. Applications for guaranteed loans(s)/line(s) of credit shall be processed in accordance with § 1980.113 of this subpart and with this section.

B. To apply for Interest Assistance in conjunction with a request for guarantee, the lender will complete Form FmHA 1980–25, "Farmer Programs Application." Additionally, such application must include a copy of Attachment 2 to this exhibit completed by the lender. A proposed debt repayment schedule which shows principal and interest payments for the proposed loan, in each year of the loan, will also be submitted with the application.

C. To request Interest Assistance on an existing guaranteed loan, the lender shall submit to FmHA the following:

1. Form FmHA 1980–25.

2. Attachment 2 to this exhibit.

3. Proposed debt repayment schedule which shows scheduled principal and interest payments for the subject loan, in each of the remaining years of the loan.

4. Cash flow budgets, pro forma income and expense statements, and supporting justification to document that the request meets the requirements outlined in paragraph IV of this exhibit.

5. Verification of non-farm income. The lender may use Form FmHA 1910–5, "Request for Verification of Employment," or other similar documentation.

6. Verification of all debts of $1,000 or more. The lender may use Form FmHA 440–32, "Request for State of Debts and Collateral," or any other documentation.

7. Documentation of the borrower's and lender's compliance with the requirements of Exhibit M to subpart G of part 1940 of this chapter, if the affected loan/line of credit is not already subjected to this provision.

D. Requests for Interest Assistance on Contracts of Guarantee (Lines of Credit) or Loan Note Guarantees for annual operating purposes must be accompanied by a projected monthly cash flow budget.

* * * * *

VIII. Approval of Interest Assistance

* * * * *

D. For requests which include requesting funds in order to issue a guarantee on the loan/line of credit, prepare Form FmHA 1980–15, "Conditional Commitment (Farmer Programs)." In no case will Form FmHA 1980–15 be executed prior to verification of the obligation of both loan/line of credit and Interest Assistance funds.

* * * * *

XIII. Servicing of Loans/Lines of Credit Covered by an Interest Assistance Agreement

* * * * *

E. * * * Interest loss payments will be processed in accordance with § 1980.144 of this subpart. * * *

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Subpart E—Business and Industrial Loan Program

§ 1980.498 [Amended]

41. Section 1980.498 is amended by removing "(d)(7)(ii)" in paragraph (l)(4) and by removing paragraph (m)(5)(iv).

Dated: June 11, 1993.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93–14486 Filed 6–23–93; 8:45 am]

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Federal Register

Thursday
June 24, 1993

Part III

Department of Transportation

Federal Highway Administration

49 CFR Part 384

State Compliance With Commercial Driver's License Program; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 384

[FHWA Docket No. MC–93–9]

RIN 2125–AC53

State Compliance With Commercial Driver's License Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA proposes standards which States must meet to substantially comply with section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986, to avoid the loss of Federal-aid highway funds as provided in section 12011 of the Act. In addition, the FHWA proposes a process to determine annually whether each State meets these standards and to effect the withholding of highway funds in the event of noncompliance.

DATES: Comments must be received on or before August 23, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–93–9, Room 4232, HCC–10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comment on specific provisions should refer to the appropriate section and paragraph number. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Chief, Driver Standards Division, Office of Motor Carrier Standards, (202) 366–4001, or Mr. Paul Brennan, Chief, Motor Carrier Law Division, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In 1986, Congress enacted the Commercial Motor Vehicle Safety Act (the Act) (Pub. L. 99–570, title XII, 100 Stat. 3207–170, as amended, 49 U.S.C. app. 2701 *et seq.*) to improve the safety of commercial motor vehicle (CMV) drivers throughout the Nation. The goals of the Act were to:

(1) Prevent CMV drivers from concealing unsafe driving records by carrying licenses from more than one State,

(2) Ensure that all CMV drivers demonstrate the minimum levels of knowledge and skills needed to safely operate CMVs before being licensed, and

(3) Subject CMV drivers to new, uniform penalties for certain poor driving behaviors.

To accomplish these goals, Congress assigned responsibilities and deadlines to CMV drivers, employers, States, and the Secretary of Transportation. Effective July 1, 1987, all CMV drivers were obliged to divest themselves of multiple drivers' licenses, to provide certain driving record information to prospective employers, to inform their employers of all motor vehicle traffic violations and suspensions of their drivers' licenses or privileges, and to maintain driving records free of the disqualifying offenses listed in 49 CFR 383.51. Also effective July 1, 1987, employers of CMV drivers were to relieve of driving responsibilities any person who lacks a currently valid driver's license, whose CMV driving privileges have been lost in any State, who has been disqualified from operating a CMV, or who has more than one driver's license. The Secretary of Transportation was to issue, by July 1988, minimum uniform standards for the States to use in testing and licensing drivers under the CDL program. (The Secretary delegated these and other CDL responsibilities to the Federal Highway Administration (FHWA), whose Office of Motor Carriers establishes and enforces safety standards for large commercial vehicles, carriers, and drivers.) Also, by January 1989, the Secretary was to implement the Commercial Driver's License Information System (CDLIS), a nationwide clearinghouse to support the Act's goals of eliminating multiple licenses and keeping problem drivers off the road.

All CMV drivers were to obtain valid commercial drivers' licenses (CDLs) from their home States by April 1, 1992. In keeping with their traditional role as driver licensing entities, the States were to establish—consonant with the minimum standards issued by the FHWA—CDL testing and licensing programs that would allow every CMV operator to meet the April 1, 1992, licensing deadline.

The requirement imposed on the States was made a condition of the continued receipt of each State's full apportionment of Federal-aid highway construction funds. To avoid risking the future loss of a portion of these funds, every State must substantially comply, by September 30, 1993, with all 21 requirements enumerated in section 12009(a) of the Act (49 U.S.C. app. 2708(a)). (An additional requirement was later added to 49 U.S.C. app. 2708(a)(21) by the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, section 4009, 105 Stat. 1914, 2156). For reasons discussed in the analysis of § 384.222, the FHWA regards this addition as a 22d requirement for substantial compliance.) Some of these requirements relate directly to the testing and licensing of drivers by the April 1, 1992, deadline for obtaining CDLs; others pertain to State disqualification of drivers and State-to-State notifications of convictions.

Building on the Federal/State partnership that characterizes the CDL program, the FHWA now looks forward to all States' substantial compliance with the 22 requirements of 49 U.S.C. app. 2708(a) by September 1993, as called for in the Act. For the States to be able to meet this deadline, new Federal regulations—proposed herein—are necessary, for several reasons:

(1) Part 383 was addressed to multiple audiences—drivers, employers, and States—and focused on those requirements of the Act that became effective from its passage through April 1, 1992. It principally focuses on driver and employer responsibilities and what a CDL applicant needs to do in the State testing and licensing process, rather than on State compliance with section 12009(a), which is not required until September 1993. For example, § 383.23(a)(1) addresses drivers and requires them to take CDL tests before driving CMVs; part 383 contains no corresponding requirement that States offer and require the tests, a lack that would be remedied in this proposal.

(2) For most of the 22 requirements, particularly in the testing and licensing arena, part 383 tells States all they need to know to achieve substantial compliance. Nevertheless, certain sections of part 383 do not succinctly define what substantial compliance by States consists of. For example, § 383.51 is written in the passive voice ("A driver who is convicted of * * * is disqualified * * *.") so as to allow for both Federal and State disqualifications. The States need wording that directly tells them what actions they are responsible for and, in some cases, what constitutes satisfactory performance of those actions. For example, this proposal would not only make the

States clearly responsible for disqualifying drivers for the causes listed in § 383.51, but also would set a maximum time interval for the State to effect such a disqualification after conviction occurs (§ 384.231).

(3) Part 383 focused primarily on topics that were of immediate interest to its multiple audiences, and thus deferred to future rulemakings a number of subjects that pertain only to the States' ability to meet their September 1993 deadline. Thus, the FHWA's existing regulations do not address State-to-State notifications of convictions (49 U.S.C. app. 2708(a)(9)); these must be dealt with in this rulemaking to help eliminate certain loopholes within State CDL programs that could impede attaining the Act's goals.

(4) Finally, in setting penalties for State noncompliance with 49 U.S.C. app. 2708(a), the statute implicitly mandates a Federal procedure for determining State compliance with the CDL program. At present, however, no regulation for such a procedure exists.

The proposed rule is primarily directed toward motor vehicle administrators and other State officials with responsibility to develop, administer, and enforce the CDL program. Nothing in this proposal is intended to alter the existing responsibilities of drivers of CMVs and their employers. The proposal addresses all 22 State requirements under 49 U.S.C. app. 2708(a). It also describes the procedure by which the FHWA would determine a State's compliance with the CDL program and would incorporate the Act's provisions for withholding of funds under section 12011 (49 U.S.C. app. 2710) when a State is not in compliance.

Structure of the Proposed Regulation

The FHWA is proposing to add a new part 384 to house the State compliance rules instead of including them in part 383, because the proposed part 384 would focus exclusively on State responsibilities, whereas part 383 directly concerns drivers and employers as well as States. Merging the proposed State compliance rules into part 383 would dramatically increase the latter's length and complexity; by contrast, codifying the State compliance rules as a separate part 384 would leave part 383 intact as a well understood part of the CFR. Comments are invited from State and other respondents on whether, and why, they would prefer that the State compliance rules be promulgated in part 383 instead of in the new part 384 proposed herein.

