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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ASW-40]

Revision of Class D Airspace: Roswell, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class D airspace at Roswell, New Mexico. The Very High Frequency Omnidirectional Range (VOR) standard instrument approach procedure (SIAP) for the VOR-A approach, utilizing the Chisum Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC), has been amended. The intent of this action is to provide controlled airspace extending upward from the surface to contain instrument flight rules (IFR) operations for aircraft executing the approach at Roswell Industrial Air Center, Roswell, NM.

EFFECTIVE DATE: 0901 UTC, March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone 817-624-5531.

SUPPLEMENTARY INFORMATION:

History

On March 1, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the control zone at Roswell, New Mexico, was published in the **Federal Register** (58 FR 11801). A recent review of the VOR-A SIAP, indicated that an adjustment to the control zone was needed to completely contain operations within controlled airspace. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "control zone" and, for controlled airspace at an airport with an operating control tower, replaced it with the designation "Class D airspace." The intent of this action is to provide Class D airspace for the VOR-A SIAP at Roswell Industrial Air Center, Roswell, NM.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Since the proposed rule was published, the Roswell VORTAC has been renamed Chisum VORTAC. Other than those changes in terminology, this amendment is the same as that proposed in the notice.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dates June 17, 1993, and effective September 16, 1993, which is incorporated by reference in CFR 71.1 (58 FR 36298 July 6, 1993).

The Class D airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises Class D airspace at Roswell, New Mexico, to provide controlled airspace for aircraft executing the VOR-A SIAP into the Roswell Industrial Air Center.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000: General

* * * * *

ASW NM D Roswell, NM [Revise]

Roswell Industrial Air Center, NM
(lat. 33°18'05" N., long. 104°31'50" W.)
Chisum VORTAC
(lat. 33°20'15" N., long. 104°37'17" W.)

That airspace extending upward from the surface to and including 6200 feet MSL within a 5-mile radius of Roswell Industrial Air Center and within 3.7 miles each side of the Chisum VORTAC 290° radial extending from the 5.0-mile radius to 14.8 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on November 19, 1993.

Larry L. Craig,
Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93-29594 Filed 12-2-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-ASW-41]

Revision of Class E Airspace; Roswell, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace at Roswell, NM. The Very High Frequency Omnidirectional Range

(VOR) standard instrument approach procedure (SIAP) for the VOR–A approach, utilizing the Chisum Very High Frequency Omnidirectional Range/ Tactical Air Navigation (VORTAC), has been amended. The intent of this action is to provide controlled airspace extending upward from 700 feet above the ground level (AGL), a transition area, to contain instrument flight rules (IFR) operations for aircraft executing the approach at Roswell Industrial Air Center, Roswell, NM.

EFFECTIVE DATE: 0901 u.t.c., March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–624–5531.

SUPPLEMENTARY INFORMATION:

History

On March 1, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area for the VOR–A standard instrument approach procedure (SIAP) at Roswell, NM, was published in the **Federal Register** (58 FR 11803). The action proposed to revise the transition area, controlled airspace extending upward from 700 feet AGL, to contain instrument flight rules (IFR) operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Airspace extending upward from 700 feet or more above ground level is now Class E airspace.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Since the proposed rule was published the Roswell VORTAC has been renamed Chisum VORTAC. Other than those changes in terminology, this amendment is the same as that proposed in the notice.

The coordinates for this airspace docket are based on North American Datum 83.

Class E airspace designations for airspace area extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Class E airspace at Roswell, NM, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the VOR–A SIAP into the Roswell Industrial Air Center.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW NM E5 Roswell, NM [Revised]
Roswell Industrial Air Center, NM
(lat. 3°18′05″N., long. 104°31′50″W.)
Chisum VORTAC
(lat. 33°20′15″N., long. 104°37′17″W.)

That airspace extending upward from 700 feet above the surface within a 12.7-mile radius of Roswell Industrial Air Center and within 4 miles each side of the Roswell VORTAC 290° radial extending from the 12.7-mile radius to 23.3 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on November 19, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29592 Filed 12–2–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASW–21]

Revocation of Class E Airspace: Rosanky, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace at Rosanky, TX. The cancellation of the Nondirectional Radio Beacon (NDB) Runway (RWY) 10 special instrument approach procedure (SIAP) serving the Double D Ranch Airport has made control of this airspace for instrument flight rules (IFR) operations unnecessary. The intent of this action is to revoke the controlled airspace extending upward from 700 feet above ground level (AGL) since it is no longer needed to contain IFR operations at this location.

EFFECTIVE DATE: 0901 u.t.c., March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–624–5531.

SUPPLEMENTARY INFORMATION:

History

On April 5, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke a transition area at Rosanky, TX (58 FR 17542). The cancellation of the NDB RWY 10 SIAP serving the Double D Ranch Airport has made control of this airspace unnecessary. The action revokes controlled airspace extending upward from 700 feet AGL that is no longer needed to contain IFR operations at this location. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Airspace extending upward from 700 feet or more above ground level is now Class E

airspace. Concurrently with this action, the Double D Ranch Airport will be changed from IFR operations to visual flight rule (VFR) operations only.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Other than that change in terminology, this amendment is the same as that proposed in the notice.

Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be removed from the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the Class E airspace at Rosanky, TX, that previously provided controlled airspace from 700 feet AGL, a transition area, for aircraft executing the NDB RWY 10 SIAP into the Double D Ranch Airport is no longer needed.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW TX E El Dorado, TX [Removed]

* * * * *

Issued in Fort Worth, TX, on November 19, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29589 Filed 12–2–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Regulation No. 16]

RIN 0960–AC97

Exclusion From Income of Gifts of Commercial Transportation Tickets Under the Supplemental Security Income Program

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: This final rule implements section 8011 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989). The rule provides that effective March 1, 1990, for purposes of determining eligibility or benefit amount under the supplemental security income (SSI) program, the countable income of an individual shall not include the value of any commercial transportation ticket for travel by such individual (or spouse) among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, which is received as a gift by such individual (or such spouse) and is not converted to cash. Under this rule the income exclusion will apply to tickets received by eligible individuals or their eligible spouses as well as by ineligible parents and ineligible spouses from whom income may be deemed to the eligible individuals.

EFFECTIVE DATE: This rule is effective on December 3, 1993.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–0512.

SUPPLEMENTARY INFORMATION: For purposes of the SSI program, income is defined at § 416.1102 to mean anything that is received in cash or in kind which can be used to meet an individual's needs for food, clothing, or shelter. Prior to the enactment of section 8011 of Public Law 101–239, if an eligible individual received a transportation ticket for domestic travel as a gift and could convert that ticket to cash to be used to meet food, clothing, or shelter needs, we would consider the surrender value as unearned income to the individual and reduce his or her SSI benefit accordingly.

Section 8011 of Public Law 101–239, effective March 1, 1990, amended section 1612(b) of the Social Security Act by adding paragraph (15). This paragraph provides for the exclusion from income of the value of any commercial transportation ticket for travel by an eligible individual (or spouse) among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. The exclusion applies if the ticket is received as a gift by the individual (or spouse) and is not converted to cash. This regulation, which implements section 8011 of Public Law 101–239, applies the income exclusion when the gift of transportation tickets is received by the eligible individual or his or her eligible spouse (§ 416.1124(c)(16)). It also applies when such tickets are received by the ineligible spouse of an eligible individual or the ineligible parent of an eligible individual who is a child, in order that the deeming rules not reduce the SSI payment of, or render ineligible, the individual or child (§ 416.1161(a)(19)). Not to apply the income exclusion in such cases could negate the beneficial effect of section 8011 for certain individuals living with their ineligible spouses and children living with their ineligible parents.

The regulation also provides that when a commercial transportation ticket excluded under section 8011 of Public Law 101–239 is cashed, the cash received is income in the month of receipt. This policy is consistent with the express terms of section 8011 that the value of such a ticket be excluded from income if "not converted to cash."

Thus, when a commercial transportation ticket is converted to cash, the exclusion ceases to apply and the cash is counted as income in the month of conversion.

We are also amending § 416.1140(a)(1) to correct a regulatory reference contained therein.

This regulation was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 24, 1992 (57 FR 44146). A 60-day comment period was provided. The comment period ended on November 23, 1992. No comments were received. The NPRM, among other changes, would have added a new paragraph (c)(15) to § 416.1124. Since a paragraph (c)(15) has been promulgated with respect to another exclusion, the material designated as paragraph (c)(15) in the NPRM will be designated as paragraph (c)(16) in the final regulation. With this change, the proposed regulation is adopted.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291, since the costs are expected to be less than $100 million and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect eligibility for SSI benefits. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, is not required.

Paperwork Reduction Act

This regulation does not impose reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income.)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: August 6, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 22, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. In § 416.1124, the word "and" at the end of paragraph (c)(13) is removed, the period at the end of paragraph (c)(14) is removed and replaced by a semicolon, the period at the end of paragraph (c)(15) is removed and replaced by "; and ", and a new paragraph (c)(16) is added to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) *Other unearned income we do not count.* We do not count as unearned income—

* * * * *

(16) The value of any commercial transportation ticket, for travel by you or your spouse among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, which is received as a gift by you or your spouse and is not converted to cash. If such a ticket is converted to cash, the cash you receive is income in the month you receive the cash.

§ 416.1140 [Amended]

3. In § 416.1140(a)(1), the reference to "§ 416.1124(c)(10)" is revised to read "§ 416.1124(c)(12)."

4. In § 416.1161, the word "or" at the end of paragraph (a)(14) is removed, the periods at the end of paragraphs (a)(17) and (a)(18) are replaced by semicolons, and a new paragraph (a)(19) is added to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

* * * * *

(a) * * *

(19) The value of a commercial transportation ticket as described in § 416.1124(c)(16). However, if such a ticket is converted to cash, the cash is income in the month your spouse or parent receives the cash.

* * * * *

[FR Doc. 93–29495 Filed 12–2–93; 8:45 am]

BILLING CODE 4190–29–P

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20 CFR Part 416

RIN 0960–AD41

Regulations No. 16, Subparts B, K and L; Exclusion of Earned Income Tax Credits From Income and Resources

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations implement those provisions of section 11115 of the Omnibus Budget Reconciliation Act of 1990 which exclude from income under the supplemental security income (SSI) program any refund of Federal income taxes due to the earned income tax credit (EITC) and any advance EITC payments from an employer. Such payments also are excluded by section 11115 from resources in the month following the month of receipt. In addition to implementing these statutory changes, these regulations also provide that SSI applicants and recipients are no longer required to file for EITC payments as a condition of SSI eligibility since such payments are excluded from income.

EFFECTIVE DATE: These rules are effective December 3, 1993.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965–1762.

SUPPLEMENTARY INFORMATION: These regulations implement those provisions of section 11115 of the Omnibus Budget Reconciliation Act of 1990, Public Law (Pub. L.) 101–508, which amended sections 1612(b) and 1613(a) of the Social Security Act (the Act). As amended, section 1612(b) excludes from income, under title XVI, any refund of Federal income taxes due to an EITC and any advance EITC payments from an employer. Such payments also are excluded from resources, by section 1613(a) of the Act, in the month following the month of receipt. In addition, under these regulations, SSI applicants and recipients are no longer required to file for EITC payments as a condition of SSI eligibility since such payments are excluded from income. The SSI provisions of section 11115 of

Public Law 101–508 were effective January 1, 1991.

Prior to January 1, 1991, we counted EITC payments, received either as an advance or a refund, as earned income for purposes of assessing SSI eligibility and benefit amount. Any EITC payments retained into the month following the month of receipt were considered countable resources in that month. As a condition of SSI eligibility, an individual was required to file for any EITC payments for which he or she was eligible. These policies were based on section 1612(a)(1)(C) of the Act and regulations at §§ 416.210, 416.1110, 416.1111, and 416.1201.

Section 1612(a) of the Act defines income for purposes of the SSI program and section 1612(a)(1)(C) of the Act states that earned income includes any refund of Federal income taxes made by reason of section 32 of the Internal Revenue Code of 1954 (relating to earned income tax credit) and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income tax credit). However, income under section 1612(a) of the Act is subject to various exclusions set out in section 1612(b) of the Act, which, as noted above, was amended by section 11115 of Public Law 101–508 to exclude from income an EITC payment received through a refund of Federal income tax or as an advance payment from an employer.

These regulations were published in the **Federal Register** (57 FR 44348) as a Notice of Proposed Rulemaking on September 25, 1992. Interested parties were given 60 days to submit comments. We received no comments and are adopting the regulations as proposed.

Provisions of the Regulations

Effective January 1, 1991, we exclude from income under these regulations any refund of Federal income taxes due to an EITC and any advance EITC payments from an employer, which an individual receives after December 31, 1990, regardless of the tax year involved.

These regulations also provide that any unspent portion of an EITC advance or refund is excluded from resources in the month following the month of receipt. This includes any unspent portion of an EITC advance or refund received in (but not earlier than) December 1990. Any unspent funds retained into the second month following the month of receipt are subject to resource counting rules at that time.

Under these regulations, individuals are no longer required to file for EITC benefits as a condition of SSI eligibility since such payments are excluded from income.

Section 11115(e) of Public Law 101–508 states that the provision applies "* * * to determinations of income or resources made for any period after December 31, 1990." We interpret this to mean that only EITC payments received after December 31, 1990, are excluded from income. EITC payments received in November or December 1990 which are used in computing payments for January or February 1991 are not excluded from income. We believe that this interpretation correctly reflects the statute since section 11115(e) of Public Law 101–508 applies with respect to "determinations of income" rather than with respect to "benefits." If section 11115(e) had been effective with respect to benefit determinations made after December 31, 1990, retrospective monthly accounting (RMA) would require the exclusion of EITCs received in November and December 1990 for the benefit calculations of January and February of 1991. But determinations of income for a particular month are simply the calculations of countable income for that month which will be used in benefit calculations two months later. Thus, "determinations of income" after December 31, 1990 would only cover income received after that date. An EITC payment received in December 1990 may be excluded from resources in January 1991 since resources by definition include any income that is retained in the month following the month of receipt.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that these are not major rules under Executive Order 12291 since the costs are expected to be less than $100 million, and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These regulations impose no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: August 6, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 22, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for subpart B of part 416 continues to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c; secs. 211 and 212 of Pub. L. 93–66, 87 Stat. 154 and 155; sec. 502(a) of Pub. L. 94–241, 90 Stat. 268; and sec. 2 of Pub. L. 99–643, 100 Stat. 3574.

2. Section 416.210 is amended by revising paragraph (b) to read as follows:

§ 416.210 You do not apply for other benefits.

* * * * *

(b) *What "other benefits" includes.* "Other benefits" includes any payments for which you can apply that are available to you on an ongoing or one-time basis of a type that includes annuities, pensions, retirement benefits, or disability benefits. For example, "other benefits" includes veterans' compensation and pensions, workers' compensation payments, Social Security insurance benefits and unemployment insurance benefits.

* * * * *

3. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

§ 416.1111 [Amended]

4. Section 416.1111 is amended by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d).

5. The introductory text of paragraph (c) of § 416.1112 is republished, and paragraph (c) is amended by

redesignating existing paragraphs (c)(1) through (c)(8) as paragraphs (c)(2) through (c)(9), removing the parenthesis at the end of redesignated paragraph (c)(6) and adding a new paragraph (c)(1) to read as follows:

§ 416.1112 Earned income we do not count.

* * * * *

(c) *Other earned income we do not count.* We do not count as earned income—

(1) Any refund of Federal income taxes you receive under section 32 of the Internal Revenue Code (relating to earned income tax credit) and any payment you receive from an employer under section 3507 of the Internal Revenue Code (relating to advance payment of earned income tax credit);

* * * * *

6. Section 416.1161 is amended by reserving paragraph (a)(19) and by adding paragraph (a)(20) to read as follows:

§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.

* * * * *

(20) Refunds of Federal income taxes and advances made by an employer relating to an earned income tax credit, as provided in § 416.1112(c).

7. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

8. Section 416.1210 is amended by removing the word "and" at the end of paragraph (h), replacing the periods at the end of paragraphs (l), (m), and (n) with semicolons, adding "and" at the end of paragraph (n) and by adding a new paragraph (o) to read as follows:

§ 416.1210 Exclusions from resources; general.

* * * * *

(o) Refunds of Federal income taxes and advances made by an employer relating to an earned income tax credit, as provided in § 416.1235.

9. Section 416.1235 is added to read as follows:

§ 416.1235 Exclusion of earned income tax credit.

In determining the resources of an individual (and spouse, if any), we exclude in the month following the month of receipt the unspent portion of any refund of Federal income taxes under section 32 of the Internal Revenue Code (relating to earned income tax credit) and the unspent portion of any payment from an employer under section 3507 of the Internal Revenue Code (relating to advance payment of earned income tax credit). Any unspent funds retained until the first moment of the second month following their receipt are subject to resource counting rules at that time.

[FR Doc. 93–29494 Filed 12–2–93; 8:45 am]

BILLING CODE 4190–29–P

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from Feed Service Co., Inc., to A. L. Laboratories, Inc. (formerly A. L. Laboratories, Inc., A Subsidiary of A/S Apothekernes Laboratorium for Specialpraeparater).

EFFECTIVE DATE: December 3, 1993.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: Feed Service Co., Inc., 303 Lundin Blvd., P.O. Box 698, Mankato, MN 56001, has informed FDA that it has transferred ownership of, and all rights and interests in NADA 111–637 for Tylosin to A. L. Laboratories, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024. Also, A. L. Laboratories, Inc., has informed FDA of a change of sponsor name from A. L. Laboratories, Inc., A Subsidiary of A/S Apothekernes Laboratorium for Specialpraeparater to A. L. Laboratories, Inc. Accordingly, FDA is amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) and 21 CFR 558.625(b)(54) to reflect these changes.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) in the entry for "A. L. Laboratories, Inc., A Subsidiary of A/S Apothekernes Laboratorium for Specialpraeparater" and in the table in paragraph (c)(2) in the entry for "046573" by revising the sponsor name to read "A. L. Laboratories, Inc."

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.625 [Amended]

4. Section 558.625 *Tylosin* is amended in paragraph (b)(54) by removing "030841" and adding in its place "046573".

Dated: November 29, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–29542 Filed 12–2–93; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 146

[FRL–4200–7]

Revisions to the Safe Drinking Water Act Underground Injection Control Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final and interim final rule and request for comments.

SUMMARY: This rule adopts, with certain changes, amendments to EPA's Underground Injection Control (UIC) regulations proposed on June 28, 1990

(55 FR 26462). The amendments clarify the current requirements for wells authorized by rule. They also clarify the obligations for financial responsibility by the parties involved in a well transfer, the criteria for demonstrating mechanical integrity through the use of annulus pressure monitoring records, and the specific authority of the UIC Program Director to require information on any well. Finally, it restores the last sentence of § 144.31(a) which was inadvertently left out in the proposal.

DATES: Except for the amendments to § 144.26(e), these regulations are published as final and shall become effective on January 3, 1994. The amendments in § 144.26(e) are published as interim final and shall become effective May 2, 1994, unless significant comments are received. Comments on the regulation that is published as interim final will be accepted until February 1, 1994. EPA will publish a further notice prior to the effective date.

These regulations shall be considered to be promulgated for purposes of judicial review at 1 p.m., Eastern Time on December 16, 1993.

ADDRESSES: Send written comments on the interim final rule to the UIC Regulation Revisions Comment Clerk; Water Docket MC–4101; Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Commenters are requested to submit an original and 3 copies of their written comments and enclosures. Commenters who want receipt of their comments acknowledged should send a self addressed, stamped envelope. No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: J. Howard Beard, III, Underground Injection Control Branch, EPA, (202) 260–8796.

SUPPLEMENTARY INFORMATION:

I. Background

These regulations are being amended under the authority of Part C of the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*). The Safe Drinking Water Act (SDWA) is designed to protect the quality of drinking water in the United States. Part C of the SDWA specifically mandates the regulation of underground injection of fluids through wells. The Agency has promulgated a series of regulations under this authority.

Section 1421 of the Act requires EPA to propose and promulgate regulations specifying minimum requirements for State programs to prevent well injection which may endanger drinking water sources. EPA promulgated administrative and permitting regulations, now codified in 40 CFR part 144, on May 19, 1980 (45 FR 33290), and technical requirements in 40 CFR part 146 on June 24, 1980 (45 FR 42472). The regulations were subsequently amended on August 27, 1981 (46 FR 43156), February 3, 1982 (47 FR 4992), January 21, 1983 (48 FR 2938), April 1, 1983 (48 FR 14146), May 11, 1984 (49 FR 20138), November 15, 1984 (49 FR 45292) and July 26, 1988 (53 FR 28118).

Section 1422 of the Act provides that States may apply to EPA for primary responsibility to administer the UIC program. Where States do not seek this responsibility, or fail to demonstrate that they meet EPA's minimum requirements, EPA is required to prescribe, by regulation, a UIC program for each State. These direct implementation (DI) programs were promulgated in two phases, on May 11, 1984 (49 FR 20138) and November 15, 1984 (49 FR 45308).

The Agency has been implementing the program for several years, and in doing so, has found the need for some clarifications and additions to make the program more effective. In most cases, the amendments do not impose any new requirements on owners or operators of injection wells. The Agency has found, however, that in some cases, the language of the current regulations can lend itself to misinterpretation or differing interpretations, making consistent and effective implementation of the program difficult. The amendments clarify the intent of the original regulations and add certain provisions to the regulations that should make them easier to implement and enforce consistently.

II. Response to Comments

EPA requested and accepted comments on the proposed regulations until August 29, 1990. EPA held a public hearing on the regulations on August 12, 1990, at the EPA Education Center, 401 M Street, SW., in Washington, DC. EPA received a total of 19 sets of comments on the proposed regulations during the comment period. For a detailed analysis of the comments received, please refer to the background document entitled "Response to Comments". Comments which led to changes to the proposal and other significant comments are addressed below.

A. Financial Responsibility

Most of the commenters provided comments regarding the amendments dealing with financial responsibility. The Agency's intent in the proposal was to ensure that financial responsibility be maintained during a transfer of ownership. The proposal attempted to achieve this result without interfering with the rights of well owners or operators to transfer properties or unduly impeding injection. The Agency, therefore, proposed that, upon transfer of ownership or operational control of the well, the current owner (transferor) would maintain financial responsibility for the well until the new owner (transferee) had demonstrated financial responsibility to the Director. The proposal also required, however, that the transferee not inject into the well until he had demonstrated financial responsibility to the Director.

In order to place the following discussion in the proper context, the Agency notes that the amendments to the financial responsibility requirements apply only to Federally-implemented programs. The Agency has to rely solely on the financial responsibility demonstration of owners and operators of injection wells to assure that these wells are not improperly abandoned or otherwise left in a manner that will endanger underground sources of drinking water (USDWs). EPA's experience in running the program has shown that the possibility of abandonment or improper plugging is greatest during a transfer of ownership, particularly for economically marginal wells. The Agency does not have a well plugging fund at its disposal as do several States, nor can it, without a court judgment, attach property of delinquent operators as can some States. In the case of transfers, it is, therefore, paramount for the Agency to have in place a mechanism that will ensure that there is no interruption in the financial coverage of a well. Since the transferor's financial fitness is a known quantity, it is prudent for the Agency to require that the transferor maintain financial responsibility for the well until the transferee can make a financial responsibility demonstration.

The commenters noted an inconsistency between the preamble language and proposed § 144.28(l) regarding the party responsible for providing notice to the Agency of the intended transfer. The Agency's intent was that the transferor be responsible, and § 144.28(l) has been modified accordingly.

There was significant agreement among the commenters that as long as the transferor must remain financially liable for the well, the transferee should be allowed to inject into the well after transfer. Commenters also argued that a transfer should be assumed to be valid for rule-authorized wells, as it is for permitted wells under § 144.38. EPA

agrees with these comments since the Agency's intention in clarifying the financial responsibility requirements was to allow for uninterrupted injection during transfer of ownership as long as financial responsibility was maintained by one of the parties. EPA also agrees that the process specified in § 144.38 for well transfers for permitted wells should be used for wells authorized by rule. For this purpose, EPA has deleted proposed sections 144.21(c)(2), 144.22(c)(2), and 144.28(d)(5), and has amended proposed § 144.28(l) to parallel the language in § 144.38, but the Agency has maintained authority in § 144.28(l)(3) to require the transferee to cease injection upon failure to demonstrate financial responsibility.

Some commenters suggested that the Agency should somehow protect the transferors from gross negligence or willful noncompliance by the transferee during the period that the transferor is liable for the financial responsibility of the well. EPA believes that it is up to the owners or operators to clearly establish the responsibility of each party in the sale or transfer contract. As pointed out by a commenter, the Agency should not and does not wish to interfere with these transactions. EPA does not have the authority to indemnify transferors for the willful or negligent conduct of transferees. Some commenters noted that many States require blanket bonds from owners or operators and that there is no need for the Director to approve a financial responsibility demonstration of a transferee with an approved blanket bond. The Agency agrees. However, since these amendments do not apply to primacy States, and since the Agency seldom relies on blanket bonds, no special provisions are necessary in these regulations to deal with this issue.

Finally, one commenter argued that transfers should not be delayed because a 30-day notice could not be given to EPA. The Agency believes the 30-day advance notice requirement is essential, since it allows EPA to review the well's records prior to transfer. In addition, the advance notice requirement should not interfere with the operation of the well because EPA no longer requires the transferee to cease operations unless he receives notification from the Director that he has not demonstrated financial responsibility.

B. Regulation of Class V Wells

EPA proposed amendments to the regulations dealing with Class V wells to clarify the duration of well authorization and specify actions that can result in a well's loss of authorization (§ 144.24). EPA also proposed amendments to clarify that permits for Class V wells may include conditions that ensure that plugging and abandonment of a well will not allow movement of fluids into or between USDWs (§ 144.51(o)).

Two commenters suggested that the proposed amendments raised anew the regulatory status of Class V wells, and that EPA should establish a comprehensive regulatory program for Class V wells. Other commenters indicated that it was premature for EPA to prescribe any additional requirements for Class V wells in the absence of a comprehensive regulatory program.

EPA did not reopen the Class V requirements in the proposal nor do these rules alter the existing rules for Class V wells that provide for authorization by rule until further requirements under future regulations become applicable. However, EPA sees a need in this promulgation to clarify the inventory requirements for Class V wells. Under the existing regulations, EPA intended that an owner or operator who submitted inventory information before the regulatory deadline of § 144.26(d) would be authorized to inject pursuant to § 144.11. The regulations also provided that rule-authorization would terminate for failure to submit inventory information. Under these circumstances, existing Class V wells for which inventory information was not submitted on time can now only be authorized to inject by permit. In the proposed amendments, EPA simply corrected an erroneous cite for the inventory deadline in the introductory paragraph to § 144.26 and clarified that owners or operators of existing wells which failed to provide inventory information within the regulatory deadline had lost authorization to inject into the wells, but that the wells remained within the purview of the UIC program.

In reviewing the regulations, however, EPA became aware that there is an inconsistency inherent in the current language of the inventory requirements. Class V wells are authorized by rule to inject until EPA develops more detailed regulations for them. Yet, § 144.26 prohibits injection into any well which was not inventoried within one year of the adoption of a UIC program for the State (May or November 1985, in most cases). Class V wells, which did not commence injection until after that date, apparently would never be able to comply with § 144.26 or obtain authorization to inject unless and until they acquire a permit, because they missed the inventory deadline.

This was not EPA's intent when it adopted the inventory requirement in May 1984 (49 FR 20182). In addition, EPA failed to provide a mechanism for restoring authorization-by-rule to inject for Class V wells which have lost it for failure to inventory, a mechanism made necessary due to the lack of detailed permitting regulations. EPA is, therefore, correcting §§ 144.26 and 144.52 to clarify the status of Class V wells and provide owners or operators of these wells an opportunity to comply with the inventory requirements and continue, resume, or commence injection. EPA believes that these changes to the inventory requirements merely clarify EPA's original intent regarding the status of Class V wells which should have been inventoried after the one-year deadline. However, EPA is also providing in § 146.26(e)(1) that owners or operators of wells which were subject to the one-year deadline, but who failed to submit inventory information, may resume injection 90 days after submittal of inventory information to the Director unless directed otherwise. Since EPA did not include this clarifying change in the proposal, this provision is included in this rule as interim final. EPA solicits comments for a 60 day period beginning with the date of the publication of this revision. In the absence of significant comments, this provision will be final on May 2, 1994.

EPA disagrees that its proposal reopened the issue of how it should regulate Class V wells; the proposal only clarified existing requirements. Thus, any comments regarding the adequacy of § 144.24 are not germane to this rule, and EPA declines to respond to them. Nonetheless, EPA notes that it is currently working on a regulatory program for Class V wells.

Several other commenters requested clarification on the status of a Class V well once it has been properly closed, since there are no specific provisions for the termination of authorization by rule once a Class V well is properly closed. The Agency believes that the authorization by rule of any well terminates when the well has been closed in such a manner that it will not cause the endangerment of USDWs. Finally, some commenters argued that since no specific closure requirements have been proposed, it is premature to include a standard for appropriate closure of Class V wells in the permitting requirements of § 144.52. EPA disagrees since the general requirements for all wells include the prohibition against endangerment of USDWs. Inadequate closure of any well can lead to endangerment, and, therefore, it is appropriate for the Agency to require that Class V wells be

closed in a manner that will not allow endangerment of USDWs.

C. Mechanical Integrity Test (MIT)

EPA requires mechanical integrity testing to insure that there is no movement of injected or native formation fluids into or between USDWs. Section 146.8 specifies that mechanical integrity consists of two parts: Part I—no significant leaks in the casing, tubing or packer (§ 146.8(a)(1)), and Part II—no significant fluid movement into a USDW through vertical channels adjacent to the well bore (§ 146.8(a)(2)). Section 146.8 also specifies the types of tests that are accepted by EPA for these demonstrations and describes a procedure to follow to request the approval of other tests. EPA clarified in proposed § 146.8 (b) and (c) that the Director has the authority to make the final decision on the test(s) that is (are) the most appropriate to demonstrate mechanical integrity (MI) for a specific well. The proposed amendments also defined the conditions for demonstrating MI by the use of annulus pressure monitoring (§ 146.8(b)(1)). Finally, the proposed amendments clarified the requirement that MI must be established and maintained (§§ 144.28(f)(2) and 144.51(q)(1)) and that injection must cease when a well lacks MI. The proposed amendments also provided the Director with the flexibility to allow injection to resume, after an MIT failure, if the owner or operator could demonstrate to the Director that there was no fluid movement into or between USDWs (§§ 144.28(f)(3) and 144.51(q)(2)).

Several commenters indicated that the well owner or operator should be able to decide which test is the most appropriate for a specific well and noted that the proposed amendments were inconsistent with § 146.8(e), which provides that when reporting results to the Director, the owner or operator must include a description of the test(s) and method(s) used. Other commenters requested that provisions be made for the Director's decision to be appealed. EPA believes that, in general, a UIC permit is the proper avenue for specifying a particular MIT, and EPA notes that permits may be appealed under § 124.19. However, for wells authorized by rule, the MIT provisions are self-implementing and not subject to appeal. Thus, the regulations, as currently written, are intended to give the owner or operator of a rule-authorized well some latitude in the choice of MITs, and EPA does not wish to change this policy. Therefore, EPA has decided not to amend §§ 146.8 (b) and (c) as proposed. However, the ultimate authority in deciding whether a test method is adequate and whether the test results are conclusive rests with the Director. Therefore, § 146.8(f) has been added clarifying the authority of the Director to require that additional or alternative tests be run if the Director is not satisfied with the results presented by the owner or operator.

The proposed amendments also included the clarification that if annulus pressure monitoring is the chosen method for demonstrating MI, as allowed in § 146.8(b)(1), the annulus pressure must be greater than atmospheric pressure at the surface. Several commenters indicated that this procedure would be expensive, that the results would be difficult to interpret and that, therefore, this method should not be required. The Agency agrees that monitoring of annulus pressure is technically complex and is not suggesting that it should be required across the board. This test is just one option for MIT. The Agency believes, however, that if other parameters which affect annulus pressure, particularly temperature of injected fluids, injection pressure and flow rates, are also monitored, annulus pressure monitoring is an effective tool for monitoring MI. Such complex monitoring requirements are undoubtedly most appropriate where it is essential to have continuous monitoring of MI such as for hazardous waste injection wells. EPA agrees with the commenters that, for most Class II wells, the required injection pressure and flow rate monitoring coupled with a 5-year pressure test are adequate. EPA's main point in the proposal was that monitoring pressure of an annulus open to atmospheric pressure is not an effective method for detecting leaks in the casing, tubing or packer. Annular pressure monitoring is only a reliable test to demonstrate the integrity of the casing and/or the injection string when the annulus can maintain a pressure, other than atmospheric, at the surface. A positive pressure may be more practical and easier to reach and maintain than a negative (less than atmospheric) pressure (References 1, 2, 3, 4 and 5). No data or other information were furnished by the commenters or are known to EPA to rebut these findings. The Agency also believes that continuous monitoring of the annulus pressure is the preferred method, but agrees that in some cases monitoring can be less than continuous as long as it is sufficiently frequent to be representative. Therefore, the amendments to § 146.8(b)(1) are promulgated with only minor revisions intended to clarify the proposed language and allow for non-continuous monitoring.

The Agency notes that this is the only amendment in this rulemaking which deals directly with the effectiveness of a program in protecting USDWs, since EPA is in fact specifying that monitoring of an open annulus is not acceptable as a technique to prove MI pursuant to § 146.8(a)(1) for any well. Mechanical integrity is considered an essential element in any effective program to protect USDWs. Clarifications in this rule other than those regarding annulus pressure monitoring may affect owners or operators on a case-by-case basis and do not include requirements that contradict State requirements or practices. However, the requirement that annulus pressure monitoring be conducted at pressure other than atmospheric is adhered to in only some of the States. The Agency, therefore, expects that even States that have been approved under section 1425 of the Act may need to amend their regulations to conform with this amendment if they allow open annulus pressure monitoring as an MIT.

Most commenters agreed with the proposed clarification that wells must maintain MI in order to operate. Some commenters, however, disagreed with EPA's proposal that injection must cease pursuant to an MI failure, unless the owner or operator can demonstrate that there is no fluid movement into or between USDWs. The commenters argued that movement of fluid into or between USDWs is a construction requirement issue, not an MIT issue. Further, the commenters argued that MIT should only deal with movement of injected fluids, not inter-formational movement of naturally-occurring formation fluids. Therefore, the commenters suggested that owners or operators should be allowed to resume injection if there is no "significant" fluid movement of injected fluids into a USDW.

The Agency believes that the purpose of the mechanical integrity testing requirements is to insure that the well is functioning according to specifications. The Agency agrees that the casing and cementing requirement is the proper vehicle for establishing which zones need to be isolated from each other. Furthermore, nothing in today's promulgation alters the flexibility provided to the Director to set casing and cementing requirements for Class II wells in existing fields to prevent only movement of fluid that may pose a significant risk to human health rather than any and all fluid movement (§ 146.22). However, the

Agency believes that § 146.8(a)(2) is indeed intended to verify the integrity of the approved casing and cementing program for these wells and to detect any movement of fluid (including inter-formational fluid movement) in noncompliance with the approved casing and cementing program. For example, temperature and noise logs are methods that use instruments lowered into the well to collect logging data to determine the presence or absence of significant fluid movement under § 146.8(a)(2). This information verifies the integrity of cement at the tested intervals and is compared with the applicable casing and cementing requirements. A well that fails Part II of the MIT (including the "cementing records" test of § 146.8(c)(2) as applicable) must be shut-in and repaired before injection is allowed to resume.

EPA, therefore, is revising proposed sections 144.28(f)(4) and 144.51(q)(3), to clarify that the flexibility for the Director to allow an operator to resume injection prior to full repair of the well is only available in the case of a failure of the MIT requirement in § 146.8(a)(1) where an owner or operator can categorically demonstrate that the failure would not lead to any fluid movement into or between USDWs. The Agency would expect that continued operation of such wells would be for short periods only, for example, until a rig could be brought on-site to perform necessary repairs.

EPA is also clarifying the period allowed for the cessation of injection after MIT failure. The proposed amendments in § 144.28(f)(3) required that injection cease within 48 hours of the notification of the MIT failure. EPA has amended this provision to clarify that the Director has the option to require immediate cessation of injection, and that the 48 hour period is the maximum time allowed when cessation can not reasonably be accomplished immediately.

Several commenters were concerned that §§ 144.28(f)(2) and 144.51(q)(3) would require owners or operators to establish MI prior to plugging and abandoning an injection well after a well has failed an MIT. This was not EPA's intent, and these sections have been clarified accordingly.

The Agency notes that, since the proposed amendments were published, final rules were promulgated which specify steps to be taken pursuant to an MIT failure of a Class I hazardous waste well. These regulations are not affected by today's promulgation. Also, EPA did not in its proposal reopen the issue of whether the UIC program should control the movement of inter-formational fluids. This issue was resolved in 1984, and EPA declines to respond to comments on this issue.

D. Reporting

EPA proposed a change in the frequency of noncompliance and program reporting by the States to quarterly instead of yearly and provided a definition for a "significant noncomplier." The Agency also proposed the elimination of the listing of all major facilities that are currently in noncompliance with the UIC regulations in the reports, opting instead for inclusion of recalcitrant violators only. The change in frequency has already been implemented for a number of years without any opposition from the States and has Office of Management and Budget (OMB) approval.

Several commenters expressed concern that the changes in the noncompliance reporting by the States could put an additional burden on the States and possibly on the well owners or operators. Several other commenters, however, indicated that elimination of the detailed noncompliance format in § 144.8 that requires well-by-well information would keep valuable information related to the pollution of ground water from the public and curtail information necessary for citizens' suits under the SDWA. EPA agrees in concept with comments concerning the need to ensure that the reporting requirements are not overly burdensome and the need to ensure that the State's UIC enforcement program is effective. EPA has therefore, decided to defer issuing rules on noncompliance and program reporting by the States and a definition of "significant noncomplier" until it has had more opportunity to study the impact that these changes will have on the States and EPA's enforcement and oversight responsibilities. Pending further action, the existing requirements in § 144.8 remain in effect.

III. Regulatory Impact

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether the amendments to the regulation are major and, therefore, subject to the requirements of a regulatory impact analysis. These amendments largely clarify the existing regulations and do not impose any additional burden on the States or the regulated community. The amendments, therefore, do not constitute a major rule. This rule has been submitted to OMB for review as required by Executive Order 12291. Any written comments received will be included in the public docket.

B. Paperwork Reduction Act

This rule places no additional information collection or record-keeping burden on respondents. Therefore, an information collection request has not been prepared and submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Impact on Small Entities

Under the Regulatory Flexibility Act, an agency is required to prepare an initial regulatory flexibility analysis whenever it is required to publish general notice of any rule, unless the head of the agency certifies that the rule, if promulgated, will not have significant economic impact on a substantial number of small entities. These regulations require no additional reporting by owners or operators and few new substantive requirements or standards. Therefore, the Administrator certifies that this regulation will not have a significant impact on a substantial number of small entities.

D. Considerations under the Administrative Procedures Act

The changes made to the Class V inventory requirements are being made without prior notice and comment. EPA believes that there is good cause for waiving notice and comment. The current regulations unintentionally create a regulatory impossibility for Class V wells which commenced injection after 1985 to obtain authorization by rule to inject. EPA did not intend this result and believes that it is necessary to correct this problem to remove any doubt that EPA intends for such wells to be authorized. Thus, prior notice would not be in the public interest. In addition, EPA believes that notice and comment is unnecessary. A fair reading of the existing §§ 144.24 and 144.26 suggest that EPA did not intend for new Class V wells to be without authorization if they submit inventory information. Therefore, today's regulation makes no change to the original intent of the regulations for new wells, for which an adequate opportunity to comment was already provided prior to promulgation May 19, 1980 and May 11, 1984. Additional comment is being requested only on § 144.26(e)(1).

E. Effect on States with Primacy

The amendments being promulgated today are non-substantial or apply only to federally-implemented programs, except as noted above, regarding

annulus pressure monitoring to demonstrate MI. Other than this exception, these rules have no impact on programs approved under section 1425. According to the regulations at 40 CFR 145.32 for non-substantial program revisions, primacy States, other than those approved under section 1425, must assert in a letter from the State's Director or his authorized representative to the Regional Administrator that the State has incorporated the revisions and new regulatory language into its current program or that it already meets the requirements. The State must submit this document within 270 days of the effective date of the final rule. The Agency expects that most States will be able to satisfy the requirements of 40 CFR 145.32 in a letter to the Regional Administrator.

F. References

1. Nielsen, D. M., and L. Aller, 1984, "Methods For Determining the Mechanical Integrity of Class II Injection Wells", National Water Well Association/EPA Series, pp. 26–34.
2. "Final Report Mechanical Integrity Testing of Injection Wells", Geraghty & Miller, Inc., April 30, 1980, pp. 49–51.
3. "Preparation and Review of UIC Area Permits for Enhanced Oil Recovery Projects", Interstate Oil Compact Commission, Contract Number 68–03–1823 with the Environmental Protection Agency, pp. 42–44.
4. "Annulus Pressure Monitoring Systems For Class I Wells", Ken E. Davis Associates, Houston, Texas, May 1987 Prepared under subcontract to Engineering Enterprises Inc., Norman, Oklahoma.
5. "Modeling Variations in Annular Pressure Due to Fluid Injection", Frederic C. Arnold, Ground Water, Vol. 29, No. 6, November-December 1991, pp. 832–837.

List of Subjects in 40 CFR Parts 144 and 146

Environmental protection, Administrative practice and procedures, Reporting and recordkeeping requirements, Confidential business information, Underground injection.

Dated: November 19, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 144 and 146 of title 40 of the Code of Federal Regulations are amended as follows:

Part 144—Underground Injection Control Program

The authority citation for part 144 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

Subpart A—General Provisions

2. Section 144.3 is amended by adding new definitions for "transferee" and "transferor" in alphabetical order to read as follows:

§ 144.3 Definitions.

* * * * *

Transferee means the owner or operator receiving ownership and/or operational control of the well.

Transferor means the owner or operator transferring ownership and/or operational control of the well.

* * * * *

Subpart B—General Program Requirements

3. Section 144.11 is amended by revising the first sentence to read as follows:

§ 144.11 Prohibition of unauthorized injection.

Any underground injection, except into a well authorized by rule or except as authorized by permit issued under the UIC program, is prohibited. * * *

4. Section 144.17 is added to subpart B to read as follows:

§ 144.17 Records.

The Director or the Administrator may require, by written notice on a selective well-by-well basis, an owner or operator of an injection well to establish and maintain records, make reports, conduct monitoring, and provide other information as is deemed necessary to determine whether the owner or operator has acted or is acting in compliance with Part C of the SDWA or its implementing regulations.

Subpart C—Authorization of Underground Injection by Rule

5. Section 144.21 is amended by redesignating paragraphs (b) and (c) as paragraphs (d) and (e), redesignating paragraph (a) as paragraph (b), revising newly designated (b), by redesignating the introductory text as paragraph (a) and revising newly designated (a) and by adding a new paragraph (c) to read as follows:

§ 144.21 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III Wells.

(a) An existing Class I, II (except enhanced recovery and hydrocarbon storage) and III injection well is authorized by rule if the owner or operator injects into the existing well within one year after the date at which a UIC program authorized under the SDWA becomes effective for the first time or inventories the well pursuant to the requirements of § 144.26. An owner or operator of a well which is authorized by rule pursuant to this section shall rework, operate, maintain, convert, plug, abandon or inject into the well in compliance with applicable regulations.

(b) *Duration of well authorization by rule.* Well authorization under this section expires upon the effective date of a permit issued pursuant to §§ 144.25, 144.31, 144.33 or § 144.34; after plugging and abandonment in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10, and upon submission of a plugging and abandonment report pursuant to § 144.28(k); or upon conversion in compliance with § 144.28(j).

(c) *Prohibitions on injection.* An owner or operator of a well authorized by rule pursuant to this section is prohibited from injecting into the well:

(1) Upon the effective date of an applicable permit denial;

(2) Upon failure to submit a permit application in a timely manner pursuant to § 144.25 or § 144.31;

(3) Upon failure to submit inventory information in a timely manner pursuant to § 144.26;

(4) Upon failure to comply with a request for information in a timely manner pursuant to § 144.27;

(5) Upon failure to provide alternative financial assurance pursuant to § 144.28(d)(7);

(6) Forty-eight hours after receipt of a determination by the Director pursuant to § 144.28(f)(3) that the well lacks mechanical integrity, unless the Director requires immediate cessation;

(7) Upon receipt of notification from the Director pursuant to § 144.28(l) that the transferee has not demonstrated financial responsibility pursuant to § 144.28(d);

(8) For Class I and III wells:

(i) In States with approved programs, five years after the effective date of the UIC program unless a timely and complete permit application is pending the Director's decision; or

(ii) In States with programs administered by EPA, one year after the effective date of the UIC program unless a timely and complete permit application is pending the Director's decision; or

(9) For Class II wells (except enhanced recovery and hydrocarbon storage), five years after the effective date of the UIC program unless a timely and complete permit application is pending the Director's decision.

* * * * *

6. Section 144.22 is amended by revising paragraph (a), redesignating

paragraph (b) as (d), and adding new paragraphs (b) and (c), to read as follows:

§ 144.22 Existing Class II enhanced recovery and hydrocarbon storage wells.

(a) An existing Class II enhanced recovery or hydrocarbon storage injection well is authorized by rule for the life of the well or project, if the owner or operator injects into the existing well within one year after the date which a UIC program authorized under the SDWA becomes effective for the first time or inventories the well pursuant to the requirements of § 144.26. An owner or operator of a well which is authorized by rule pursuant to this section shall rework, operate, maintain, convert, plug, abandon or inject into the well in compliance with applicable regulations.

(b) *Duration of well authorization by rule.* Well authorization under this section expires upon the effective date of a permit issued pursuant to §§ 144.25, 144.31, 144.33 or § 144.34; after plugging and abandonment in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10 of this chapter, and upon submission of a plugging and abandonment report pursuant to § 144.28(k); or upon conversion in compliance with § 144.28(j).

(c) *Prohibitions on injection.* An owner or operator of a well authorized by rule pursuant to this section is prohibited from injecting into the well:

(1) Upon the effective date of an applicable permit denial;

(2) Upon failure to submit a permit application in a timely manner pursuant to § 144.25 or § 144.31;

(3) Upon failure to submit inventory information in a timely manner pursuant to § 144.26;

(4) Upon failure to comply with a request for information in a timely manner pursuant to § 144.27;

(5) Upon failure to provide alternative financial assurance pursuant to § 144.28(d)(7);

(6) Forty-eight hours after receipt of a determination by the Director pursuant to § 144.28(f)(3) that the well lacks mechanical integrity, unless the Director requires immediate cessation; or

(7) Upon receipt of notification from the Director pursuant to § 144.28(l) that the transferee has not demonstrated financial responsibility pursuant to § 144.28(d).

* * * * *

7. Section 144.24 is revised to read as follows:

§ 144.24 Class V wells.

(a) A Class V injection well is authorized by rule until further requirements under future regulations become applicable.

(b) *Duration of well authorization by rule.* Well authorization under this section expires upon the effective date of a permit issued pursuant to §§ 144.25, 144.31, 144.33 or § 144.34, or upon proper closure of the well.

(c) *Prohibition of injection.* An owner or operator of a well which is authorized by rule pursuant to this section is prohibited from injecting into the well:

(1) Upon the effective date of an applicable permit denial;

(2) Upon failure to submit a permit application in a timely manner pursuant to § 144.25 or § 144.31;

(3) Upon failure to submit inventory information in a timely manner pursuant to § 144.26; or

(4) Upon failure to comply with a request for information in a timely manner pursuant to § 144.27.

8. Section 144.25 is amended by revising the first sentence in paragraph (a) introductory text and the first sentence of paragraph (c), and revising the first two sentences of paragraph (b) as follows;

§ 144.25 Requiring a Permit.

(a) The Director may require the owner or operator of any Class I, II, III or V injection well which is authorized by rule under this subpart to apply for and obtain an individual or area UIC permit. * * *

(b) For EPA-administered programs, the Regional Administrator may require an owner or operator of any well which is authorized by rule under this subpart to apply for an individual or area UIC permit under this paragraph only if the owner or operator has been notified in writing that a permit application is required. The owner or operator of a well which is authorized by rule under this subpart is prohibited from injecting into the well upon the effective date of permit denial, or upon failure by the owner or operator to submit an application in a timely manner as specified in the notice. * * *

(c) An owner or operator of a well authorized by rule may request to be excluded from the coverage of this subpart by applying for an individual or area UIC permit. * * *

9. Section 144.26 is amended by revising the introductory text, and by adding the introductory text of paragraph (d) and paragraph (e) to read as follows:

§ 144.26 Inventory requirements.

The owner or operator of an injection well which is authorized by rule under this subpart shall submit inventory information to the Director. Such an owner or operator is prohibited from injecting into the well upon failure to submit inventory information for the well within the time specified in paragraph (d) or (e) of this section.

* * * * *

(d) *Deadlines.* Except as provided in paragraph (e) of this section.

(1) * * *

(e) *Deadlines for Class V Wells (EPA-administered programs only).* (1) The owner or operator of a Class V well in which injection took place within one year after the date at which a UIC program authorized under the SDWA first became effective, and who failed to submit inventory for the well within the time specified in paragraph (d) of this section may resume injection 90 days after submittal of the inventory information to the Director unless the owner or operator receives notice that injection may not resume or may resume sooner.

(2) The owner or operator of a Class V well in which injection started after the first anniversary date at which a UIC program authorized under the SDWA became effective, shall submit inventory information no later than one year after May 2, 1994.

(3) The owner or operator of a Class V well in which injection will start after May 2, 1994, shall submit inventory information prior to starting injection.

(4) The owner or operator of a Class V injection well prohibited from injecting for failure to submit inventory information for the well within the time specified in paragraphs (e) (2) and (3) of this section, may resume injection 90 days after submittal of the inventory information to the Director unless the owner or operator receives notice from the Director that injection may not resume or may resume sooner.

10. Section 144.27 is amended by removing the last sentence of the section and adding a new paragraph (d) to read as follows:

§ 144.27 Requiring other information.

* * * * *

(d) An owner or operator of an injection well authorized by rule under this subpart is prohibited from injecting into the well upon failure of the owner or operator to comply with a request for information within the time period(s) specified by the Director pursuant to paragraph (c) of this section. An owner or operator of a well prohibited from injection under this section shall not resume injection except under a permit issued pursuant to §§ 144.25, 144.31, 144.33 or 144.34.

11. Section 144.28 is amended by revising the introductory sentence,

revising paragraph (d)(1), revising paragraph (d)(2) and adding new paragraphs (d)(5) and (d)(6); redesignating paragraphs (f) (2) and (3) as paragraphs (f) (5) and (6) and adding new paragraphs (f)(2), (f)(3) and (f)(4); and revising paragraph (l) to read as follows:

§ 144.28 Requirements for Class I, II, and III wells authorized by rule.

The following requirements apply to the owner or operator of a Class I, II or III well authorized by rule under this subpart, as provided by §§ 144.21(e) and 144.22(d).

* * * * *

(d) *Financial responsibility.* (1) The owner, operator and/or, for EPA-administered programs, the transferor of a Class I, II or III well, is required to demonstrate and maintain financial responsibility and resources to close, plug and abandon the underground injection operation in a manner prescribed by the Director until:

(i) The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10 and submission of a plugging and abandonment report has been made pursuant to § 144.28(k);

(ii) The well has been converted in compliance with the requirements of § 144.28(j); or

(iii) For EPA-administered programs, the transferor has received notice from the Director that the transferee has demonstrated financial responsibility for the well. The owner or operator shall show evidence of such financial responsibility to the Director by the submission of a surety bond, or other adequate assurance, such as a financial statement.

(2) For EPA-administered programs, the owner or operator shall submit such evidence no later than one year after the effective date of the UIC program in the State. Where the ownership or operational control of the well is transferred more than one year after the effective date of the UIC program, the transferee shall submit such evidence no later than the date specified in the notice required pursuant to § 144.28(l)(2).

* * * * *

(5) For EPA-administered programs, an owner or operator must notify the Regional Administrator by certified mail of the commencement of any voluntary or involuntary proceeding under Title 11 (Bankruptcy) of the United States Code which names the owner or operator as debtor, within 10 business days after the commencement of the proceeding. Any party acting as guarantor for the owner or operator for the purpose of financial responsibility must so notify the Regional Administrator, if the guarantor is named as debtor in any such proceeding.

(6) In the event of commencement of a proceeding specified in paragraph (d)(5) of this section, an owner or operator who has furnished a financial statement for the purpose of demonstrating financial responsibility under this section shall be deemed to be in violation of this paragraph until an alternative financial assurance demonstration acceptable to the Regional Administrator is provided either by the owner or operator or by its trustee in bankruptcy, receiver, or other authorized party. All parties shall be prohibited from injecting into the well until such alternate financial assurance is provided.

* * * * *

(f) * * *

(2) The owner or operator of a Class I, II or III injection well authorized by rule shall establish and maintain mechanical integrity as defined in § 146.8 of this chapter until the well is properly plugged in accordance with an approved plugging and abandonment plan pursuant to §§ 144.28(c) and 146.10, and a plugging and abandonment report pursuant to § 144.28(k) is submitted, or until the well is converted in compliance with § 144.28(j). For EPA-administered programs, the Regional Administrator may require by written notice that the owner or operator comply with a schedule describing when mechanical integrity demonstrations shall be made.

(3) When the Director determines that a Class I (non-hazardous), II or III injection well lacks mechanical integrity pursuant to § 146.8 of this chapter, the Director shall give written notice of his determination to the owner or operator. Unless the Director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the Director's determination. The Director may allow plugging of the well in accordance with the requirements of § 146.10 of this chapter, or require the owner or operator to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon receipt of written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to § 146.8 of this chapter.

(4) The Director may allow the owner or operator of a well which lacks mechanical integrity pursuant to § 146.8(a)(1) of this chapter to continue or resume injection if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

* * * * *

(l) *Change of ownership or operational control.* For EPA-administered programs:

(1) The transferor of a Class I, II or III well authorized by rule shall notify the Regional Administrator of a transfer of ownership or operational control of the well at least 30 days in advance of the proposed transfer.

(2) The notice shall include a written agreement between the transferor and the transferee containing a specific date for transfer of ownership or operational control of the well; and a specific date when the financial responsibility demonstration of § 144.28(d) will be met by the transferee.

(3) The transferee is authorized to inject unless he receives notification from the Director that the transferee has not demonstrated financial responsibility pursuant to § 144.28(d).

* * * * *

Subpart D—Authorization by Permit

12. Section 144.31 is amended by revising paragraph (a) and paragraph (c)(2) and adding new paragraph (e)(10) to read as follows:

§ 144.31 Application for a permit; authorization by permit.

(a) *Permit application.* Unless an underground injection well is authorized by rule under subpart C of this part, all injection activities including construction of an injection well are prohibited until the owner or operator is authorized by permit. An owner or operator of a well currently authorized by rule must apply for a permit under this section unless well authorization by rule was for the life of the well or project. Authorization by rule for a well or project for which a permit application has been submitted terminates for the well or project upon the effective date of the permit. Procedures for applications, issuance and administration of emergency permits are found exclusively in § 144.34. A RCRA permit applying the standards of part 264, subpart C of this chapter will constitute a UIC permit for hazardous waste injection wells for which the technical standards in part 146 of this chapter are not generally appropriate.

* * * * *

(c) * * *

(2) For new injection wells, except new wells in projects authorized under § 144.21(d) or authorized by an existing area permit under § 144.33(c), a reasonable time before construction is expected to begin.

* * * * *

(e) * * *

(10) A plugging and abandonment plan that meets the requirements of § 146.10 of this chapter and is acceptable to the Director.

* * * * *

Subpart E—Permit Conditions

13. Section 144.51 is amended by removing paragraph (p), redesignating paragraph (o) as paragraph (p) and adding new paragraphs (o) and (q) to read as follows:

§ 144.51 Conditions applicable to all permits.

* * * * *

(o) A Class I, II or III permit shall include and a Class V permit may include, conditions which meet the applicable requirements of § 146.10 of this chapter to insure that plugging and abandonment of the well will not allow the movement of fluids into or between USDWs. Where the plan meets the requirements of § 146.10 of this chapter, the Director shall incorporate it into the permit as a permit condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director may require the applicant to revise the plan, prescribe conditions meeting the requirements of this paragraph, or deny the permit. For purposes of this paragraph, temporary or intermittent cessation of injection operations is not abandonment.

* * * * *

(q) *Duty to establish and maintain mechanical integrity.* (1) The owner or operator of a Class I, II or III well permitted under this part shall establish prior to commencing injection or on a schedule determined by the Director, and thereafter maintain mechanical integrity as defined in § 146.8 of this chapter. For EPA-administered programs, the Regional Administrator may require by written notice that the owner or operator comply with a schedule describing when mechanical integrity demonstrations shall be made.

(2) When the Director determines that a Class I, II, or III well lacks mechanical integrity pursuant to § 146.8 of this chapter, he shall give written notice of his determination to the owner or operator. Unless the Director requires immediate cessation, the owner or operator shall cease injection into the well within 48 hours of receipt of the Director's determination. The Director may allow plugging of the well pursuant to the requirements of § 146.10 of this chapter or require the permittee to perform such additional construction, operation, monitoring, reporting and corrective action as is necessary to prevent the movement of fluid into or between USDWs caused by the lack of mechanical integrity. The owner or operator may resume injection upon written notification from the Director that the owner or operator has demonstrated mechanical integrity pursuant to § 146.8 of this chapter.

(3) The Director may allow the owner or operator of a well which lacks mechanical integrity pursuant to § 146.8(a)(1) of this chapter to continue or resume injection, if the owner or operator has made a satisfactory demonstration that there is no movement of fluid into or between USDWs.

14. Section 144.52 is amended by revising paragraph (a)(7) to read as follows:

§ 144.52 Establishing permit conditions.

(a) * * *

(7) *Financial responsibility.* (i) The permittee, including the transferor of a permit, is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director until:

(A) The well has been plugged and abandoned in accordance with an approved plugging and abandonment plan pursuant to §§ 144.51(o) and 146.10 of this chapter, and submitted a plugging and abandonment report pursuant to § 144.51(p); or

(B) The well has been converted in compliance with the requirements of § 144.51(n); or

(C) The transferor of a permit has received notice from the Director that the owner or operator receiving transfer of the permit, the new permittee, has demonstrated financial responsibility for the well.

(ii) The permittee shall show evidence of such financial responsibility to the Director by the submission of a surety bond, or other adequate assurance, such as a financial statement or other materials acceptable to the Director. For EPA administered programs, the Regional Administrator may on a periodic basis require the holder of a lifetime permit to submit an estimate of the resources needed to plug and abandon the well revised to reflect inflation of such costs, and a revised demonstration of financial responsibility, if necessary. The owner or operator of a well injecting hazardous waste must comply with the financial responsibility requirements of subpart F of this part.

* * * * *

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

1. The authority citation for part 146 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

Subpart A—General Provisions

2. Section 146.2 is revised to read as follows:

§ 146.2 Law authorizing these regulations.

The Safe Drinking Water Act, 42 U.S.C. 300f *et seq.* authorizes these regulations and all other UIC program regulations referenced in 40 CFR part 144. Certain regulations relating to the injection of hazardous waste are also authorized by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

3. Section 146.8 is amended by revising paragraph (b)(1) and adding paragraph (f) to read as follows:

§ 146.8 Mechanical integrity.

* * * * *

(b) * * *

(1) Following an initial pressure test, monitoring of the tubing-casing annulus pressure with sufficient frequency to be representative, as determined by the Director, while maintaining an annulus pressure different from atmospheric pressure measured at the surface;

* * * * *

(f) The Director may require additional or alternative tests if the results presented by the owner or operator under § 146.8(e) are not satisfactory to the Director to demonstrate that there is no movement of fluid into or between USDWs resulting from the injection activity.

Subpart B—Criteria and Standards Applicable to Class I Wells

§ 146.15 [Removed]

4. Section 146.15 is removed.

Subpart C—Criteria and Standards Applicable to Class II Wells

§ 146.25 [Removed]

5. Section 146.25 is removed.

Subpart D—Criteria and Standards Applicable to Class III Wells

§ 146.35 [Removed]

6. Section 146.35 is removed.

Subpart F—Criteria and Standards Applicable to Class V Injection Wells

§ 146.52 [Amended]

7. Section 146.52 is amended by removing paragraph (a) and redesignating paragraph (b) as paragraph (a) and by adding and reserving a new paragraph (b).

[FR Doc. 93-29410 Filed 12-2-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7590]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, 3 CFR,

1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood harzard areas
Region I				
Rhode Island: North Smithfield, town of, Providence County.	440021	May 6, 1975, Emerg; Aug. 1, 1978, Reg; Dec. 3, 1993, Susp.	Dec. 3, 1993 ...	Dec. 3, 1993.
Region III				
Pennsylvania:				
Aldan, township of, Delaware County	420401	Aug. 26, 1974, Emerg; Sept. 17, 1980, Reg; Dec. 3, 1993, Susp.	Sept. 30, 1993	Do.
Bethel, township of, Delaware County	421606	May 9, 1978, Emerg; Aug. 10, 1979, Reg; Dec. 3, 1993, Susp.	Sept. 30, 1993	Do.
Brookhaven, borough of, Delaware County.	420403	Oct. 22, 1971, Emerg; Feb. 14, 1976, Reg; Dec. 3, 1993, Susp.	Sept. 30, 1993	Do.
Chester, city of, Delaware County	420404	Dec. 10, 1971, Emerg; Aug. 1, 1979, Reg; Dec. 3, 1994, Susp.	Sept. 30, 1993	Do.
Clifton Heights, borough of, Delware County.	420407	Aug. 18, 1972, Emerg; May 16, 1977, Reg; Dec. 3, 1993, Susp.	Sept. 30, 1993	Do.
Colwyn, borough of, Delaware County	420409	Sept. 15, 1972, Emerg; May 2, 1977, Reg; Dec. 3, 1993, Susp.	Sept. 30, 1993	Do.
Concord, township of, Delaware County .	420410	Feb. 25, 1972, Emerg; Jan. 5, 1978, Reg; Dec. 3, 1993, Susp.	Sept. 30, 1993	Do.
Darby, township of, Delaware County	421603	Nov. 8, 1974, Emerg; April 3, 1984, Reg; Dec. 3, 1993, Susp.	Sept. 30, 1993	Do.
Eddystone, borough of, Delaware County	420413	Sept. 15, 1972, Emerg; Feb. 2, 1977, Reg; Dec. 3, 1993, Susp.	Sept. 30, 1993	Do.
Folcroft, borough of, Delaware County	420415	Feb. 2, 1973, Emerg; Aug. 1, 1977, Reg; Dec. 3, 1993, Susp.	Sept. 30, 1993	Do.
Middletown, township of, Delaware County.	420422	Dec. 1, 1972, Emerg; Feb. 15, 1979, Reg; Feb. 15, 1979, Susp; Mar. 12, 1979, Rein; Dec. 3, 1993, Susp.	Sept. 30, 1993	Do.
Ridley, township of, Delaware County	420429	Sept. 8, 1972, Emerg; Jan. 6, 1983, Susp; Dec. 3, 1993, Rein.	Sept. 30, 1993	Do.
Rose Valley, borough of, Delaware County.	420431	May 12, 1972, Emerg; Feb. 2, 1977, Susp; Dec. 3, 1993, Rein.	Sept. 30, 1993	Do.
Parkside, borough of, Delaware County ..	420426	Dec. 10, 1971, Emerg; July 5, 1977, Susp; Dec. 3, 1993, Rein.	Sept. 30, 1993	Do.
Springfield, township of, Delaware County.	420434	Nov. 26, 1971, Emerg; Jan. 19, 1978, Susp; Dec. 3, 1993, Rein.	Sept. 30, 1993	Do.
Thornbury, township of, Delaware County	425390	Aug. 6, 1971, Emerg; July 24, 1973, Reg; July 1, 1977, Susp; July 24, 1977, Rein; Dec. 3, 1993, Susp.	Sept. 30, 1993	Do.
Upland, borough of, Delaware County	420438	Dec. 3, 1971, Emerg; Dec. 10, 1976, Reg; Dec. 3, 1993, Susp.	Sept. 30, 1993	Do.
Upper Darby, township of, Delaware County.	420440	Dec. 10, 1971, Emerg; Mar. 1, 1978, Reg; Dec. 3, 1993, Susp.	Sept. 30, 1993	Do.
Upper Province, township of, Delaware County.	420441	Dec. 3, 1971, Emerg; June 15, 1977, Reg; Dec. 3, 1993, Susp.	Sept. 30, 1993	Do.
Region IV				
Kentucky: Augusta, city of, Bracken County ...	210022	Feb. 26, 1975, Emerg; Sept. 16, 1988, Reg; Dec. 3, 1993, Susp.	Dec. 3, 1993 ...	Do.
Mississippi: Smith County, Unincorporated Areas.	280306	June 8, 1990, Emerg; July 1, 1991, Reg; Dec. 3, 1993, Susp.	Dec. 3, 1993 ...	Do.
North Carolina:				
Davie County, Unincorporated Areas	370308	Dec. 23, 1975, Emerg; Mar. 21, 1980, Reg; Dec. 17, 1993, Susp.	Dec. 17, 1993	Dec. 17, 1993.
Winston-Salem, city of, Forsythe County .	375360	Mar. 19, 1971, Emerg; Aug. 31, 1973, Reg; Dec. 17, 1993, Susp.	Dec. 17, 1993 .	Do.
Region VII				
Missouri: Rolla, city of, Phelps County	290285	Feb. 15, 1974, Emerg; Sept. 30, 1977, Reg; Dec. 17, 1993, Susp.	Dec. 17, 1993 .	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp— Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: November 30, 1993.

Robert Volland,

Acting Deputy Associate Director, Mitigation Directorate.

[FR Doc. 93-29639 Filed 12-2-93; 8:45 am]

BILLING CODE 6718-21-P

Proposed Rules

Federal Register
Vol. 58, No. 231
Friday, December 3, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 93–ANE–45; Notice No. 33–ANE–03]

Special Conditions; General Electric Aircraft Engines Model(s) GE90–75B/–85B/–76B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the General Electric (GE) Aircraft Engines Model(s) GE90–75B/–85B/–76B turbofan engines. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from medium and large bird ingestion. This notice proposes the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the Federal Aviation Regulations (FAR).

DATES: Comments must be submitted on or before January 18, 1994.

ADDRESSES: Comments on this proposal may be submitted in triplicate to: Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ANE–45, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments must be marked: Docket No. 93–ANE–45. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Golinski, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; telephone (617) 238–7119; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: .

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed special conditions. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comment to Docket No. 93–ANE–45." The postcard will be date stamped and returned to the commenter.

Background

On December 16, 1991, General Electric Aircraft Engines applied for type certification of Model(s) GE90–75B/–85B/–76B turbofan engines. The FAA has determined that the current foreign object ingestion requirements of § 33.77(a) for four pound birds; and § 33.77(b) for one and one-half pound flocking birds, do not adequately represent the bird threat encountered in service. A study of in-service bird ingestion events has indicated a need to modify the bird ingestion requirements for this application to ensure design integrity and demonstrate an adequate level of safety.

The FAA has concluded that additional safety standards must be applied to GE Model(s) GE90–75B/–85B/–76B turbofan engines to demonstrate that they are capable of acceptable operation after medium and large bird ingestion. The applicable airworthiness requirements do not contain adequate or appropriate safety standards for type certification with respect to the new design criteria. This new design criteria assumes the actual bird threat encountered in service.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, General Electric Aircraft Engines must show that the GE Model(s) GE90–75B/–85B/–76B turbofan engines meet the requirements of the applicable regulations in effect on the date of the application. Those Federal Aviation Regulations are § 21.21 and part 33, effective February 1, 1965, as amended through August 10, 1990, Amendment 33–14.

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the GE90 series turbofan engine because of its unique design criteria. Therefore, the Administrator proposes these special conditions under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

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

Conclusion

This action affects only GE Model(s) GE90–75B/–85B/–76B turbofan engines. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these new design criteria on the engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421, 1423; 49 U.S.C. 106(g); 14 CFR 21.16, and 14 CFR 11.28.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the

following special conditions as part of the type certification basis for the General Electric Company GE90 series turbofan engine.

In lieu of the requirements of FAR § 33.77 (a) and (b), the following tests and analyses must be conducted, unless compliance can be shown by alternate methods acceptable to the Administrator:

(a) It must be shown that the ingestion of a single large bird, under the conditions prescribed in appendix A, will not cause the engine to:

(1) Catch fire;

(2) Release hazardous fragments through the engine casing;

(3) Generate loads greater than those ultimate loads specified under § 33.23(a);

(4) Lose the ability to be shut down; or

(5) Generate other conditions hazardous to the aircraft.

(b) Alternatively, if compliance with the bird ingestion requirements of paragraph (a) of this special condition is not established, the applicant must demonstrate that compliance with the containment requirements of § 33.94(a) constitutes a more severe demonstration than the requirements of paragraph (a) of this special condition. The engine type certification documentation will than be endorsed to reflect this alternative compliance method.

Appendix A—Large Bird Ingestion Test Procedures

(a) The test shall be conducted with the engine stabilized at rated takeoff thrust for the test day ambient conditions prior to the ingestion.

(b) The test shall be conducted using one eight-pound bird targeted at the most critical location and ingested at a bird speed of 200 knots.

(c) Power lever movement is not permitted within 15 seconds following the ingestion event.

(c) It must be shown that the ingestion of medium birds, under the conditions prescribed in appendix B, will not cause the engine to:

(1) Sustain more than a 25 percent thrust loss;

(2) Be shut down during the required run-on demonstration prescribed in appendix B;

(3) Exceed any engine operating limitations to the extent that the engine cannot comply with this section; or

(4) Generate other conditions hazardous to the aircraft.

Appendix B—Medium Bird Ingestion Test Procedures

(a) The ingestion test shall be conducted with the engine stabilized at rated takeoff thrust for the test day ambient conditions prior to the ingestion.

(b) The test shall be conducted to simulate a flock encounter, with all birds ingested within approximately one second, and using the more severe of the following bird weight/quantity combinations:

(1) Six 1.5-pound and one 2.5-pound birds.

(2) Four 2.5-pound birds.

(c) Bird targeting shall be one 2.5-pound bird at the core primary flow path, and the remaining birds targeted at critical fan rotor locations.

(d) Bird ingestion velocity shall be the most critical velocity between V1 minimum through 250 knots.

(e) Power lever movements between stages must occur in 10 seconds or less. The following test schedule will be used as the post-ingestion run-on demonstration:

(1) Two minutes with no power lever movement.

(2) Three minutes at 75 percent of takeoff thrust.

(3) Six minutes at 75 percent of maximum continuous thrust.

(4) Six minutes at 50 percent of maximum continuous thrust.

(5) One minute at approach idle.

(6) Two minutes at 75 percent of takeoff thrust.

(7) Retard throttle to idle.

(8) Shut down the engine.

(f) An analysis or component/engine test(s) acceptable to the Administrator shall be conducted to determine the critical ingestion parameters for medium bird ingestion that relates to airspeeds from V1 minimum through 250 knots. The analysis or test(s) must also show satisfactory engine operation for medium bird ingestion at the most severe ambient operating condition approved for the engine that may be experienced in service.

(d) It must be shown that engine spinner impact by one large bird and by the single largest medium bird, under the respective conditions prescribed in appendices A and B, will not affect the engine to the extend that it cannot comply with the requirements of paragraphs (a) and (b) of this special condition.

Issued in Burlington, Massachusetts, on November 19, 1993.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–29584 Filed 12–2–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–41]

Proposed Establishment of Class E Airspace: Texarkana, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Texarkana, AR. Controlled airspace to the surface is needed during the hours that the control tower is closed. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "control zone." Airspace designated from the surface of an airport where there is no operating control tower is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace to contain instrument flight rule (IFR) operations during the hours that the control tower is closed.