The proposal comprises four subparts. Subpart A would contain the general provisions—purpose and scope, applicability, and definitions. Subpart B would present the minimum standards for substantial compliance by States based on, and in the exact order of, the 22 requirements of 49 U.S.C. app. 2708(a). Subpart C would specify State and Federal procedures to determine whether a State is in substantial compliance with the Act, and subpart D would detail the consequences of State noncompliance.

The Concept of Substantial Compliance

In 49 U.S.C. app. 2710, the Secretary is required to withhold five percent of a State's Federal-aid highway funds on the first day of the fiscal year succeeding the first fiscal year beginning after September 30, 1992, throughout which the State does not substantially comply with any requirement of 49 U.S.C. app. 2708(a).

Thus, the FHWA proposes that a State must "substantially comply" with each and all of the 22 requirements of 49 U.S.C. app. 2708(a). A State would not have the option of complying with fewer than the 22 requirements; nor may it balance a failure to comply with one requirement with extra attention to some other requirement.

Further, to meet a given minimum standard, a State would have to comprehensively implement it in the cases to which it applies. This is because the standards in part 384 are being proposed as the minimum standards which a State must meet to be considered to be in substantial compliance with the Act. (Similarly, part 383 contains minimum standards for testing and licensing CDL applicants and issuing valid CDLs.) Therefore, the FHWA would not agree that a State meets the standard for a given transaction if it successfully accomplishes the transaction only a given portion of the time, for example 80 percent. Rather, any departure from the minimum standard, together with evidence that the State does not have in place such procedures and internal controls as would offer reasonable assurance of comprehensive adherence, would be cause for a determination that the State is not meeting the standard and is not in substantial compliance.

The FHWA regards its proposed standards for substantial compliance as performance standards which each State would have to meet by means of the demonstrable combined effect of its statutes, regulations, administrative procedures, organizational structures, internal control mechanisms, resource assignments, and enforcement practices (i.e., all the components of its CDL program). Under this approach, a State that incorporates these standards verbatim into its laws, but fails to implement and enforce them, could be found to be noncompliant, while a State that thoroughly implements and enforces its CDL program by administrative means alone might be determined to be in substantial compliance.

This concept of substantial compliance is incorporated in proposed § 384.301.

Deadlines for Compliance

This proposal is based on the assumption that States will be able to certify, as of September 1993, that they meet all CDL requirements for which regulations have been in place prior to the publication of this rule. In most cases, the regulations date back to 1988 or earlier, giving States ample time to be in compliance. Three items included in this NPRM would be new to the States. These would include:

(1) Satisfaction of State disqualification requirement for non-CDL holders (§ 384.231(b)(2));

(2) Required timing of record checks—no more than 24 hours before license issuance (§ 384.232); and

(3) Implementation of disqualifications for violations of out-of-service regulations (§ 384.222 [reserved]—see analysis *ad locum*).

Because some States may encounter difficulties in implementing items (1) and/or (2), by legislation or otherwise, by September 1993, the FHWA proposes to define substantial compliance with 49 U.S.C. app. 2708(a) as excluding item (1), and including a relaxed version of item (2), until October 1, 1995. The Congress directed the Secretary to determine and define substantial compliance; thus, the FHWA believes that it is within its authority to allow States more time to comply with these new requirements without a corresponding loss of Federal-aid highway funds. Since the underlying regulation for item (3) is the subject of a separate proceeding in which no final rule has been published, the FHWA is not proposing corresponding State-related regulatory text in this NPRM and intends to require State compliance with the out-of-service violations provisions of 49 U.S.C. app. 2708(21) no earlier than the October 1, 1995, deferred effective date. Such a deferred date would allow sufficient time, even for States with biennial legislative sessions, to take the necessary steps to assure compliance.

A detailed analysis of each section of the proposal follows.

Section-by-Section Analysis

Subpart A—General

Section 384.105—Definitions. This part would rely on and supplement the definitions in part 383. However, in the work done by the State licensing agencies with the FHWA, three areas are continually at issue and are often the subject of many questions and interpretations in the context of compliance. Therefore, they are proposed to be defined as follows:

Issue and issuance. Although the Act requires a State to make specific checks of a driver's record before issuing him or her a CDL, and prohibits a State from issuing a CDL to a person subject to various licensing and other sanctions, it does not define the term "issue." Under this proposal, "issue" and "issuance" would refer to any of the licensing activities specifically mentioned in §§ 383.71 and 383.73—i.e., initial licensure, license transfers, license renewals, and license upgrades (and any of those procedures applied to nonresident CDLs, the issuance of which is at the State's option). Under this definition, as a minimum standard for substantial compliance with the Act, States would need to perform the checks of the CDLIS (§ 384.205), applicable State records (§ 384.206), and the NDR (§ 384.220), prior to any initial, transfer, renewal, or upgrade CDL issuance. In addition, States would be prohibited from issuing an initial, transfer, renewal, or upgrade CDL to any person to whom the limitation on licensing in § 384.210 applies.

Licensing entity. The intent of this definition is to allow the FHWA to impose reasonable deadlines on States for notifying each other of, and taking action on, convictions of CMV drivers. As mentioned at the outset of this preamble, the prompt and effective removal of problem CMV drivers from the Nation's highways is one of the underlying goals of the CDL program. These goals cannot be achieved unless the States implement reliable techniques to quickly inform each other of convictions and to disqualify drivers automatically whenever necessary. To fulfill these objectives, each State needs a rapid flow of information between the courts and the driver licensing agencies, a flow which the FHWA encourages the States to expedite by all available means. Although more than one branch of State government is involved in processing this information, the consequences of noncompliance attach to the State as a whole. Since one entity must be responsible for administering the CDL process by carrying out the minimum standards of parts 383 and 384, the FHWA proposes to use the term "licensing entity" to mean the agency in the State that is authorized to issue drivers' licenses.

Year of noncompliance. Title 49, U.S.C., app. 2710 requires a portion of a State's Federal-aid highway funding to be withheld on the first day of the fiscal year succeeding the first fiscal year beginning after September 30, 1992, throughout which the State does not substantially comply with any requirement of 49 U.S.C. app. 2708(a). In other words, a noncompliant State would begin to lose Federal-aid highway funds on the first day of the Federal fiscal year following the fiscal year in which the noncompliance occurs. For purposes of economy of expression, the FHWA proposes to use the term "year of noncompliance" to denote the Federal fiscal year in which the FHWA's final determination of noncompliance, or the State's failure to certify compliance, takes place. Thus, fiscal sanctions would begin on October 1 of the Federal fiscal year immediately following the year of noncompliance. The first possible year of noncompliance under the Act would be FY 1993; the first possible year for which funds might actually be withheld is FY 1994, which begins on October 1, 1993.

Subpart B—Minimum Standards for Substantial Compliance by States

The analysis of this subpart presents each section of the proposal as it relates to the corresponding section of the Act and, if applicable, part 383.

The numbering scheme for sections in this subpart correlates with that of 49 U.S.C. app. 2708(a). Thus, § 384.201 of this proposal implements 49 U.S.C. app. 2708(a)(1); § 384.202 reflects 49 U.S.C. app. 2708(a)(2); and so forth until § 384.221, which implements the intoxicating beverage portion of 49 U.S.C. app. 2708(a)(21), and § 384.222, which is reserved for a related rulemaking that is planned to address the provisions for violations of out-of-service orders added to 49 U.S.C. app. 2708(a)(21) by the Intermodal Surface Transportation Efficiency Act of 1991. For ease of understanding and implementation of the standard, the FHWA will treat the last as the 22d requirement for State compliance.

Section 384.201—Testing program. Paraphrasing 49 U.S.C. app. 2708(a)(1), this section would require the State to adopt and administer a CDL testing and licensing program meeting the minimum standards of part 383 (in subparts B, E, F, G, H, and J). Prior to receiving FHWA approval to issue CDLs, each State's testing and licensing practices passed a careful scrutiny utilizing those standards. While the testing and licensing standards, promulgated in July 1988, have long been in place, the explicit requirement that States set up CDL programs has not yet appeared in regulation. This section would correct that.

Section 384.202—Test standards. This section likewise paraphrases 49 U.S.C. app. 2708(a)(2) and refers to the testing and licensing portions of part 383.

Section 384.203—Driving while under the influence. This section would require the State to have in effect and enforce a 0.04 percent alcohol concentration standard for all CMV operators. A person convicted of driving a CMV while violating the 0.04 percent standard must be disqualified (i.e., through license suspension, revocation, or cancellation). This section paraphrases 49 U.S.C. app. 2708(a)(3) and incorporates the alcohol concentration level specified in § 383.51(b)(2)(i)(A). The FHWA published a detailed final rule on this topic in October 1988 (53 FR 39044).

Section 384.204—CDL issuance and information. This section would contain a general rule paraphrasing 49 U.S.C. app. 2708(a)(4) and referring to subpart J of part 383. The general rule contains two concepts: first, States can authorize persons to drive CMVs only by means of issuing CDLs (this concept does not explicitly appear in part 383 as it relates to States); and second, each CDL must contain the information specified in part 383, subpart J.