DATES: Comments must be received on or before January 14, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–41, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed under the caption "Addresses." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement:

"Comments to Airspace Docket No. 93–ASW–41." The postcard will be date and time stamped and returned to the commenter. All communications received before the specified closing

date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 4400 Blue Mound Road, Fort Worth TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Texarkana, AR. During the hours that the control tower is closed controlled airspace to the surface is needed to contain IFR operations at Texarkana Regional Airport, Texarkana, AR. Airspace reclassification, effective September 16, 1993, discontinued the use of the term "control zone." Designated airspace from the surface of an airport where there is no operating control tower is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace, during the hours that the control tower is closed for IFR operators at Texarkana Regional Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[Amended]

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

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

§ 71.1 [Amended]

2. The incorporation by references in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport

* * * * *

ASW AR E2 Texarkana, AR [New]
Texarkana Regional-Web Field AR
(latitude 33°27′13″N. longitude 93°59′28″W.)

That airspace within a 4.2-mile radius of Texarkana Regional-Webb Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on November 19, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29593 Filed 12–2–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ANM–37]

Proposed Amendment to Class D Airspace; Ogden, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Ogden, Hill Air Force Base (AFB), Utah (UT), Class D airspace. This action is necessary to correct an error in the airspace description inadvertently committed during the airspace reclassification process. This action would reduce the size of the Ogden, Hill AFB, UT, Class D airspace. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "control zone," replacing it with the designation "Class D airspace." The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–37, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM–537, Federal Aviation Administration, Docket No. 93–ANM–37, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit

with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ANM-37." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM-530, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at Ogden, Hill AFB, UT, to correct an error in the Class D airspace description. During the airspace reclassification process, the Class D airspace for Hill AFB was miscalculated resulting in the designation of more controlled airspace than necessary. This action would correct that error. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "control zone," replacing it with the designation "Class D airspace." The coordinates for this airspace docket are based on North American Datum 83. Class D airspace areas are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ANM UT D Ogden, Hill AFB, UT [Revised]
Ogden, Hill AFB, UT
(lat. 41°07'25" N, long. 111°58'23" W)
Ogden-Hinckley Airport
(lat. 41°11'46" N, long. 112°00'44" W)

That airspace extending upward from the surface to, but not including, 7,800 feet MSL within the 4.3-mile radius of the Ogden-Hinckley Airport and the 4.3-mile radius of the Hill AFB; excluding that airspace within the Ogden-Hinckley Airport, UT, Class D area when it is effective.

* * * * *

Issued in Seattle, Washington, on November 19, 1993.

Helen M. Parke,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 93-29596 Filed 12-2-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 93-ANM-38]

Proposed Amendment to Class E Airspace; West Yellowstone, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the West Yellowstone, Montana, Class E Airspace. This action is necessary to correct an error in the airspace description inadvertently omitted during the airspace reclassification process. This action would amend the West Yellowstone, Montana, Class E airspace from full-time back to part-time. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." This amendment would bring publications up-to-date giving continuous information to the aviation public.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM-530, Federal Aviation Administration, Docket No. 93-ANM-38, 1601 Lind Avenue SW., Renton, Washington, 98055-4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: James Riley, ANM-537, Federal Aviation Administration, Docket No. 93-ANM-38, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone number: (206) 227-2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the

FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ANM-38." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM-530, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at West Yellowstone, Montana, to correct an error in the Class E airspace description. During the airspace reclassification process the language designating the Class E airspace as part-time was inadvertently omitted. This action would correct that error. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 West Yellowstone, MT [Amended]

West Yellowstone, Yellowstone Airport, MT (lat. 44°41'19" N, long. 111°07'04" W)

Targy NDB (Lat. 44°34'32" N, Long. 111°11'51" W)

That airspace extending upward from 700 feet above the surface within 4.3 miles west and 8.3 miles east of the 026 degree and 206 degree bearings from the Targy NDB extending from 15.7 miles northeast to 16.1 miles southwest of the NDB; that airspace extending upward from 1,200 feet above the surface within 4.3 miles each side of the 209 degree bearing from the NDB extending from the NDB to 36.2 miles southwest of the NDB, and within 4.3 miles each side of the 304 degree bearing from the NDB extending from the NDB to the east edge of V-343; that airspace extending upward from 10,700 feet MSL within a 25.3-mile radius of the Targy NDB extending clockwise from the 081 degree bearing from the NDB to 4.3 miles east of the 236 degree bearing from the NDB and within 4.3 miles each side of the 236 degree bearing from the NDB extending from the NDB to 43.5 miles southwest of the NDB; that airspace extending upward from 12,000 feet MSL within a 30.5-mile radius of the Targy NDB extending clockwise from the 026 degree bearing from the NDB to the 081 degree bearing from the NDB; that airspace extending upward from 13,000 feet MSL, within a 30.5-mile radius of the Targy NDB, extending clockwise from the 313 degree bearing to the 026 degree bearing from the NDB, excluding that portion that overlies V-298 and V-343. This Class E airspace shall be effective during the specified dates and times established in advance by a Notice to Airmen. The effective dates and times thereafter, will be continuously published in the airport/facility directory.

* * * * *

Issued in Seattle, Washington, on November 22, 1993.

Helen M. Parke,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 93-29597 Filed 12-2-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-AWP-4]

Proposed Alteration of Jet Routes J-86 and J-92

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This supplemental notice amends a previous proposal to alter Jet Route J-86 from the Boulder City, NV, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to the Beatty, NV, VORTAC. Extending J-86 would enable air traffic controllers to provide pilots with an alternate route from Boulder City VORTAC to the Beatty VORTAC during the times Restricted Area R-4808S is in use. Jet Route J-92 was inadvertently omitted from the original proposal. Therefore, this action would also realign J-92 direct from the Boulder City VORTAC to the Beatty VORTAC, providing a route that is normally requested by pilots. This action would enhance the traffic flow and reduce the controllers' workload.

DATES: Comments must be received on or before January 18, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP-500, Docket No. 93-AWP-4, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-AWP-4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of SNPRM's

Any person may obtain a copy of this SNPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this SNPRM. Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the descriptions of Jet Route J-86 and J-92. The FAA published an earlier NPRM to alter J-86 on June 9, 1993 (58 32313). Comments received in response to the NPRM and this NPRM will be addressed in the final disposition of the rule. Extending J-86 would enable air traffic controllers to provide pilots with an alternate route from the Boulder City VORTAC to the Beatty VORTAC during the times Restricted Area R-4808S is in use. Jet Route J-92 was inadvertently omitted from the original proposal. Therefore, this action would also realign J-92 direct from the Boulder City VORTAC to the Beatty VORTAC, providing a route that is normally requested by pilots. This action would enhance the traffic flow and reduce the controllers' workload. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The jet routes listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12855; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004-Jet Routes

* * * * *

J-85 [Revised]

From Beatty, NV; INT Beatty 131 °T(115 °M) and Boulder City, NV, 284 °T(269 °M) radials; Boulder City, Peach Springs, AZ; Winslow, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; Austin, TX; Humble, TX; Leeville, LA; INT Leeville 104° and Sarasota, FL, 286° radials; Sarasota; INT Sarasota 103° and La Belle, FL, 313° radials; La Belle; to Miami, FL.

* * * * *

J-92 [Revised]

From Klamath Falls, OR; via Mustang, NV; Coaldale, NV; Beatty, NV; Boulder City, NV; Drake, AZ; Phoenix, AZ; Stanfield, AZ; INT of Stanfield 145° and Tucson, AZ, 300° radials; Tucson; to the INT of Tucson 182° radial and the United States/Mexican Border.

* * * * *

Issued in Washington, DC, on November 24, 1993.

Willis C. Nelson,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93-29588 Filed 12-2-93; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 93-ASO-8]

Proposed Expansion of Restricted Area R-2917, De Funiak Springs, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to expand the lateral and vertical dimensions of Restricted Area R-2917, De Funiak Springs, FL, to increase the size of special use airspace around the Space Detection and Tracking Radar (FPS-85) system located at that site. The U.S. Air Force recently revised safety regulations to require an increase in the protected area around such installations to reduce the potential hazard to aircraft which are carrying electroexplosive devices. A temporary flight restriction is currently in effect to increase the protected area around the FPS-85 radar site. Due to a reorganization within the Air Force, this action also proposes to change the title of the current using agency and to include the title of a controlling agency for R-2917.

DATES: Comments must be received on or before January 18, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 93-ASO-8, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9361.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-ASO-8." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land use aspects to: 646 CES/CEVP, 501 DeLeon St., suite 100, Eglin AFB, FL 32542-5101. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to expand the lateral and vertical dimensions of R-2917, De Funiak Springs, FL. The proposed expansion would increase the protected airspace around an FPS-85 radar facility which emits potentially hazardous radio frequency (RF) energy. The RF radiation transmitted by the FPS-85 radar has the potential to activate electroexplosive devices that may be carried on board certain aircraft. As a result of a change to U.S. Air Force safety regulations, a revised formula was developed which computes a larger area wherein the FPS-85 radar poses a potential hazard to aircraft carrying electroexplosive devices. Currently, R-2917 consists of a circular area with a 1.25-statute-mile radius, extending from the surface to 5,000 feet mean sea level. As proposed, the restricted area would be increased to a 2.5-nautical-mile radius circle, and the upper limit would be raised to, but would not include, Flight Level 230.

Restricted Area R-2917 is located within the confines of another existing restricted area, R-2914A, which is designated for continuous use from the surface to unlimited altitude. If amended as proposed, Restricted Area R-2917 would remain totally within Restricted Area R-2914A. Consequently, it is not anticipated that the proposed expansion of Restricted Area R-2917 would adversely impact air traffic operations in the area.

Due to a reorganization within the Air Force, this action also proposes to change the title of the current using agency to U.S. Air Force, Commander, Air Force Space Command, Peterson AFB, CO, and to include U.S. Air Force, Eglin Approach Control as the title of a controlling agency for R-2917. Section 73.29 of part 73 was republished in FAA Order 7400.8A dated March 3, 1993.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034 February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

An environmental review of this proposal will be conducted by the U.S. Air Force and the FAA prior to an FAA final decision on the proposal. The results of the review will be addressed in any subsequent rulemaking action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.29 [Amended]

R–2917 De Funiak Springs, FL [Revised]

Boundaries. A circle with a 2½ NM radius centered at lat. 30°32′55″N., long. 86°12′52″W.

Designated altitudes. Surface to but not including FL 230.

Time of designation. Continuous.

Controlling agency. U.S. Air Force, Eglin Approach Control.

Using agency. U.S. Air Force, Commander, Air Force Space Command, Peterson AFB, CO.

Issued in Washington, DC, on November 23, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–29587 Filed 12–2–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 67

RIN 0905–AD30

Health Services Research, Evaluation, Demonstration, and Dissemination Projects; Peer Review of Grants and Contracts

AGENCY: Public Health Services, DHHS.

ACTION: Proposed rule; correction.

SUMMARY: This document contains the correction to the proposed rule on grants for health services research, evaluation, demonstration, and dissemination projects, which was published Tuesday, November 16, 1993 (58 FR 60510–60521).

FOR FURTHER INFORMATION CONTACT: Linda K. Demlo, Ph.D., (301) 594–2453.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the proposed rule contained an erroneous telephone number in the section entitled "**FOR FURTHER INFORMATION CONTACT**".

Correction of Publication

In proposed rule document RIN 0905–D30 appearing on page 60510 in the issue of Tuesday, November 16, 1993, in the first column, under the section entitled **FOR FURTHER INFORMATION CONTACT:**, last line, the telephone number listed as "(301) 227–8453" should read "(301) 594–2453".

Dated: November 24, 1993.

J. Jarrett Clinton,

Administrator, AHCPR.

[FR Doc. 93–29545 Filed 12–2–93; 8:45 am]

BILLING CODE 4160–90–U

Notices

Federal Register
Vol. 58, No. 231
Friday, December 3, 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

Federal Grain Inspection Service

Request for Comments on the Applicant for Designation in Hillsdale and Branch Counties, MI

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS requests comments on the applicant for designation to provide official inspection services in Hillsdale and Branch Counties, Michigan.

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by January 3, 1994.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send responses to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Schneider Inspection Service, Inc. (Schneider), asked FGIS to amend their designation to remove Hillsdale and Branch counties from their assigned geographic area, in the State of Michigan. Schneider has not provided service to these two counties; however, Michigan Grain Inspection Services, Inc. (Michigan), has provided service. In the October 8, 1993, **Federal Register** (58 FR 52475), FGIS asked persons interested in providing official services in Hillsdale and Branch counties to submit an application for designation. Applications were due by November 9, 1993. Michigan, the only applicant, applied for designation in Hillsdale and Branch counties, Michigan, in addition to the area already assigned to them. FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicant for designation in Hillsdale and Branch Counties, Michigan. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of Michigan. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicant written notification of the decision.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: November 29, 1993

Neil E. Porter

Director, Compliance Division

[FR Doc. 93–29561 Filed 12–2–93; 8:45 am]

BILLING CODE 3410–EN–F

Forest Service

Northern Goshawk Management, Southwestern Region

AGENCY: Forest Service, USDA.

ACTION: Notice; reissuance of interim policy.

SUMMARY: The Regional Forester for the Southwestern Region of the Forest Service, USDA, is reissuing interim policy to guide management of northern goshawk habitat in the National Forests of the Southwestern Region.

The policy is reissued as Interim Directive (ID) R3 2670–93–1 to Forest Service Manual Chapter 2670. The new ID is identical to the previous interim directive R3 2670–92–1, which expires December 8, 1993, except that section 13. Southwestern Region Northern Goshawk Inventory Protocol 1993–1995 is added as guidance on inventory methods; format and edit changes are made to refer to section 13 in the text of the interim policy; and effective dates are updated to conform to continuing policy.

The new interim policy continues the requirement that goshawk management units (home ranges) be identified and established, and managed whenever a northern goshawk site (active and/or historical) is located on National Forest System lands in the Southwestern Region.

DATES: Interim Directive R3 2670–93–1 will be effective December 8, 1993, and will expire on June 8, 1995.

ADDRESSES: Single copies of the interim directive are available by writing the Regional Forester, (2670) Southwestern Region, Forest Service, USDA, 517 Gold Avenue, SW, Albuquerque, New Mexico, 87102, or by calling the number listed in the next section of this document.

FOR FURTHER INFORMATION CONTACT: Dr. Sandy Boyce, Wildlife and Fisheries Management Staff, Southwestern Region, 805–842–3261.

SUPPLEMENTARY INFORMATION: The Regional Forester first issued an interim policy policy for northern goshawk management in the Southwestern Region on June 8, 1992. Notice of the interim policy was published in the **Federal Register** on June 19, 1992, (57 FR 27424–27435). The intent of the interim policy remains to provide quality habitat for goshawks (and their prey species) within their 6,000 acre home ranges. Direction is given for managing specific portions of the goshawk home range including six 30 acre nesting areas, one 420 acre Post-fledgling family area (PFA) which surrounds the nesting areas, and one 5,400 acre foraging area surrounding the nesting areas and the PFA.

This interim policy followed the habitat management recommendations developed by a team of scientists that made up the Goshawk Scientific Committee (GSC). The GSC published their recommendations in 1992 as a Forest Service General Technical Report (RM–217). The GSC report is available from the Forest Service, Rocky Mountain Forest and Range Experiment Station, 240 W. Prospect Rd., Fort

Collins, Colorado 80526. The GSC Recommendations are also on file at National Forest Supervisor Offices and District Ranger Stations throughout the Southwestern Region.

An interagency goshawk implementation team, composed of biologists and habitat specialists from state and federal agencies, is preparing a set of recommendations for implementing the Regional Goshawk Policy. Their draft recommendations are currently being reviewed and will be presented to the Regional Forester for decision. In the meantime, these draft recommendations will be developed as an alternative in the Southwestern Region's upcoming draft Environmental Impact Statement, which will amend Forest Plan Standards and Guidelines regarding management of goshawk habitat.

While the new interim directive may remain in effect until June 8, 1955, the (USDA) Forest Service may decide upon a final agency action on this issue prior to that date.

Dated: November 23, 1993.

Larry Henson,

Regional Forester.

[FR Doc. 93-29618 Filed 12-2-93; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD OCT. 20, 1993–NOV. 15, 1993

Firm name	Address	Date petition accepted	Product
Optenberg, Inc	1435 S. 7th Street, Sheboygan, WI 53081.	10/27/93	Drum weldments (rollers) for use on asphalt paving equipment.
Universal Rectifiers, Inc	1613 Cottonwood Road, Rosenberg, TX 77471.	11/01/93	Rectifiers.
Morris Bean & Company	777 East Hyde Road, Yellow Springs, OH 45387.	11/04/93	Sand cast molds, architectural plates and turbo-charger impeller for locomotive engines.
I.W. Industries, Inc	35 Melville Park Road, Melville, NY 11747.	11/03/93	Plumbing, lighting and industrial parts.
National Frozen Foods Corporation.	Post Office Box 9366, Seattle, WA 98109	11/05/93	Frozen peas, carrots, green beans and corn.
Topco, Inc	107 Trumbull Street, Elizabeth, NJ 07206	11/05/93	Portable incandescent lighting.
Flavors of North America, Inc.	303 Northfield Road, Northfield, IL 60093	11/08/93	Flavorings for food.
Whistle Enterprises Ltd., The Toycrafter.	1237 East Main Street, Rochester, NY 14609.	11/08/93	Wood spinning tops.
Phoenix Dye Works, Inc	4755 W. 150th Street, Cleveland, OH 44135.	11/10/93	Package and skein dyed, 100% multiple plied fine count cotton yarn, uncombed and combed.
Prime Tube, Inc	13101 Eckles Road, Plymouth, MI 48170	11/10/93	Automotive steering column components and automotive cab components.
International Die Casting, Inc.	14733 South Avalon Boulevard, Gardena, CA 90248-2009.	11/12/93	Zinc castings for bathroom hardware.
Taylor Forge International, Inc.	5577 Tayfor Drive, Millington, TN 38053	11/12/93	Flanges, rough rings, press fittings and fittings.
Diamond "B" Plumbing & Heating, Inc.	3436 Airport Drive, Box 68, Bellingham, WA 98226.	11/15/93	Plumbing pipe.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: November 26, 1993.

Pedro R. Garza,

Deptuy Assistant Secretary for Program Operations.

[FR Doc. 93-29629 Filed 12-2-93; 8:45 am]

BILLING CODE 3510-24-M

Foreign-Trade Zones Board

[Docket 58-93]

Foreign-Trade Zone 62—Brownsville, Texas, Application for Subzone; Mid States Pipe Fabricating, Inc. (Steel Pipe); Harlingen, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Brownsville Navigation District, grantee of FTZ 62, requesting special-purpose subzone status at the steel pipe fabrication facilities of Mid States Pipe Fabricating, Inc. (Mid States), located in Harlingen, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board

(15 CFR part 400). It was formally filed on November 24, 1993.

The Mid States facility (18 acres) is located on FM Route 106, within the Port of Harlingen Complex, Harlingen, Texas, some twenty miles northwest of the Port of Brownsville. The facility is used to fabricate steel and steel alloy pipe (½" to 60" outer diameter) used by oil refineries and chemical processing, paper production, power generation, and motor vehicle manufacturing plants. Foreign-origin materials used in the manufacturing process include: iron and steel (alloy or non-alloy including carbon, stainless and chrome) pipes, flanges, elbows, fittings, swage nipples and related items. (Foreign materials would be admitted in privileged foreign status (19 CFR 146.41)).

Zone procedures would exempt Mid States from Customs duty payments on the foreign materials used in export production (30% of output). On domestic sales, the company would be able to defer Customs duties until finished products are shipped from the plant. Foreign materials and finished products held for export would be eligible for an exemption from certain state and local ad valorem taxes. The application indicates that the savings from zone procedures would help improve Mid States' international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 1, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 16, 1994.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Customs Service, Office of the Port Director, 1500 E. Elizabeth Street, room 214, Brownsville, Texas 78520.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

Dated: November 26, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–29630 Filed 12–2–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle, From Japan Amended Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: We are amending our final results of administrative review of the antidumping finding on roller chain, other than bicycle, from Japan with respect to two firms, RK Excel and Izumi chain Manufacturing Co., Ltd., to correct clerical errors.

EFFECTIVE DATE: December 3, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Prosser or Wendy Frankel, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–1130.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 52264) the final results of its April 1, 1991, through March 31, 1992, administrative review of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9226; April 12, 1973).

The American Chain Association (the ACA), the petitioner in this proceeding, submitted timely comments concerning alleged clerical errors in the Department's calculation of the final dumping margin for two companies: RK Excel (Excel) and Izumi Chain Manufacturing Co., Ltd. (Izumi). Specifically, the ACA alleges that the Department inadvertently failed to convert the value for Japanese consumption tax to dollars before adding that value to the net U.S. price or the foreign unit price in dollars.

Amended Final Results of Review

Based on our analysis of the comments received from the ACA, we have corrected the clerical errors noted above and we have amended our final results for the April 1, 1991, through March 31, 1992, period with respect to Izumi and Excel. The amended weighted-average margin for Izumi is 0.61 percent, and the amended weighted-average margin for Excel is 0.13 percent.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of roller chain, other than bicycle, from Japan, and entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results of administrative review, as provided by section 751(a)(1) of the Tariff Act of 1930 (the Tariff Act): (1) Excel's new cash deposit requirement will be zero (0.0) percent because its margin is *de minimis*. Izumi's cash deposit rate will be 0.61 percent.

The cash deposit requirement for the other firms covered by this review will continue to be those published in our final results of antidumping duty administrative review for this period (58 FR 52264, October 7, 1993); (2) for merchandise exported by manufacturers or exporters not covered by this review but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, earlier reviews, or the LTFV investigation, whichever is the most recent; (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, or the LTFV investigation, the cash deposit rate will be the "new shipper" rate established in the first review conducted by the Department in which a "new shipper" rate was established, as discussed below.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that

once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the "all others" rate from the LTFV investigation (or that rate as amended for correction or clerical errors as a result of litigation) in proceedings governed by antidumping duty orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction or clerical errors as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping finding, and we are unable to ascertain the "all others" rate from the Treasury LTFV investigation, the "all others" rate for the purposes of this review would normally be the "new shipper" rate established in the first notice of final results of administrative review published by the Department (46 FR 44488, September 4, 1981). However, a "new shipper" rate was not established in that notice. For the purposes of this review, the "all others" rate of 15.92 percent will be drawn from Roller Chain, Other Than Bicycle, from Japan, Final Results of Administrative Review of Antidumping Finding, 48 FR 51801, (November 14, 1983), the first review conducted by the Department in which a "new shipper" rate was established.

This notice is in accordance with sections 751(f) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(f)), and 19 CFR 353.28.

Dated: November 23, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-29631 Filed 12-2-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-583-808]

Sweaters Wholly or in Chief Weight of Man-Made Fiber From Taiwan; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner and four manufacturers/exporters, the Department of Commerce is conducting an administrative review of the antidumping duty order on sweaters wholly or in chief weight of man-made fiber from Taiwan. The review covers 27 manufacturers/exporters of this merchandise to the United States and the period April 27, 1990 through August 31, 1991. The Department reviewed four companies that requested a review. Using sampling techniques, the Department of Commerce selected for analysis three of the companies for which petitioner requested a review. The other firms covered by this review have received rates based on the sample rate, which is a simple average of the margins of the three selected companies. In addition, we are terminating the review in part with respect to Diing Luh Yuh Enterprises Co., Ltd. The review indicates the existence of dumping margins during the period.

As a result of this review, we have preliminarily determined to assess antidumping duties equal to the difference between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 3, 1993.

FOR FURTHER INFORMATION CONTACT: Edward Haley, G. Leon McNeill, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 39033) the antidumping duty order on sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from Taiwan, corrected on September 24, 1990 (55 FR 39775). On September 23, 1991, Amrox International Corp. (Amrox), an importer, requested a review of Diing Luh Yuh Enterprises Co., Ltd. (Diing Luh Yuh); on September 24, 1991, Saxony Sportswear Company, an importer, requested a review of Yuan Hwei Ind. Co., Ltd. (Yuan Hwei); on September 30, 1991, the petitioner, the National Knitwear & Sportswear Association (NKSA), requested that we conduct an administrative review of 25 companies; and on September 30, 1991, Oriental Knitting Co., Ltd. (Oriental), Jau Perng Knitting Co., Ltd. (Jau Perng), and Chweleco Ltd. (Chweleco), requested to be reviewed; all in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act) and section 353.22(a) of the Department's regulations. We published the notice of initiation of the antidumping duty administrative review on October 18, 1991 (56 FR 52254), covering the period April 27, 1990 through August 31, 1991.

The initiation notice names 28 companies. Of these 28 companies, we are terminating the review of one company (see "Termination of Review in Part" section of this notice). We analyzed the responses of the following four companies which requested to be reviewed: Chweleco, Jau Perng, Oriental, and Yuan Hwei. Of the remaining 23 companies, the following three companies were selected to be reviewed, using sampling techniques: Maco Knitting (Maco), Chung Ling Company, Ltd. (Chung Ling), and The Workshop Industrial Company, Ltd. (The Workshop). The other companies covered by this review have received a rate which is the simple average of the margins of these three companies. The Department has now conducted the review in accordance with section 751 of the Tariff Act.

Termination of Review in Part

On December 11, 1991, Amrox withdrew its request for review of Diing Luh Yuh. The petitioner had not requested a review of this company. Therefore, in accordance with 19 CFR 353.22(a)(5), the Department is terminating the review with respect to Diing Luh Yuh.

Standing

On October 22, 1991, the Taiwan Textile Federation, the Taiwan Sweater Industry Association, and the individual members thereof alleged that the petitioner in the less-than-fair-value (LTFV) investigation did not have standing as an interested party within the meaning of 19 CFR 353.2(k)(5) to request administrative review of the antidumping duty order on MMF sweaters from Taiwan. On February 19, 1992, we determined that NKSA did have standing to request the review. See Memorandum to Alan M. Dunn from Joseph A. Spetrini, February 19, 1992 (on file in the Central Records Unit).

Scope of the Review

Imports covered by this review are shipments of MMF sweaters from

Taiwan. MMF sweaters are defined as garments for outerwear that are knitted or crocheted, in a variety of forms including jacket, vest, cardigan with button or zipper front, or pullover, usually having ribbing around the neck, bottom, and cuffs on the sleeves (if any), encompassing garments of various lengths, wholly or in chief weight of man-made fiber. The term "in chief weight of man-made fiber" includes sweaters where the man-made fiber material predominates by weight over each other single textile material. This excludes sweaters 23 percent or more by weight of wool. It includes men's, women's, boys', or girls' sweaters, as defined above, but does not include sweaters for infants 24 months of age or younger. It includes all sweaters as defined above, regardless of the number of stitches per centimeter, provided that, with regard to sweaters having more than nine stitches per two linear centimeters horizontally, it includes only those with a knit-on rib at the bottom.

Garments which extend below mid-thigh or cardigans that contain a sherpa lining or heavy-weight fiberfill lining, including quilted linings, used to provide extra warmth to the wearer, are not considered sweaters and are excluded from the scope of the order. Also specifically excluded from the scope are sweaters assembled in Guam that are produced from knit-to-shape component parts knit in and imported from Taiwan and entering under Harmonized Tariff Schedule (HTS) item number 9902.61.

The subject merchandise is currently classifiable under HTS item numbers 6110.30.30.10, 6110.30.30.15, 6110.30.30.20, 6110.30.30.25, 6103.23.00.70, 6103.29.10.40, 6103.29.20.62, 6104.23.00.40, 6104.29.10.60, 6104.29.20.60, 6110.30.10.10, 6110.30.10.20, 6110.30.20.10, and 6110.30.20.20. This merchandise may also enter under HTS item numbers 6110.30.30.50 and 6110.30.30.55. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

This review covers 27 manufacturers/exporters of the subject merchandise from Taiwan, and the period April 27, 1990, through August 31, 1991. Sampled firms Maco, Chung Ling, and The Workshop, and self-requesters Chweleco, Jau Perng, Oriental, and Yuan Hwei have been selected by the Department to be analyzed.

Sampling

Because of the numerous respondents in this review and the antidumping duty administrative reviews of MMF sweaters from Korea and Hong Kong, on December 13, 1991, the Department issued a memorandum proposing the use of sampling techniques, in accordance with section 777A of the Tariff Act, to limit the number of sales analyzed. In accordance with that memorandum, on December 16, 1991, the Department sent a letter to all interested parties explaining the proposed sampling methodology and soliciting comments on that methodology. We received comments from the petitioner and respondents on December 23, 1991, and a memorandum recommending the use of sampling was issued on January 6, 1992.

Of the 23 companies for which a review was requested only by the petitioner, nine companies notified the Department that they had not made sales of subject merchandise to the United States during the period of review (POR). We eliminated those firms from the sample pool.

We applied our sampling methodology to the remaining 14 companies in the following manner. First, we assigned each company points according to its percentage share of total volume of export sales to the United States. One point was given for each 1/2 percent of export sales. Each company was represented in the sample pool in proportion to the number of points it received. For example, a company that comprised 25 percent of exports to the United States would receive 50 points and go "into the hat" 50 times. A company that comprised one percent of exports to the United States would receive two points and go "into the hat" twice. In this way, the company with a greater volume of exports had a greater chance of being selected than the company with a smaller volume of exports.

From the 14 companies, we randomly selected Maco, Chung Ling, and The Workshop to be analyzed. We sent questionnaires to these three companies on January 6, 1992; however, none of these companies responded. Counsel for Chung Ling and The Workshop reported that Chung Ling is no longer in the business of manufacturing and selling sweaters and would be unable to answer the Department's questionnaire. Counsel also reported that the Taiwan Textile Federation and the Taiwan Sweater Industry Association have determined that The Workshop has ceased business altogether and thus would be unable to answer the questionnaire.

The other companies in the sample pool have received a rate which is the simple average of the margins of the three selected companies. We have used a simple average for calculating the sample pool rate because we weighted each company according to its share of export sales in selecting the sampled companies.

When a firm received a BIA rate as its margin, we did not exclude it from the sample pool. The elimination of non-responding firms from the sample would reward non-responding firms and could encourage non-compliance in future reviews. Moreover, it would impair the integrity of the sample because it would detract from the randomness of the results. See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review (58 FR 37912, July 14, 1993).

Verification

We verified the questionnaire responses of Chweleco, Yuan Hwei, Oriental, and Jau Perng in Taiwan between October 12, 1992, and October 26, 1992. We also verified the responses to the sampling questionnaire and the supplemental questionnaire submitted by Modern Knitting Mills, Inc. (Modern), Chung Tai Industrial Co., Ltd., and Chun Te Enterprises Co., Ltd., which were in the sample pool but were not selected for analysis. We also verified the claim by Chung Shing Textile Co., Ltd., that it made no shipments to the United States during the POR.

All other companies refused verification of their responses to the sampling questionnaire and supplemental questionnaire. See Best Information Available section below.

Best Information Available

We preliminarily determine, in accordance with section 776(c) of the Tariff Act, that the use of best information available (BIA) is appropriate for sales of the subject merchandise from Chung Ling, The Workshop, and Maco. Because these companies did not answer our questionnaire, as BIA we have assigned them the highest margin from the LTFV investigation or the current review.

For companies that shipped during the POR but later went out of business, we must apply a BIA rate. We are considering the issue of what type of BIA is most appropriate under these circumstances. Among the factors we may consider in determining whether an adverse BIA rate is appropriate are the extent to which the entity continues to operate, the number of persons employed by the entity, the disposition of the entity's assets, the relationship of the entity to other entities continuing in business, the current legal status of the

bankruptcy or liquidation proceedings, and the potential for reorganization (including the likelihood that the entity will resume production). We invite comments on this proposal.

We also preliminarily determine that the use of BIA is appropriate for companies that refused to allow the Department to verify their responses to the sampling questionnaire and supplemental questionnaire. These companies are: Bay Flower Knitting Co., Ltd., Bonanza Industries Co., Ltd., Chen & Yu Corporation, Chen Hwa Knitting Factory, Chii Shing Knitting and Textile Co., Ltd., Danzas Corporation, Finery Garments Manufacturing Co., Ltd., Hsing Tai Knitting Co., Ltd., Hualey Knitwears Ltd., Jiing Sheng Knitting Co., Ltd., Keelung Clothing Co., Ltd., New Northern Knitting Co., Ltd., Taih Yung Enterprise Co., Ltd., Union Culling Knits Garments Factory Corp., and Yung Lien Knitwear Manufacturing Company, Ltd. Because these firms were non-cooperative, as BIA we have assigned them the highest margin from the LTFV investigation or the current review.

Oriental did not provide price adjustment data for sample sales to the United States. As BIA for adjustments to U.S. price, we used the highest reported adjustment data from Oriental's U.S. sales.

United States Price

The Department used purchase price (PP), as defined in section 772 of the Tariff Act, in calculating U.S. price for Chweleco, Jau Perng, Oriental, and Yuan Hwei because all sales were made directly to unrelated parties prior to importation into the United States. U.S. price was based on the packed, f.o.b. or c.i.f. price to the first unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, harbor maintenance fees, wharfage, air/ocean freight and insurance, and containerization charges.

Where quota fees were claimed as part of the movement charges incurred on U.S. sales, we have reclassified the quota fee portion as a direct selling expense, and we have allowed it as a circumstance-of-sale adjustment to foreign market value (FMV). No other adjustments were claimed or allowed.

Foreign Market Value

In calculating FMV for Chweleco, Jau Perng, Oriental, and Yuan Hwei, the Department used home market sales, third country (TC) sales, or constructed value (CV), as defined in section 773 of the Tariff Act.

As a result of verification, we adjusted the reported costs in those instances where costs were not appropriately quantified or valued. For Chweleco and Jau Perng, we revised the reported general and administrative expense and interest expense to reflect these expenses as a percentage of annual cost of sales. For Jau Perng, (1) we revised the submitted material cost to reflect the correct raw material usage, and (2) we revised the submitted labor cost to reflect the actual machine hours used.

To determine whether there were sufficient sales of MMF sweaters in the home market to serve as the basis for calculating FMV, we compared the volume of home market sales of the such or similar category (i.e., all MMF sweaters) to the volume of third country sales, in accordance with section 773(a)(1) of the Tariff Act. Only one of the respondents, Jau Perng, had a viable home market. For the other respondents, the volume of home market sales was less than five percent of the aggregate volume of TC sales. Therefore, we preliminarily determine that, except in the case of Jau Perng, home market sales do not constitute a viable basis for calculating FMV, in accordance with § 353.48 of the Department's regulations.

During the LTFV investigation of this case, the Department found that Oriental had made TC sales of subject merchandise at prices which were below the cost of production. Accordingly, for this review, we initiated an investigation of possible TC sales below the cost of production for Oriental. Chweleco and Jau Perng submitted cost-of-production data to enable the Department to compare home market and TC sales to their cost of production. On March 16, 1992, the petitioner alleged that Yuan Hwei was selling subject merchandise in third countries at prices below the cost of production, and requested that the Department initiate a sales-below-cost investigation. On April 1, 1992, we determined that petitioner's allegation was not sufficient and denied the petitioner's request to initiate a sales-below-cost investigation on Yuan Hwei.

As a result of our review, we found below-cost sales for Oriental, Chweleco, and Jau Perng. When more than 10 percent, but less than 90 percent, of the sales of a particular model were determined to be below the cost of production, we excluded those sales from our calculation of FMV. When 90 percent or more of the sales of a particular model were determined to be below the cost of production, we excluded all sales of that model from our calculation of FMV. If there were not sufficient contemporaneous sales of such or similar merchandise made at or above the cost of production, we used CV for calculating FMV.

Where we determined that sales in the home market were the most appropriate basis for calculating FMV, we calculated FMV based on the packed, f.o.b. or ex-factory prices to unrelated customers in Taiwan. We deducted inland freight, where applicable, and home market packing costs, and added U.S. packing costs, in accordance with section 773(a)(1)(B) of the Tariff Act.

Third country price was based on the packed, f.o.b., c.i.f., or CIF price to the first unrelated purchaser. We made deductions, where applicable, to the TC price for foreign inland freight, foreign brokerage and handling, wharfage and containerization, harbor fees, and air/ocean freight and insurance. We also deducted TC packing costs, and added U.S. packing costs.