The exemption for behind-the-wheel training, contained in § 383.23(c), would be incorporated here so that it is included in the minimum standards for substantial compliance. In addition, some States confiscate CDLs so as to enhance enforcement of traffic codes (e.g., for driving under the influence of alcohol), and issue dated temporary receipts that allow continued driving pending a final disposition of the enforcement proceeding. An exemption is proposed that would allow this enhanced-enforcement practice to continue, as long as the receipts are valid for no more than 30 days or until the driver's conviction of a disqualifying offense (or offenses) under § 383.51, whichever occurs first.

Section 384.205—CDLIS information. Title 49, U.S.C., app. 2708 (a)(5) requires the State to notify the CDLIS before it issues a CDL. Section 383.73(a)(3)(ii) of title 49, CFR, implements this provision and requires the State to conduct a check of the CDLIS to determine whether the driver applicant already has a CDL, whether the applicant's license has been

suspended, revoked, or cancelled, or if the applicant has been disqualified from operating a CMV. This check fulfills the advance notification requirement of 49 U.S.C. app. 2708(a)(5). Moreover, under proposed § 384.205, if a CDLIS check yields unfavorable information on an applicant, the State would be required to subject him or her to all applicable licensing prerequisites, limitations, disqualifications, and penalties as specified in other sections of this subpart.

The timing of the record checks in §§ 384.205, 384.206, and 384.220 is discussed in the analysis of § 384.232.

Section 384.206—State record checks. Title 49, U.S.C., app. 2708(a)(6) requires a State to check the record of any applicant in any other State which has issued him or her a CDL. Section 383.73(a)(3)(i) similarly requires the State to check the applicant's driving record as maintained by his or her current State of licensure. Proposed section 384.206 would harmonize these two requirements by specifically requiring, as a prerequisite to licensing, two separate checks of State records: First, a check of the State's own record pertaining to the applicant; and second, a check of the applicant's record in any other State which has issued him or her a CDL. As a practical matter, the CDLIS check under § 384.205 would automatically provide information necessary for the latter check.

If the check of the State record under § 384.206 yields unfavorable information on the applicant, the State would be required to subject him or her to all applicable licensing prerequisites, limitations, disqualifications, and penalties as specified in other sections of this subpart.

Specifically omitted from the substantial compliance requirements at this time would be a check of the applicant's prior non-CDL record in another State, since it is not specifically required in the Act and since direct State-to-State transfers of such non-CDL records are not provided for in the CDLIS. The National Driver Register (NDR) check in § 384.220 is intended to capture any driving record information on problem drivers who have non-CDL records in other States.

Section 384.207—Notification of licensing. Title 49, U.S.C., app. 2708(a)(7) (as implemented in § 383.73(f)) provides that a State shall inform the operator of the CDLIS of all CDL issuances. Generally, the transaction which would enter a new driver in the CDLIS system would occur when the initial CDL is issued to a driver applicant. A transfer transaction would reflect a change in the State of licensure and record to which the driver's CDLIS record points. See also proposed 49 CFR 384.211. By contrast, renewals or upgrades would be reflected on the driver's existing record in the State of licensure. Although § 383.73(f) requires notification within ten days, notification should occur, as a practical matter, automatically upon issuance. The FHWA is proposing this standard to ensure that all checks and notifications needed to fulfill the intent of the Act are accomplished for each license issuance action.

Section 384.208 [Reserved]. Title 49 U.S.C. app. 2708(a)(8)—which has not been implemented by regulation—requires a State which disqualifies the holder of a CDL, or which suspends, revokes, or cancels the person's CDL, to inform the CDLIS and the State of licensure of such action. A specific standard for substantial compliance is not needed because, in the CDL program, it is the State of licensure that accomplishes disqualifications involving license suspension, revocation, and cancellation, and because the CDLIS pointer system already makes the State of licensure the location of all driver record information except for limited "pointer" data. Furthermore, if a person's CMV driving privileges are suspended within a State that is not the State of licensure, the FHWA expects that the State of licensure will discover that fact during the check of the National Driver Register prior to any CDL issuance (§ 384.220). If the privilege suspension remains current, the licensing State will apply the limitation on licensing of § 384.210 against the driver's CDL application for the duration of the suspension, which constitutes a disqualification (under paragraph (a) of the definition of disqualification in § 383.5—see the preamble to §§ 384.209 and 384.210). Therefore, all currently apparent applications of 49 U.S.C. app. 2708(a)(8) are already covered under other sections of this subpart, and the FHWA is not proposing a minimum standard for substantial compliance with this section of the Act. Section 384.208 is reserved to preserve the numbering scheme described in the introduction to subpart B of this analysis and to accommodate a minimum compliance standard corresponding to 49 U.S.C. app. 2708(a)(8) should the need ever arise.

Section 384.209—Notification of traffic violations. State-to-State notification of all convictions for violations of State or local law relating to motor vehicle traffic control (other than parking violations) by CDL holders is mandated by the Act, so that the State of licensure can take all requisite disqualifying and other actions. Although not included in part 383, the notification system is a pillar of the CDL program. In keeping with the CDL program strategy of removing problem CMV drivers from the road, the FHWA believes that State compliance with the Act's notification requirements is essential to highway safety. Without such notification, a driver who should be disqualified may be able to continue driving—contrary to the mandate and purpose of the Act.

Thus, the FHWA proposes—as mandated by Congress in the Act—to require States to perform State-to-State notifications for all traffic violation convictions of CDL holders (except parking violations), whether or not the convictions are disqualifying under § 383.51, and regardless of the type of vehicle in which the offense was committed. Moreover, for reasons explained in the analysis of § 384.231, the FHWA proposes that the licensing entity in the State of conviction would have to notify the State of licensure within three business days after the date the former learns of the conviction, and no more than 30 calendar days after the conviction occurs. This is to ensure prompt removal of poor drivers from the road and to make use of the electronic information exchange systems available in all States. The notification would be by electronic means as established by AAMVAnet, Inc., the operator of the CDLIS. The FHWA believes that only in this manner would the notification protocol satisfy the safety goals of the Act as well as the prescriptions of 49 U.S.C. app. 2708(a)(9).

Title 49, U.S.C., app. 2708(a)(9) requires State-to-State notification of all traffic convictions by "a person who operates a CMV." This means that the notification requirement extends to non-CDL holders who illegally operate CMVs, who commit traffic offenses (other than parking violations) while doing so, and who are subsequently convicted of such offenses. This NPRM therefore requires State-to-State reporting of all such convictions. Since such persons would not necessarily be entered into the CDLIS prior to their convictions, however, the proposal is to allow the licensing entities to accomplish these notifications by any means (not just electronically) and within 10 days. (For this class of drivers as well, the State of conviction would need to notify the licensing State no more than 30 days from the date of conviction.) See also § 384.231(b) for proposed disqualification requirements for non-CDL holders in the situation described in this paragraph.

Section 384.210—Limitation on licensing. As mandated in 49 U.S.C. app. 2708 (a)(10), States would be prohibited from issuing CDLs to persons who are disqualified from operating CMVs, or who have a driver's license suspended, revoked, or cancelled by the State or jurisdiction of licensure. In addition, this section would incorporate the limitation (in § 383.73(g)) against licensing a person who is determined to have falsified information on his or her CDL application.

The prohibition against issuing a CDL to a person with a currently suspended or revoked license would apply regardless of the cause of the suspension or revocation. For purposes of the limitation on licensing, "disqualification" would explicitly include all elements of that term as defined in § 383.5. In brief, these elements are:

(a) The suspension, revocation, cancellation, or other withdrawal by a State of a person's privileges to drive a CMV;

(b) A determination by the FHWA that a person is no longer qualified to operate a CMV; or

(c) The loss of qualification which automatically follows conviction of an offense listed in § 383.51.

This last element of the "disqualification" definition means that a State would be prohibited from issuing a CDL to any person for whom the required record checks in §§ 384.205, 384.206, and/or 384.220 yield information on convictions that—while disqualifying under § 383.51—have not yet been translated into a license suspension, revocation, or cancellation.

In conformity with § 384.231(b)(2), a State would also be prohibited from issuing a CDL to non-CDL holders who are disqualified due to convictions for CMV-disqualifying offenses. (See discussion at §§ 384.209 and 384.231(b)(2).)

Sections 384.211 (Return of old licenses) and 384.212 (Domicile requirement). These sections implement 49 U.S.C. app. 2708(a)(11) and (a)(12), respectively. In addition, § 384.212 would require States to enforce the requirement of § 383.71(b) that a CDL holder apply for a license transfer within 30 days of establishing domicile in a new State.

The actual disposition of the driver's old license documents is a matter best left to the States involved. However, the FHWA proposes to prescribe in § 384.207 that the driver's State of record be changed from the old to the new State by means of the CDLIS. This requirement would help ensure that each CDL holder has only one record, a tenet of the Act. It is also already a requirement of participation in the CDLIS and, as such, is the current practice of the States.

Section 384.213—Penalties for driving without a proper CDL. Title 49, U.S.C., app. 2708(a)(13), requires a State to impose the penalties that it deems appropriate, and that the Secretary approves, for operating a CMV while not having a CDL; while having any type of driver's license suspended, revoked, or cancelled; or while being disqualified from operating a CMV. Section 384.213 would implement 49 U.S.C. app. 2708(a)(13) with the proviso that the CDL-related civil and criminal penalties must be at least as severe as those imposed by the State on noncommercial drivers. The FHWA believes this proviso will encourage States to ensure that the CDL program is efficiently enforced.

Section 384.214—Reciprocity. The statute specifies that each State shall allow any holder of a valid CDL issued by any other State, who is not disqualified, to operate a CMV in its State. 49 U.S.C. app. 2708 (a)(14). Section 383.73(h) makes a State's granting of this licensing reciprocity a prerequisite to the validity of that State's own CDLs. This proposal explicitly conditions the State's substantial compliance with the CDL program on the same licensing reciprocity intended in part 383, with two clarifications. First, the proposed phrase "State or jurisdiction" means that a State must accept CDLs issued by countries named in footnote 1 to § 383.23(b). Currently, Canadian licenses issued under the National Safety Code, and Mexico's new Licencia Federal de Conductor, must be reciprocally accepted because the FHWA has determined that those countries test drivers and issue CDLs in accordance with, or similar to, the part 383 standards. Second, to be reciprocally honored, a license must be good for the vehicle type (including any endorsements) being driven.

Sections 384.215 (First offenses), 384.216 (Second offenses), 384.217 (Drug offenses), 384.218 (Second serious traffic violation) and 384.219 (Third serious traffic violation). These sections would implement without change the corresponding provisions of 49 U.S.C. app. 2708(a)(15) through (a)(19). Proposed § 384.231 would contain minimum standards, grouped together for economy of expression, that are generally applicable to all these sections. In particular, proposed § 384.231(a) specifies that it is the person's current State of licensure that is responsible to implement the disqualifications called for in these sections.

Section 384.220—National Driver Register (NDR) information. This proposed section makes clear that the State must check the NDR prior to any CDL "issuance" as defined herein. This check is required in section 12009(a)(20) of the Act and was implemented as an essential CDL State licensing procedure in § 383.73(a)(3)(iii). Although the Act demands that the State give full weight and consideration to NDR information in deciding whether to issue a CDL to such person, § 383.73(a)(3)(iii) prescribes no concrete action to be taken by the State based on a driver's NDR record, because that section is not a State requirement *per se*. This proposal, therefore, would make it such and goes beyond § 383.73(a)(3)(iii) to define "full weight and consideration" for substantial compliance purposes: As in the case of the checks of the CDLIS (§ 384.205) or of the State record (§ 384.206), if a State discovers information in the NDR check that would cause the disqualifications under §§ 384.215 through 384.219 or the licensing limitation of § 384.210 to apply to him or her, then those requisite actions must be taken. The FHWA believes this proposal would ensure that the limitations on licensing are applied in practice so that problem drivers are prevented from being issued CDLs.

Section 384.221 and future section 384.222 (reserved in this proposal). These sections would address two distinct infractions—first, violations of alcohol prohibitions, and second, violations of out-of-service orders placed on drivers for any reason including alcohol—for which Congress required the States to apply sanctions under 49 U.S.C. app. 2708(a)(21). The distinction between these two infractions is exemplified as follows: If the State Police stop a truck driver and detect alcohol on his or her breath, he or she has committed the first infraction, and the State must place the driver out-of-service for 24 hours. (Sections 392.5 and proposed 384.221.) If, upon the departure of the police 15 minutes later, the driver decides to resume his or her trip in violation of the out-of-service order, then he or she has committed the second infraction and, upon his or her conviction, the State would disqualify him or her for at least 90 days. (Sections 383.51—assuming finalization of the rule proposed at 58 FR 4640—and future § 384.222.)

Section 384.221—Out of service regulations (intoxicating beverage). This section would require States to place out-of-service for 24 hours any CMV

driver who is found to be in violation of § 392.5, which forbids driving while having any measured alcohol concentration or detected presence of alcohol (among other drinking/driving limitations).

As interpreted by the FHWA as early as October 1988 (at 53 FR 39048), this is the only requirement of 49 U.S.C. app. 2708(a) that applies both to all drivers of CMVs as defined in part 383 and to all drivers of CMVs as defined in part 390. (Generally, part 383 has a 26,001 pound gross vehicle weight rating (GVWR) minimum threshold for CMVs, while part 390 has a 10,001 pound threshold. Both parts include as CMVs, regardless of GVWR, vehicles placarded for hazardous materials or designed to transport 16 or more persons including the driver.) The requirement is unique in that States must apply § 392.5 to those CDL holders who otherwise are exempted from the Federal Motor Carrier Safety Regulations in parts 390 through 399 (for example, drivers of government vehicles).

Section 384.222. This section number is reserved for a related rulemaking concerning State responsibilities for disqualifying CMV drivers convicted of violations of out-of-service orders of any kind—not just of the out-of-service orders that section 384.221 would require States to give for intoxicating beverage infractions under section 392.5. (Examples of non-alcohol-related out-of-service orders would include those for excessive hours of service or unsafe equipment conditions.) Section 4009 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) amends the Act by adding section 12020 to mandate CMV disqualifications of at least 90 days for drivers convicted of violating any type of out-of-service order. The ISTEA likewise required States to implement these out-of-service-related disqualifications, and combined this new State responsibility with the intoxicating beverage provision in section 12009(a)(21) of the Act. However, as the example further above illustrates, the nature of the added infraction and its potential consequence differ enough from the original subject matter of section 12009(a)(21) that the FHWA regards this as the 22d requirement for substantial compliance.

The FHWA is conducting a rulemaking action to establish the out-of-service violation as a disqualifying offense in § 383.51, among other provisions (see 58 FR 4640), and has not yet issued a final rule. For that reason, no regulatory language on corresponding State responsibilities is included here. However, § 384.222 has been reserved for future placement of the appropriate State-directed regulatory text, if the rule establishing the underlying disqualifications is finalized. (At that time, changes will also be needed in the proposed § 384.231(a) and (d).) The FHWA's intention would be to make States responsible to enforce the out-of-service related disqualifications no earlier than October 1, 1995.

Sections 384.223 through 384.230. These sections are reserved.

Sections 384.231 and 384.232. These sections would contain minimum standards that pertain to more than one of the 22 State requirements of 49 U.S.C. app. 2708. To avoid the repetition of these standards under each of the 22 requirements to which they apply, they are grouped together here and cross-referenced to the applicable sections.

Section 384.231—Satisfaction of State disqualification requirement. This section provides minimum standards that a State would be required to meet to comply with §§ 384.215 through 384.219.

Section 384.231 (a). This section makes clear that it is the driver's current State of licensure that is responsible to implement the disqualifications of §§ 384.203 and 384.215 through 384.219; the licensing limitation of § 384.210 (a responsibility also of any prospective State of licensure); and the penalties of § 384.213. This is true regardless of where any relevant convictions may have occurred, and is needed to ensure that the CDL program successfully prevents problem drivers from being issued CDLs and operating on the highways. Without the one-license, one-record concept, the goals of the Act could not be met; and without this provision, the one-license, one-record concept would be violated.

Section 384.231(b). This section, based on 49 U.S.C. app. 2708(b) ("Satisfaction of State disqualification requirement"), requires the State to fulfill its responsibility to disqualify a CDL holder by means of suspending, revoking, or cancelling the driver's CDL. This is implied in part 383 but does not yet exist as a required standard, noncompliance with which may occasion the loss of Federal-aid highway funds. Therefore, the FHWA proposes to include it here. The State would, of course, retain the option to take still more stringent actions against the driver.

Section 384.209, Notification of traffic violations, in part, proposes notification requirements for CMV-disqualifying convictions of drivers for offenses committed while operating CMVs, but without holding currently valid CDLs. For example, a person who has no CDL gets drunk, steals a CMV, and is subsequently arrested and convicted for, among other things, operating a CMV while under the influence of alcohol. Section 384.231(b) carries the § 384.209 approach one step further by proposing that, effective October 1, 1995, the State of licensure maintain all records (including, by implication, CDLIS entries) necessary to prevent such a non-CDL holder's legally obtaining a CDL from any State during the period of disqualification.

Since the CDL program deals solely with commercial driving privileges, the FHWA believes that a State should have the discretion to allow the retention or restoration of driving privileges in personal automobiles or other non-CMVs for the period of disqualification, and is consequently interpreting 49 U.S.C. 2708(b) to allow for that eventuality. Comments are invited on the appropriateness and feasibility of this proposed treatment of non-CDL holders who receive CMV-disqualifying convictions, and any alternative approaches to this problem.

Section 384.231(c). This section addresses time limits for disqualification for which each State has responsibility, and makes the State's licensing entity responsible to assure compliance with those limits. Specifically, the FHWA is proposing to fix responsibility on the licensing entity for meeting a three-day deadline for disqualifying drivers (or, when appropriate, notifying the State of licensure) following receipt of notification from the court system. A thirty-day deadline, from the operative date of conviction to the date of disqualification by the licensing entity, is proposed to be applied to the State as a whole. (The operative date of conviction is generally the date of sentencing and the date from which the statute of limitations begins to run for appeal purposes.)

The rationale for the three-day deadline is as follows. First, problem CMV drivers must be removed from the road, particularly those who are convicted of the offenses listed in § 383.51. To allow more than three days would prolong the process and adversely affect highway safety. Second, most State licensing entities are computerized with capabilities that enable them to effect disqualifications almost immediately; a limit of three business days would make ample allowance for backlogs and administrative procedures.