Because all comparisons involved PP sales, we made circumstance-of-sale adjustments, where appropriate, for differences in credit and banking expenses, commissions, referral payments, and quota fees, in accordance with § 353.56 of the Department's regulations. When commissions were paid on either the PP sale or the FMV sale but not on the other, we made an adjustment for indirect selling expenses in one market to offset the commissions in the other market.

Where appropriate, we made further adjustments to FMV to account for differences in physical characteristics of the merchandise, in accordance with § 353.57 of the Department's regulations.

CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of eight percent of materials and fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments to CV, in accordance with 19 CFR 353.56, for differences in circumstances of sale. We denied Oriental's claim that the Department should allocate part of long-term interest expense to non-operating investment activities in the calculation of cost of production and CV.

No other adjustments were claimed or allowed.

Modern

Modern was included in the sample pool but not selected as one of our

sample companies. We conducted a verification of Modern's response to the sampling information questionnaire and supplemental questionnaire. At verification we discovered that Modern purchased completed sweaters from other manufacturers and sold them to the United States, in addition to Modern's regular production. Modern was not able to identify the manufacturers of the resold merchandise. Therefore, we are assuming that all sweaters sold by Modern were manufactured by firms receiving the highest rate in this review, which is the sample pool rate.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Period of review	Margin (percent)
Chweleco Ltd	04/07/90–08/31/91	1.79
Jau Perng Knitting Co., Ltd	04/07/90–08/31/91	0.43
Oriental Knitting, Ltd	04/07/90–08/31/91	9.62
Yuan Hwei Ind. Co., Ltd	04/07/90–08/31/91	14.44
Maco Knitting	04/07/90–08/31/91	24.02
Chung Ling Company, Ltd	04/07/90–08/31/91	24.02
The Workshop Industrial Co	04/07/90–08/31/91	24.02
Chun Te Enterprises	04/07/90–08/31/91	[1] 24.02
Chung Tai Ind. Co., Ltd	04/07/90–08/31/91	[1] 24.02
Modern Knitting Mills	04/07/90–08/31/91	[1] 24.02
Bay Flower Knitting Co., Ltd	04/07/90–08/31/91	[2] 24.02
Bonanza Industrial Co., Ltd	04/07/90–08/31/91	[2] 24.02
Chen Hwa Knitting	04/07/90–08/31/91	[2] 24.02
Chii Shing Knitting	04/07/90–08/31/91	[2] 24.02
Hsing Tai Knitting	04/07/90–08/31/91	[2] 24.02
Jiing Sheng Knitting	04/07/90–08/31/91	[2] 24.02
New Northern Knitting Co., Ltd	04/07/90–08/31/91	[2] 24.02
Taih Yung Enterprise Co., Ltd	04/07/90–08/31/91	[2] 24.02
Chen & Yu Corporation	04/07/90–08/31/91	[2] 24.02
Chialie International	04/07/90–08/31/91	[2] 24.02
Danzas Corp.	04/07/90–08/31/91	[2] 24.02
Finery Garments Mfgr. Co	04/07/90–08/31/91	[2] 24.02
Hualey Knitwears Ltd	04/07/90–08/31/91	[2] 24.02
Keelung Clothing Co., Ltd	04/07/90–08/31/91	[2] 24.02
Union Culling Knits	04/07/90–08/31/91	[2] 24.02
Yung Lien Knitwear	04/07/90–08/31/91	[2] 24.02
Chung Shing Textile Co	04/07/90–08/31/91	[3] 21.38
All Others	04/07/90–08/31/91	21.38

[1] Not selected from the sample pool; rate is the weighted average of the margins for the three selected companies.
[2] Refused verification; BIA rate is the highest rate in the LTFV investigation or this review.
[3] No shipments during the period; rate is (1) the firm's calculated margin from the LTFV investigation, or (2) if not covered in the investigation, the "all others" rate, 21.38 percent.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of MMF sweaters from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this administrative review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be their company-specific rate published for the LTFV investigation; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established in the LTFV investigation for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final notice of the LTFV investigation of this case, in accordance with the Court of International Trade's decisions in *Floral Trade Council* v. *United States,* Slip Op. 93–79, and *Federal Mogul Corporation and the Torrington Company* v. *United States,* Slip Op. 93–83. Since the margin for Jau Perng is less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of antidumping duties on entries from Jau Perng. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secetary's presumption that reimbursement of

antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 29, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-29634 Filed 12-2-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-582-802]

Sweaters Wholly or in Chief Weight of Man-Made Fiber From Hong Kong; Preliminary Results of and Termination in Part of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce is conducting an administrative review of the antidumping duty order on sweaters wholly or in chief weight of man-made fiber from Hong Kong. The review covers 29 manufacturers/exporters of this merchandise to the United States and the period April 27, 1990 through August 31, 1991. The review indicates the existence of dumping margins during the period.

Using sampling techniques, the Department of Commerce selected four of these companies to be analyzed. The other firms covered by this review have received a rate which is the simple average of the margins of the four selected companies. In addition, we are terminating the review in part, with respect to Three Star Knitting Ltd. and Greenwood Knitters, Ltd.

As a result of this review, we have preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 3, 1993.

FOR FURTHER INFORMATION CONTACT: Elisabeth Urfer or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 39036) the antidumping duty order on sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from Hong Kong. On September 30, 1991, the petitioner, the National Knitwear & Sportswear Association (NKSA), requested that we conduct an administrative review, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act) and 19 CFR 353.22(a). We published the notice of initiation of the antidumping duty administrative review on October 18, 1991 (56 FR 52254), covering the period April 27, 1990 through August 31, 1991. The initiation notice names 31 companies. Of these 31 companies, we are terminating the review of two companies (*see* "Termination of Review in Part" section of this notice). Of the remaining 29 companies the following four companies were selected to be analyzed, using sampling techniques: Apace Knitting Factory (Apace), Bond Manufacturing Co., Ltd. (Bond), Hayward Knitters (Hayward), and LaMagma, Ltd. (LaMagma). The other companies covered by this review have received a rate which is the simple average of the margins of these four companies.

Termination of Review in Part

On October 10, 1991, Three Star Knitting Factory Ltd. (Three Star) withdrew its request for review, and on November 8, 1991, Greenwood Knitters, Ltd. (Greenwood) withdrew its request for review. Accordingly, the Department is terminating the review with respect to these companies, in accordance with 19 CFR 353.22(a)(5). On November 7, 1991, Everest Knitwear (Everest) also withdrew its request for review. However, as petitioners had requested Everest be reviewed, the Department declined to terminate its review. Everest remains in the sample pool, and has received the sample rate.

Standing

On October 29, 1991, the Hong Kong Woolen and Synthetic Knitting Manufacturers' Association and its individual members argued that the petitioner in the less than fair value investigation (LTFV investigation), NKSA, did not have standing as an interested party within the meaning of 19 CFR 353.2(k)(5) to request administrative review of the antidumping duty order on MMF sweaters from Hong Kong. They therefore requested that the Department rescind the review. On February 19, 1992, we determined that NKSA did have standing to request the review. *See Memorandum to Alan M. Dunn from Joseph A. Spetrini,* February 19, 1992 (on file in the Central Records Unit).

Scope of the Review

Imports covered by this review are shipments of MMF sweaters from Hong Kong. MMF sweaters are defined as garments for outerwear that are knitted or crocheted, in a variety of forms including jacket, vest, cardigan with button or zipper front, or pullover, usually having ribbing around the neck, bottom, and cuffs on the sleeves (if any), encompassing garments of various lengths, wholly or in chief weight of man-made fiber. The term "in chief weight of man-made fiber" includes sweaters where the man-made fiber material predominates by weight over each other single textile material. This excludes sweaters 23 percent or more by weight of wool. It includes men's, women's, boys', or girls' sweaters, as defined above, but does not include sweaters for infants 24 months of age or younger. It includes all sweaters as defined above, regardless of the number of stitches per centimeter, provided that, with regard to sweaters having more than nine stitches per two linear centimeters horizontally, it includes only those with a knit-on rib at the bottom.

Garments which extend below mid-thigh or cardigans that contain a sherpa lining or heavy-weight fiberfill lining, including quilted linings, used to provide extra warmth to the wearer, are not considered sweaters and are excluded from the scope of the order. Also specifically excluded from the scope are sweaters assembled in Guam that are produced from knit-to-shape component parts knit in and imported from Hong Kong and entering under Harmonized Tariff Schedule (HTS) item number 9902.61.

The subject merchandise is currently classifiable under HTS item numbers 6110.30.30.10, 6110.30.30.15, 6110.30.30.20, 6110.30.30.25, 6103.23.00.70, 6103.29.10.40, 6103.29.20.62, 6104.23.00.40, 6104.29.10.60, 6104.29.20.60, 6110.30.10.10, 6110.30.10.20, 6110.30.20.10, and 6110.30.20.20. This merchandise may also enter under HTS item numbers 6110.30.30.50 and 6110.30.30.55. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

This review covers 29 manufacturers/exporters of the subject merchandise from Hong Kong, and the period April 27, 1990 through August 31, 1991. Apace, Bond, Hayward, and LaMagma have been selected by the Department to be analyzed.

Sampling

Due to the extremely large number of respondents in this review and the antidumping duty administrative reviews of MMF sweaters from Taiwan and Korea, on December 13, 1991, the Department issued a memorandum proposing the use of sampling techniques, in accordance with section 777A of the Tariff Act, in order to limit the number of sales analyzed. In accordance with that memorandum, on December 16, 1991, the Department sent a letter to all interested parties explaining the proposed sampling methodology and soliciting comments on that methodology. Comments were received from petitioner and respondents on December 23, 1991, and a memorandum recommending the use of sampling was issued on January 6, 1992.

Of the 29 companies for which a review was requested only by petitioner, four companies notified the Department that they had not made sales of subject merchandise to the United States during the period of review, four companies did not respond to the sampling questionnaire, and we were unable to locate three companies.

We applied our sampling methodology to the remaining 18 companies in the following manner. First, each company was assigned points according to its percentage share of total export sales, by volume, to the United States. One point was given for each ½ percent of export sales. Each company was represented in the sample pool in proportion to the number of points it received. For example, a company that comprised 25 percent of exports to the United States would receive 50 points and go "into the hat" 50 times. A company that comprised one percent of total exports would receive two points and go "into the hat" twice. In this way, the company with a greater volume of exports had a greater chance of being selected than a company with a smaller volume of exports.

Of the 18 companies, Apace, Bond, Hayward, and LaMagma were randomly selected to be analyzed. Questionnaires were sent to these companies on January 6, 1992. We received questionnaire responses from Hayward on March 18, 1992, from Bond on March 6, 1992, and from LaMagma on February 20, 1992. Apace did not submit a questionnaire response.

The companies selected to be analyzed have received their own rates. The other companies in the sample pool have received a rate which is the simple average of the margins of the four selected companies. We have used a simple average for calculating the sample pool rate because we weighted each company according to its share of export sales in selecting the sampled companies.

When a firm received a BIA rate as its margin, we did not exclude it from the sample pool. The elimination of non-responding firms from the sample would reward non-responding firms and could encourage non-compliance in future reviews. Moreover, it would impair the integrity of the sample because it would detract from the randomness of the results. See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Antidumping Duty Administrative Review (58 FR 37912, July 14, 1993).

Verification

Verification of the questionnaire responses of Bond, Hayward, and LaMagma was conducted in Hong Kong during October 6–19, 1992, and at the offices of their related parties in the United States during November 9–17, 1992.

Best Information Available

We preliminarily determine, in accordance with section 776(c) of the Tariff Act, that the use of best information available (BIA) is appropriate for sales of the subject merchandise from Apace, Bond and Hayward.

In deciding what to use as BIA, 19 CFR 353.37(b) provides that the Department may take into account whether a party refused to provide requested information. Thus, the Department determines on a case-by-case basis what is best information available. For purposes of these preliminary results, we have applied BIA depending on whether the companies refused or attempted to cooperate in this review.

Where a company attempted to cooperate, but did not provide adequate and verifiable questionnaire responses, as BIA we used the higher of: (1) The highest calculated margin for any Hong Kong respondent in this review, or (2) that firm's margin from the LTFV investigation, or, if not investigated, the "all others" rate from the investigation. Where a company refused to cooperate, we assigned it the highest margin from the investigation or the current review.

Apace informed the Department on March 7, 1992 that it would not participate in the review. As BIA we have therefore assigned it the highest margin from LTFV investigation.

Under section 776(b) of the Tariff Act, if the Department is unable to verify the accuracy of information submitted in an administrative review where verification is conducted, the Department must use BIA. We were unable to verify significant portions of Bond's and Hayward's responses to our questionnaire. In addition, during verification we found significant deficiencies and errors in the sales and cost responses submitted by Bond, Hayward, and their related parties. While it is not uncommon to find minor methodological and mathematical errors during verification, the multitude of the discrepancies, methodological errors, unreported data, and information that could not be supported by source documents was such that we are compelled to resort to BIA. After review of the information submitted by these companies and the nature of the errors found at verification, we have determined Bond and Hayward to be cooperative, although significantly deficient in their responses to the Department. Therefore, we have used, as BIA for these companies, the higher of: (1) The highest calculated margin for any Hong Kong respondent in this review, or (2) that firm's margin from the LTFV investigation, or, if not investigated, the "all others" rate from the investigation. The major deficiencies found during verification for each affected respondent are discussed in the public versions of verification reports, which are on file in the Central Records Unit. These deficiencies are summarized below.

Bond

Because Bond cooperated with the Department, we have assigned it the cooperative BIA rate, the "all others" rate from the LTFV investigation. Among the many errors and discrepancies we found at verification, most serious were Bond's failure to report any third country sales, and the failure of its related party in the United States, Snowmass Apparel Inc. (Snowmass), to report chargebacks, which are post-sale discounts or reductions in price. In addition, Snowmass could not substantiate how it calculated packing expenses; did not report all discounts; could not demonstrate that loans from a related party were at fair market value; had incorrectly reported sales; had records that showed importation of more sweaters than it sold; frequently

reported incorrect dates of payment; and incorrectly allocated its U.S. duty by volume. Furthermore, Bond did not report all sample sales of subject merchandise to the United States; failed to provide adequate support for its claimed exclusion of four cost elements for G&A expenses; and was inconsistent in its calculation of G&A expenses in constructed value (CV).

Hayward

Because Hayward cooperated with the Department, we have assigned it the cooperative BIA rate. Among the many errors and discrepancies we found at verification, most serious were that Hayward's related party in the United States, T.J. Manalo (TJM), did not adequately record chargebacks, and we could not verify the total quantity and value of sales for TJM. In addition, Hayward was unable to provide any documentation establishing inland freight expense for home market sale; had no documentation supporting its home market commission claim; had contradictory documentation supporting its claim for home market inventory carrying expenses; had incorrectly calculated several of its total quantity and value figures; had reported inaccurate materials cost; was unable to substantiate its calculated interest rate; incorrectly reported quota expense; and was unable to demonstrate how it had generated the total quantity of shipments used in the allocation of brokerage and handling expenses. Furthermore, TJM had incorrectly calculated factor fees, and was unable to demonstrate how it had calculated the rate it used in reporting 1991 commissions.

For these reasons, we preliminarily determine that the use of BIA is appropriate, and is consistent with past practice. *See* Preliminary Results of Antidumping Duty Administrative Review: Certain Forged Steel Crankshafts From the United Kingdom (58 FR 41241, August 3, 1993); and Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Brazil (58 FR 37091, July 9, 1993).

La Magma

United States Price

For LaMagma the Department used purchase price (PP), as defined in section 772 of the Tariff Act, in calculating U.S. price. U.S. price was based on the packed, f.o.b. price to the first unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, and foreign brokerage and handling, in accordance with section 772(d)(2) of the Tariff Act. No other adjustments were claimed or allowed.

Foreign Market Value

We preliminarily determine that LaMagma's sales of such or similar merchandise in the home market are not viable, and LaMagma made no third country sales. Therefore, in accordance with section 773(a)(2) of the Tariff Act, we used CV in calculating foreign market value (FMV) for LaMagma.

CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials and fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. We calculated LaMagma's total general expenses on its U.S. sales by adding general and administrative expenses to a sum of direct selling expenses (quota expenses and bank charges), indirect selling expenses, imputed credit, and inventory holding costs.

No adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/exporter	Period of review	Margin (percent)
Apace Knitting Factory	04/27/90–08/31/91	115.15
Bond Manufacturing Company, Ltd	04/27/90–08/31/91	5.86
Hayward Knitters	04/27/90–08/31/91	5.86
LaMagma	04/27/90–08/31/91	0.00
Sample Pool:		
Chung Cheung Knitting Factory	04/27/90–08/31/91	[1] 31.72
Comitex Knitters, Ltd	04/27/90–08/31/91	[1] 31.72
Everest Knitwear, Ltd	04/27/90–08/31/91	[1] 31.72
Fang Brothers Knitting, Ltd	04/27/90–08/31/91	[1] 31.72
Fortuna Knits	04/27/90–08/31/91	[1] 31.72
Gee Cheung Knitting	04/27/90–08/31/91	[1] 31.72
Just Fashions International	04/27/90–08/31/91	[1] 31.72
Ken Shing Knitting Factory	04/27/90–08/31/91	[1] 31.72
Peninsula Knitters, Ltd	04/27/90–08/31/91	[1] 31.72
Sun Hing Knitting Factory, Ltd	04/27/90–08/31/91	[1] 31.72
Union Knitting Factory Co., Ltd	04/27/90–08/31/91	[1] 31.72
Wai Tai Knitwear	04/27/90–08/31/91	[1] 31.72
Wing Yick Knitting Factory	04/27/90–08/31/91	[1] 31.72
Wiseknit Factory	04/27/90–08/31/91	[1] 31.72
No Shipments:		
Afasia Knitting Factory, Ltd	04/27/90–08/31/91	[2] 5.86
Esquel Enterprises, Ltd	04/27/90–08/31/91	[2] 5.86
King Ah Knitting Factory	04/27/90–08/31/91	[2] 5.86
Shui Ling Industries Co., Ltd	04/27/90–08/31/91	[2] 5.86
Did not respond to Sampling Questionnaire:		
Kent Phone	04/27/90–08/31/91	[3] 115.15
Ko Tang Knitting Factory	04/27/90–08/31/91	[3] 115.15
Simee Knitting Factory, Ltd	04/27/90–08/31/91	[3] 115.15
Tai Wah Garment & Knitting Factory	04/27/90–08/31/91	[3] 115.15
Excluded from the sample:		

Manufacturer/exporter	Period of review	Margin (percent)
Great Wind	04/27/90–08/31/91	[4] 5.86
Liaoning Knitwear	04/27/90–08/31/91	[4] 5.86
Maurice Knitters	04/27/90–08/31/91	[4] 5.86
All Others	04/27/90–08/31/91	5.86

[1] Not selected from the sample pool; rate is the simple average of the margins for the four selected companies, 31.72 percent.
[2] No shipments during the period; rate is (1) the firm's calculated margin from the LTFV investigation or, (2) if not covered in the investigation, the "all others" rate, 5.86 percent.
[3] Did not respond to the sampling questionnaire; the uncooperative BIA rate is 115.15 percent, the highest rate from the LTFV investigation.
[4] No address found; rate is the all others rate from the LTFV investigation, 5.86 percent.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of MMF sweaters from Hong Kong entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this administrative review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the LTFV investigation; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established in the LTFV investigation for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all other" rate established in the final notice of LTFV investigation of this case, in accordance with the Court of International Trade's decisions in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 24, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–29632 Filed 12–2–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–580–806]

Sweaters Wholly or in Chief Weight of Man-Made Fiber From Korea; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce is conducting an administrative review of the antidumping duty order on sweaters wholly or in chief weight of man-made fiber from Korea. The review covers 69 manufacturers/exporters of this merchandise to the United States and the period April 27, 1990 through August 31, 1991. Using sampling techniques, the Department of Commerce selected six of these companies to be analyzed. The other firms included in the sample pool have received a rate which is the simple average of the margins of the six selected companies. The review indicates the existence of dumping margins during the period.

As a result of this review, we have preliminarily determined to assess antidumping duties equal to the difference between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Karin Price, Donald Little, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 39036) the antidumping duty order on sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from Korea. On September 30, 1991, the petitioner, the National Knitwear & Sportswear Association (NKSA), requested that we conduct an administrative review, in accordance with § 353.22(a) of the Department's regulations. We published the notice of initiation of the antidumping duty administrative review on October 18, 1991 (56 FR 52254), covering the period April 27, 1990 through August 31, 1991. The initiation notice names 69 companies. Of these 69 companies, the following six companies were selected to be analyzed, using sampling techniques: Chunji Industrial Company, Ltd. (Chunji), Kee Ryung Industrial Company, Ltd. (Kee Ryung), Suhcheon Company, Ltd. (Suhcheon), Tae Kwang

Industrial Company, Ltd. (Tae Kwang), Young Woo & Company, Ltd. (Young Woo), and Yurim Company, Ltd. (Yurim). The other companies included in the sample pool have received a rate which is the simple average of the margins of these six companies. The Department has now conducted the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of MMF sweaters from Korea. MMF sweaters are defined as garments for outerwear that are knitted or crocheted, in a variety of forms including jacket, vest, cardigan with button or zipper front, or pullover, usually having ribbing around the neck, bottom, and cuffs on the sleeves (if any), encompassing garments of various lengths, wholly or in chief weight of man-made fiber. The term "in chief weight of man-made fiber" includes sweaters where the man-made fiber material predominates by weight over each other single textile material. This excludes sweaters 23 percent or more by weight of wool. It includes men's, women's, boys', or girls' sweaters, as defined above, but does not include sweaters for infants 24 months of age or younger. It includes all sweaters as defined above, regardless of the number of stitches per centimeter, provided that, with regard to sweaters having more than nine stitches per two linear centimeters horizontally, it includes only those with a knit-on rib at the bottom.

Garments which extend below mid-thigh or cardigans that contain a sherpa lining or heavy-weight fiberfill lining, including quilted linings, used to provide extra warmth to the wearer, are not considered sweaters and are excluded from the scope of the review. Also specifically excluded from the scope are sweaters assembled in Guam that are produced from knit-to-shape component parts knit in and imported from Korea and entering under Harmonized Tariff Schedule (HTS) item number 9902.61.

The subject merchandise is currently classifiable under HTS item numbers 6110.30.30.10, 6110.30.30.15, 6110.30.30.20, 6110.30.30.25, 6103.23.00.70, 6103.29.10.40, 6103.29.20.62, 6104.23.00.40, 6104.29.10.60, 6104.29.20.60, 6110.30.10.10, 6110.30.10.20, 6110.30.20.10, and 6110.30.20.20. This merchandise may also enter under HTS item numbers 6110.30.30.50 and 6110.30.30.55. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

This review covers 69 manufacturers/exporters of the subject merchandise from Korea, and the period April 27, 1990 through August 31, 1991. Chunji, Kee Ryung, Suhcheon, Tae Kwang, Young Woo, and Yurim have been selected by the Department to be analyzed.

Sampling

Due to the large number of respondents in this review and the antidumping duty administrative reviews of MMF sweaters from Taiwan and Hong Kong, on December 13, 1991, the Department issued a memorandum proposing the use of sampling techniques, in accordance with section 777A of the Tariff Act, in order to limit the number of sales analyzed. In accordance with that memorandum, on December 16, 1991, the Department sent a letter to all interested parties explaining the proposed sampling methodology and soliciting comments on that methodology. Comments were received from petitioner and respondents on December 23, 1991, and a memorandum recommending the use of sampling was issued on January 6, 1992.

Of the 69 companies included in the Department's initiation notice, eight companies notified the Department that they had not made sales of subject merchandise to the United States during the period of review; 19 were unknown to the Korea Garments and Knitwear Export Association (KGKEA), and, thereby, were presumed not to have exported subject merchandise to the United States during the period of review since KGKEA issues all export permits for exports of MMF sweaters; two named companies were owned by other named companies; and two of the named companies were duplicates of other named companies.

We applied our sampling methodology to the remaining 38 companies in the following manner. First, each company was assigned points according to its percentage share of total export sales, by volume, to the United States. One point was given for each ½ percent of export sales. Each company was represented in the sample pool in proportion to the number of points it received. For example, a company that represented 25 percent of exports to the United States would receive 50 points and go "into the hat" 50 times. A company that comprised one percent of total exports would receive two points and go "into the hat" twice. In this way, the company with a greater volume of exports had a much greater chance of being selected than the company with a smaller volume of exports. Of the 38 companies, Chunji, Kee Ryung, Suhcheon, Tae Kwang, Young Woo, and Yurim were randomly selected to be analyzed. Questionnaires were sent to these companies on January 6, 1992.

The companies selected to be analyzed have received their own rates. The other companies in the sample pool have received a rate which is the simple average of the margins of the six selected companies. We have used a simple average for calculating the sample pool rate because we weighted each company according to its share of export sales in selecting the sampled companies.

Verification

Verification of the questionnaire responses of Kee Ryung, Suhcheon, and Tae Kwang were conducted in Korea between October 12, 1992 and October 26, 1992. We also conducted a verification of the response of Choongbang Company, Ltd. (Choongbang) to our questionnaire, which stated that Choongbang had no exports of the subject merchandise to the United States during the period of review, in Korea on October 27, 1992.

Best Information Available

Young Woo did not provide complete sales data on its exporter's sales price (ESP) sales of MMF sweaters to the United States made through its wholly-owned subsidiary Young Collections, Inc., U.S.A. (YCI–NY), because in May 1991, YCI–NY discontinued its operations. For these sales, the Department used the best information available. As the best information available, we have used a cooperative rate, which is the higher of (1) Young Woo's weighted-average margin from the investigation of sales at less than fair value (LTFV), or (2) the highest calculated rate in this review for any firm. We have used a cooperative rate since these ESP sales represent a small proportion of Young Woo's total sales to the United States, and Young Woo has cooperated in submitting full data on its other sales.

United States Price

With the exception of certain of Young Woo's U.S. sales which are ESP, for which the best information available was used, as described above, the Department used purchase price (PP), as defined in section 772 of the Tariff Act, in calculating United States price (U.S. price) for Chunji, Kee Ryung, Suhcheon, Tae Kwang, Young Woo, and Yurim. U.S. price was based on the packed,

f.o.b. price to the first unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling, and wharfage and containerization charges. We also made an addition for import duties which were rebated on imported materials used to produce subsequently exported merchandise.

No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value (FMV) for Chunji, Kee Ryung, Suhcheon, Tae Kwang, Young Woo, and Yurim, the Department used third country price or constructed value (CV), as defined in section 773 of the Tariff Act.

During the LTFV investigation of this case, the Department found that Yurim had made third country sales of subject merchandise at prices which were below the cost of production. Accordingly, for this review, we initiated an investigation of possible third country sales below the cost of production for Yurim. On March 13, 1992, petitioner alleged that Chunji, Kee Ryung, Suhcheon, Tae Kwang, and Young Woo were selling subject merchandise in third countries at prices below the cost of production. On March 20, 1992, we initiated sales below cost investigations on these companies.

As a result of our investigations, we found below-cost sales for each company. When more than 10 percent, but less than 90 percent, of the sales of a particular model were determined to be below the cost of production, we excluded those sales from our calculation of FMV. When 90 percent or more of the sales of a particular model were made below cost, we excluded all sales of that model from our calculation of FMV. When 10 percent or less of the home market sales of a particular model were made at prices below the cost of production, we did not disregard any sales of that model. If there were not sufficient sales of such or similar merchandise made at or above the cost of production, we used CV for calculating FMV.

Third country price was based on the packed, f.o.b., c.i.f., or C&F price to the first unrelated purchaser. We made adjustments, where applicable, to the third country price for foreign inland freight, foreign brokerage and handling, wharfage and containerization, ocean freight, marine insurance, credit expenses, warranties, commissions, differences in the physical characteristics of the merchandise, and differences in packing. We also added an amount for import duties which were rebated on imported materials used to produce subsequently exported merchandise. When FMV was compared to PP, we added U.S. credit, warranties, and commissions, as appropriate. When commissions were paid on either the PP sale or the third country sale but not on the other, we made an adjustment for indirect selling expenses in the one market to offset the commissions in the other market.

CV includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses or the statutory minimum of 10 percent of materials and fabrication, whichever was greater; (2) actual profit or the statutory minimum of 8 percent of materials and fabrication costs and general expenses, whichever was greater; and (3) packing costs for merchandise exported to the United States. Where appropriate, we made adjustments for differences in circumstances of sale, in accordance with 19 CFR 353.56.

No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist:

Manufacturer/Exporter	Period of review	Margin (percent)
Chunji Industrial Company, Ltd and Sungwha Garment Company, Ltd	04/27/90–08/31/91	3.01
Kee Ryung Industrial Company, Ltd	04/27/90–08/31/91	2.43
Suhcheon Company, Ltd	04/27/90–08/31/91	2.36
Tae Kwang Industrial Company, Ltd	04/27/90–08/31/91	0.28
Young Woo Industrial Company, Ltd	04/27/90–08/31/91	4.55
Yurim Industrial Company, Ltd	04/27/90–08/31/91	2.40
Bangil Industrial, Ltd	04/27/90–08/31/91	[1]2.51
Boun Kyung Corporation	04/27/90–08/31/91	[1]2.51
Bum-Yang Apparel Company, Ltd	04/27/90–08/31/91	[1]2.51
Chai-Knit Trading Company, Ltd	04/27/90–08/31/91	[1]2.51
Chang Jae Corporation	04/27/90–08/31/91	[1]2.51
Chongju Textiles Company, Ltd	04/27/90–08/31/91	[1]2.51
Dae Kyung Company, Ltd	04/27/90–08/31/91	[1]2.51
Daewoo Corporation	04/27/90–08/31/91	[1]2.51
Dae Yu Company, Ltd	04/27/90–08/31/91	[1]2.51
Do Sung Textile Company, Ltd	04/27/90–08/31/91	[1]2.51
Dong Kwang Corporation	04/27/90–08/31/91	[1]2.51
Dong Woo Company, Ltd	04/27/90–08/31/91	[1]2.51
Doosung Textile Company, Ltd	04/27/90–08/31/91	[1]2.51
Full Bright Industrial Co., Ltd	04/27/90–08/31/91	[1]2.51
Hae Yang Knitting Factory, Ltd	04/27/90–08/31/91	[1]2.51
Hanil Synthetic Fiber Ind. Co., Ltd	04/27/90–08/31/91	[1]2.51
Hwa Man Industrial Company, Ltd	04/27/90–08/31/91	[1]2.51
Jo Woo Company, Ltd	04/27/90–08/31/91	[1]2.51
Kolon International Corporation	04/27/90–08/31/91	[1]2.51
Kuk Rim Ltd	04/27/90–08/31/91	[1]2.51
Kun Ja Industrial Company, Ltd	04/27/90–08/31/91	[1]2.51
Ryu Kyung Industrial Company, Ltd	04/27/90–08/31/91	[1]2.51
Samdo Trading Company and Daishin Trading Company, Ltd	04/27/90–08/31/91	[1]2.51
Samjin Moolsan Ltd	04/27/90–08/31/91	[1]2.51
Samsung Company, Ltd	04/27/90–08/31/91	[1]2.51
Se Dong Company, Ltd	04/27/90–08/31/91	[1]2.51
Shin Chang Knitting Company, Ltd	04/27/90–08/31/91	[1]2.51
Shinwon Corporation	04/27/90–08/31/91	[1]2.51

Manufacturer/Exporter	Period of review	Margin (percent)
Sunny Apparel, Inc	04/27/90–08/31/91	[1] 2.51
Uksung Company, Ltd	04/27/90–08/31/91	[1] 2.51
Wha Jin Apparel Company, Ltd	04/27/90–08/31/91	[1] 2.51
Yakjin Trading Corporation	04/27/90–08/31/91	[1] 2.51
Baik Yang Company, Ltd	04/27/90–08/31/91	[2] 1.30
Choongbang Company, Ltd	04/27/90–08/31/91	[2] 1.30
Dongwoo Silk Company, Ltd	04/27/90–08/31/91	[2] 1.30
Doosan Industrial Company, Ltd	04/27/90–08/31/91	[2] 1.30
Hanjoo Corporation	04/27/90–08/31/91	[2] 1.30
Hoejun Knit Goods Company, Ltd	04/27/90–08/31/91	[2] 1.30
Jung Woo Textile Company, Ltd	04/27/90–08/31/91	[2] 1.30
San Han Synthetic Fiber Co., Ltd	04/27/90–08/31/91	[2] 1.30
Cheon Woo Express	04/27/90–08/31/91	[3] 1.30
Chin Ji Industrial	04/27/90–08/31/91	[3] 1.30
Daelim	04/27/90–08/31/91	[3] 1.30
Goo San Trading	04/27/90–08/31/91	[3] 1.30
Hanjoo Shipping International	04/27/90–08/31/91	[3] 1.30
Hanlim	04/27/90–08/31/91	[3] 1.30
Hyop Sung	04/27/90–08/31/91	[3] 1.30
Hyop Woon Enterprises	04/27/90–08/31/91	[3] 1.30
Jung Wong	04/27/90–08/31/91	[3] 1.30
Kook Industries	04/27/90–08/31/91	[3] 1.30
Ryu Kyung	04/27/90–08/31/91	[3] 1.30
Sam Jin Industries	04/27/90–08/31/91	[3] 1.30
Sam Jing Industries	04/27/90–08/31/91	[3] 1.30
Shen Heung Textile	04/27/90–08/31/91	[3] 1.30
Wahjin	04/27/90–08/31/91	[3] 1.30
Woorin Trading	04/27/90–08/31/91	[3] 1.30
Ye In	04/27/90–08/31/91	[3] 1.30
Yoo Chang Enterprise	04/27/90–08/31/91	[3] 1.30
Yuwon Trading	04/27/90–08/31/91	[3] 1.30
All Others	04/27/90–08/31/91	[3] 1.30

[1] Not selected from the sample pool; rate is the simple average of the margins for the six selected companies.
[2] No shipments during the period; rate is the weighted-average margin for each company from the less-than-fair-value investigation, or, if a company was not involved in the investigation, the "All Others" rate.
[3] Not known to KGKEA as a shipper; rate is the weighted-average margin for each company from the less-than-fair-value investigation, or, if the company was not involved in the investigation, the "All Others" rate.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of MMF sweaters from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this administrative review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the less-than-fair value investigation; (3) if the exporter is not a firm covered in this review or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established in the less-than-fair-value investigation for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate established in the final notice of LTFV investigation of this case, in accordance with the Court of International Trade's decisions in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83. Since the margin for Tae Kwang is less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of antidumping duties on entries from Tae Kwang. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 24, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-29633 Filed 12-2-93; 8:45 am]

[BILLING CODE 3510-DS-P]

U.S. Geological Survey, 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 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: 93-099. *Applicant:* U.S. Geological Survey, Denver, CO 80225. *Instrument:* Automatic Spinner Magnetometer System, Model JR-5A. *Manufacturer:* Geofyzika, Czech Republic. *Intended Use:* See notice at 58 FR 49023, September 21, 1993. *Advice Received From:* National Institute of Standards and Technology, October 28, 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 sensitivity of 2.4 μA/m (2.4 x 10^{-9} emu), (2) on-line computer control and (3) small size without need for cryogenic operation for studies of remenant magnetism. The National Institute of Standards and Technology advises that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows 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. 93-29635 Filed 12-2-93; 8:45 am]

BILLING CODE 3510-DS-F

Applications for Duty-Free Entry of Scientific Instruments

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 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 93-132. *Applicant:* Texas A&M University, Corpus Christi, 6300 Ocean Drive, Corpus Christi, TX 78412. *Instrument:* Rapid Kinetics Spectrometer Accessory, Model RX 1000. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be attached to a spectrophotometer and used to teach principles and applications of stopped flow kinetics in several chemistry courses. *Application Received by Commissioner of Customs:* October 14, 1993.