Even with a three-day deadline applicable to the licensing entity, problems in communication between

court systems and licensing entities (see under definition of "licensing entity" at § 384.105) may persist; thus, the FHWA would require all branches of State government to limit the delay between a driver's conviction of a disqualifying offense, and the suspension, revocation, or cancellation of the CDL, to no more than 30 days.

The 30-day deadline, for which the State as a whole would be held accountable, would apply to convictions within the same State. If the conviction occurs in other than the licensing State, then the licensing entity in the licensing State would be responsible for meeting a three-day deadline to disqualify the driver following receipt of notification from the State of conviction. As discussed under § 384.209, the State of conviction would face its own deadlines for processing the information internally.

The FHWA has also recognized the need to clarify exactly when a person's required period of disqualification begins, and when it ends. In the time since part 383 was issued and while States implemented their CDL programs, this question surfaced many times. Thus, this proposal would specify that the disqualification period begins on the date that the licensing entity effects the suspension, revocation, or disqualification, and is in keeping with the FHWA's response to the many questions asked on this subject.

Nevertheless, as discussed in the preamble to the proposed § 384.210, Limitation on licensing, a State would be prohibited from issuing a CDL to a person during the period intervening between a disqualifying conviction and the beginning of the disqualification period as defined in the preceding paragraph.

Section 384.231(d)—Recordkeeping requirements. Certain CDL disqualification requirements are cumulative—that is, they are triggered by multiple convictions. To meet the disqualification standards, a State must assure that cumulative convictions stay on the books long enough to reflect the mandated disqualification time periods, thus implementing the strategy—intended by the Act—of removing CMV drivers from the road for certain unsafe driving behaviors. Thus, once a driver receives a long-term disqualification, his or her record must remain available so that, even after a period of years, the disqualification can be enforced. The driver's identifying data must remain on the CDLIS and the related conviction data must remain in the State of record, so that—in the event of a second or third such conviction—the appropriate disqualification can be implemented. In particular, the CDLIS and the State of record must retain information on a driver who receives an absolute lifetime disqualification for a drug-related CMV felony conviction, for example, so that no other State can subsequently issue him or her a CDL.

AAMVAnet, Inc., the operator of the CDLIS on behalf of the States, issues technical requirements for State participants in the CDLIS. The FHWA believes those technical determinations are appropriate standards for State compliance with § 384.231(d) because they were developed to implement the CDL program as mandated in the Act. For example, the requirements for the CDLIS define "life" as 55 years from conviction. Thus, the FHWA proposes that States be required to adopt and use these AAMVAnet, Inc. requirements to be in compliance with the Act.

Section 384.232—Required timing of record checks. To effectively exclude ineligible applicants from obtaining CDLs, the checks of the CDLIS, the State record(s), and the NDR (in §§ 384.205, 384.206, and 384.220, respectively) should occur immediately—i.e., no more than 24 hours—prior to all CDL issuances, as proposed to be defined in § 384.105. However, some States do not issue CDLs over-the-counter and are thus unable to complete these checks within 24 hours before CDL issuance. Therefore, for licenses issued before October 1, 1995, the FHWA is proposing that the record checks should occur no more than 10 days prior to issuance. For licenses issued after September 30, 1995, however, the FHWA is proposing to require that the checks occur no more than 24 hours prior to issuance. This staged implementation of the limits on elapsed time between record checks and issuance should balance the needs of the States which centrally issue licenses against the need to prevent an individual from obtaining a CDL who has recently been convicted of a disqualifying offense. It should also allow time for States to implement needed improvements to their communication systems.

Subpart C—Procedures for Determining State Compliance

This part of the proposal would set up two parallel mechanisms—mandatory State certifications and discretionary FHWA reviews of State CDL programs—either of which could trigger a finding of noncompliance.

Section 384.301—Substantial compliance—general requirement. This section summarizes the FHWA's concept of substantial compliance, discussed above.

Sections 384.303 and 384.305—State certifications. By the tenth day of September 1993 (the last month of Federal fiscal year 1993), and by January 1 of every subsequent Federal fiscal year, the State would make an annual certification of substantial compliance with 49 U.S.C. app. 2708(a). If the State fails to make that certification it would be determined to be out of compliance, and subject to the statutory reduction in Federal-aid highway funding.

The precise wording of the Act leads to differing certification requirements for Federal fiscal year 1993 and thereafter. The FHWA interprets 49 U.S.C. app. 2710(a) to mean that if a State is in compliance with part 384 at the end of FY 1993, it cannot be found to be out of compliance even if it has failed to meet the part 384 requirements throughout most of FY 1993. From a practical standpoint, in order to accomplish the apportionment of Federal-aid highway funds for FY 1994, the FHWA must know a State's compliance status by September 10, 1993. Thus, no later than September 10, 1993, the State would have to certify to the FHWA that it currently meets the standards of part 384.

The FHWA interprets 49 U.S.C. app. 2710(b) to mean that, in FY 1994 and thereafter, a State must continuously comply with part 384—i.e., throughout the entire year. Thus, the certification due by January 1 of any current fiscal year would cover the entire period from the date of the prior fiscal year's certification (retrospectively) through the date of the required certification for the next fiscal year (prospectively). (For example, the certification due January 1, 1995 would cover the period from January 1, 1994 through January 1, 1996.) The resulting overlaps in coverage result from the need for continuous compliance throughout the current fiscal year. A January 1 deadline for each fiscal year's certification is proposed because, in addition to paralleling the analogous requirement in 23 CFR 657.17 (for size and weight enforcement), it would provide the FHWA with sufficient time to review certifications and compliance. This deadline would also enable the State to conduct a thorough review of its compliance during the previous fiscal year as well as its capacity to continue in compliance during the current fiscal year.

The FHWA recognizes that the certifications proposed to be due by September 10, 1993, and January 1, 1994, would be separated by less than four months. Comments are invited on the efficacy of two required certifications in so brief a period and

any recommended solutions (such as waiving the FY 1994 certification if the prior one was submitted and accepted).

Section 384.307—FHWA program reviews of State compliance. Because individual States' situations may differ markedly, the FHWA will rely in the first instance on the State's certification. The FHWA reserves the right and the flexibility to design and schedule reviews of State compliance. Thus, the FHWA would, at its discretion, conduct reviews of State compliance with part 384 on a random and/or for-cause basis relying on information obtained from the State and other sources. The FHWA expects that the State-provided information would include documents and address topics such as those mentioned in the proposed § 384.301 (for example, statutes, regulations, and administrative procedures and practices). Comments are invited on whether the final rule should prescribe the documents which the State would be obliged to maintain for the FHWA.

If, in the course of any such reviews, the FHWA makes a preliminary determination that a State does not meet one or more of the standards of subpart B, an informal resolution procedure would begin. The State would be informed of any such preliminary determination before July 1 of the fiscal year in which it is made; this deadline would help assure that the State has adequate time to come into compliance prior to the beginning of the next fiscal year, to avoid a withholding of funds.

The State would have up to 30 calendar days to respond to a preliminary determination. If, after reviewing the State's timely response, the FHWA still finds the State to be in noncompliance, the FHWA would notify the State of its final determination.

The FHWA believes that such a procedure, building on existing Federal/State cooperation in the CDL endeavor, would satisfactorily protect the nationwide CDL program on the one hand, and the States' interests on the other.

Section 384.309—Results of compliance determination. Any year in which a State fails to submit the required certification, or in which the FHWA makes a final determination that a State does not meet one or more of the standards of subpart B of this part, would be considered a year of noncompliance and would trigger the consequences contained in subpart D. Conversely, if timely certification is supplied and the FHWA makes no final determinations of noncompliance, then the State would be deemed to be in compliance for the year.

Subpart D—Consequences of State Noncompliance

This subpart implements the detailed consequences of State noncompliance laid out in section 12011 of the Act (49 U.S.C. app. 2710). During the fiscal year following a State's first year of noncompliance, five percent of the State's Federal-aid highway funds would be withheld; during the fiscal year following any year of noncompliance other than the first, the withheld amount would be ten percent. The specific funds cited in the Act, 23 U.S.C. 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6), are redesignated in this proposal to read 23 U.S.C. 104(b)(1), 104(b)(3), and 104(b)(5) to conform to changes made in the Federal-aid highway program by the Intermodal Surface Transportation Efficiency Act of 1991.

This proposal also sets forth the particulars, provided in the Act, for various cases in which a State comes into compliance after having had funds withheld.

Rulemaking Analyses and Notices

Regulatory Impact

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a major rule under Executive Order 12291. Any final rule based on this NPRM is not expected to result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse impacts on the United States economy. However, because of the public interest in the issue of CMV safety and the expected benefit in transportation, this rule is considered significant under the regulatory policies and procedures of the DOT. For this reason, and pursuant to Executive Order 12498, this rulemaking action has been included on the regulatory program for significant rulemaking actions.

A primary purpose of this rulemaking is to formalize as State requirements the obligations already placed upon States in 49 CFR part 383, Commercial Driver's License Standards—Requirements and Penalties. Part 383 was already the subject of an extensive regulatory evaluation, a copy of which has been placed for informational purposes in the public docket for this rulemaking and is available for inspection in the Headquarters office of the FHWA, 400 Seventh Street SW., Washington, DC 20590. Because the States are already complying with the underlying requirements of part 383, and because the FHWA expects the States to comply with these proposed regulations which impose few new mandates on the States, the FHWA does not project that material incremental regulatory impacts, beyond those described in the regulatory evaluation for part 383, would result from promulgation of this proposal.

Regulatory Flexibility Act

As explained in the preamble to the final rule on CDL testing and licensing (53 FR 27647, July 21, 1988), the impacts of the CDL program on small entities have already been considered. This proposed rule, addressing the States rather than employees and employers, is not expected to have identifiable incremental impacts on small entities, beyond those already described with regard to part 383. Therefore, under the criteria of the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed rule on small entities, and certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

The FHWA subjected the underlying rules in 49 CFR part 383, which form the substantive basis for most of the State requirements in this rulemaking, to a painstaking Federalism analysis under Executive Order 12612. See 53 FR 27648. As a result of that analysis, the FHWA found that the CDL program, embodied in 49 CFR part 383, accorded fully with the letter and spirit of the Federalism initiative.

Title 49, U.S.C., app. 2708(a) lists 22 CDL program requirements which States must meet to avoid the withholding of five or ten percent of their Federal-aid highway construction funds. Most of these 22 requirements are already fully addressed in 49 CFR part 383 and covered by the Federalism Assessment for that part. The remaining requirements, addressed herein, constitute proposed minimum standards which would have to be followed by States and which may be supplemented by the States. This NPRM would limit the policymaking discretion of the States only in narrow ways, and would do so only to achieve the national purposes of the Act. The procedures proposed in subparts C and D either directly embody the provisions of the Act or constitute a necessary procedural framework for implementing the funds withholding sanctions set forth in 49 U.S.C. app. 2710. Accordingly, it is certified that the policies contained in

this document have been assessed in light of, and accord fully with, the principles, criteria, and requirements of the Federalism Executive Order and that the requirements of this action that were not addressed in the Federalism Assessment for 49 CFR part 383 do not have sufficient federalism implications to warrant the preparation of a separate full Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

By virtue of the certifications proposed to be required annually of the States under subpart C, this action proposes a minimal collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520. Accordingly, a draft amendment to the information collection supporting statement for 49 CFR part 383 (Commercial Driver Testing and Licensing Standards—OMB Number 2125–0542) is being prepared and submitted to the Office of Management and Budget during the comment period for this NPRM.

National Environmental Policy Act

The agency has analyzed this section for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 384

Commercial driver's license documents, Commercial motor vehicles, Driver qualification, Highways and roads, Motor carriers licensing and testing procedures, Motor vehicle safety.

Issued on: June 17, 1993.

Rodney E. Slater,

Administrator.

In consideration of the foregoing, the FHWA hereby proposes to amend title 49, Code of Federal Regulations, chapter III, subchapter B, as set forth below.

1. Chapter III is amended by adding part 384, to read as follows:

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

Subpart A—General

Sec.

Subpart B—Minimum Standards for Substantial Compliance by States

Subpart C—Procedures for Determining State Compliance

Subpart D—Consequences of State Noncompliance

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 2505, 2701 *et. seq.*; and 49 CFR 1.48.

Subpart A—General

§ 384.101 Purpose and scope.

(a) *Purpose.* The purpose of this part is to ensure that the States comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. app. 2708(a)).

(b) *Scope.* This part:

(1) Includes the minimum standards for the actions States must take to be in substantial compliance with each of the 22 requirements of 49 U.S.C. app. 2708(a);

(2) Establishes procedures for determinations to be made of such compliance by States; and

(3) Specifies the consequences of State noncompliance.

§ 384.103 Applicability.

The rules in this part apply to all States.

§ 384.105 Definitions.

(a) The definitions in part 383 of this title apply to this part, except where otherwise specifically noted.

(b) As used in this part:

Issue and *issuance* mean initial licensure, license transfers, license renewals, license upgrades, and nonresident CDLs, as described in § 383.73 of this title.

Licensing entity means the agency of State government that is authorized to issue drivers' licenses.

Year of noncompliance means any Federal fiscal year during which—

(1) A State fails to submit timely certification as prescribed in subpart C of this part; or

(2) The State does not meet one or more of the standards of subpart B of this part, based on a final determination by the FHWA under § 384.307(c) of this part.

Subpart B—Minimum Standards for Substantial Compliance by States

§ 384.201 Testing program.

The State shall adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with the minimum Federal standards contained in part 383 of this title.

§ 384.202 Test standards.

No State shall authorize a person to operate a commercial motor vehicle unless such person passes a written and driving test for the operation of a commercial motor vehicle in accordance with the minimum Federal standards contained in part 383 of this title.

§ 384.203 Driving while under the influence.

The State shall have in effect and enforce a law which provides that any person with an alcohol concentration of 0.04 percent or more when operating a commercial motor vehicle is deemed to be driving a commercial motor vehicle while under the influence of alcohol.

§ 384.204 CDL issuance and information.

(a) *General rule.* The State shall authorize a person to operate a commercial motor vehicle only by issuance of a CDL which contains, at a minimum, the information specified in part 383, subpart J, of this title.

(b) *Exceptions.*

(1) *Training.* The State may authorize a person, who does not hold a CDL valid in the type of vehicle in which training occurs, to undergo behind-the-wheel training in a commercial motor vehicle only by means of a learner's permit issued and used in accordance with § 383.23(c) of this title.

(2) *Confiscation of CDL pending enforcement.* The State may allow a CDL holder, whose CDL is confiscated in the course of enforcement of the State's motor vehicle traffic code, but who is not yet convicted of a disqualifying offense under § 383.51 based on such enforcement, to drive a commercial motor vehicle for up to 30 days while holding a dated receipt for such confiscated CDL.

§ 384.205 CDLIS information.

Before issuing a CDL to any person, the State shall, within the period of time specified in § 384.232, perform the check of the Commercial Driver's License Information System (CDLIS) in accordance with § 383.73(a)(3)(ii) of this title, and, based on that information, shall promptly implement the disqualifications, licensing limitations, and/or penalties that are called for in any applicable section(s) of this subpart.

§ 384.206 State record checks.

(a) *Required checks.*

(1) *Issuing State's records.* Before issuing a CDL to any person, the State shall, within the period of time specified in § 384.232, check its own driving record for such person in accordance with § 383.73(a)(3) of this title.

(2) *Other States' records.* Before initial or transfer issuance of a CDL to a person, the issuing State shall, within the period of time specified in § 384.232, obtain from any other State or jurisdiction which has issued a CDL to such person, and such other State(s) shall provide, all information pertaining to the driving record of such person in accordance with § 383.73(a)(3) of this title.

(b) *Required action.* Based on the findings of the State record checks prescribed in this section, the State shall promptly implement the disqualifications, licensing limitations, and/or penalties that are called for in any applicable section(s) of this subpart.

§ 384.207 Notification of licensing.

Within the period defined in § 383.73(f) of this title, the State shall:

(a) Notify the operator of the CDLIS of each CDL issuance;

(b) Notify the operator of the CDLIS of any changes in driver identification information; and

(c) In the case of transfer issuances, implement the Change State of Record transaction, as specified by the operator of the CDLIS, in conjunction with the previous State of record and the operator of the CDLIS.

§ 384.208 [Reserved]

§ 384.209 Notification of traffic violations.

(a) *Required notification with respect to CDL holders.* The licensing entity of the State in which a conviction occurs shall, before the end of the third business day following the day it receives notice of such conviction, and no later than 30 calendar days from the operative date of conviction in the tribunal of competent jurisdiction, notify the licensing entity of a person's State of licensure of the conviction by such electronic means as are specified by the operator of the CDLIS, whenever a person who holds a CDL from another State is convicted of a violation, in any type of vehicle, of any State or local law relating to motor vehicle traffic control (other than a parking violation).

(b) *Required notification with respect to non-CDL holders.* The licensing entity of the State in which a conviction occurs shall, within 10 days after being informed of such conviction, and no later than 30 calendar days from the operative date of conviction in the tribunal of competent jurisdiction, notify the licensing entity of a person's State of licensure of such conviction, whenever a person who does not hold a CDL, but who is licensed to drive by another State, is convicted of a violation, in a commercial motor vehicle, of any State or local law relating to motor vehicle traffic control (other than a parking violation).

§ 384.210 Limitation on licensing.

The State shall not knowingly issue a CDL to a person during a period in which:

(a) Such person is disqualified from operating a commercial motor vehicle under the definition of *disqualification* in § 383.5 of this title or under the provisions of § 384.231(b)(2);

(b) Any type of driver's license held by such person is suspended, revoked, or cancelled by the State or jurisdiction of licensure; or

(c) Such person is subject to the penalties for false information contained in § 383.73(g) of this title.

§ 384.211 Return of old licenses.

The State shall not issue a CDL to a person who possesses a driver's license issued by another State or jurisdiction unless such person first surrenders the driver's license issued by such other State or jurisdiction in accordance with §§ 383.71(a)(7) and (b)(4) of this title.

§ 384.212 Domicile requirement.