Docket Number: 93-133. *Applicant:* San Francisco State University, 1600 Holloway Avenue, San Francisco, CA 94132. *Instrument:* Electron Microscope, Model CM 120. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for teaching purposes in the courses Biology 741, 699 and 897. *Application Received by Commissioner of Customs:* October 19, 1993.

Docket Number: 93-134. *Applicant:* State University of New York at Buffalo, 3435 Main Street, Buffalo, NY 14214. *Instrument:* Topographic Measuring System, Model TS 100. *Manufacturer:* Oxford Metrics Limited, United Kingdom. *Intended Use:* The instrument will be used for studies of three dimensional back shape in scoliosis and other spinal deformities. In addition, the instrument will be used in courses in Orthopaedic Physical Therapy to assess posture and postural faults of the back. *Application Received by Commissioner of Customs:* October 21, 1993.

Docket Number: 93-135. *Applicant:* Texas Department of Health, 1100 W. 49th Street, Austin, TX 78756. *Instrument:* Electron Microscope, Model H-7100. *Manufacturer:* Nissei Sangyo, Japan. *Intended Use:* The instrument will be used to examine biological specimens to identify microorganisms, primarily viruses, but also bacteria, parasites and fungi. *Application Received by Commissioner of Customs:* October 22, 1993.

Docket Number: 93-136. *Applicant:* Mount Sinai Medical Center, 1 Gustave L. Levy Place, New York, NY 10029. *Instrument:* Cytovision Ultra Analysis System. *Manufacturer:* Applied Imaging International, United Kingdom. *Intended Use:* The instrument will be used for research purposes to examine some aspects of chromosomal rearrangements in human leukemia. In addition, the instrument will be used for training and teaching cytogenetics of hematological disorders in conjunction with fluorescence in situ hybridization analysis using chromosomal DNA probes. *Application Received by Commissioner of Customs:* October 26, 1993.

Docket Number: 93-137. *Applicant:* University of Virginia, Molecular Physiology & Biology Physics, 449 Jordan Hall, Charlottesville, VA 22908. *Instrument:* Electron Microscope, Model CM 200. *Manufacturer:* N.V. Philips, The Netherlands. *Intended Use:* The instrument will be used for studies of cardiac, smooth and skeletal muscle, blood platelets and a number of other vertebrate and invertebrate cells to determine how phosphorylation and calcium binding affect intracellular and cell-to-cell signaling, including the development of fatal disorders of the heart beat. The long term objective of this study is the development of therapeutic agents for preventing and/or treating abnormalities of cardiac rhythm. *Application Received by Commissioner of Customs:* October 28, 1993.

Docket Number: 93-138. *Applicant:* Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439. *Instrument:* Scintillometer, Model SLS 20. *Manufacturer:* Scintec, Germany. *Intended Use:* The instrument will be used to conduct research on the exchange of heat and momentum between the atmosphere and the surface of the Earth. *Application Received by Commissioner of Customs:* October 28, 1993.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-29638 Filed 12-2-93; 8:45 am]

BILLING CODE 3510-DS-F

University of Hawaii, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated 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 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.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–103. *Applicant:* University of Hawaii, Honolulu, HI 96822. *Instrument:* Mass Spectrometer, Model VG Sector 54-30. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* See notice at 58 FR 49023, September 21, 1993. *Reasons:* The foreign instrument provides: (1) an abundance sensitivity to 0.1 ppm at mass 237 with respect to the ^{238}U peak, (2) 7 Faraday cup multidetectors and (3) a Daly ion counting collector.

Docket Number: 93–109. *Applicant:* University of Utah, Salt Lake City, UT 84112. *Instrument:* Mass Spectrometer, Model 252. *Manufacturer:* Finnigan MAT Inc., Germany. *Intended Use:* See notice at 58 FR 49024, September 21, 1993. *Reasons:* The foreign instrument provides: (1) an internal precision of 0.005 per mil for 3 bar µl samples of CO_2, (2) an 8–cup multicollector and a H/D detector and (3) all-metal gold sealed valves of monoblock design.

The capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–29636 Filed 12–2–93; 8:45 am]

BILLING CODE 3510–DS–F

University of Florida, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated 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 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.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93–112. *Applicant:* University of Florida, Gainesville, FL 32611–2046. *Instrument:* ICP Mass Spectrometer, Model MAT SOLA. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 58 FR 49024, September 21, 1993. *Reasons:* The foreign instrument provides: (1) sub-ng/liter detection limits for liquids and sub-ppb for solids across the periodic table, (2) rapid interchange of the ion source from ICP to glow discharge, (3) Faraday and electron multiplier detectors and (4) laser ablation capability. *Advice Received From:* National Institute of Standards and Technology, October 25, 1993.

Docket Number: 93–080. *Applicant:* Dartmouth College, Hanover, NH 03755. *Instrument:* Imaging and In-Vivo Spectroscopy System, Model 7T/200. *Manufacturer:* Surrey Medical Imaging Systems, United Kingdom. *Intended Use:* See notice at 58 FR 42941, August 12, 1993. *Reasons:* The foreign instrument provides: (1) in vivo spectroscopy and imaging, (2) a 7 tesla magnet with 200 nm bore and 120–125 mm inside diameter shield gradient, (3) 16 Mbyte free memory and (4) interleaved spectra of 5 nuclei. *Advice Received From:* National Institutes of Health, September 10, 1993.

Docket Number: 93–104. *Applicant:* Graduate Hospital, Philadelphia, PA 19146. *Instrument:* Fluorescence Excitation, Four Wavelength System and Fluorescence Photometer System with Light Source. *Manufacturer:* Scientific Instruments GmbH, Germany. *Intended Use:* See notice at 58 FR 49023, September 21, 1993. *Reasons:* The foreign instrument provides measurement of 505 nm fluorescence with excitation at 340 and 38 nm and has a resolution of 4.0 ms. *Advice Received From:* National Institutes of Health, October 21, 1993.

Docket Number: 93–105. *Applicant:* University of Vermont, Burlington, VT 05401. *Instrument:* Mass Spectrometer System, Model Delta S. *Manufacturer:* Finnigan, MAT, Germany. *Intended Use:* See notice at 58 FR 49023, September 21, 1993. *Reasons:* The foreign instrument provides: (1) on-line combustion and reduction furnaces, (2) an internal precision of 0.01 per mil for N_2 and (3) absolute detection sensitivity to 1500 molecules of CO_2 per mass 44 ion. *Advice Received From:* National Institutes of Health, October 21, 1993.

Docket Number: 93–094. *Applicant:* University Research Association, Inc., Dallas, TX 75237. *Instrument:* Spirex DIP 1700 Coil Winding Machine. *Manufacturer:* Ezio Selva S.R.L., Italy. *Intended Use:* See notice at 58 FR 47887, September 13, 1993. *Reasons:* The foreign instrument provides computerized synchronization of relative position of the winding head and mandrel for winding superconducting coils of 2 to 17 m. *Advice Received From:* Brookhaven National Laboratory, November 3, 1993.

The National Institute of Standards and Technology, National Institutes of Health and Brookhaven National Laboratory advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

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

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93–29637 Filed 12–2–93; 8:45 am]

BILLING CODE 3510–DS–F

National Institute of Standards and Technology

[Docket No. 931101–3301]

National Fire Codes: Request for Proposals for Revision of Standards

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT:

Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Standards Administration Office.

Each person must include his or her name and address, identify the document and give reasons for the proposal. Proposals received before or by 5:00 PM local time on the closing date indicated will be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

At a later date, each NFPA Technical Committee will issue a report which will include a copy of written proposals that have been received and an account of the disposition of each proposal by the NFPA Committee as the Technical Committee Report. Each person who has submitted a written proposal will receive a copy of the report.

Dated: November 24, 1993.

Samuel Kramer,

Associate Director.

NFPA No	Title	Proposal closing date
NFPA 12B–1990	Halon 1211 Fire Extinguishing Systems	1/21/94
NFPA 14–1993	Installation of Standpipe and Hose Systems	7/15/94
NFPA 15–1990	Water Spray Fixed Systems for Fire Protection	7/15/94
NFPA 22–1993	Water Tanks for Private Fire Protection	7/15/94
NFPA 24–1992	Installation of Private Fire Service Mains and Their Appurtenances	1/21/94
NFPA 26–1988	Supervision of Valves Controlling Water Supplies for Fire Protection	1/21/94
NFPA 33–1989	Spray Application Using Flammable and Combustible Materials	1/1/94
NFPA 34–1989	Dipping and Coating Processes Using Flammable or Combustible Liquids	1/1/94
NFPA 43A–1990	Liquid and Solid Oxidizers	1/21/94
NFPA 50–1990	Bulk Oxygen Systems at Consumer Sites	5/20/94
NFPA 51A–1989	Acetylene Cylinder Charging Plants	5/20/94
NFPA 52–1992	Compressed Natural Gas (CNG) Vehicular Fuel Systems	1/21/94
NFPA 70–1993	National Electrical Code	11/5/93
NFPA 75–1992	Electronic Computer/Data Processing Equipment	1/21/94
NFPA 80–1992	Fire Doors and Fire Windows	1/21/94
NFPA 85C–1991	Furnace Explosions/Implosions in Multiple Burner Boiler-Furnaces (Will be renumbered NFPA 8502)	1/21/94
NFPA 86–1990	Ovens and Furnaces	1/21/94
NFPA 86C–1991	Industrial Furnaces Using a Special Processing Atmosphere	1/21/94
NFPA 86D–1990	Industrial Furnaces Using Vacuum as an Atmosphere	1/21/94
NFPA 88A–1991	Parking Structures	1/21/94
NFPA 88B–1991	Repair Garages	1/21/94
NFPA 92B–1991	Smoke Management Systems in Malls, Atria, and Large Areas	1/21/94
NFPA 110–1993	Emergency and Standby Power Systems	7/15/94
NFPA 111–1993	Stored Electrical Energy Emergency and Standby Power Systems	7/15/94
NFPA 115–P*	Laser Fire Protection	1/21/94
NFPA 121–1990	Self-Propelled and Mobile Surface Mining Equipment	7/15/94
NFPA 130–1993	Fixed Guideway Transit Systems	1/21/94
NFPA 203–1992	Roof Coverings and Roof Deck Construction	1/21/94
NFPA 220–1992	Types of Building Construction	1/21/94
NFPA 231F–1987	Storage of Roll Paper	1/21/94
NFPA 232–1991	Protection of Records	1/21/94
NFPA 232AM–1991	Fire Protection for Archives and Records Centers	1/21/94
NFPA 253–1990	Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source	1/21/94
NFPA 264–1992	Heat Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter	1/21/94
NFPA 268–P*	Ignitibility of Exterior Wall Assemblies Using a Radiant Heat Energy Source	7/15/94
NFPA 269–P*	Toxic Hazard Modeling	1/21/94
NFPA 291–1988	Fire Flow Testing and Marking of Hydrants	1/21/94
NFPA 297–1986	Telecommunications Systems—Principles and Practices for Rural and Forestry Services	1/21/94
NFPA 303–1990	Marinas and Boatyards	1/21/94
NFPA 307–1990	Marine Terminals, Piers, and Wharves	1/21/94
NFPA 312–1990	Vessels During Construction, Repair, and Lay-Up	1/21/94
NFPA 385–1990	Tank Vehicles for Flammable and Combustible Liquids	1/15/94
NFPA 386–1990	Portable Shipping Tanks for Flammable and Combustible Liquids	1/15/94
NFPA 481–1987	Titanium	1/15/94
NFPA 482–1987	Zirconium	1/21/94
NFPA 497M–1991	Classification of Gases, Vapors, and Dusts for Electrical Equipment in Hazardous (Classified) Locations	1/21/94
NFPA 501A–1992	Manufactured Home Installations, Sites, and Communities	1/21/94
NFPA 501C–1993	Recreational Vehicles	7/15/94
NFPA 501D–1993	Recreational Vehicle Parks and Campgrounds	7/15/94
NFPA 560–P*	Storage, Handling, and Use of Ethylene Oxide for Sterilization and Fumigation	1/21/94
NFPA 600–1992	Industrial Fire Brigades	7/15/94
NFPA 650–1990	Pneumatic Conveying Systems for Handling Combustible Materials	7/15/94
NFPA 703–1992	Fire Retardant Impregnated Wood and Flame Retardant Coatings for Building Materials	1/21/94

NFPA No	Title	Proposal closing date
NFPA 720–P*	Household Carbon Monoxide and Fuel Gas Detectors	3/11/94
NFPA 780–1992	Lightning Protection Code	1/21/94
NFPA 804–P*	Advance Lightwater Reactor Electric Generating Plants	1/21/94
NFPA 820–1992	Wastewater Treatment and Collection Facilities	1/21/94
NFPA 901–1990	Uniform Coding for Fire Protection	11/1/93
NFPA 902M–1990	Fire Reporting Field Incident Manual	11/1/93
NFPA 903–1992	Fire Reporting Property Survey Guide	11/1/93
NFPA 904–1992	Incident Follow-up Report Guide	11/1/93
NFPA 911–1991	Protection of Museums and Museum Collections	1/21/94
NFPA 913–1992	Protection of Historic Structures and Sites	1/21/94
NFPA 1051–P*	Wildland Fire Management Personnel Professional Qualifications	1/21/94
NFPA 1123–1990	Outdoor Display of Fireworks	3/11/94
NFPA 1401–1989	Fire Service Training Reports and Records	7/15/94
NFPA 1404–1989	Fire Department Self-Contained Breathing Apparatus Program	7/15/94
NFPA 1405–1990	Land-Based Fire Fighters Who Respond to Marine Vessel Fires	7/15/94
NFPA 1500–1992	Fire Department Occupational Safety and Health Program	Open
NFPA 1561–1990	Fire Department Incident Management System	1/21/94
NFPA 1583–P*	Fire Fighter Physical Performance	1/21/94
NFPA 1600–P*	Disaster Management	1/21/94
NFPA 1983–1990	Fire Service Life Safety Rope, Harnesses, and Hardware	1/15/94
NFPA 1984–P*	Closed-Circuit SCBA for Fire Fighters	1/21/94
ONFPA 2002–P*	Fire Suppression System Properties	1/21/94
NFPA 8506–P*	Heat Recovery Steam Generators	1/21/94

P*—Proposed NEW drafts are available from the NFPA Standards Administration Department, 1 Batterymarch Park, Quincy, MA 02269.

[FR Doc. 93–29559 Filed 12–2–93; 8:45 am]
BILLING CODE 3510–13–M

[Docket No. 931197–3297]

National Fire Codes: Request for Comments on NFPA Technical Committee Reports

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees. The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1994 Fall Meeting. The publication of this notice by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Thirty Reports are published in the 1994 Fall Meeting Technical Committee Reports and will be available on January 28, 1994. Comments received on or before April 8, 1994 will be considered by the respective NFPA Committees before final action is taken on the proposals.

ADDRESSES: The 1994 Fall Technical Committee Reports are available from NFPA, Publications Department, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Comments on the reports should be submitted to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cote, P.E., Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested persons may participate in these revisions by submitting written data, views, or arguments to Arthur E. Cote, P.E., Secretary, Standards Council, NFPA 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269–9101. Commenters may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before April 8, 1994, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by September 23, 1994, prior to the Fall Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commenter. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Fall Meeting, November 14–16, 1994 in Toronto, Ontario, Canada by NFPA members.

Dated: November 24, 1993.

Samuel Kramer,

Associate Director

1994 FALL MEETING—TECHNICAL COMMITTEE REPORTS

[P=Partial revision; W=Withdrawal; R=Reconfirmation; N=New; C=Complete Revision]

Doc No.	Title	Action
NFPA 13E	Fire Department Operations In Properties Protected by Sprinkler and Standpipe Systems	C
NFPA 16	Installation of Deluge Foam-Water Sprinkler and Foam-Water Spray Systems	P
NFPA 25	Water-Based Fire Protection Systems	P
NFPA 35	Manufacture of Organic Coatings	P
NFPA 58	Storage and Handling of Liquefied Petroleum Gases	P
NFPA 59	Liquefied Petroleum Gases at Utility Gas Plants	P
NFPA 61	Fire and Dust Explosions in Agricultural and Food Product Facilities (Compilation of NFPA 61A, NFPA 61B, NFPA 61C, and NFPA 61D).	N
NFPA 70E	Electrical Safety Requirements for Employee Workplaces	P
NFPA 91	Exhaust Systems for Air Conveying of Materials	P
NFPA 101M	Alternative Approaches to Life Safety	P
NFPA 102	Assembly Seating, Tents, and Membrane Structures	C
NFPA 122	Flammable and Combustible Liquids Within Underground Metal and Nonmetal Mines (Other than Coal)	C
NFPA 123	Underground Bituminous Coal Mines	C
NFPA 124	Diesel Fuel and Diesel Equipment in Underground Mines	W
NFPA 231	General Storage	P
NFPA 231C	Rack Storage of Materials	P
NFPA 251	Fire Tests of Building Construction and Materials	P
NFPA 252	Fire Tests of Door Assemblies	P
NFPA 255	Surface Burning Characteristics of Building Materials	P
NFPA 257	Fire Tests of Window Assemblies	P
NFPA 318	Protection of Cleanrooms	P
NFPA 550	Fire Safety Concepts Tree	R
NFPA 701	Fire Tests for Flame-Resistant Textiles and Films	C
NFPA 801	Facilities Handling Radioactive Materials	C
NFPA 907	Electrical Fire Causes (Formerly NFPA 907M)	W
NFPA 921	Fire and Explosion Investigations	P
NFPA 1124	Manufacture, Transportation, and Storage of Fireworks	P
NFPA 1125	Manufacture of Model Rocket Motors	P
NFPA 1410	Initial Fire Attack	C
NFPA 1906	Wildland Fire Apparatus	N

[FR Doc. 93–29558 Filed 12–2–93; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[I.D. 112693D]

New England Fishery Management Council; Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a two-day public meeting on December 8–9, 1993, at the King's Grant Inn, Route 128 at Trask Lane, Danvers, MA; telephone: (508) 774–6800. The meeting will begin at 10:00 a.m. on December 8 and at 8:30 a.m. on December 9.

On December 8, the meeting will begin with a review by the Lobster Oversight Committee of the public's response to measures proposed for Amendment #5 to the American Lobster Fishery Management Plan. A final decision on the content of the amendment is expected. During the afternoon session, the Marine Mammal Committee will report on the use of time/area closures to reduce the bycatch of harbor porpoise in the Gulf of Maine. At 3:30 p.m., the Council will convene a public hearing on a mesh exemption for winter flounder in state waters. If a decision is reached, the measure will be resubmitted as part of Amendment #5 to the Northeast Multispecies Plan. NMFS will discuss its recommendation for prohibiting the landing or possession of haddock. The Groundfish Committee will discuss management measures for the whiting fishery and review the status of Amendment #5 which is currently undergoing NMFS review.

On December 9, the meeting will begin with reports from the Council Chairman, the Council Executive Director, the NMFS Regional Director, Northeast Fisheries Center liaison, Mid-Atlantic Fishery Management Council liaison, and representatives from the Coast Guard, Fish and Wildlife Service and the Atlantic States Marine Fisheries Commission. The Regional Director will include a report on the development of a new NMFS data collection program.

At 9:30 a.m., NMFS will hold a public hearing on the temporary adjustment of the meat count and shell height standards for Atlantic Sea Scallops. The Council will also submit its recommendation at that time. The Large Pelagics Committee chairman will report on the International Commission for the Conservation of Atlantic Tunas meeting in Madrid. Finally, the Council will discuss management issues as they relate to Canadian fisheries management. Any other outstanding business will be addressed before the meeting adjourns on December 9.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: November 29, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–29601 Filed 12–2–93; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 3, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 24, October 8 and 15, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 49981, 52478 and 53503) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Brush, Sanitary
7920–00–141–5450
Slacks, Woman's 8410–01–277–0621 thru –0661

Services

Janitorial/Custodial, 185th Air National Guard Base, Sioux Gateway Airport, Sioux City, Iowa
Janitorial/Custodial, Air Force Inspection and Safety Agency, Building 24499, Kirtland Air Force Base, New Mexico
Janitorial/Custodial, Naval Hospital and Building 15, Marine Corps Base, Camp Lejeune, North Carolina
Janitorial/Custodial, U.S. Army Reserve Center, 10031 E. Northwest Highway, Dallas, Texas
Janitorial/Grounds Maintenance for the following locations: U.S. Army Reserve Center #1, 2010 Harry Wurzbach Highway, San Antonio, Texas
U.S. Army Reserve Center #2, 432 Boswell Street, San Antonio, Texas
U.S. Army Reserve Center #3, 600 Callaghan Road, San Antonio, Texas
U.S. Army Reserve Center #4 (janitorial only), 1920 Harry Wurzbach Highway, San Antonio, Texas
U.S. Army Reserve Center #5, 5 Arvin Oaks, 1505 Harry Wurzbach Highway, San Antonio, Texas
U.S. Army Reserve Facility, MICTF, Building 6120, Camp Bullis, Texas
Mailroom Operation, Federal Highway Administration, 555 Zang Street, Denver, Colorado
Mailroom Operation, U.S. Army Corps of Engineers, Norfolk District, 803 Front Street, Norfolk, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–29568 Filed 12–2–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 3, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following service to the Procurement List for performance by the nonprofit agency listed:

Service

Janitorial/Mechanical Maintenance, Federal Building, 26 N. MacDonald Street, Mesa, Arizona
Nonprofit Agency: Goodwill Industries of Central Arizona, Inc., Phoenix, Arizona

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–29569 Filed 12–2–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Ballistic Missile Defense Advisory Committee; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session in Washington, DC, on December 15 and 16, 1993.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense through the USD(A) on all matters relating to ballistic missile defense acquisition, system development, and technology.

In accordance with section 10(d), as amended (5) U.S.C., app II, (1982), it has been determined that this BMD Advisory Committee meeting concerns matters listed in 5 U.S.C., 552(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Dated: November 29, 1993.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–29549 Filed 12–2 –93; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Readiness

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Readiness will meet in closed session on December 6, 1993 at the Pentagon, Arlington, Virginia, and on December 20, 1993 at the Norfolk Naval Base, Norfolk, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide advice, recommendations, and supporting rationale on the components of a Readiness Early Warning System to insure that our forces do not become "hollow," and, where deficiencies may begin to emerge, to suggest corrective actions.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: November 30, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–29602 Filed 12–2–93; 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, applicable forms, and OMB control number: Civil Aircraft Landing Permit System; DD Forms 2400, 2401, and 2402; OMB Control Number 0701–0050.

Type of request: Reinstatement.

Number of respondents: 6,000.

Responses per respondent: 1.

Annual responses: 6,000.

Average burden per response: 30 minutes.

Annual burden hours: 3,000.

Needs and uses: The information collected hereby is provided by civil aircraft operators in applying for landing rights at military airfields. It includes aircraft data, justification for use, and insurance coverage, and serves as the basis for approval/disapproval determinations by the responsible military department. This information is also used to advise installation commanders of approved users and the purpose of use.

Affected public: Individuals or households; businesses or other for-profit; Federal agencies or employees; 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. Edward C. Springer.

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: November 30, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–29603 Filed 12–2–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

Naval Research Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee will meet on December 1, 1993. The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 8 a.m. and terminate at 4 p.m. on December 1, 1993. This session from 2 p.m. to 2:45 p.m., will be open to the public. The remaining sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the Committee related to current critical issues facing the Department of the Navy, including the new perceived threat and changing mission requirements, perspectives and guidance from the recently appointed Assistant Secretary of the Navy (Research, Development and Acquisition), the status of ongoing studies, potential future topics for Committee study, a self-assessment of the Committee's effectiveness, and the new emerging threats to national security and NRAC 1994 study topics. The open session will generally cover presentations and discussions on future board membership, membership balance, and conflict of interest and ethics issues.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting, except the 2 p.m. to 2:45 p.m. session, be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of administrative delays which constitute and exceptional circumstance, not allowing Notice to be published in the **Federal Register** at least 15 days before the date of the meeting.

For further information concerning this meeting contact: Commander Richard C. Lewis, USN, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, telephone number: (703) 696–4870.

Dated: November 29, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-29664 Filed 11-30-93; 4:14 pm]

BILLING CODE 3810-AE-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 January 3, 1994.

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: November 29, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of the Under Secretary

Type of Review: New

Title: Adult Education Funds Allocation Study

Frequency: One time

Affected Public: State or local governments

Reporting Burden: Responses: 50; Burden Hours: 139

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

Abstract: This study will interview state directors of adult education in the 50 states to reveal policies and criteria used to distribute Adult Education Act Basic grants and State adult education funds. The Department will use the information to better understand the diversity of the States' methods and approaches to Adult Education funds allocation, the actual patterns of grant money distribution from the States to their local providers of adult literacy services, and the relationship between the allocations of Adult Education funds and the need for such services.

[FR Doc. 93-29627 Filed 12-2-93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Invitation for Proposals Designed To Support Federal Agencies and Commercial Interests in Meeting Special Power and Propulsion Needs for Future Space Missions

AGENCY: Department of Energy (DOE).

ACTION: Notice of program interest (NOPI).

SUMMARY: The U.S. Department of Energy (DOE) is interested in obtaining unsolicited proposals under 10 CFR 600.15 for the potential award of grants or cooperative agreements to fund research and development studies of nuclear power and propulsion technologies for use in space. In addition to DOE participation, applicants which propose projects in response to this notice are encouraged to involve other partners, e.g. private or non-profit sector parties, federal, state, or local governments.

DATES: This notice is effective on the date of issue, and the notice will remain effective until February 1, 1994. Applications may be submitted at any time prior to February 1, 1994. DOE will begin an objective merit review of received applications February 2, 1994, and plans to announce awards, if any, on or about June 1, 1994.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information, should be directed to: Mr. Wade P. Carroll, Department of Energy, Space Reactor Power Systems Division, NE-52 (GTN), Washington, DC 20585 (301) 903-3321.

Proposals (original plus five (5) copies), citing this NOPI, should be directed to: Mr. George Cooperider, Department of Energy, Office of Procurement Assistance and Program Management, HR-522.2, Washington, DC 20585, (202) 586-4920.

SUPPLEMENTARY INFORMATION:

I. Purpose
II. Objective Merit Review
III. Proposal Format
IV. Evaluation Criteria
V. Awards

I. Purpose

DOE desires to fund research and development studies directed at: (1) Identifying innovative approaches using nuclear reactor power and propulsion systems for potential future NASA, DOD, and commercial space activities; (2) developing innovative, key technologies in support of these approaches; and (3) establishing a repository of technical information to support our Nation's space programs in the next century. The following broad research areas are those in which DOE is interested in receiving proposals to conduct studies:

(1) Space nuclear reactor power or propulsion systems for either earth orbit, deep space exploration, or extraterrestrial surface applications.

(2) Space nuclear reactor systems which provide both power and propulsion capabilities (Bimodal Space Reactor Systems).

(3) High temperature fuel technologies for space nuclear thermal rockets.

(4) Power conversion technologies for space nuclear reactor systems providing long lifetime with a low system mass.

(5) Safe and environmentally compliant space nuclear thermal propulsion ground test facilities with cost effective effluent treatment systems.

(6) Potential nuclear safety functional requirements as related to potential space missions.

Applicants should consult the DOE programmatic information contact listed above prior to developing and submitting proposals in areas outside the enumerated categories above.

II. Objective Merit Review

The following objective merit review process will be applied to evaluating proposals for financial assistance under this NOPI. The purpose of the review is to provide analysis on the merits of proposals to the Selection Official. The Selection Official is the Office of Nuclear Energy (NE) Director of the Office of Space and Defense Power Systems (NE–50). NE–50 has assigned the Director of the Space Reactor Power Systems Division (NE–52) to coordinate the efforts under this NOPI.

All proposals will be treated in accordance with 10 CFR 600.19 and the guidelines of DOE Order 4210.4A. Everyone involved in the merit review must comply with the requirements of 10 CFR 1010.101(a) and 1010.302(a)(1) concerning conflict of interest. Individuals who cannot meet these requirements with regard to a particular proposal may not review, discuss, or in any way be involved in the evaluation of the proposal in which they have a conflict of interest. In addition, technical reviewers will exclude anyone who, on behalf of the Federal Government, performs any of the following functions:

a. Providing substantial technical assistance to the applicant.

b. Approving/disapproving or having any decision-making role regarding the application.

c. Serving as the project manager or otherwise monitoring, auditing, or evaluating the recipient's performance.

d. Exercising line authority over anyone ineligible to serve as a reviewer because of the above stated limitations.

Evaluation Process: NE–50 will assign a Project Officer to each proposal; a Project Officer may oversee more than one proposal at any given time. The Project Officer has the responsibility to conduct the preliminary screening review against the preliminary screening standards listed in Section IV, Evaluation Criteria. Applications meeting the preliminary screening standards will be subjected to a technical review. If the proposal does not meet all the preliminary screening standards, it will not be given a detailed technical review. The results of this preliminary screening review will be documented and reported to the Selection Official and the proposer within 30-calendar days after the objective merit review begins.

If a decision is made to continue with a technical review of the proposal, the Project Officer will select a technical review group made up of three (3) individuals. These individuals will be selected based on their expertise and professional qualifications as related to the proposed work, and may be Federal or non-Federal experts. The technical reviewers will independently review applications against the technical evaluation criteria listed in Section IV, Evaluation Criteria, and will individually present written (point scores—see Section IV, Evaluation Criteria) results of their reviews to the Project Officer. The technical reviewers will not meet to review and present a general recommendation, but may be called together by the Project Officer to receive materials, review issues, or share information. No attempt will be made to achieve a group consensus. The Project Officer will summarize the results of the technical review and recommend to the Selection Official whether the proposal should be accepted or rejected. The Project Officer will document the justification for either acceptance or rejection of the proposal in a Justification for Acceptance or Rejection Report. Once NE–50 approves the Justification for Acceptance or Rejection Report, the Project Officers are then responsible for preparing either the rejection letters or the necessary Procurement Request documents.

III. Proposal Format

The proposal must consist of two sections, technical and cost.

Technical Proposals will be no more than 35-pages in length; resumes of key personnel involved should be submitted as an appendix and will not be considered part of the technical proposal 35-page limit. It is left to the proposer to determine how best to use the 35-pages; however the technical proposal should be divided into the following four sections:

Section 1—Executive Summary

Section 2—Proposal

This section will provide the detailed technical explanation of the proposed activities. The activities should be addressed with respect to the preliminary screening standards and technical evaluation criteria listed in Section IV, Evaluation Criteria.

Section 3—Statement of Work

A statement of work is to be supplied that discusses the specific tasks to be carried out to achieve the goals stated in Section 2 above, including a schedule of significant events and measurable milestones.

Section 4—Selection Criteria Index

An index must be provided showing the pages on which each of the selection criteria are addressed.

Appendix A—Key Personnel Resumes

Resumes should be succinct, and clearly illustrate how the individuals technical background and experience are related achieving the proposals objectives.

Cost Proposals will have no page limit or page layout requirement. However, the cost proposal must include a summary breakdown of all costs, and give a detailed breakdown of costs on a task-by-task basis for each task appearing in the Statement of Work. In addition, any expectation concerning cost sharing shall be clearly stated. While cost sharing is encouraged, it shall not be considered in the selection process and shall be considered only at the time the award is negotiated.

IV. Evaluation Criteria

DOE will select proposals based on the preliminary screening standards and technical evaluation criteria, which represent a unique or innovative idea, method, or approach. These criteria are based on the criteria set forth in 10 CFR 600.14.

Preliminary Screening Standards. A preliminary screening review will be conducted by the Project Officer to assure the following standards are met before conducting a technical review:

1. Relevance. Proposals must be relevant to the areas of interest listed in Section I of this NOPI.

2. Technical/Scientific Content and Merit. Proposals must contain sufficient detail for a merit review to be performed.

3. No Unnecessary Duplications or Overlap. Proposals must not request to perform research already completed or currently being supported by DOE or other Federal agencies.

Technical Evaluation Criteria. The technical reviewers will evaluate proposals against the following technical evaluation criteria.

1. The proposal's overall merit in relation to the development of space nuclear reactor power and propulsion system technologies in terms of:

(a) Innovation—technical quality of the proposed activity, including uniqueness with regard to the state-of-the-art and industry practice.

(b) Knowledge of the state-of-the-art—demonstrated by an understanding of current space reactor development efforts.

(c) Impact on the U.S. civil and defense capabilities in space, such as: an increase in affordability; a reduction of health, safety and environmental hazards; enhancement of the U.S. industrial base, and the creation of new firms and/or long-term, high quality jobs.

2. The proposal's probability of success in meeting its stated goal in terms of:

(a) Feasibility—clarity of technical objective(s), and quality and coherence of the technical plan to achieve technical objective. High risk objectives are acceptable where it is justified by high potential payoff and the management proposal clearly addresses an approach for the mitigation of the risks.

(b) Means—assessment of the adequacy of the quality, quantity and appropriateness of the resources the proposer is planning to employ on the project, and evidence of successful performance on similar projects in the past.

3. Personnel.

The qualifications of the proposed key personnel to carry out the proposed project in terms of the quality and appropriateness of the technical staff to be employed on the proposed project.

4. The appropriateness of the facilities and techniques available to the applicant.

Proposal will be evaluated on the need for facilities, equipment, design and manufacturing tools; need for technical, financial, and administrative resources; and the plan for ensuring the protection of intellectual property.

The technical evaluation criteria will be point scored, and have been listed in order of descending importance. In addition, the subcriteria listed in Criteria 1 and 2 have been listed in order of descending importance. Subcriteria 1(a) and 2(a) are of equal importance; subcriterion 1(b) criterion 3 are of equal importance; and subcriteria 1(c), 2(b), and criterion 4 are of equal importance.

Cost Criteria: The cost proposal will not be point scored. The proposed costs will be evaluated to determine whether they are consistent with proposed objectives, and the probable cost to the Government. Included in this evaluation will be the consideration of the reasonableness of any proposed fees. Cost sharing shall not be considered in the selection process and shall be considered only at the time the award is negotiated.

V. Awards

Approximately three to four million dollars may be available in FY 1994 for projects. If sufficient acceptable applications are received, funding may determine the number of awards. Awards, if any, will be determined through evaluation of applications received against the evaluation criteria, and the availability of funds. Awards, either grants or cooperative agreements, will be made to technically acceptable applicants. Any awards will be on a schedule to be agreed to by DOE and the awardee. Budget and project periods may be negotiated to fit the needs of particular projects. DOE reserves the right to support or not support any portion, all, or none of the proposals submitted.

Issued in Washington, DC, on November 24, 1993.

Daniel A. Dreyfus,

Acting Director, Office of Nuclear Energy.

[FR Doc. 93–29623 Filed 12–2–93; 8:45 am]

BILLING CODE 6450–01–P

Media & Process Technology, Inc.

AGENCY: Department of Energy.

ACTION: Notice of intent to grant exclusive or partially exclusive patent license.

SUMMARY: Notice is hereby given of an intent to grant to Media and Process Technology, Inc., of Pittsburgh, Pennsylvania, an exclusive or partially exclusive license to practice the invention described in U.S. Patent No. 5,022,996, entitled "Method of Separating Organic Contaminants From Fluid Feed Streams With Polyphosphazene Membranes." The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Intellectual Property, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than February 1, 1994.

ADDRESSES: Office of the Assistant General Counsel for Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Intellectual Property, U.S. Department of Energy, Forrestal Building, room 6F–067, 1000 Independence Avenue, 20585; Telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

Media and Process Technology, Inc., of Pittsburgh, Pennsylvania, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 5,022,996, and has a plan for commercialization of the invention.

The proposed license will be exclusive or partially exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on November 24, 1993.

Robert R. Nordhaus.

General Counsel.

[FR Doc. 93–29625 Filed 12–2–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. RS92–23–016 RS92–33–006]

Tennessee Gas Pipeline Co., East Tennessee Natural Gas Co; Petition for Declaratory Order and Order on Continuing Service.

(Not Consolidated)

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

(Issued November 26, 1993)

On November 17, 1993, Tennessee Gas Pipeline Company (Tennessee) and East Tennessee Natural Gas Company (East Tennessee) filed a petition for a declaratory order requiring Atlanta Gas Light Company (Atlanta) and Chattanooga Gas Company (Chattanooga) to execute transportation agreements if Tennessee and East Tennessee are to continue providing firm transportation service after November 30, 1993.