(a) The State shall issue CDLs only to those persons for whom such State is the State of domicile as defined in § 383.5 of this title; except that the State may issue a nonresident CDL under the conditions specified in §§ 383.23(b), 383.71(e) and 383.73(e) of this title.

(b) The State shall require any person holding a CDL issued by another State to apply for a transfer CDL from the State within 30 days after establishing domicile in the State, as specified in § 383.71(b) of this title.

§ 384.213 Penalties for driving without a proper CDL.

The State shall impose civil and criminal penalties for operating a commercial motor vehicle while not possessing a CDL that is valid for the type of commercial motor vehicle being driven; while having a driver's license suspended, revoked, or cancelled; or while being disqualified from operating a commercial motor vehicle. In determining the appropriateness of such penalties, the State shall consider their effectiveness in deterring this type of violation. The State shall not impose penalties on commercial motor vehicle drivers which are less stringent than those imposed on noncommercial drivers for the same or analogous offenses.

§ 384.214 Reciprocity.

The State shall allow any person to operate a commercial motor vehicle in the State who is not disqualified from operating a commercial motor vehicle and who holds a CDL which is—

(a) Issued to him or her by any other State or jurisdiction in accordance with part 383 of this title;

(b) Not suspended, revoked, or cancelled; and

(c) Valid, under the terms of part 383, subpart F, of this title, for the type of vehicle being driven.

§ 384.215 First offenses.

(a) *General rule.* The State shall disqualify from operating a commercial motor vehicle each person who is convicted, as defined in § 383.5 of this title, in any State or jurisdiction, of a disqualifying offense specified in § 383.51(b)(2)(i) through (iv) of this title, for no less than one year.

(b) *Special rule for hazardous materials offenses.* If the offense under paragraph (a) of this section occurred while the driver was operating a vehicle transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (codified as amended at 49 U.S.C. app. 1801–1819), the State shall disqualify the person for no less than three years.

§ 384.216 Second offenses.

(a) *General rule.* The State shall disqualify for life from operating a commercial motor vehicle each person who is convicted, as defined in § 383.5 of this title, in any State or jurisdiction, of a subsequent offense as described in § 383.51(b)(3)(iv) of this title.

(b) *Special rule for certain lifetime disqualifications.* The State may reduce the lifetime disqualification of a person disqualified for life under § 383.51(b)(3)(iv) of this title, to a minimum of ten years in accordance with § 383.51(b)(3)(v) of this title.

§ 384.217 Drug offenses.

The State shall disqualify from operating a commercial motor vehicle for life each person who is convicted, as defined in § 383.5 of this title, in any State or jurisdiction, of using a commercial motor vehicle in the commission of a felony described in §§ 383.51(b)(2)(v) and 383.51(b)(3)(iii) of this title. The State shall not apply the special rule in § 384.216(b) to lifetime disqualifications imposed for controlled substance felonies as detailed in §§ 383.51(b)(2)(v) and 383.51(b)(3)(iii) of this title.

§ 384.218 Second serious traffic violation.

The State shall disqualify from operating a commercial motor vehicle for a period of not less than 60 days each person who, in a three-year period, is convicted, as defined in § 383.5 of this title, in any State(s) or jurisdiction(s), of two serious traffic violations involving a commercial motor vehicle operated by such person, as specified in §§ 383.51(c)(1) and (c)(2)(i) of this title.

§ 384.219 Third serious traffic violation.

The State shall disqualify from operating a commercial motor vehicle for a period of not less than 120 days each person who, in a three-year period, is convicted, as defined in § 383.5 of this title, in any State(s) or jurisdiction(s), of three serious traffic violations involving a commercial motor vehicle operated by such person, as specified in §§ 383.51(c)(1) and (c)(2)(ii) of this title

§ 384.220 National Driver Register information.

Before issuing a CDL to any person, the State shall, within the period of time specified in § 384.232, perform the check of the National Driver Register in accordance with § 383.73(a)(3)(iii) of this title, and, based on that information, promptly implement the disqualifications, licensing limitations, and/or penalties that are called for in any applicable section(s) of this subpart.

§ 384.221 Out-of-service regulations (intoxicating beverage).

The State shall adopt, and enforce on all operators of commercial motor vehicles as defined in either § 383.5 or § 390.5 of this title, the provisions of § 392.5(a) and (c) of this title.

§§ 384.222 through 384.230 [Reserved]

§ 384.231 Satisfaction of State disqualification requirement.

(a) *Applicability.* The provisions of §§ 384.203, 384.206(b), 384.210, 384.213, 384.215 through 384.219, 384.221, and 384.231 apply to the State of licensure of the person affected by the provision. The provisions of § 384.210 also apply to any State to which a person makes application for a transfer CDL.

(b) *Required action.*

(1) *CDL holders.* A State shall satisfy the requirements of this subpart that the State disqualify a person who holds a CDL by, at a minimum, suspending, revoking, or cancelling the person's CDL for the applicable period of disqualification.

(2) *Non-CDL holders (effective October 1, 1995).* A State shall satisfy the requirements of this subpart that the State disqualify a non-CDL holder who is convicted of an offense or offenses necessitating disqualification under § 383.51 by, at a minimum, implementing the limitation on licensing provisions of § 384.210 and the timing and recordkeeping requirements of paragraphs (c) and (d) of this section so as to prevent such non-CDL holder's legally obtaining a CDL from any State during the applicable disqualification period(s) specified in this subpart.

(c) *Required timing.* The State shall disqualify a driver before the end of the third business day following the day the State licensing entity received notice of the conviction necessitating such driver's disqualification, and, if the conviction occurred in the State, no later than 30 calendar days from the operative date of conviction in the tribunal of competent jurisdiction. The starting date to calculate the minimum disqualification periods of this part shall be the date on which the State licensing entity takes the requisite disqualifying action.

(d) *Recordkeeping requirements.* The State shall maintain such driver records and cause such driver identification data to be retained on the CDLIS as the operator of the CDLIS specifies are necessary to the implementation and enforcement of the disqualifications called for in §§ 384.215 through 384.219.

§ 384.232 Required timing of record checks.

The State shall perform the record checks prescribed in §§ 384.205, 384.206, and 384.220, no earlier than 10 days prior to issuance for licenses issued before October 1, 1995, and no earlier than 24 hours prior to issuance for licenses issued after September 30, 1995.

Subpart C—Procedures for Determining State Compliance

§ 384.301 Substantial compliance—general requirement.

To be in substantial compliance with 49 U.S.C. app. 2708(a), a State must meet each and every standard of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices.

§ 384.303 State certification for Federal fiscal year 1993 (FY 1993).

(a) *FY 1993 Certification Requirement.* Prior to September 10, 1993, each State shall review its compliance with this part and certify to the Federal Highway Administrator as prescribed in paragraph (b) of this section. The certification shall be submitted as a signed original and four copies to the State Director or Officer-in-Charge, Office of Motor Carriers, Federal Highway Administration, located in that State.

(b) *FY 1993 Certification Content.* The certification shall consist of a statement signed by the Governor of the State, or by an official designated by the Governor, and reading as follows: "I (name of certifying official), (position title), of the State (Commonwealth) of _____, do hereby certify that the State (Commonwealth) is in substantial compliance with all requirements of 49 U.S.C. app. 2708(a), as defined in 49 CFR 384.301, and contemplates no changes in statutes, regulations, or administrative procedures, or in the enforcement thereof, which would affect

such substantial compliance through the date of the next certification required under 49 CFR 384.305."

§ 384.305 State certifications for Federal fiscal years after FY 1993.

(a) *Certification requirement.* Prior to January 1 of each Federal fiscal year after FY 1993, each State shall review its compliance with this part and certify to the Federal Highway Administrator as prescribed in paragraph (b) of this section. The certification shall be submitted as a signed original and four copies to the State Director or Officer-in-Charge, Office of Motor Carriers, Federal Highway Administration, located in that State.

(b) *Certification content.* The certification shall consist of a statement signed by the Governor of the State, or by an official designated by the Governor, and reading as follows: "I (name of certifying official), (position title), of the State (Commonwealth) of _____, do hereby certify that the State (Commonwealth) has continuously been in substantial compliance with all requirements of 49 U.S.C. app. 2708(a), as defined in 49 CFR 384.301, since [date of prior year's required certification; or if no such certification was made, the first day of the current Federal fiscal year], and contemplates no changes in statutes, regulations, or administrative procedures, or in the enforcement thereof, which would affect such substantial compliance through the date of the next certification required under 49 CFR 384.305."

§ 384.307 FHWA program reviews of State compliance.

(a) *FHWA program reviews.* Each State's CDL program shall be subject to review to determine whether or not the State meets the general requirement for substantial compliance in § 384.301. The State shall cooperate with and provide information in conjunction with any program reviews under this section.

(b) *Preliminary FHWA determination and State response.* If, after review, a preliminary determination is made that a State does not meet one or more of the standards of subpart B of this part, the State will be informed accordingly prior to July 1 of the fiscal year in which the preliminary determination is made. The State will have up to thirty calendar days to respond to the preliminary determination. Upon request by the State, an informal conference will be provided during this time.

(c) *Final FHWA determination.* If, after reviewing any timely response by the State to the preliminary determination, a final determination is made that the State is out of compliance with the affected standard, the State's certifying official (or, if there is no certifying official, the Governor and the licensing entity), will be notified of the final determination.

§ 384.309 Results of compliance determination.

(a) A State shall be determined not substantially in compliance with 49 U.S.C. app. 2708(a) for any fiscal year in which it:

(1) Fails to submit the certification as prescribed in this subpart; or

(2) Does not meet one or more of the standards of subpart B of this part, as established in a final determination by the FHWA under § 384.307(c).

(b) A State shall be in substantial compliance with 49 U.S.C. app. 2708(a) for any fiscal year in which neither of the eventualities in paragraph (a) of this section occurs.

Subpart D—Consequences of State Noncompliance

§ 384.401 Withholding of funds based on noncompliance.

(a) *Following first year of noncompliance.* An amount equal to five percent of the funds required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's first year of noncompliance under this part.

(b) *Following second and subsequent year(s) of noncompliance.* An amount equal to ten percent of the funds required to be apportioned to any State under each of sections 104(b)(1), 104(b)(3), and 104(b)(5) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's second or subsequent year of noncompliance under this part.

§ 384.403 Period of availability; effect of compliance and noncompliance.

(a) *Period of availability.*

(1) *Funds withheld on or before September 30, 1995.* Any funds withheld under this subpart from apportionment to any State on or before September 30, 1995, shall remain available for apportionment to such State as follows:

(i) If such funds would have been apportioned under 23 U.S.C. 104(b)(5)(B) but for the provisions of this subpart, such funds shall remain available until the end of the second fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(ii) If such funds would have been apportioned under 23 U.S.C. 104(b)(1) or 104(b)(3) but for the provisions of this subpart, such funds shall remain available until the end of the third fiscal year following the fiscal year for which such funds are authorized to be appropriated.

(2) *Funds withheld after September 30,1995.* No funds withheld under this subpart from apportionment to any State after September 30, 1995, shall be available for apportionment to such State.

(b) *Apportionment of withheld funds after compliance.* If, before September 10 of the last fiscal year for which funds withheld under this subpart from apportionment are to remain available for apportionment to a State under paragraph (a) of this section, the State makes the certification called for in § 384.305 and a determination is made that the State has met the standards of subpart B of this part for a period of 365 days and continues to meet such standards, the withheld funds remaining available for apportionment to such State shall be apportioned to the State on the day following the last day of such fiscal year.

(c) *Period of availability of subsequently apportioned funds.* Any funds apportioned pursuant to paragraph (b) of this section shall remain available for expenditure until the end of the third fiscal year succeeding the fiscal year in which such funds are apportioned. Sums not obligated at the end of such period shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

(d) *Effect of noncompliance.* If, at the end of the period for which funds withheld under this subpart from apportionment are available for apportionment under paragraph (a) of this section, the State has not met the standards of subpart B of this part for a 365-day period, such funds shall lapse or, in the case of funds apportioned under 23 U.S.C. 104(b)(5), shall lapse and be made available by the Secretary for projects in accordance with 23 U.S.C. 118(b).

[FR Doc. 93–14896 Filed 6–23–93; 8:45 am]
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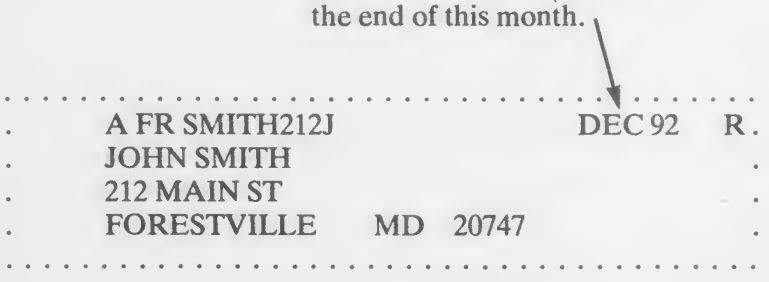

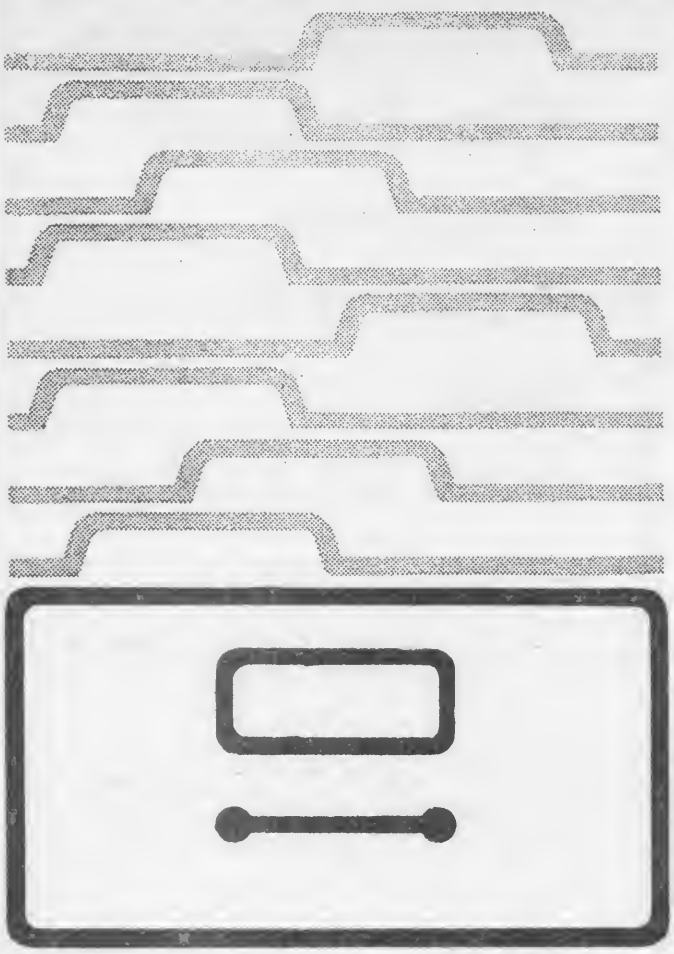

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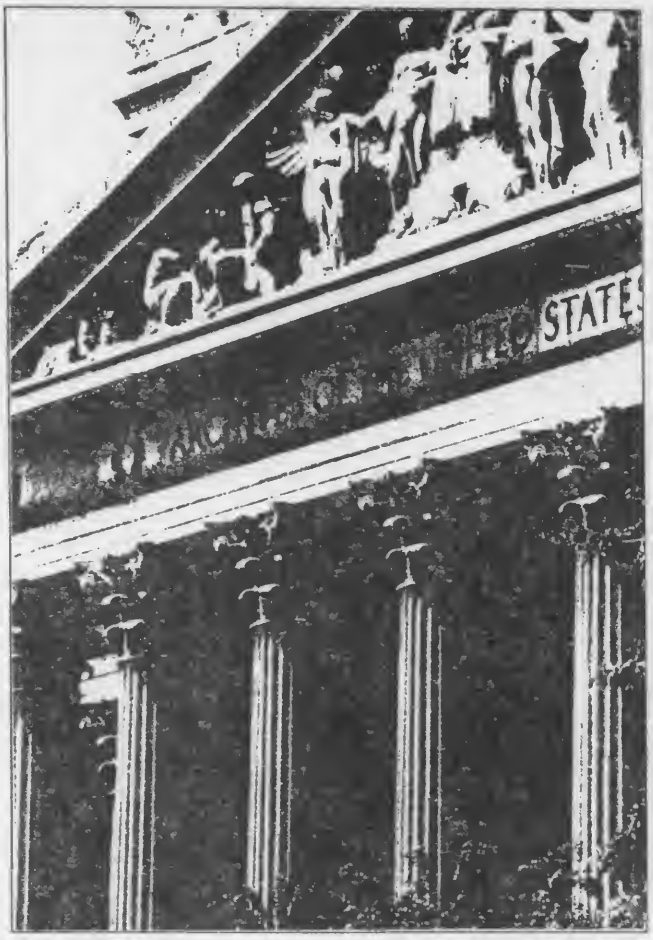

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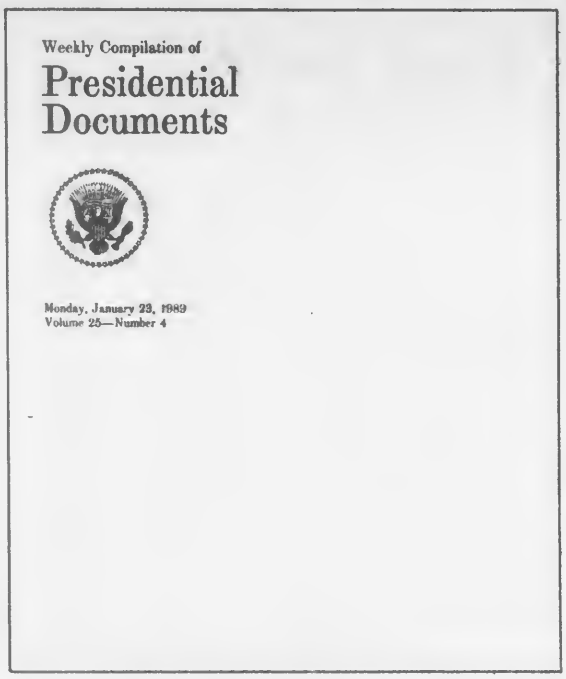

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