Background

Atlanta and Chattanooga have been customers of Tennessee under Rate Schedule FT–B. Atlanta and Chattanooga were also bundled sales customers of East Tennessee. In their respective restructuring proceedings, Tennessee has discontinued Rate Schedule FT–B and replaced it with service under Rate Schedule FT–A while East Tennessee has unbundled its sales service. Atlanta and Chattanooga requested assignment of East Tennessee's capacity on Tennessee that formerly supported the bundled sales service. However, Atlanta and Chattanooga have refused to sign new transportation agreements for any of the capacity.

East Tennessee and Tennessee state that the Commission should either issue an order requiring Atlanta and Chattanooga to execute firm service agreements in the form approved by the Commission or grant whatever authority is necessary for the pipelines to abandon the transportation service to Atlanta and Chattanooga effective immediately. East Tennessee and Tennessee allege that Atlanta and Chattanooga, in demanding that terms be added to the approved transportation agreement, are seeking preferential treatment that the Commission has already deemed to be beyond the scope of restructuring and that might well be illegal. East Tennessee and Tennessee state that when the Commission has approved the *pro forma* transportation agreements of a pipeline as just and reasonable and a customer refuses to execute those agreements without substantial modifications, the customer has rejected the service. East Tennessee and Tennessee state that without such agreements, the legal obligations of the parties are unclear and that the customers would be free to act to the detriment of both the pipelines and the other customers on their systems.

East Tennessee and Tennessee state that in an attempt to allow for resolution of this situation they have voluntarily agreed to provide continued service through November, even in the face of Atlanta and Chattanooga's disregard of Commission policy. However, East Tennessee and Tennessee argue they should not have to continue in this manner beyond that time.

Discussion

East Tennessee and Tennessee formally brought this matter to the attention of the Commission on November 17, 1993. The Commission has not had the time to consider the matter fully, nor have other parties had the opportunity to comment on this filing. Thus, the Commission will not make a final determination on this issue at this time. However, the Commission is concerned that the matter be promptly resolved and that the pipelines not be placed at risk for an unreasonable period of time. Therefore, the Commission will set a timetable for resolution of this matter.

Any party wishing to comment on the November 17 petition should do so on or prior to December 3, 1993. East Tennessee and Tennessee are instructed to continue service to Atlanta and Chattanooga for the month of December in the same manner as they have voluntarily provided it for the month of November. The Commission will further act on this matter prior to the end of December in the absence of a resolution of the issue by the parties involved.

Any person desiring to be heard or to make any protest with reference to said petition for a declaratory order should on or prior to December 3, 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 384.214 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 the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Any person who has previously intervened in these restructuring proceedings does not need to intervene again and is already a party to these proceedings in relation to said petition.

The Commission Orders

(A) Parties wishing to comment on the November 17 petition of Tennessee and East Tennessee must do so on or prior to December 3, 1993.

(B) East Tennessee and Tennessee are required to continue to provide service for Atlanta and Chattanooga for the month of December in the same manner as service was provided in November 1993.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–29626 Filed 12–2–93; 8:45 am]

BILLING CODE 6717–01–P

Office of Hearings and Appeals

Cases Filed; Week of October 22 through October 29, 1993

During the Week of October 22 through October 29, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: November 24, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Oct. 22 through Oct. 29, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Oct. 25, 1993	Texaco/Hicone Texaco, Greensboro, NC	RR321-137	Request for modification/Rescission in the Texaco refund proceeding. If granted: The September 3, 1993 Decision and Order (Case No. RF321-18938) issued to Hicone Texaco would be modified regarding the firm's application for refund submitted in the Texaco Refund proceeding.
Oct. 26, 1993	Professional Services Unlimited, Tacoma, WA.	LFA-0328	Appeal of an information request denial. If granted: The September 16, 1993 Freedom of Information Denial issued by the Idaho Field Office would be rescinded and Professional Services Unlimited would receive access to the unit pricing of the unsuccessful bidders which were deleted from the information received.
Oct. 28, 1993	Carson Petroleum Company, Wheeling, WV.	LEE-0055	Exception to the reporting requirements. If granted: Carson Petroleum Company would not be required to file Form EIA-782B "Resellers/Retailers" Monthly Petroleum Products Sales Report.
Do	Jon Berg, Alexandria, Virginia	LFA-0330	Appeal of an information request denial. If granted: The August 20, 1993, Freedom of Information Request Denial issued by the Inspector General would be rescinded, and Jon Berg would receive access to any and all documents relating to investigations of himself and another individual conducted by the Inspector General.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
10/22/93 thru 10/29/93	Crude oil refund applications received	RF272-94971 thru RF272-94982.
10/22/93 thru 10/29/93	Texaco refund applications received	RF321-19939 thru RF321-19947.
10/22/93 thru 10/29/93	Atlantic Richfield applications received	RF304-14668 thru RF304-14703.
10/25/93	Welsh Cannal Bulk Plant	RF346-108.
10/26/93	Riverside Linen Supply	RC272-216.
10/27/93	Domex, Inc.	RF340-191.

[FR Doc. 93-29621 Filed 12-2-93; 8:45 am]

BILLING CODE 6450-01-P

Issuance of Proposed Decision and Order During the Week of October 25 through October 29, 1993

During the week of October 25 through October 29, 1993, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: November 24, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Norm Poole Oil, Inc., Ontario, Oregon, LEE-0052, Reporting Requirements

Norm Poole Oil, Inc., filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Accordingly, on October 28, 1993, the DOE issued a Proposed Decision and Order determining that the exception request should be denied.

[FR Doc. 93-29620 Filed 12-2-93; 8:45 am]

BILLING CODE 6450-01-P

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $52,093.73, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of a Remedial Order issued to Sunset

Boulevard Car Wash (Sunset) Case No. LEF–0091. The OHA has tentatively determined that the funds will be distributed in accordance with the provisions of 10 CFR part 205, subpart V and 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act (PODRA).

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to Case Number LEF–0091.

FOR FURTHER INFORMATION CONTACT: Kim L. Hargrove, Staff Attorney, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–2400.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $52,093.73, plus accrued interest, obtained by the DOE under the terms of a Remedial Order that the DOE issued to Sunset Boulevard Car Wash (Sunset) on October 22, 1980. Under the Remedial Order, Sunset was found to have violated the Federal petroleum price and allocation regulations involving the sale of refined petroleum products between August 1, 1979 and January 27, 1980 (the audit period).

The OHA has proposed to distribute the Remedial Order funds in a two stage refund proceeding. Purchasers of Sunset refined petroleum products will have an opportunity to submit refund applications in the first stage. Refunds will be granted to applicants who satisfactorily demonstrate they were injured by the pricing violations and who document the volume of refined petroleum products they purchased from Sunset during the audit period. In the event that money remains after all first stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to forward two copies of their submissions, within 30 days of publication of this notice in the **Federal Register**, to the address set forth at the beginning of this notice. Comments so received, will be made available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except Federal holidays, in the Public Reference Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: November 24, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Proposed Implementation of Special Refund Procedures

Name of Firm: Sunset Boulevard Car Wash
Date of Filing: July 20, 1993
Case Number: LEF–0091

On July 20, 1993, the Economic Regulatory Administration of the Department of Energy (ERA) filed a Petition requesting that the Office of Hearings and Appeals (OHA) formulate and implement Subpart V special refund proceedings. Under the procedural regulations of the DOE, special refund proceedings may be implemented to refund monies to persons injured by violations of the DOE petroleum price regulations, provided DOE is unable to readily identify such persons or to ascertain the amount of any refund. 10 CFR 205.280. We have considered the ERA's request to formulate refund procedures for the disbursement of monies remitted by Sunset Boulevard Car Wash (Sunset) in connection with a Remedial Order (hereafter, the Order) issued by OHA on October 22, 1980, and have determined that such procedures are appropriate.

Under the terms of the Order, Sunset remitted $52,093.73 to the DOE to remedy pricing violations which occurred between August 1, 1979 and January 27, 1980. These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution. See Memorandum from George B. Breznay, Director OHA, to James T. Campbell, Comptroller, on August 30, 1993, Transferring Funds to Escrow Account. This Decision sets forth OHA's tentative plan to distribute those funds. The specific application requirements appear in section III of this Decision. Because these procedures are set forth in proposed form, refund applications should not be filed at this time. Comments are solicited.

I. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR part 205, subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Office of Enforcement, 9 DOE ¶ 82,508 (1981) and Office of Enforcement, 8 DOE ¶ 82,597 (1981).

II. Background

The facts alleged in the Remedial Order were undisputed. Sunset was a "retailer" of motor gasoline as that term has been defined at 10 CFR 212.31 and was therefore subject to the provisions of 10 CFR part 210 and 10 CFR part 212, subpart F. The Order states that from August 1, 1979 to January 27, 1980 (the audit period), Sunset charged prices higher than those permitted by 10 CFR 212.93(a)(2); levied a cents-per-gallon fee for services associated with the sale of motor gasoline in violation of 10 CFR 210.62(d)(1) and refused to make its records available for inspection in violation of 10 CFR 210.92(b).

Sunset was ordered to reduce its prices for motor gasoline by specified amounts until a sufficient volume of gasoline had been sold at the reduced prices to remedy the violations.[1] After decontrol, the Order was modified to require direct monetary restitution to the Treasury instead. See Sunset Boulevard Car Wash, 20 FERC ¶ 62,319 at 63,537 (1982). Sunset objected. The Order has since been affirmed by the Federal Energy Regulatory Commission (FERC) in a Decision issued on August 13, 1982. *Id.* It also has been upheld by the United States District Court for the Central District of California in a decision dated May 14, 1992. Sunset's objections were finally disposed of by the Temporary Emergency Court of Appeals in a March 9, 1993, decision affirming the Order.

III. The Proposed Refined Product Refund Procedures

This section sets forth the considerations that will be used to evaluate applications for refund payable from the monies remitted by Sunset. We propose to implement a two stage refund proceeding. Purchasers of Sunset refined petroleum products will have an opportunity to submit refund applications in the first stage. In the event that money remains after all first

[1] The Order imposed no sanctions upon Sunset for failing to provide records pursuant to 10 CFR 210.92(b). See Remedial Order at 1 and 7.

stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (15 U.S.C. 4501) (PODRA).

Refund applications submitted in the Sunset special refund proceeding will be evaluated in exactly the same manner as applications submitted in other refined product proceedings. Refunds will be granted to applicants who satisfactorily demonstrate they were injured by the pricing violations and who document the volume of refined petroleum products they purchased from Sunset during the audit period. In order to permit applicants to participate in the refund proceeding without incurring inordinate expense and to facilitate OHA's consideration of refund applications, we plan to adopt certain presumptions regarding pricing violations and injury. 10 CFR 205.282(e).

With regard to the pricing violations, we propose to adopt a rebuttable presumption that such violations were dispersed equally throughout Sunset's sales of refined products during the audit period and that refunds should therefore be made on a pro rata or volumetric basis. Under this volumetric refund approach, an applicant will be eligible to receive a refund that is equal to the number of gallons purchased multiplied by the per gallon refund amount, plus accrued interest.

We are proposing that the per gallon refund amount be set at $.0434 per gallon. This figure was obtained by dividing the remedial order funds available for distribution by the approximate number of gallons of refined products we believe Sunset sold during the audit period.[2] Applicants believing they were disproportionately injured will have an opportunity to rebut this presumption and those who succeed in doing so, will be eligible to receive refunds calculated at a higher volumetric.

The potential applicants are likely to fall into just two categories since Sunset was a retailer. We will provide a presumption of injury for end-users of petroleum products whose businesses were unrelated to the petroleum industry and were therefore not subject to the regulations promulgated under the Emergency Petroleum Allocation Act of 1973 (EPAA), 15 U.S.C. 751–760h. In order to receive a refund, such applicants will only be required to document the volume of Sunset products they purchased during the audit period. See Shell, 17 DOE at 88,406. Retailer and reseller applicants, however, will be required to submit detailed evidence of injury. This category of applicant must show that the overcharges were absorbed, not passed through to their customers. They therefore will be unable to rely upon injury presumptions utilized in many refined product refund cases. *Id.*

Only claims for at least $15 in principal will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. See Mobil Oil Corp., 13 DOE ¶ 85,339 (1985). Using the volumetric methodology, an applicant must have purchased at least 345 gallons of Sunset refined products in order for its claim to be considered in this proceeding.

The deadline for filing an Application for Refund is June 1, 1995.

It Is Therefore Ordered That: The refund amount remitted to the Department of Energy by Sunset Boulevard Car Wash, pursuant to the Remedial Order finalized on October 22, 1980, be distributed in accordance with the foregoing Decision.

[FR Doc. 93–29622 Filed 12–2–93; 8:45 am]

BILLING CODE 6450–01–P

[2] In the absence of precise figures indicating the amount of refined petroleum products Sunset sold during the audit period, we have estimated the volume of Sunset's sales using the best available data. Our estimate is that Sunset sold 1,200,000 gallons of refined petroleum product during the audit period. This estimate is based on sales of 200,000 gallons per month for 6 months. This figure will be used to calculate the volumetric refund amount. Should the claims submitted pursuant to this Order indicate that our sales volume estimate was inaccurate, it may be necessary to reestimate the volumetric.

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $5,784.33, plus accrued interest, in alleged refined petroleum product violation amounts obtained by the DOE pursuant to settlements with Buchanan Shell, Inc. (Case No. LEF–0081), Jim Campbell Shell (Case No. LEF–0082), Miles Union Service (Case No. LEF–0083), and Elwood Chevron Service (Case No. LEF–0085) (the consenting firms) reached on August 25, 1982, August 2, 1982, April 11, 1982, and March 25, 1992, respectively. The OHA has tentatively determined that the funds obtained from the consenting firms, plus accrued interest, will be distributed to customers who purchased gasoline from them during the following periods: August 1, 1979, through November 13, 1979, in the Buchanan Shell, Inc., Jim Campbell Shell, and Miles Union Service proceedings; and August 2, 1979, through April 23, 1980, in the Elwood Chevron Service proceeding.

DATE AND ADDRESS: Comments must be filed in duplicate within 30 days of the publication of this notice in the **Federal Register**, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should display a reference to the appropriate case number.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585,(202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants $5,784.33 plus accrued interest, obtained by the DOE pursuant to agreements reached on April 11, 1982, August 2, 1982, August 25, 1982, and March 25, 1992. In the agreements, the DOE settled allegations that, during the periods beginning August 1, 1982, the Buchanan Shell, Inc., Jim Campbell Shell, Miles Union Service, and Elwood Chevron Service, Inc. had sold motor gasoline at prices in excess of the maximum lawful selling price, in violation of Federal petroleum price regulations.

The OHA has tentatively determined to distribute the funds obtained from the consenting firms in two stages. In the first stage, we will accept claims from identifiable purchasers of gasoline from the consenting firms who may have been injured by alleged overcharges. The specific requirements which an applicant must meet in order to receive a refund are set out in section III of the Proposed Decision. Claimants who meet these specific requirements will be eligible to receive refunds based on the number of gallons of gasoline which they purchased from the consenting firms.

If any funds remain after valid claims are paid in the first stage, they may be used for indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07.

Applications for Refund should not be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provided two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address listed at the beginning of this notice. All comments received in these proceedings will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays; in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: November 24, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms:
Buchanan Shell, Inc.
Jim Campbell Shell
Miles Union Service
Elwood Chevron Service

Date of Filing:
July 20, 1993

Case Numbers:
LEF–0081
LEF–0082
LEF–0083
LEF–0085

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of DOE regulations. See 10 CFR part 205, subpart V. The ERA filed such a petition on July 20, 1993, requesting that the OHA implement special refund proceedings to distribute funds received pursuant to Consent Orders or Judgments entered into by the DOE and the following gasoline retailers: Buchanan Shell, Inc., Jim Campbell Shell, Miles Union Service, and Elwood Chevron Service (hereinafter collectively referred to as the consenting firms).[1]

I. Background

Each of the consenting firms is a reseller-retailer of refined petroleum products as those terms were defined in 10 CFR 212.31. ERA audits of the consenting firms revealed possible pricing violations of the Mandatory Petroleum Price Regulations. Subsequently, each of these firms entered into a separate Consent Order or Judgment with the DOE in order to settle its disputes with the DOE concerning certain sales of gasoline. Pursuant to these Consent Orders and Judgment, the firms agreed to pay to the DOE specified amounts in settlement of their potential liability with respect to sales to their customers during the settlement periods. The firms' payments are currently being held in separate interest-bearing escrow accounts pending distribution by the DOE. The names and locations of the firms, the settlement amounts, the products covered by the settlement agreements, the volumes sold by the firms during the settlement periods, and the dates of the settlement periods are set forth in the Appendix to this Proposed Decision.

II. Jurisdiction and Authority

The subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan for the distribution of funds received as a result of an enforcement proceeding. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501 et seq., Office of Enforcement, 9 DOE ¶ 82,508 (1981), and Office of Enforcement, 8 DOE ¶ 82,597 (1981) (Vickers).

We have considered the ERA's petition that we implement subpart V proceedings with respect to the four settlement funds and have determined that such proceedings are appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Before taking the actions proposed in this Decision, we intend to publicize our proposals and solicit comments from interested parties. Comments regarding the tentative distribution process set forth in this Proposed Decision and Order should be filed with the OHA within 30 days of its publication in the **Federal Register**.

III. Proposed Refund Procedures

We propose to implement a two-stage refund procedure for distribution of the settlement funds by which purchasers of gasoline from the consenting firms during the periods covered by the settlements may submit Applications for Refund in the initial stage. From our experience with subpart V proceedings, we expect that potential applicants generally will be limited to ultimate consumers ("end-users"). Therefore, we do not anticipate that it will be necessary to employ the injury presumptions that we have used in past proceedings in evaluating applications submitted by refiners, resellers, and retailers.[2]

A. First Stage Refund Procedures

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of gasoline from each of the consenting firms during each of their respective settlement periods. Our experience indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense and ensures that refund claims are evaluated in the most efficient manner possible. See, e.g., Marathon Petroleum Co., 14 DOE ¶ 85,269 (1986) (Marathon). Presumptions in refund cases are specifically authorized by the applicable subpart V regulations at 10 CFR 205.282(e). Accordingly, we propose to adopt the presumptions set forth below.

1. Calculation of Refunds

First, we will adopt a presumption that for each consenting firm the overcharges were dispersed equally in all of its sales of gasoline during the period covered by its settlement. In accordance with this presumption, refunds are made on a pro-rata or volumetric basis.[3] In the absence of

[1] The DOE entered into Consent Orders with Buchanan Shell, Inc., Jim Campbell Shell, and Miles Union Service. The DOE entered into a Consent Judgment with Elwood Chevron Service in the United States District Court, Central District of California.

[2] If a refiner, reseller, or retailer should file an application in any of these refund proceedings, however, we will utilize the standards and appropriate presumptions established in previous proceedings. See, e.g., Starks Shell Service, 23 DOE ¶ 85,017 (1993); Shell Oil Co., 18 DOE ¶ 85,492 (1989).

[3] If an individual claimant believes that it was injured by more than its volumetric share, it may elect to forego this presumption and file a refund application based upon a claim that it suffered a disproportionate share of the consenting firms' overcharges. See, e.g., Mobil Oil Corp./Atchison, Topeka and Santa Fe Railroad Co., 20 DOE ¶ 85,788 (1990); Mobil Oil Corp./Marine Corps Exchange Service, 17 DOE ¶ 85,714 (1988). Such a claim will

better information, a volumetric refund is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's "allocable share" of a settlement fund is equal to the number of gallons purchased from the consenting firms during the periods covered by the settlements, times the per gallon refund amount. In the present cases, the per gallon refund amounts are as follows:

LEF–0081 Buchanan Shell, Inc. $0.0060
LEF–0082 Jim Campbell Shell $0.0011
LEF–0083 Miles Union Service $0.0113
LEF–0085 Elwood Chevron Service $0.0095

We derived these figures by dividing the dollar amount of each settlement fund by the volume of gasoline which the corresponding consenting firm sold during the period covered by its settlement. See Appendix. A claimant that establishes its eligibility for a refund will receive all or a portion of its allocable share plus a pro-rata share of the accrued interest.[4]

2. End-Users

In accordance with prior Subpart V proceedings, we also propose to adopt the presumption that an end-user or ultimate consumer of gasoline purchased from the consenting firms whose business is unrelated to the petroleum industry was injured by the overcharges resolved by the settlement agreements. See, e.g., Texas Oil and Gas Corp., 12 DOE ¶ 85,069 at 88,209 (1984) (TOGCO). Members of this group generally were not subject to price controls during the periods covered by the settlement agreements, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. *Id.* We therefore propose that the end-users of gasoline purchased from the consenting firms need only document their purchase volumes from the consenting firms during the periods covered by the settlement agreements to make a sufficient showing that they were injured by the overcharges.

B. Refund Application Requirements

To apply for a refund from any of the settlement funds, a claimant should submit an Application for Refund containing all of the following information:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is an individual, corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for additional information, and the name and address of the person who should receive any refund check.[5] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names;

(2) A monthly purchase schedule covering the relevant settlement period. See Appendix. The applicant should specify the source of this gallonage information. In calculating its purchase volumes, an applicant should use actual records from the settlement period, if available. If these records are not available, the applicant may submit estimates of its gasoline purchases, but the estimation methodology must be reasonable and must be explained.

(3) A statement whether the applicant or a related firm has filed, or has authorized any individual to file on its behalf, any other application in that refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with the consenting firms, it should explain this affiliation, including the time period in which it was affiliated;[6]

(5) The statement listed below signed by the individual applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and should clearly refer to the appropriate proceeding name and Case Number. See Appendix. Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than 90 days after the date of the final Decision and Order and be sent to: Buchanan Shell, Inc./Jim Campbell Shell/Miles Union Service/OR, Elwood Chevron Service Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

C. Refund Applications Filed by Representatives

In addition, we propose to adopt the standard OHA procedures relating to refund applications filed on behalf of applicants by "representatives," including refund filing services,

only be granted if the claimant makes a persuasive showing that it was "overcharged" by a specific amount, and that it absorbed those overcharges. See Panhandle Eastern Pipeline Co./Western Petroleum Co., 19 DOE ¶ 85,705 (1989). To the degree that a claimant makes this showing, it will receive an above-volumetric refund.

[4] As in previous cases, we propose to establish minimum refund amounts of $15. In these proceedings, any potential claimant purchasing less than a total of 2,416 gallons of gasoline from Buchanan Shell, Inc., less than 13,177 gallons from Jim Campbell Shell, less than 1,283 gallons from Miles Union Service, or less than 1,526 gallons from Elwood Chevron Service would have an allocable share of less than $15. We have found that the cost of processing claims in which refunds for amounts less than $15 are sought outweighs the benefits of restitution in those instances. See Exxon Corp., 17 DOE ¶ 85,590, at 89,150 (1988) (Exxon).

[5] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 CFR Part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigation a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

[6] As in other refund proceedings involving alleged refined product violations, the DOE will presume that affiliates of the consenting firms were not injured by the firms' overcharges. See, e.g., Marathon Petroleum Co./EMRO Propane Co., 15 DOE ¶ 85,288 (1987). This is so because a consenting firm presumably would not have sold petroleum products to an affiliate if such a sale would have placed the purchaser at a competitive disadvantage. See Marathon Petroleum Co./Pilot Oil Corp., 16 DOE ¶ 85,611 (1987), amended claim denied, 17 DOE ¶ 85,291 (1988), reconsideration denied, 20 DOE ¶ 85,236 (1990). Additionally, if an affiliate of one of the consenting firms was granted a refund, the consenting firm would be indirectly compensated from a fund remitted to settle its own alleged violations.

consulting firms, accountants, and attorneys. See, e.g., Shell Oil Co., 18 DOE ¶ 85,492 (1989); Texaco Inc., 20 DOE ¶ 85,147 (1990); Starks Shell Service, 23 DOE ¶ 85,017 (1993). We will also require strict compliance with the filing requirements as specified in 10 CFR 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant.

The OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in the final Decision and Order in these proceedings.

Finally, the OHA reserves the authority to require additional information before granting any refund in these proceedings. Applications lacking the required information may be dismissed or denied.

D. Distribution of Funds Remaining After First Stage

We propose that any funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501–07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the consenting firms settlement funds that the OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That

The refund amounts remitted to the Department of Energy by Buchanan Shell, Inc., Jim Campbell Shell, Miles Union Service, and Elwood Chevron Service pursuant to settlements reached on August 25, 1982, August 2, 1982, April 11, 1982, and March 25, 1992, respectively, will be distributed in accordance with the foregoing Decision.

APPENDIX

Case No.	Firm	Address	Settlement period	Product	Volume sold	Settlement amount	Consent No.
LEF–0081	Buchanan Shell, Inc..	1315 Buchanan Rd., Pittsburg, CA 94565.	8/1/79–11/13/79	Gasoline ...	250,480	$1,500.87	90OZO3255
LEF–0082	Jim Campbell Shell	3201 Lakeshore Ave., Oakland, CA 94610.	8/1/79–11/13/79	Gasoline ...	297,953	323.13	90OZO3255
LEF–0083	Miles Union Service.	500 Bancroft Ave., San Leandro, CA 94577.	8/1/79–11/13/79	Gasoline ...	107,566	1,210.33	90OZO3258
LEF–0085	Elwood Chevron Service.	7952 Hollister Ave., Goleta, CA 93117.	8/2/79–4/23/80	Gasoline ...	290,124	2,750.00	999K90097

[FR Doc. 93–29624 Filed 12–2–93; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4808–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 3, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Trade Secrecy Claims for Community Right-to-Know and Emergency Planning Information. (EPA ICR No: 1428.03; OMB No: 2050–0078) This ICR requests renewal of the existing clearance.

Abstract: Section 322 of the Emergency Planning and Community Right-to-Know Act (EPCRA) allows a facility to withhold the specific chemical identity from the EPCRA reports if the facility asserts a claim of trade secrecy for that chemical identity. Facilities requesting trade secrecy protection must submit to EPA, in conjunction with their EPCRA report, an explanation showing that their claim for the chemical identity meets the four statutory criteria for trade secrecy enumerated in section 322(b)(1)-(4):

- The facility has not disclosed the chemical identity to any other person not bound by a confidentiality agreement (except for certain Federal, State or local government officials);
- The information is not required to be disclosed or otherwise made available to the public under any other Federal or State law;
- Disclosure of the information is likely to cause substantial competitive harm to the competitive position of the facility; and
- The chemical identity is not readily discoverable through reverse engineering.

A standardized claim substantiation form was developed to help submitters more easily determine if they have sufficient bases to make the trade secrecy claim, and to ensure that all submissions are evaluated on the basis of comparable information.

Section 322(d) of EPCRA also provides for a public petition process to request the disclosure of the chemical identities claimed as trade secret. The necessary elements for a petition are described in the information collection.

Burden Statement: Public reporting burden for this collection of information is estimated to average 30 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information. There are no recordkeeping requirements associated with the claims. The estimated burden for the public petition process is 10 hours per petitioner and includes time to identify

the facility, chemical and submission the petitioner is concerned with.

Respondents: Owners/operators of fixed facilities required to report to State and local authorities, and EPA the presence, use and release of extremely hazardous substances (described in Sections 302 and 304) and hazardous and toxic chemicals (described in Sections 311, 312 and 313).

Estimated No. of Respondents: 469 (459 facilities, 10 petitioners).

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 14,210 hours.

Frequency of Collection: on occasion, when needed to protect the chemical identity of an EPCRA submission.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street SW., Washington, DC 20460 and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

Dated: November 24, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-29614 Filed 12-2-93; 8:45 am]

BILLING CODE 6560-50-M

[AD-FRL-4808-8]

National Emission Standards for Hazardous Air Pollutants Schedule for the Promulgation of Emission Standards Under Section 112(e) of the Clean Air Act Amendments of 1990

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the source category schedule for standards.

SUMMARY: This notice publishes the schedule for standards as required under section 112(e) of the Clean Air Act as amended in 1990 (1990 Amendments). A draft schedule for the promulgation of emission standards providing the opportunity for public comment was published in the **Federal Register** (57 FR 44147, September 24, 1992). This schedule, which satisfies the requirement of section 112(e)(3) that the Administrator publish a schedule for the promulgation of emission standards, was established after considering the public comments and further EPA review. This schedule establishes deadlines for the promulgation of emission standards for the categories of sources emitting hazardous air pollutants (HAP's) initially listed pursuant to section 112(c)(1) and (3).

The initial list of categories of sources, developed under section 112(c), was published in the **Federal Register** (57 FR 31576, July 16, 1992). The initial list includes 166 categories of major sources and eight categories of area sources for a total of 174 source categories. The schedule for standards is organized such that the 174 listed source categories are grouped in four separate timeframes with promulgation deadlines of November 15, 1992, November 15, 1994, November 15, 1997, or November 15, 2000.

Sources within the listed categories will be subject to emission standards developed pursuant to section 112(d) in accordance with today's schedule. In the event an applicable standard is not promulgated on schedule for a listed category of major sources, the owner or operator of a major source in such category may be subject to emission limitations determined on a case-by-case basis, pursuant to section 112(j). Section 112(j) requires that the owner or operator of any major source, in a category for which emissions standards are delayed by at least 18 months from today's scheduled date for promulgation of standards, must submit a permit application to the applicable permit authority in compliance with title V of the 1990 Amendments. The case-by-case equivalent emission limitations by permit, under section 112(j), are discussed more thoroughly in section I.B. of today's notice.

EFFECTIVE DATE: December 3, 1994.

ADDRESSES: Relevant information can be found in the **Federal Register** notice (57 FR 44147, September 24, 1992) entitled "National Emission Standards for Hazardous Air Pollutants (NESHAP); Availability: Draft Schedule for the Promulgation of Emission Standards" and also in the **Federal Register** notice (57 FR 31576, July 16, 1992) entitled "Initial List of Categories of Sources Under section 112(c)(1) of the Clean Air Act Amendments of 1990."

Docket: Docket No. A-91-14, containing information considered by the EPA in development of the schedule for standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Room M1500, U.S. EPA, 401 M Street, Southwest, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning categories involving the production, handling, refining or use of chemicals or petroleum, or products thereof, contact Mr. David Svendsgaard, Chemicals and Petroleum Branch (MD-13), Emission Standards Division, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2380. For information concerning categories involving fuel combustion, incineration, metals and minerals processing, contact Mr. William Maxwell, Industrial Studies Branch (MD-13), telephone number (919) 541-5430, at the above address. For information concerning pollutant health effects and the Source Category Ranking System, contact Mr. Charles French, Pollutant Assessment Branch (MD-13), telephone number (919) 541-0467 at the above address. For general information concerning this notice contact Mr. French or Mr. Svendsgaard.

SUPPLEMENTARY INFORMATION: The information in this notice is organized as follows:

I. Introduction
- A. Initial List of Categories of Sources
- B. Clean Air Act Requirements for the Schedule
- C. Schedule for Coke Oven Batteries
- D. Schedule for Publicly Owned Treatment Works

II. Background to the Schedule for Standards
- A. Criteria for Establishing the Schedule
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VII. Organization of the Schedule for Standards

Table 1.—Categories of Sources and Regulation Promulgation Schedule by Industry Group

Table 2.—Categories of Sources and Regulation Promulgation Schedule by Regulatory Deadlines

Acronym List:
ATB=Aquatic Toxicity and Bioconcentration
CTG=Control Techniques Guidelines
EPA=Environmental Protection Agency
FR=Federal Register
HAP=Hazardous Air Pollutant
HON=Hazardous Organic NESHAP
MACT=Maximum Achievable Control Technology
NESHAP=National Emission Standards for Hazardous Air Pollutants
RTECS=Registry of Toxic Effects of Chemical Substances
SCRS=Source Category Ranking System
SIC=Standard Industrial Classification
SOCMI=Synthetic Organic Chemical Manufacturing Industry

I. Introduction

A. Initial List of Categories of Sources

A preliminary draft list of over 700 categories and subcategories of sources emitting one or more of the HAP's listed in section 112(b)(1) of the 1990 Amendments was published in the **Federal Register** for public comment on June 21, 1991 (56 FR 28548). After consideration of public comment and further EPA review, the list was revised and now contains 174 categories of sources (i.e., source categories). This initial list was published as required by section 112(c)(1) of the 1990 Amendments on July 16, 1992 (57 FR 31576). The reader is referred to that notice for information regarding the development of the list of source categories.

B. Clean Air Act Requirements for the Schedule

Section 112(e) of the 1990 Amendments requires the publication of a schedule for the promulgation of emission standards for listed source categories and subcategories (hereafter referred to as categories), that will result in the promulgation of regulations pursuant to section 112(d) for all initially listed source categories within 10 years of the date of enactment of the 1990 Amendments (i.e., by November 15, 2000). Section 112(e)(1) requires the EPA to promulgate regulations for 40 source categories within 2 years of enactment of the 1990 Amendments (i.e., by November 15, 1992); for coke oven batteries by December 31, 1992; for 25 percent of all initially listed categories within 4 years (i.e., by November 15, 1994); for an additional 25 percent of all initially listed categories within 7 years (i.e., by November 15, 1997); and to complete the promulgation of regulations for all initially listed source categories within 10 years (i.e., by November 15, 2000).

In determining priorities for promulgating emission standards, section 112(e)(2) specifies that the EPA consider three criteria: (1) The known or anticipated adverse effects of HAP's on public health and the environment; (2) the quantity and location of emissions or reasonably anticipated emissions of HAP's; and (3) the efficiency of grouping source categories according to the pollutants emitted, or the processes or technologies used.

Today's emission standards promulgation schedule was required to be published, after consideration of public comments pursuant to section 112(e)(3). Today's schedule will establish the timeframe for the promulgation of section 112(d) standards for each initially listed category of sources.

Section 112(e)(3) explicitly states that "the determination of priorities for the promulgation of standards * * * is not a rulemaking and shall not be subject to judicial review, except that, failure to promulgate any standard pursuant to the schedule * * * shall be subject to review under section 304 of this Act". Therefore, the schedule for standards published today is not a rulemaking and is not subject to judicial review.

The Equivalent Emission Limitation by Permit rule, pursuant to section 112(j), which was proposed in the **Federal Register** on July 13, 1993 (58 FR 37778), provides for additional actions in the event the Administrator fails to meet the schedule for establishing regulations for any listed category of sources. Pursuant to section 112(j), the owner or operator of any major source, in a category for which emissions standards are delayed by at least 18 months from the date contained in today's schedule for promulgation of standards, must submit a permit application to the applicable permit authority in compliance with rules implementing Title V of the 1990 Amendments. (The final rule published on July 21, 1992 (57 FR 32250) establishes requirements for state permit programs, and a final future rulemaking will establish similar requirements for Federally issued permits.) This permitting requirement is not applicable until after the effective date of a permit program in a State and not sooner than 42 months after enactment of the 1990 Amendments (i.e., May 15, 1994). The permit must specify emissions limitations that, on a case-by-case basis, are determined by the Administrator (or the State) to be equivalent to the level of control that would have been required by emission standards established under section 112(d). These permits will be reviewed and approved by the permitting authority on a case-by-case basis. For more information and specifics concerning section 112(j), readers are referred to the proposed Equivalent Emission Limitations by Permit rule which was published in the **Federal Register** on July 13, 1993 (58 FR 37778).

Section 112(e)(1) requires EPA to develop the schedule for emission standards based on categories of sources "* * * initially listed for regulation pursuant to subsection (c)(1).* * *" The EPA has interpreted this to mean that the categories of sources included in today's schedule for standards must be the same categories of sources as listed in the **Federal Register** (57 FR 31576, July 16, 1992).

Today's schedule for standards is consistent with the section 112(c) list. Pursuant to section 112(c)(5), source categories subsequently added to the section 112(c) list shall be scheduled for regulation by November 15, 2000, or 2 years after the source categories are listed, whichever is later.

Section 112(e)(3) requires the EPA to publish a schedule for promulgating standards for listed categories by November 15, 1992. However, section 112(e) is silent concerning the permissibility of amending that schedule. The EPA has no intent to defer regulation in any way that would compromise the numerical and temporal requirements in section 112(e)(1). However, because data on many categories of sources are still very limited, the EPA anticipates that there may be circumstances where revision of the schedule would better serve the prioritizing criteria in section 112(e)(2). For example, the EPA might obtain new information, after publication of today's schedule, indicating that emissions from some categories scheduled for early regulation pose less public health and/or environmental concerns than emissions from categories scheduled for regulation in a later timeframe. Because of resource constraints, it is unlikely that the more hazardous categories could be regulated earlier than planned unless regulation of the relatively less hazardous categories could be deferred. In such case, EPA would wish to comply with the directive in the Conference Report that "[t]he conferees wish to emphasize that in promulgating standards, the EPA should devote its resources first to those pollutants which present the greatest risk to the public health and the environment." (Conference Report. on S. 1630, H.R. Rept. 101–952, 101st Cong., 2d Sess. at 338, 1990). For example, if EPA could shift five categories from the 10-year timeframe to the 7-year timeframe, and

shift five others from the 7-year timeframe to the 10-year timeframe, this action might more effectively reduce hazards to public health earlier than would strict adherence to today's schedule. In addition, the EPA may, at its discretion, establish standards for listed categories or subsequently defined subcategories sooner than scheduled under section 112(e). The EPA may consider broader categories for establishing standards. The EPA may aggregate categories or subcategories which have been disaggregated on the initial list into a single category on any revised list. This may be done for the purpose of setting a single emission standard for the aggregated category.

C. Schedule for Coke Oven Batteries

The 1990 Amendments establish a specific timeframe for the regulation of coke oven batteries (charging, topside, and door leaks). As specified in section 112(d)(8), the EPA was required to promulgate emissions standards for this source category by December 31, 1992. An emissions standard for this source category was published in the **Federal Register** on October 27, 1993 (58 FR 57898).

D. Schedule for Publicly Owned Treatment Works

The 1990 Amendments establish a specific schedule for promulgation of emission standards applicable to Publicly Owned Treatment Works (POTW's). Section 112(e)(5) requires the EPA to promulgate emissions standards pursuant to section 112(d) for POTW's by November 15, 1995.

II. Background to the Schedule for Standards

A. Criteria for Establishing the Schedule

In determining priorities for promulgating emission standards, section 112(e)(2) specifies that the EPA consider three criteria: (1) The known or anticipated adverse effects of HAP's on public health and the environment; (2) the quantity and location of emissions or reasonably anticipated emissions of HAP's; and (3) the efficiency of grouping categories according to the pollutants emitted, or the processes or technologies used. The first two criteria are addressed by the Source Category Ranking System (SCRS) which is discussed in section II.B. of this notice. The efficiency of grouping criterion allows for optimizing regulatory efficiency by considering similarities among categories of sources, including emission mechanisms and control technologies. In addition to these criteria, other factors, such as the public comments, further technical analyses, the availability of data for standard development, time needed to develop standards, and the ability to meet the section 112(e) numerical and temporal requirements, were considered in establishing today's schedule.

The EPA interprets the regulatory schedule mandated by the 1990 Amendments as the placement of source categories into groups to be regulated within the required deadlines. For this reason, today's schedule shows whether the regulatory effort for a given category of sources is scheduled for completion by November 15, 1992; November 15, 1994; November 15, 1997; or November 15, 2000. This schedule does not establish the order in which the rules for particular categories will be proposed or promulgated. Rather, it requires that emissions standards pursuant to section 112(d) for a given category of sources be promulgated by the specified date.

B. The Source Category Ranking System

To assist in its effort to meet the statutory requirements for schedule prioritization, the EPA developed the Source Category Ranking System (SCRS). The SCRS combines readily available health effects data, emission estimates, and population information to rank source categories. By incorporating this information the SCRS considers a broad range of toxicological effects which address "* * * the known or anticipated adverse effects.* * * on public health * * *" criterion under section 112(e)(2)(A), and also addresses the "* * * quantity and location * * *" criterion under section 112(e)(2)(B).

The SCRS generates a score for each source category based on emissions estimates, estimates of the toxicity of HAP's, and to a lesser degree, the location of the emitting facilities. The result is a scoring system by which a source category is ranked in relation to other listed source categories. Details on scoring methodology and data input are discussed in the **Federal Register** notice for the draft schedule for standards (57 FR 44147, September 24, 1992) as well as in the "Methodology for the Source Category Ranking System" document (Docket No. A-91-14, Item No. IV-A-1).

In developing the schedule for standards, the EPA gathered as much information as was reasonably practical to prioritize the listed categories of sources. The EPA recognizes that the SCRS could not duplicate the level of analysis performed in a regulatory source assessment effort for an individual standard or in a site specific risk assessment. Given that the SCRS was designed to aid in prioritizing categories of sources for developing the schedule based on varying levels of information, the SCRS was a useful tool that assisted in the grouping of source categories into the four timeframes specified in section 112(e). The SCRS was not the sole determining factor in establishing the schedule for standards, but was the basis of EPA's consideration of the quantity and location of emissions, and public health effects criteria. The third criterion for establishing priorities, the efficiency of grouping, is discussed in the following section.

C. Application of Efficiency of Grouping

In developing the schedule for standards, the EPA sought to group separate categories of sources into single regulatory development efforts due to similar processes, emission characteristics, and applicable control technologies. There are some lower priority categories, based on the SCRS results, that have similarities to higher priority categories. Through application of the efficiency of grouping criterion, a standard may be completed for several similar categories of sources at the same time. By using the SCRS scores in combination with the efficiency of grouping criterion, EPA has sought to avoid duplication of effort and optimize the regulatory development process. As a result, some categories of sources that might have been scheduled for regulatory development at a later date based solely on the SCRS ranking are scheduled earlier due to the efficiency of grouping. An example of this efficiency is the polymers and resins I group. Currently, there are nine source categories in the polymers and resins I group that are all scheduled in the 4-year timeframe. In this industrial group, regulatory efforts initiated for a few relatively high-ranking categories are also applicable to additional categories that ranked lower in the SCRS.

The efficiency of grouping criterion was also applied to schedule lower ranked categories with other similar categories where regulatory development activities have been initiated or are planned. Section 183 of the 1990 Amendments requires development of 13 control technology guidelines (CTG's) for volatile organic compounds (VOC's) emissions by November, 1993. Many of the categories for which CTG's are being developed also emit HAP's. Hence, efficiency of grouping may be achieved by evaluating HAP's concurrently with VOC's. This allows EPA to consider the requirements for establishing CTG's and maximum achievable control

technology (MACT) standards at the same time, and to make them compatible. This strategy provides the affected industries with greater certainty about both sets of requirements, so that both can be considered at about the same time by an owner or operator in developing an overall control strategy.

D. Other Considerations for Scheduling

In addition to the three priority-setting criteria specified in section 112(e)(2), the 1990 Amendments also require that the EPA regulate certain percentages of the list of source categories by certain dates. For example, the EPA is required to regulate 25 percent of the listed categories within 4 years after enactment. When establishing the schedule for standards, the EPA also considered the time and resources required for development of emissions standards. Several categories of sources have been studied previously by EPA, and a good understanding of the basis of a technology-based standard is available. All the 2-year, and a substantial portion of the 4-year scheduled standards cover industries that were already under study in preparation for regulations at the time the 1990 Amendments were passed.

For other categories, where little information is currently available, considerable time and effort may be necessary to adequately study the category, analyze the processes, identify emission points, establish regulatory baselines, evaluate potential control strategies, and determine the appropriate regulatory strategy. Therefore, the amount of available information was another factor in the prioritization of source categories.

III. Summary of Public Comments and EPA's Responses

A. Overview

A draft schedule for standards was published in the **Federal Register** on September 24, 1992 (57 FR 44147), and was followed by a public comment period which concluded on October 26, 1992. A total of 18 letters commenting on the draft schedule were submitted by industry representatives and government agencies. These comments have been reviewed and placed in the docket (Docket No. A-91-14, Category IV-D). A summary of the public comments and EPA's responses is also available in the docket (Docket No. A-91-14, Item No. IV-A-3). The major comments relevant to the development of the schedule for standards and EPA's responses are summarized below.

B. Comments and Responses Related to Category Definitions

Five commenters requested that the EPA provide additional information with the schedule notice to assist owners and operators in determining which source category their sources might be included in. They contended that the sources and HAP's which will be controlled in each of the categories were not well-defined in the source category schedule or in the source category list **Federal Register** publications. The commenters asserted that the EPA should publish a description of each source category and its associated HAP's along with the schedule. One commenter suggested the EPA develop a decision tree for determining regulatory applicability, similar to the one being developed for the SOCMI source category (57 FR 62608, December 31, 1992). Another commenter recommended a hotline be established so facilities can obtain assistance in determining which category a process falls into. The commenter noted that written communication would be needed and that the determination would need to be binding.

Several commenters suggested that a list of major products from each category be included in the schedule. One commenter suggested that a list of relevant Standard Industrial Classification (SIC) codes also be included. The commenters asserted that such additional information would assist operators in identifying the regulations to which they would be subject, and in planning and allocating resources for compliance.

Many commenters suggested the EPA include table 3.1 of the December 14, 1990 document "Draft Documentation for Developing the Source Category List" in the schedule notice because this table provides the corresponding speciation profiles used to associate HAP's with source categories and thus helps clarify the sources and HAP's intended to be regulated under each category.

Two commenters stated it was essential that a mechanism be developed for determining under which category a production unit is included, to make decisions concerning equivalent emissions limitations under section 112(j), and to file compliance extension requests under the section 112(i)(5) early reduction program.

In response to these comments, some of the information the commenters requested is provided in the EPA report for the initial list, "Documentation for Developing the Initial Source Category List—Final Report" (EPA-450/3-91-030; July 1992. Docket No. A-90-49, Item No. IV-A-55). Hereafter in today's notice, this document is termed the "final report." This final report contains descriptions of each listed category of major sources. Information provided includes the types of operations, processes, and equipment included within each category. However, the source category descriptions in the final report are preliminary, and may be revised during the regulatory development process. Also, during this process, the EPA may discover new information about the various industries (such as different processes or emission points) that require adding new distinct source categories to the section 112(c) list. Tables 3.1 and 4.1 of this report contain listings of some of the HAP's currently associated with each category of major sources, and area sources, respectively. These tables are too lengthy to incorporate into a **Federal Register** notice, but may be accessed by viewing the final report contained in the docket (Docket No. A-90-49, Item No. IV-A-55). Also, people can obtain copies of this final report by contacting the National Technology Information Service (NTIS) at 5285 Port Royal Road, Springfield, Virginia 22161, telephone number 703-487-4650. The NTIS order number for this final report is PB92-218429. Because of current data limitations, a more comprehensive discussion of processes and equipment, and all associated HAP's for each category is not currently available. During the course of regulatory development, each category will be further examined to refine the source category descriptions and determine specifics about processes, equipment, products, HAP emissions and applicability. During this process, relevant SIC codes might be identified on a source category basis where good correlations can be determined. This information will be available from the respective EPA standard development teams, who will be communicating with trade groups, and other interested parties, during the development of emission standards. As stated in the source category list **Federal Register** notice:

> The Agency recognizes that these descriptions (of what each listed source category comprises), like the list itself, may be revised from time to time as better information becomes available. The Agency intends to revise these descriptions as part of the process of establishing standards for each category. Ultimately, a definition of each listed category, or subsequently listed subcategories, will be incorporated in each

rule establishing a NESHAP for a category. (57 FR 31576, July 16, 1992).

Therefore, the EPA cannot make such preliminary descriptions binding. The EPA encourages interested parties to communicate with appropriate EPA standard development teams early in the regulatory process.

In response to the comments relating to section 112(j), the EPA intends to make information available regarding source category definitions, applicability, and controls before the section 112(j) provisions would take effect for a source category. The EPA encourages interested parties to communicate with the appropriate EPA project teams well in advance of the time that section 112(j) provisions might apply for a source category. Readers are referred to the proposed Equivalent Emission Limitations by Permit Rule, which was published in the **Federal Register** on July 13, 1993 (58 FR 37778).

The comments relevant to section 112(i)(5) of the 1990 Amendments have been submitted to the EPA project team implementing this program. The early reductions project team is aware of the commenter's concerns about applicability. Again, the EPA encourages the interested parties to communicate with the appropriate project teams to discuss these concerns.

Regarding the commenter's suggestion to develop decision trees to assist with determining regulatory applicability, the EPA believes that the commenter is referring to the applicability decision framework included in section VI.A. of the proposed emission standard for the SOCMI (57 FR 62608, December 31, 1992), which is commonly referred to as the Hazardous Organic NESHAP (HON). Similar decision trees, if developed, would be produced under individual standard development activities after more information about each category is gathered. Also, the EPA does not plan to establish a hotline for source category determinations. However, status updates on standards and other rulemakings are typically presented through such forums as the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) and the National Air Toxics Inventory Clearinghouse (NATICH). In addition, a Regulatory Agenda is published in the **Federal Register** approximately twice per year which provides descriptions of various regulatory projects and the EPA personnel to contact for more information.

C. Comments and Responses Related to the Source Category List

Several commenters discussed issues related to determinations made during the development of the initial source category list (57 FR 31576, July 16, 1992). The decisions to list source categories, and potential revisions to the source category list, are not being addressed under today's schedule action. As stated in the draft schedule for standards **Federal Register** publication on September 24, 1992 (57 FR 44147), comments on today's action were solicited regarding scheduling of regulatory deadlines for source categories. A public comment period was provided for source category list determinations following the publication of the draft list of source categories on June 21, 1991 (56 FR 28548). During the course of regulatory development for the various source categories, the EPA will study individual source categories in greater detail. Listing determinations and potential source category list revisions such as addition, removal, aggregation, and subcategorization of source categories will be studied during this process. The public comments submitted relating to the listing of various source categories have been forwarded to the appropriate EPA project teams. If the EPA determines that revisions to the source category list are appropriate, then a revised source category list will likely be published in the FR sometime in the future. The public comments relating to source category list determinations that were submitted during the public comment period for the draft schedule for standards, and the EPA's responses, are summarized in a background information document entitled "Schedule for Standards: Summary of Public Comments and Responses" (Docket No. A-91-14, Item No. IV-A-3).

D. Comments and Responses Related to the Ranking Methodology

1. General

Many commenters approved of the EPA's use of the SCRS in prioritizing source categories. One commenter considered the SCRS approach to be consistent with section 112(e) criteria for determining the schedule. Others were pleased that SCRS scores are derived by combining health effects scores with exposure scores for each pollutant. However, many commenters also stressed that the SCRS has limited or no applicability elsewhere. A group of these commenters agreed with the EPA's position that a higher SCRS score does not necessarily mean a greater risk than a lower SCRS score. One commenter wanted the EPA to confirm in the **Federal Register** notice supporting the final schedule that: (1) The SCRS was used only for this preliminary screening and is not to be used for either risk assessment or any other regulatory purpose; (2) more accurate and realistic information shall be used in developing the section 112 regulations for the scheduled categories; and (3) the commenter may submit additional information in the future that may be relevant to schedule adjustments.

One commenter asserted that the SCRS process must be validated to assure that the ranking it produces has some basis to justify using it for developing the schedule. The commenter suggested doing an in-depth study on a few of the categories to confirm the results from the SCRS process, noting that this could demonstrate whether or not the results are consistent with results that would be expected from a more complete review.

In response to these comments, the EPA emphasizes that the SCRS addresses two of the section 112(e)(2) criteria (i.e., adverse effects of the HAP's on public health; and the quantity and location of emissions of HAP's) by generating a relative ranking score for each source category based on emission estimates, toxicity data, and to a lesser degree, the location of emitting facilities. However, the SCRS does not estimate absolute or relative risk, population exposure, or impacts.

Several factors were considered when developing the schedule for standards including: the SCRS ranking scores; the EPA's capability to meet the numerical and temporal requirements of section 112(e); and the efficiency of grouping categories in the same timeframe. Admittedly, the SCRS methodology and data input have limitations. However, for its limited use, the SCRS and its present results are adequate for assisting with the development of the schedule for standards. It was the only tool reasonably available that could address the criteria of section 112(e)(2) for a large number of source categories in the short time available. The EPA does not plan to revise and rerun the SCRS with new data. Currently, the EPA does not intend to use the SCRS for any other regulatory purposes. The EPA realizes the restricted utility of the SCRS and encourages the public and other government agencies not to use incorrectly, or misinterpret, the SCRS results.

The SCRS methodology includes several assumptions and utilizes simplified algorithms. In order to evaluate thoroughly the SCRS ranking, more facility-specific data would be needed, along with other data such as EPA-verified health effects benchmarks.

Currently, this information is not available for many of the categories or pollutants. The EPA considers the current SCRS results to be adequate for assisting with the development of the schedule for standards.

2. Exposure Score

One commenter was concerned with the use of average county population density within a 50-kilometer (km) radius of the facility for the long-term aggregate exposure score because the resulting score may underestimate the risk to individuals that live closer to the facility. Another commenter objected to the use of average population density because this method gives unwarranted priority to facilities located in unpopulated parts of a heavily populated county. One commenter suggested that the EPA incorporate the census-based population exposure capabilities of the Human Exposure Model (HEM) into the SCRS. The commenter was concerned that several assumptions made in the SCRS might underestimate the impact of emissions from source categories, such as the use of: (1) Nationwide estimates; (2) uniform population exposure; and (3) constant average dispersion parameters for all pollutants and sources.

For detailed information on SCRS methodology, readers are referred to the draft schedule **Federal Register** notice (57 FR 44147 September 24, 1992) and the SCRS Methodology document (Docket No. A–91–14, Item No. IV–A–1). In summary, the SCRS calculated four separate exposure scores: the long-term aggregate, the long-term maximum, short-term aggregate, and the short-term maximum exposure scores. Emissions estimates were the most sensitive factors in the calculation of each of the four source category exposure scores. Population information, although limited, was factored into one of the four exposure scores, the long-term aggregate. Since the SCRS contains many assumptions, and uses generic algorithms and readily available data of varying quality, the exposure scores are meant as screening tools and are not to be considered exposure estimates.

In response to the comment on use of a 50-km radius, the long-term aggregate exposure score theoretically represents a population-based exposure score and is not intended to represent the maximally exposed individual. A 50-km radius was incorporated into the long term aggregate exposure score algorithm because it is the maximum downwind distance to which meteorological dispersion conditions are considered to be reliable using the EPA's dispersion models. A second long-term score, the long-term maximum exposure score, is used to represent a theoretical maximally exposed individual. In this algorithm, it is assumed that the highest concentration is typically 200 meters (m) downwind. However, since these values are constants incorporated into generic algorithms by which all source categories are scored, and since the SCRS does not estimate exposure or risk, it is arbitrary what radii and distances are used in the SCRS exposure scores. If other constant values for radii or distance were to be used (e.g., 20 km and 100 m, respectively) in the generic algorithms, the SCRS relative ranking results would change very little, if at all.

Exposure modeling using detailed census data (e.g. such as using the HEM model) was not used in the SCRS because the EPA did not have adequate facility-specific data for many of the source categories. Also, performing exposure modeling for all facilities in each of the listed source categories could require an enormous level of effort and is beyond the scope of work believed to be necessary to support the schedule for standards. Average population density, and other assumptions such as constant dispersion parameters for all pollutants, are appropriate for the SCRS given its limited use and data availability.

3. Health Effects Score

One commenter recommended that the EPA use acute health effects endpoints rather than the lethal dose to 50 percent of the exposed population (LD_{50}) currently used in the SCRS. The commenter was also concerned about the combination of health effects data on acute lethality, reproductive effects, and other noncancer effects that may underestimate public health impacts.

In addition, it was argued by a commenter that the nationwide emission estimates and national population density do not accurately show the public health impact from exposure to area source emissions. The commenter also recommended incorporating uncertainty factors and environmental effects in the SCRS.

Another commenter expressed concern over the use of data from the Registry of Toxic Effects of Chemical Substances (RTECS), since it is not a peer-reviewed journal, and recommended using well-supported toxicity data for individual chemicals, if available, to develop the health effects score. Another commenter mentioned that the data used are very limited and frequently out-of-date, and noted that the RTECS data base is 6 years old. The commenter cautioned that the SCRS mathematical scoring, on several levels, crosses such a diverse stratum of health effects and agents that any scientific relevance is distorted. The commenter also protested that the SCRS approach does not address whether the health effects only occur when a threshold limit is exceeded.

Another commenter noted that the SCRS is too ill-defined for the assignment of potential health effects for a particular source category, and therefore, contended that the term "source category risk score" is not correctly used. The commenter also claimed that the health effects score, particularly the use of RTECS data, should be scientifically based. The commenter pointed out that RTEC's contains a number of inaccurate values, missing data, and misinterpretations on severity.

As part of the response to the above comments, the following summary of the health effects scoring methodology is provided. The health effects score for each pollutant was based on four health effects endpoints (i.e., cancer, reproductive/developmental effects, acute lethality, and "other toxicity"). The "other toxicity" endpoint was based on acute or chronic health effects data other than cancer (i.e., noncancer effects), that were not included in the reproductive/developmental or acute lethality endpoints. The LD_{50} and lethal concentration to 50 percent of exposed population (LC_{50}) were used to calculate the score for acute lethality. These values were a useful measure of relative toxicity since the data were readily available and the endpoint (i.e., 50 percent death) is consistent across pollutants. Other acute benchmarks, such as levels of concern (LOC's) and doses immediately dangerous to life and health (IDLH's) are based on LD_{50} and LC_{50} data, and therefore, would have yielded similar relative results. The LD_{50} and LC_{50} data were useful for scoring the pollutants in one of the four health effects endpoints. The lowest oral dose reported to cause a health effect (TD_{LO}), or lowest concentration when the substance is in air (TC_{LO}), from the RTECS data base, were used to derive the reproductive/ developmental health effects score, and the "other toxicity" score for most pollutants in the SCRS.

The primary source of information for noncancer health effects was RTECS, which is a data base developed and maintained by the National Institute of Occupational Safety and Health. The RTECS data base is widely used by both industry and regulatory agencies as a source of toxicity data. The RTECS represents one of the most readily available and comprehensive sources of information on noncancer toxicological

endpoints. When the health effects data were being compiled for the SCRS, the most current RTECS data were used (see Docket No. A–91–14, Item No. II-A–1). It would have been desirable to obtain peer-reviewed, noncancer health data, and verified health effects benchmarks such as the EPA's inhalation reference concentrations (RfC's). However, RfC's are not available for a significant number of the HAP's, and therefore, RfC's were not used in the SCRS. Since LD_{50}'s, LC_{50}'s, TD_{LO}'s and TC_{LO}'s were available for most of the HAP's, these values were used in the SCRS. Although the RTECS data base itself is not formally peer reviewed, the data are from the scientific literature. The EPA recognizes the limitations associated with the lack of peer review; however, for compiling health effects information for the 189 HAP's for incorporating into a screening tool such as the SCRS, RTECS was a valuable source.

Threshold limits were not considered in the SCRS. For many pollutants, data are inadequate to determine threshold limits, if they exist. More importantly, since the SCRS does not estimate exposure or risk, it cannot determine if a threshold effect level might be exceeded. The pollutants were scored based on relative potency. The SCRS generates a relative ranking based on emissions and toxicity data, but does not attempt to determine if public health impacts actually exist. Therefore, threshold levels were not considered.

The terminology "source category risk score" was used in some earlier docket items. After further review, the EPA recognized that this terminology could be misleading since the SCRS does not estimate risk. Therefore, in the draft schedule notice (57 FR 44147, September 24, 1992), and in the more recent docket items, including the "Methodology for the Source Category Ranking System" (Docket No. A–91–14, Item No. IV–A–1), this terminology has been changed to "source category score." The draft schedule **Federal Register** notice, today's notice, and the methodology document clearly indicate that the SCRS does not estimate risk. The EPA encourages the public not to misinterpret the SCRS results.

As mentioned above, the health effects score was derived for four types of endpoints. This approach was used so that the SCRS would cover a wide range of health concerns. There are other possible methods for combining various toxicity and emissions data to rank source categories. However, given the limitations on time and data availability, the EPA considers the methodology used in the SCRS to be adequate for its limited purpose.

In response to the commenter who suggested that the EPA incorporate uncertainties in the SCRS, the EPA recognizes that uncertainty factors are a very important concern when conducting risk assessments, and that defensible risk assessments should contain uncertainty analyses. For estimating risk or impacts, it is important to consider both quantitative and qualitative uncertainty. However, uncertainty analyses would have limited utility for producing a relative ranking. Since the SCRS generates a relative ranking, and does not estimate risk or impacts, and since the SCRS was only a tool used in conjunction with the efficiency of grouping and other considerations in developing the regulatory schedule, uncertainty factors were not incorporated into the SCRS. Needless to say, outputs from the SCRS are highly uncertain, even on a relative basis.

4. Environmental Effects

Two commenters suggested that potential adverse effects to the environment also be considered in developing the schedule. Specifically, one of these commenters recommended that aquatic toxicity, bioaccumulation, effects on terrestrial wildlife, and the effects of metals on plants be considered. This commenter did, however, recognize that the availability of toxicity data for effects on the environment are limited.

Section 112(e)(2) of the 1990 Amendments states, "In determining priorities for promulgating standards * * * the Administrator shall consider * * * adverse effects to public health and the environment." In response to these comments on environmental effects, and after further EPA review, the EPA has conducted a limited technical analysis to address ecological concerns. The analysis consists of two relative rankings of the source categories. One ranking is based on emissions estimates, aquatic toxicity, and bioconcentration. The other ranking is based on the same three parameters plus environmental partitioning. The ecological data (i.e., aquatic toxicity, bioconcentration, and environmental partitioning) were primarily obtained from the draft "Focus Chemicals for the Clean Air Act Amendments Great Waters Study" report, hereafter called the "Focus Chemicals" report, (Docket No. A–91–14, Item No. IV–A–2). The emissions estimates were gathered from the SCRS data base (Docket No. A–91–14, Item No. II–B–5 and II–B–8). The resulting relative rankings are called the Aquatic Toxicity and Bioconcentration (ATB) rankings in the remainder of this notice. Environmental persistence of the HAP's was not incorporated into the ATB rankings because of the limited available data. Persistence data (from the Focus Chemicals report) were available for less than 50 percent of the HAP's. Although the persistence data were not incorporated into the ATB rankings, source categories were identified if they emit HAP's which were considered persistent in the Focus Chemicals report. Effects on terrestrial species were not considered because of the limitations in readily available data, and the limited time and resources available to the EPA for finalizing the schedule for standards by the deadlines imposed by the 1990 Amendments. The ATB rankings are not ecological risk assessments, but rather relative rankings based on some readily available environmental data. A thorough discussion of methodology, input data, and results are contained in Docket No. A–91–14.

After analyzing the ATB relative rankings along with the separate effort to identify source categories that emit persistent HAP's, and after re-addressing all the other considerations that factored into the development of the schedule (such as the section 112(e)(1) requirements, SCRS results, efficiency of grouping, time needed to develop standards, EPA resources, and ability to meet the numerical and temporal requirements of section 112(e)), some changes have been made to the schedule for standards. These changes are discussed in section IV "Changes to the Draft Schedule."

E. Comments and Responses Concerning Category Specific Scheduling

Two commenters affirmed placement of their particular source categories on the schedule. One of the commenters reported, however, that the docket for the draft schedule did not provide sufficient information regarding the ranking of individual source categories, and the data used in the ranking.

One commenter asserted that the oil and natural gas production category should not be regulated in the 7-year timeframe because a methodological flaw in the SCRS has probably overstated the risk from this category. The commenter argued that this category should have a lower priority because it has low emission rates, and because the remote location of most operations results in lower exposure potential than predicted.

A second commenter voiced concern about the division of petroleum refinery operations into two separate source categories on the initial list, and the

different timeframes to which they were assigned within the draft schedule. The commenter was concerned that there might be insufficient time to develop MACT standards for the source category "petroleum refineries—other sources not distinctly listed" before the 1994 deadline. Additionally, the commenter asserted that this separation would preclude emissions trading between these two source categories, even when collocated.

A third commenter argued that the pollutant and emissions information used to list and to develop the SCRS score for the iron foundries and steel foundries source categories was incorrect and ultimately skewed the SCRS ranks upon which the regulatory schedules for the iron foundries and steel foundries source categories are based. Another commenter asserted that, given the current asbestos NESHAP's efficacy and the reduction in asbestos use, the EPA should not schedule the asbestos processing source category for rulemaking anytime in the near future. Also, one commenter requested a 60-day extension to the comment period, in order to further review SCRS ranking information.

For further discussion of public comments and responses relevant to the scheduling of source categories, the reader is referred to a document entitled "Schedule for Standards: Summary of Public Comments and Responses" (Docket No. A-91-14, Item No. IV-A-3). In response to the above comment regarding docket information, the docket number A-91-14 and the referenced docket number A-90-49, contain information, including emissions estimates and health effects data, incorporated into SCRS. In response to the comments relevant to the listing of source categories, the decisions to list categories and to subdivide or aggregate categories such as petroleum refinery operations are not a part of today's schedule publication action. As discussed previously, the source category list will likely be revised sometime in the future.

In response to the specific scheduling comments, the scheduling decision for each source category was made after reviewing all the considerations previously discussed in this notice. The SCRS was considered an adequate tool to assist in the development of the schedule. The commenters did not submit new data on emissions, health effects, or specific facility parameters. After further EPA review, evaluating all the considerations and criteria previously discussed in today's notice, the EPA decided to move the iron foundries and steel foundries source categories to the 10-year timeframe. However, the EPA does not have sufficient information indicating that the other suggested changes should be made. Therefore, none of these suggested changes has been made, except for the movement of the iron and steel foundries categories to the 10-year timeframe.

After further review, the EPA decided not to extend the comment period as requested by one commenter. The EPA realizes that a 30-day comment period challenges the public to review and respond quickly to the notice. However, the 1990 Amendments imposed an extremely ambitious schedule, and to lengthen the comment period may have resulted in additional delays beyond those which this project has already encountered. The EPA has, however, contacted the commenter directly to clarify some confusion about the SCRS ranking, and to provide assistance in locating the items in the docket related to that particular source category.

F. Comments and Responses Related to Flexibility

Many commenters discussed the need for some degree of flexibility within the schedule, and said that the EPA should have the flexibility to adjust the schedule for regulating source categories after the schedule for standards is published. Some commenters noted that the present rankings should be subject to change in the event that new information becomes available and prompts the EPA to recalculate a source category score which might alter the relative rank upon which its scheduled promulgation date is based. Many commenters asserted that as data quality and availability improves, a new SCRS analysis changing the relative ranking may prove that greater risk reduction may be achieved in a shorter timeframe by amending the schedule.

One commenter stated that flexibility was needed if new source categories are added to the source category list and schedule. Another commenter stressed the importance of revising the methodology used to develop the SCRS as new information becomes available. The commenter suggested that the EPA should have the authority to change the schedule in the future, if necessary, after periodic review and updates in methodology. Another commenter stated that the EPA needs flexibility in order to allow time for proper attention to the technical details of writing the emission standards. Several commenters asserted that the EPA must be able to modify the schedule out of administrative necessity in order to better meet the goals of the statute.

Two commenters asserted that since section 112(c) of the 1990 Amendments allows the EPA to amend the list as appropriate, the EPA should also have the flexibility to alter regulatory promulgation deadlines. One of these commenters proposed that such revisions are appropriate because section 112(b) instructs the EPA to add or delete HAP's when specific conditions are satisfied, and that the 1990 Amendments allow for the removal of source categories if the pollutants they emit have been delisted, or if the projected risk from those pollutants drops below a certain level.

Six commenters alleged that section 112(e) contains no prohibitions against the EPA changing the schedule. One of the commenters interpreted the absence of such prohibition to mean that the decision has been left to the EPA's discretion. The commenter argued that Congress would have firmly indicated that the EPA would not have the authority to adjust the regulatory schedule if Congress had so intended. Finally, the commenter asserted that if the EPA was deprived of its authority to adjust the schedule, the revision authority described in sections 112(b) and 112(c) would lose much of its value. Others added that since section 112(e) is not considered a rulemaking subject to judicial review, the EPA should not be pressured regarding revisions to the schedule by possible lawsuits or the requirements of the Administrative Procedure Act, 5 U.S.C 7551 (1992). However, one commenter stated that the schedule should not be altered unless a significant change in the ranking of source categories occurs based on the changing state of knowledge supporting the three criteria used in establishing the schedule.

In response to the above comments on flexibility, the EPA interprets section 112 of the 1990 Amendments as permitting some flexibility concerning amendment of the schedule. The comments received regarding this issue support the interpretation that the EPA has the authority to amend the schedule, and to retain some regulatory flexibility, after publication of today's schedule. The EPA considers it impractical to have a strictly rigid schedule for the reasons discussed in section I.B. of today's notice. To reiterate some of these reasons, as new data become available, the EPA may identify changes to the schedule that would facilitate greater achievement of the prioritizing criteria of section 112(e). As pointed out by some commenters, there may be situations where significant new information is obtained (e.g., data indicating that a source

category presents much less of a hazard to public health than previously thought, or the discovery that a source category is posing a significant threat to the environment) that warrants limited changes to the schedule. In addition, amendment of the schedule may also be necessary if categories on the initial source category list are delisted under the authority of section 112(c)(9). Hence, the EPA anticipates that it may, from time to time, amend the schedule for standards published in today's notice.

The EPA does not anticipate frequent amendment of the schedule for standards for important reasons. First, because of the long lead time and significant resources required to promulgate an emissions standard, the EPA will not have the technical ability or resources to reschedule many standards, particularly to move significant numbers of source categories into earlier timeframes. Second, because of the section 112(e) numerical and temporal requirements regarding scheduling of standards (e.g., regulate 25 percent of all listed source categories by November 15, 1994, and an additional 25 percent by November 15, 1997), the EPA is limited in its ability to defer categories into later timeframes without moving a commensurate number of standards to earlier timeframes.

Therefore, the schedule will not change frequently, but rather, may undergo some modifications as significant new information becomes available. Of course, any entirely newly listed categories will not affect the schedule, as they have their own schedule under section 112(c)(5). Source categories subsequently added to the section 112(c) list shall be scheduled for regulation by November 2000, or 2 years after they are listed, whichever is later.

G. Comments and Responses Concerning Efficiency of Grouping

A few commenters cautioned the EPA to refrain from arbitrarily grouping source categories for the sole purpose of making the regulatory process easier and more convenient. They were concerned that arbitrary groupings could lead to implementation bottlenecks and could complicate the residual risk determinations that will be made under section 112(f). The commenters recommended that, if the EPA determines a single standard applies to more than one source category, the standard should be promulgated separately for each source category.

One commenter stressed that it is incorrect to hasten the regulatory schedule for categories for which information is more readily available just because they are easier to regulate in a given timeframe, notwithstanding the impact of their emissions on public health.

Another commenter noted that the source category list should be reviewed for inconsistencies. Specifically, they pointed out that polyester resins production, which had a scheduled promulgation date of November 15, 1997 on the draft schedule, and polyethylene terepthalate production, which has a schedule promulgation date of November 15, 1994, are essentially the same category and, therefore, should both be scheduled under the November 15, 1997 timeframe.

One commenter reiterated concerns they had expressed in their comments on the preliminary draft list of source categories regarding the approach the EPA used to identify which sources fell under which categories and their respective schedules. The commenter questioned why butyl benzyl phthalate, a phthalate plasticizer, is included in the draft list of SOCMI processes (scheduled for MACT promulgation by November 15, 1992). This would result in butyl benzyl phthlate production being regulated before the phthalate plasticizers production source category listed under miscellaneous processes. The commenter questioned the logic of requiring regulation of one phthalate plasticizer 8 years before the others. In addition, the commenter indicated that the EPA had not specified which category the formaldehyde resins group would fall under, stating that it could fit under the acetal resins production, the amino resins production, or the phenolic resins production categories.

Another commenter alleged that little reliable quantitative data on emissions of HAP's from iron or steel foundries were presented. They stated that due to different emissions, process, and technology characteristics, iron foundries and steel foundries should not be assigned the same regulatory schedule as other sources grouped in the ferrous metal processing industry group. The commenter requested a November 15, 2000 schedule assignment.

In response to these comments, section 112(e)(2)(C) allows the EPA to prioritize regulations for source categories based on "the efficiency of grouping categories * * * according to the pollutants emitted, or the processes or technologies used." This criterion enables the EPA to more effectively utilize its technical resources for developing regulations, and helps prevent the EPA from duplicating regulatory efforts for similar categories. The EPA has considered in the past, and will consider in the future, characteristics such as end products, processing steps, raw materials, emitted pollutants, emission controls, economic factors, and efficiency of using EPA resources in grouping source categories into single regulatory projects. Of course, without extensively studying each source category, it is often difficult for the EPA to predict whether a particular emission standard will closely resemble a standard for another source category. The EPA understands that if it is later discovered that initially grouped categories may not effectively be regulated by one standard, the EPA may promulgate separate standards for the source categories as necessary. However, to follow the commenter's suggestion of continuing to have project groupings for similar categories but then to promulgate each emission standard at different times based on the SCRS ranking would defeat the purpose of the efficiency of grouping criteria and could have a substantial impact on the EPA meeting other goals of section 112.

The EPA investigated the commenter's allegation that the polyester resins production is identical to polyethylene terephthalate production. This review revealed that these categories are in fact distinct from one another, and should remain as separate source categories. In particular, polyethylene terephthalate is an ethylene glycol-based polymer which is spun into fibers for clothing, blow-molded into plastic bottles, or quenched and stretched to form specialty films. Polyester resins, on the other hand, are styrene-based resins that are used primarily in the manufacture of fiberglass. Because of these differences, there is no technical reason to schedule the two source categories in the same timeframe. The polyester resins production source category has been moved to the 10-year timeframe. And, the polyethylene terephthalate production source category remains scheduled in the 4-year timeframe. The reader is referred to section IV of today's notice for further discussion of the changes to the draft schedule.

In response to the comments regarding the formaldehyde resins group, this is merely a title that has been adopted by the EPA to refer to the NESHAP project intended to regulate the acetal, amino, and phenolic resins production source categories. By researching these individual categories, the EPA discovered that each of these resin producers used formaldehyde as a

principal reactant in the polymerization reaction. Consequently, the EPA decided to minimize its regulatory resource efforts by grouping these three source categories into one project. Although the same regulatory project focuses on all three categories, this does not necessarily suggest that the emission standards will be equivalent. However, it means that information will be gathered simultaneously, that Agency work group membership will presumably be similar (if not identical), and that the emission standard(s) will most likely be proposed and promulgated on the same schedules.

In response to a commenter's concerns regarding butyl benzyl phthalate, the production of butyl benzyl phthalate is included in the list of SOCMI processes which are proposed for regulation under the HON (57 FR 62608, December 31, 1992). It is included in the list of SOCMI processes because butyl benzyl phthalate fits the definition delineated in the proposed HON. The other phthalate plasticizers do not meet the HON definition. Therefore, the other phthalate plasticizers productions are grouped into a separate category of major sources and were ranked separately in the SCRS. They ranked relatively low in the SCRS and were scheduled in the 10-year timeframe. The list of SOCMI processes is not an item for review under this action. However, the comment has been forwarded to the EPA staff responsible for the proposed HON.

Regarding the comment on the iron foundries and steel foundries source categories, these categories were scheduled independently of the other categories within the ferrous metals processing industry group. However, after further review by the EPA, the iron foundries and steel foundries source categories have been moved to the 10-year timeframe. In consideration of regulatory efficiency, individual source categories within the ferrous metals industry group may subsequently be grouped with one or more other similar categories within or outside of the industry group.

H. Comments and Responses Related to Other Considerations

One commenter urged the EPA to avoid setting schedule dates for source categories that are clearly unattainable. The commenter mentioned the difficult challenge imposed on the EPA to meet the statutory deadlines, and stated that it is important that section 112(d) standards be of the highest quality possible. Therefore, the commenter recommended and encouraged the EPA to focus on the practical considerations of setting and meeting the source category schedule. The commenter stated that the EPA should consider data availability and resource needs when determining where to place certain source categories in the schedule, recognizing that writing standards for certain categories will be extremely resource-intensive compared to other categories.

In response, the EPA agrees with the above recommendations. The EPA considered data availability and resource needs, and the ability to meet the scheduled deadlines, when developing today's schedule. Some of the changes made to the draft schedule for standards were partly based on these considerations. The changes to the draft schedule are discussed in the following section.

IV. Changes to the Draft Schedule

The schedule published in today's notice is similar to the draft schedule published on September 24, 1992 (57 FR 44147). However, some changes have been made. After reevaluating the prioritizing considerations previously discussed in this notice, and considering public comments, limitations in EPA resources, time needed to develop standards, section 112(e)(1) requirements, the ATB rankings, and persistence of HAP's, and after further EPA review, the EPA decided to move 29 source categories from the 7-year to the 10-year timeframe, and to move nine source categories from the 10-year to the 7-year timeframe.

The draft schedule published on September 24, 1992 (57 FR 44147) had 107 source categories (61 percent of the initially listed source categories) scheduled within 7 years of enactment of the 1990 Amendments. This is 20 source categories (11 percent) more than the 87 source categories (50 percent) required by section 112(e)(1). Thus, under the conditions of the draft schedule, the EPA could have met the statutory requirement of regulating 50 percent of the listed source categories by November 15, 1997, and still triggered section 112(j) requirements if the EPA failed to promulgate emission standards on time for all 107 source categories. After further review, the EPA decided to change the schedule so that there are 87 source categories (50 percent) scheduled within 7 years of enactment of the 1990 Amendments. This percentage change more closely reflects the requirements of section 112(e)(1), and helps avoid triggering 112(j) requirements for the extra categories.

Nine source categories from the agricultural chemicals industry group were moved from the 10- to the 7-year timeframe. For a listing of these nine source categories included in the agricultural chemicals industry group that were moved to the 7-year timeframe, the readers are referred to table 1 of today's notice. This change was made after reevaluating all the prioritizing considerations previously discussed in today's notice, but especially after considering the efficiency of grouping criterion, data availability, and the time and resources needed to promulgate emission standards for the 174 source categories included in today's schedule. The EPA has attempted to optimize the resources available for developing emission standards. By grouping these source categories together under one regulatory project, and moving them to the 7-year timeframe, the EPA believes that resources are being used more efficiently for meeting the requirements of section 112(e). The EPA believes that this scheduling change should facilitate meeting the numerical and temporal requirements of section 112(e), and also, facilitate a greater achievement of the prioritizing criteria of section 112(e)(2). In addition, five of these nine source categories emit HAP's that were considered ecologically persistent in the draft Focus Chemicals report.

After reevaluating all the criteria and considerations for prioritizing that were previously discussed in today's notice, the EPA moved the following 29 source categories from the 7- to the 10-year timeframe: (1) Stationary Turbines; (2) Polyvinyl Alcohol Production; (3) Benzyl-Trimethyl-Ammonium Chloride Production; (4) Carboxy-Methyl-Cellulose Production; (5) Polyvinyl Acetate Emulsions Production; (6) Polyvinyl Butyral Production; (7) Stationary Internal Combustion Engines; (8) Photographic Chemicals Production; (9) Paper and Other Webs (Surface Coating); (10) Polymethyl Methacrylate Resins Production; (11) Sewage Sludge Incineration; (12) Semiconductors Manufacturing; (13) Aerosol Can Filling; (14) Cellophane Production; (15) Rayon Production; (16) Chromium Refactories Production; (17) Hydrochloric Acid Production; (18) Hydrogen Fluoride Production; (19) Polyester Resins Production; (20) Hydrazine Production; (21) Chelating Agents Production; (22) Rubber Chemicals Manufacturing; (23) Iron Foundries; (24) Steel Foundries; (25) Auto and Light Duty Truck (surface coating); (26) Municipal Landfills; (27) Integrated Iron and Steel; (28) Phosphoric Acid Manufacturing; and (29) Phosphate Fertilizers Production.

V. Schedule for the Promulgation of Emission Standards

The schedule, in tables 1 and 2 of today's notice, establishes timeframes for the promulgation of emission standards for the categories of sources initially listed pursuant to section 112(c). The listed categories are prioritized considering the three criteria identified in section 112(e)(2) and the other considerations discussed in today's notice. Today's schedule specifies that each of the initially listed source categories are scheduled to be regulated within 2, 4, 7, or 10 years of the enactment of the 1990 Amendments, as required by section 112(e).

The schedule for the first two years (i.e., requiring promulgation of standards by November 15, 1992) includes five categories of dry cleaners and the SOCMI source category. The SOCMI category, along with equipment leaks from 20 other non-SOCMI source categories or subsets of source categories would be subject to the proposed HON (57 FR 62608, December 31, 1992). A subset of a source category, as used in today's notice, is defined as a particular process or emission point that is part of the more broadly defined source category. The proposed HON includes a negotiated standard for equipment leaks in the SOCMI and 20 non-SOCMI source categories or subsets of source categories (see table 1, footnote c). These non-SOCMI source categories, or subsets of source categories, are consistent with the seven manufacturing processes listed in the notice of agreement on negotiated regulation for equipment leaks (56 FR 9318, March 6, 1991). The negotiated standard was proposed as part of the HON. Only the equipment leak emissions in these non-SOCMI source categories or subsets of source categories are scheduled for regulation by November 15, 1992. Regulations covering other emission sources in these non-SOCMI source categories are scheduled for later years because of insufficient time and information. Although the remainder of the source categories will be regulated in a later timeframe, sources will need to comply with the equipment leaks requirements in the HON, according to the deadlines specified in the HON.

To fulfill the section 112(e)(1)(C) requirement to regulate 25 percent of listed categories within 4 years of enactment of the 1990 Amendments, 45 source categories (26 percent of the initially listed source categories) are scheduled for regulation in the 2- and 4-year timeframes. This group includes several active projects previously identified as high priority through earlier prioritization efforts; categories already under investigation as part of active CTG projects; and others selected because of efficiency of grouping, level of knowledge, and potential for completion by November 15, 1994.

The remaining 129 source categories are scheduled for regulation within either 7 or 10 years of enactment. The SCRS ranking, along with efficiency of grouping and the other considerations discussed previously in today's notice, were the primary criteria for scheduling the remaining categories in either 7- or 10-years. To fulfill the section 112(e)(1)(D) requirement to promulgate emissions standards for an additional 25 percent of the initially listed source categories by November 15, 1997, a total of 87 source categories (50 percent) are scheduled for regulation within 7 years of enactment of the 1990 Amendments.

As required in section 112(c)(5), source categories that are added to the source category list after publication of the initial source category list (57 FR 31576, July 16, 1992) shall be regulated by November 15, 2000, or within 2 years after the listing date, which ever is later.

VI. Administrative Requirements

A. Docket

The docket for this action is No. A-91-14. The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this schedule. The principal purpose of the docket is to allow interested parties a means to access documents relevant to developing the schedule. The docket is available for public inspection at the EPA's Air Docket Section, listed in the ADDRESSES section of this notice.

B. Regulatory Requirements

1. General

Because today's schedule notice is not a rule, the EPA has not prepared an assessment of the potential costs and benefits pursuant to Executive Order 12866, nor an economic impact analysis pursuant to section 317, nor a regulatory flexibility analysis pursuant to Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980). Also, this notice is not subject to the Paperwork Reduction Act of 1990, 44 U.S.C. 3501 *et seq.*

2. Executive Order and Office of Management and Budget Review

Under Executive Order 12866 (58 FR 51735, 10/04/93), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof; (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the Office of Management and Budget (OMB) has notified the EPA that this schedule notice is a "significant" regulatory action within the meaning of the Executive Order. For this reason, this schedule action was submitted to the OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

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VII. Organization of the Schedule for Standards

The Schedule for Standards is presented in tabular form. In table 1, the schedule is organized by industry group. Within each industry group are related categories of sources and the scheduled deadline for promulgation of emissions standards. The source categories are scheduled for regulation within 2, 4, 7, or 10 years of enactment of the 1990 Amendments. However, as indicated in the footnotes of table 1, some source categories are subject to court-ordered deadlines in accordance with a consent decree entered in *Sierra Club* v. *Browner*, Case Number 93-0124 (and related cases) (DC District Court). It should be noted that the section 112(j) requirements, which are discussed in section I.B. of today's notice, take effect 18 months after the statutory deadlines (i.e., November 15, 1992, November 15, 1994, November 15, 1997, and November 15, 2000). The court-ordered deadlines do not affect the section 112(j) provisions. In table 1, categories of area sources have been listed separately. In table 2, the schedule is organized by the four timeframes (i.e., the 2, 4, 7 and 10 year groups).

Dated: November 15, 1993.

Michael Shapiro,

Assistant Administrator.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP

Industry group—Source category[a]	Schedule date
Fuel Combustion:	
Engine Test Facilities	11/15/00
Industrial Boilers[b]	11/15/00
Institutional/Commercial Boilers[b]	11/15/00
Process Heaters	11/15/00
Stationary Internal Combustion Engines[b]	11/15/00
Stationary Turbines[b]	11/15/00
Non-Ferrous Metals Processing:	
Primary Aluminum Production	11/15/97
Secondary Aluminum Production	11/15/97
Primary Copper Smelting	11/15/97
Primary Lead Smelting	11/15/97
Secondary Lead Smelting[j]	11/15/94
Lead Acid Battery Manufacturing	11/15/00
Primary Magnesium Refining	11/15/00
Ferrous Metals Processing:	
Coke By-Product Plants	11/15/00
Coke Ovens: Charging, Top Side, and Door Leaks	12/31/92
Coke Ovens: Pushing, Quenching, and Battery Stacks	11/15/00
Ferroalloys Production	11/15/97
Integrated Iron and Steel Manufacturing	11/15/00
Non-Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation	11/15/97
Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation	11/15/97
Iron Foundries	11/15/00
Steel Foundries	11/15/00
Steel Pickling—HCl Process	11/15/97
Mineral Products Processing:	
Alumina Processing	11/15/00
Asphalt Concrete Manufacturing	11/15/00
Asphalt Processing	11/15/00
Asphalt Roofing Manufacturing	11/15/00
Asphalt/Coal Tar Application—Metal Pipes	11/15/00
Chromium Refractories Production	11/15/00
Clay Products Manufacturing	11/15/00
Lime Manufacturing	11/15/00
Mineral Wool Production	11/15/97
Portland Cement Manufacturing	11/15/97
Taconite Iron Ore Processing	11/15/00
Wool Fiberglass Manufacturing	11/15/97
Petroleum and Natural Gas Production and Refining:	
Oil and Natural Gas Production	11/15/97
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units	11/15/97
Petroleum Refineries—Other Sources Not Distinctly Listed[k]	11/15/94

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

Industry group—Source category[a]	Schedule date
Liquids Distribution:	
Gasoline Distribution (Stage 1)[g]	11/15/94
Organic Liquids Distribution (Non-Gasoline)	11/15/00
Surface Coating Processes:	
Aerospace Industries[l]	11/15/94
Auto and Light Duty Truck (Surface Coating)	11/15/00
Flat Wood Paneling (Surface Coating)	11/15/00
Large Appliance (Surface Coating)	11/15/00
Magnetic Tapes (Surface Coating)[g]	11/15/94
Manufacture of Paints, Coatings, and Adhesives	11/15/00
Metal Can (Surface Coating)	11/15/00
Metal Coil (Surface Coating)	11/15/00
Metal Furniture (Surface Coating)	11/15/00
Miscellaneous Metal Parts and Products (Surface Coating)	11/15/00
Paper and Other Webs (Surface Coating)	11/15/00
Plastic Parts and Products (Surface Coating)	11/15/00
Printing, Coating, and Dyeing of Fabrics	11/15/00
Printing/Publishing (Surface Coating)	11/15/94
Shipbuilding and Ship Repair (Surface Coating)	11/15/94
Wood Furniture (Surface Coating)	11/15/94
Waste Treatment and Disposal:	
Hazardous Waste Incineration	11/15/00
Municipal landfills	11/15/00
Publicly Owned Treatment Works (POTW) Emissions	11/15/95
Sewage Sludge Incineration	11/15/00
Site Remediation	11/15/00
Solid Waste Treatment, Storage and Disposal Facilities (TSDF)	11/15/94
Agricultural Chemicals Production:	
4–Chloro-2-Methylphenoxyacetic Acid Production	11/15/97
2, 4–D Salts and Esters Production	11/15/97
4, 6–Dinitro-o-Cresol Production	11/15/97
Captafol Production[c]	11/15/97
Captan Production[c]	11/15/97
Chloroneb Production	11/15/97
Chlorothalonil Production[c]	11/15/97
Dacthal (tm) Production[c]	11/15/97
Sodium Pentachlorophenate Production	11/15/97
Tordon (tm) Acid Production[c]	11/15/97
Fibers Production Processes:	
Acrylic Fibers/Modacrylic Fibers Production	11/15/97
Rayon Production	11/15/00
Spandex Production	11/15/00

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

Industry group—Source category[a]	Schedule date
Food and Agriculture Processes:	
Baker's Yeast Manufacturing	11/15/00
Cellulose Food Casing Manufacturing	11/15/00
Vegetable Oil Production	11/15/00
Pharmaceutical Production Processes:	
Pharmaceuticals Production[c]	11/15/97
Polymers and Resins Production:	
Acetal Resins Production	11/15/97
Acrylonitrile-Butadiene-Styrene Production	11/15/94
Alkyd Resins Production	11/15/00
Amino Resins Production	11/15/97
Boat Manufacturing	11/15/00
Butadiene-Furfural Cotrimer (R–11)[c]	11/15/00
Butyl Rubber Production	11/15/94
Carboxymethylcellulose Production	11/15/00
Cellophane Production	11/15/00
Cellulose Ethers Production	11/15/00
Epichlorohydrin Elastomers Production	11/15/94
Epoxy Resins Production[h]	11/15/94
Ethylene-Propylene Rubber Production	11/15/94
Flexible Polyurethane Foam Production	11/15/97
Hypalon (tm) Production[c]	11/15/94
Maleic Anhydride Copolymers Production	11/15/00
Methylcellulose Production	11/15/00
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production[c]	11/15/94
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production[c]	11/15/94
Neoprene Production	11/15/94
Nitrile Butadiene Rubber Production	11/15/94
Non-Nylon Polyamides Production[h]	11/15/94
Nylon 6 Production	11/15/97
Phenolic Resins Production	11/15/97
Polybutadiene Rubber Production[c]	11/15/94
Polycarbonates Production[c]	11/15/97
Polyester Resins Production	11/15/00
Polyethylene Terephthalate Production	11/15/94
Polymerized Vinylidene Chloride Production	11/15/00
Polymethyl Methacrylate Resins Production	11/15/00
Polystyrene Production	11/15/94
Polysulfide Rubber Production[c]	11/15/94
Polyvinyl Acetate Emulsions Production	11/15/00
Polyvinyl Alcohol Production	11/15/00
Polyvinyl Butyral Production	11/15/00
Polyvinyl Chloride and Copolymers Production	11/15/00
Reinforced Plastic Composites Production	11/15/97

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

Industry group—Source category [a]	Schedule date
Styrene-Acrylonitrile Production	11/15/94
Styrene-Butadiene Rubber and Latex Production [c]	11/15/94
Production of Inorganic Chemicals:	
Ammonium Sulfate Production—Caprolactam By-Product Plants	11/15/00
Antimony Oxides Manufacturing	11/15/00
Chlorine Production [c]	11/15/97
Chromium Chemicals Manufacturing	11/15/97
Cyanuric Chloride Production	11/15/97
Fume Silica Production	11/15/00
Hydrochloric Acid Production	11/15/00
Hydrogen Cyanide Production	11/15/97
Hydrogen Fluoride Production	11/15/00
Phosphate Fertilizers Production	11/15/00
Phosphoric Acid Manufacturing	11/15/00
Quaternary Ammonium Compounds Production	11/15/00
Sodium Cyanide Production	11/15/97
Uranium Hexafluoride Production	11/15/00
Production of Organic Chemicals:	
Synthetic Organic Chemical Manufacturing [e]	11/15/92
Miscellaneous Processes:	11/15/92
Aerosol Can-Filling Facilities	11/15/00
Benzyltrimethylammonium Chloride Production	11/15/00
Butadiene Dimers Production	11/15/97
Carbonyl Sulfide Production	11/15/00
Chelating Agents Production	11/15/00
Chlorinated Paraffins Production [c]	11/15/00
Chromic Acid Anodizing [g]	11/15/94
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines	11/15/92
Commercial Sterilization Facilities [g]	11/15/94
Decorative Chromium Electroplating [g]	11/15/94
Dodecanedioic Acid Production [c]	11/15/00
Dry Cleaning (Petroleum Solvent)	11/15/00
Ethylidene Norbornene Production [c]	11/15/00
Explosives Production	11/15/00
Halogenated Solvent Cleaners [g]	11/15/94
Hard Chromium Electroplating [g]	11/15/94
Hydrazine Production	11/15/00
Industrial Cleaning (Perchloroethylene)—Dry-to-dry machines	11/15/92
Industrial Dry Cleaning (Perchloroethylene) Transfer Machines	11/15/92
Industrial Process Cooling Towers [f]	11/15/94
OBPA/1,3-Diisocyanate Production [c]	11/15/00
Paint Stripper Users	11/15/00

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

Industry group—Source category [a]	Schedule date
Photographic Chemicals Production	11/15/00
Phthalate Plasticizers Production	11/15/00
Plywood/Particle Board Manufacturing	11/15/00
Polyether Polyols Production	11/15/97
Pulp and Paper Production	11/15/97
Rocket Engine Test Firing	11/15/00
Rubber Chemicals Manufacturing	11/15/00
Semiconductor Manufacturing	11/15/00
Symmetrical Tetrachloropyridine Production [c]	11/15/00
Tire Production	11/15/00
Wood Treatment	11/15/97
Categories of Area Sources: [d]	
Asbestos Processing	11/15/94
Chromic Acid Anodizing [g]	11/15/94
Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines	11/15/92
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines	11/15/92
Commercial Sterilization Facilities [g]	11/15/94
Decorative Chromium Electroplating [g]	11/15/94
Halogenated Solvent Cleaners [c]	11/15/94
Hard Chromium Electroplating [g]	11/15/94

[a] Only major sources within any category shall be subject to emission standards under section 112 unless a finding is made of a threat of adverse effects to human health or the environment for the area sources in a category. All listed categories are exclusive of any specific operations or processes included under other categories that are listed separately.

[b] Sources defined as electric utility steam generating units under section 112(a)(8) shall not be subject to emission standards pending the findings of the study required under section 112(n)(1).

[c] Equipment handling specific chemicals for these categories or subsets of these categories are subject to a negotiated standard for equipment leaks contained in the HON, which was proposed on December 31, 1992. The HON includes a negotiated standard for equipment leaks from the SOCMI category and 20 non-SOCMI categories (or subsets of these categories). The specific processes affected within the categories are listed in section XX.X0(c) of the March 6, 1991 FEDERAL REGISTER notice (56 FR 9315).

[d] A finding of threat of adverse effects to human health or the environment was made for each category of area sources listed.

The following footnotes apply to source categories that are subject to court ordered promulgation deadlines (differing from the above listed regulatory deadlines) in accordance with a consent decree entered in *Sierra Club* v. *Browner*, Case No. 93-0124 (and related cases) (D.C. Dist. Ct.).

[e] Judicial deadline: 02/28/94.

[f] Judicial deadline: 07/31/94.

[g] Judicial deadline: 11/23/94.

[h] Judicial deadline: 02/28/95.

[i] Judicial deadline: 04/30/95.

[j] Judicial deadline: 05/31/95.

[k] Judicial deadline: 06/30/95.

[l] Judicial deadline: 07/31/95.

Table 2.—Categories of Sources of Hazardous Air Pollutants and Regulation Promulgation Schedule by Regulatory Deadlines

Source Categories with Emission Standards Due by November 15, 1992

- Synthetic Organic Chemical Manufacturing
- Commercial Drycleaning (Perchloroethylene)—Dry-to-Dry Machines *
- Commercial Drycleaning (Perchloroethylene)—Transfer Machines *
- Commercial Drycleaning (Perchloroethylene)—Transfer Machines
- Industrial Drycleaning (Perchloroethylene)—Dry-to-Dry Machines
- Industrial Drycleaning (Perchloroethylene)—Transfer Machines

Source Categories with Emission Standards Due by November 15, 1994

- Acrylonitrile-Butadiene-Styrene Production
- Aerospace Industries
- Asbestos Processing *
- Butyl Rubber Production
- Chromic Acid Anodizing
- Chromic Acid Anodizing *
- Coke Ovens: Charging, Topside and Door Leaks (CAA Mandated Promulgation by December 31, 1992)
- Commercial Sterilization Facilities
- Commercial Sterilization Facilities *
- Decorative Chromium Electroplating
- Decorative Chromium Electroplating *
- Epichlorohydrin Elastomers Production
- Epoxy Resins Production
- Ethylene-Propylene Rubber Production
- Gasoline Distribution—Stage 1
- Halogenated Solvent Cleaners
- Halogenated Solvent Cleaners *
- Hard Chromium Electroplating
- Hard Chromium Electroplating *
- Hypalon (TM) Production
- Industrial Process Cooling Towers
- Magnetic Tapes (Surface Coating)
- Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production
- Methyl Methacrylate-Butadiene-Styrene Terpolymers Production
- Neoprene Production
- Nitrile Butadiene Rubber Production
- Non-Nylon Polyamides Production
- Petroleum Refineries—Other Sources Not Distinctly Listed
- Polyethylene Terephthalate Production
- Polybutadiene Rubber Production
- Polystyrene Production
- Polysulfide Rubber Production
- Printing/Publishing (Surface Coating)
- Secondary Lead Smelting
- Shipbuilding and Ship Repair (Surface Coatings)
- Solid Waste Treatment, Storage, & Disposal Facilities (TSDF)
- Styrene-Acrylonitrile Production
- Styrene-Butadiene Rubber and Latex Production

Wood Furniture (Surface Coating)
Source Categories with Emission Standards Due by November 15, 1997
4-Chloro-2-Methylphenoxyacetic Acid Production
2,4-D Salts and Esters Production
4,6-Dinitro-O-Cresol Production
Acetal Resins Production
Acrylic Fibers/Modacrylic Fibers Production
Amino Resins Production
Butadiene Dimers Production
Captafol Production
Captan Production
Chloroneb Production
Chlorothalonil Production
Chlorine Production
Chromium Chemicals Manufacturing
Cyanuric Chloride Production
Dacthal (TM) Production
Ferroalloys Production
Flexible Polyurethane Foam Production
Hydrogen Cyanide Production
Mineral Wool Production
Non-Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation
Nylon 6 Production
Oil and Natural Gas Production
Petroleum Refineries—Catalytic Cracking (Fluid and Other) Units, Catalytic Reforming Units, and Sulfur Plant Units
Pharmaceuticals Production
Phenolic Resins Production
Polycarbonates Production
Polyether Polyols Production
Portland Cement Manufacturing
Primary Aluminum Production
Primary Copper Smelting
Primary Lead Smelting
Publicly Owned Treatment Works (POTW) Emissions (CAA Mandated Promulgation by November 15, 1995)
Pulp & Paper Production
Reinforced Plastic Composites Production
Secondary Aluminum Production
Sodium Cyanide Production
Sodium Pentachlorophenate Production
Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation
Steel Pickling—HCl Process
Tordon (TM) Acid Production
Wood Treatment
Wool Fiberglass Manufacturing
Source Categories with Emission Standards Due by November 15, 2000
Aerosol Can-Filling Facilities
Alkyd Resins Production
Alumina Processing
Ammonium Sulfate Production—Caprolactam By-product Plants
Antimony Oxides Manufacturing
Asphalt Concrete Manufacturing
Asphalt Processing
Asphalt Roofing Manufacturing
Asphalt/Coal Tar Application—Metal Pipes
Auto and Light Duty Truck (Surface Coating)
Bakers Yeast Manufacturing
Benzyltrimethylammonium Chloride Production
Boat Manufacturing
Butadiene-Furfural Cotrimer (R-11)
Carbonyl Sulfide Production
Carboxymethylcellulose Production
Cellophane Production
Cellulose Ethers Production
Cellulose Food Casing Manufacturing
Chelating Agents Production
Chlorinated Paraffins Production
Chromium Refractories Production
Clay Products Manufacturing
Coke By-product Plants
Coke Ovens: Pushing, Quenching and Battery Stacks
Dodecanedioic Acid Production
Dry Cleaning (Petroleum Solvent)
Engine Test Facilities
Ethylidene Norbornene Production
Explosives Production
Flat Wood Paneling (Surface Coating)
Fume Silica Production
Hazardous Waste Incineration
Hydrazine Production
Hydrochloric Acid Production
Hydrogen Fluoride Production
Industrial Boilers
Institutional/Commercial Boilers
Integrated Iron & Steel Manufacturing
Iron Foundries
Large Appliance (Surface Coating)
Lead Acid Battery Manufacturing
Lime Manufacturing
Maleic Anhydride Copolymers Production
Manufacture of Paints, Coatings & Adhesives
Metal Can (Surface Coating)
Metal Coil (Surface Coating)
Metal Furniture (Surface Coating)
Methylcellulose Production
Miscellaneous Metal Parts & Products (Surface Coating)
Municipal Landfills
OBPA/1,3-Diisocyanate Production
Organic Liquids Distribution (Non-Gasoline)
Paint Stripper Users
Paper and Other Webs (Surface Coating)
Phosphate Fertilizers Production
Phosphoric Acid Manufacturing
Photographic Chemicals Production
Phthalate Plasticizers Production
Plastic Parts and Products (Surface Coating)
Plywood/Particle Board Manufacturing
Polyester Resins Production
Polymerized Vinylidene Chloride Production
Polymethyl Methacrylate Resins Production
Polyvinyl Acetate Emulsions Production
Polyvinyl Alcohol Production
Polyvinyl Butyral Production
Polyvinyl Chloride and Copolymers Production
Primary Magnesium Refining
Printing, Coating & Dyeing of Fabrics
Process Heaters
Quaternary Ammonium Compounds Production
Rayon Production
Rocket Engine Test Firing
Rubber Chemicals Manufacturing
Semiconductor Manufacturing
Sewage Sludge Incineration
Site Remediation
Spandex Production
Stationary Internal Combustion Engines
Stationary Turbines
Steel Foundries
Symmetrical Tetrachloropyridine Production
Taconite Iron Ore Processing
Tire Production
Uranium Hexafluoride Production
Vegetable Oil Production

* Denotes area source category

[FR Doc. 93-29513 Filed 12-2-93; 8:45 am]

BILLING CODE 6560-50-P

[ER-FRL-4706-1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Weekly receipt of Environmental Impact Statements Filed November 22, 1993 through November 26, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930420, Draft EIS, NPS, CO, Bent's Old Fort Historic Site, General Management Plan and Development Concept Plan, Implementation, Santa Fe Trail, Otero County, CO, Due: January 18, 1994, Contact: Don Hill (719) 384-2596.

EIS No. 930421, Final EIS, NPS, UT, Timpanogos Cave National Monument General Management and Development Concept Plans, Implementation, American Fork Canyon, Utah County, UT, Due: January 03, 1994, Contact: Sue McGill (801) 756-5239.

EIS No. 930422, Final EIS, BLM, NV, Newmont Gold Quarry Open-Pit Mine and Ore Processing Facility Expansion and Operation, Plan of Operation Approval, NPDES and COE Section 404 Permits, Eureka and Elko Counties, NV, Due: January 03, 1994, Contact: David Vandenberg (702) 753-0200.

EIS No. 930423, Draft EIS, AFS, NV, Jerritt Canyon Gold Mine Expansion Project, Implementation, Plan of Operation and COE Section 404 Permit, Humboldt National Forest, Mountain City Ranger District, Elko County, NV, Due: January 18, 1994, Contact: Don Carpenter (702) 763-6691.

EIS No. 930424, Draft EIS, SCS, WV, Upper Buffalo Creek Watershed, Flood Prevention and Watershed Protection, Funding, City of Mannington, Marion County, WV, Due: January 18, 1994, Contact: Rollin Swank (304) 291-4151.

EIS No. 930425, Draft EIS, AFS, WA, McCoy Timber Sales and Related Projects, Implementation, Gifford Pinchot National Forest, Randle Ranger District, Lewis and Skamania Counties, WA, Due: January 31, 1994, Contact: Harry Cody (206) 497-7565.

EIS No. 930426, Final EIS, FAA, AZ, Phoenix Sky Harbor International

Airport Master Plan Updated Improvements, Runway 8L/26R Extension, Funding, City of Phoenix, Maricopa County, AZ, Due: January 03, 1994, Contact: David B. Kessler (310) 297–1534.

EIS No. 930427, Final EIS, BLM, CA, Hollister Oil and Gas Leasing, Land and Resource Management Plan Amendment, Implementation and Applications for Permits to Drill, Bakersfield District, Monterey, San Benito, Fresno, Madera and Merced Counties, CA, Due: January 03, 1994, Contact: Robert Beehler (408) 637–8183.

EIS No. 930428, Draft EIS, BLM, WY, Newcastle Resource Management Plan, Implementation, Evaluating Alternatives for the Use of Public Lands and Resources in Portions of Wyoming, Crook, Niobrara and Weston Counties, WY, Due: March 04, 1994, Contact: Floyd Ewing (307) 746–4453.

Amended Notices

EIS No. 930394, Draft EIS, UAF, ID, Idaho Training Range, Air-to-Ground Aircraft Tactical Training Facilities within the Idaho Air National Guard at Gowen Field and the Composite Wing Mountain Home Air Force Base, ID, Due: February 09, 1994, Contact: Brenda Cook, BLM (804) 764–3328 or Butch Peugh, UAF (208) 384–3076 Published FR–11–12–93. Due Date Correction; The U.S. Department of Defense's U.S. Air Force and the U.S. Department of the Interior's Bureau of Land Management are Joint Lead Agencies for this Project.

Dated: November 30, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–29615 Filed 12–2–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4706–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 8, 1993 through November 12, 1993 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (50 FR 18392).

Draft EISs

ERP No. D–AFS–G65057–NM Rating EO2, Angostura Diversity Unit Vegetative Management Plan, Implementation, Timber Harvesting and Regrowing, Carson National Forest, Camino Real Ranger District, Taos County, NM.

Summary: EPA had environmenta objections to the USFS' preferred alternative and requested additional information in the final EIS regardin ; the selection of the preferred alterna ive, clarification of purpose, wetland identification and impacts, water quality and fishery impacts and road construction.

ERP No. D–AFS–L65201–OR Rating EC2, Eagle Creek Timber Sale and Road Construction, Implementation, Mt. Hood National Forest, Zigzag and Estacada Ranger Districts, Clackamas County, OR.

Summary: EPA expressed environmental concerns regarding the timber sale's potential impact on water quality. Additional information was requested regarding maps, monitoring, air quality, threatened and endangered species.

ERP No. D–AFS–L65209–WA Rating EC2, Pebble and Little Granite Timber Sales, Implementation, Mountain Analysis Area, Okanogan National Forest, Tonasket, Twisp and Winthrop Ranger Districts, Okanogan County, WA.

Summary: EPA expressed environmental concerns regarding the sale's potential impact on water quality. Additional information was requested on air quality, threatened and endangered species, road closures, and wetlands.

ERP No. D–FAA–C51015–NJ Rating EC2, Newark International Airport Installation and Operation of an Instrument Landing System on Runway 11, Funding and Airport Layout Plan Approval, Essex and Union Counties, NJ.

Summary: EPA continued to express environmental concerns about potential impacts to capacity. Further, the document provides insufficient information to evaluate the potential need for hazardous waste disposal of material to be excavated during construction of the proposed project. Accordingly, EPA recommended that the final EIS present additional information to address these concerns.

ERP No. D–NPS–C80023–NY Rating LO1, Hamilton Grange National Memorial, General Management Plan, Implementation, New York County, NY.

Summary: EPA had no objections to the proposed project.

ERP No. DS–FHW–C40129–NY Rating EC2, NY–9A Reconstruction Project, Battery Place to 59th Street along the western edge of Manhattan, New Information, Funding and Approval of Permits, New York County, NY.

Summary: EPA expressed environmental concerns although the scope of the supplemental draft EIS is limited to anomalies in the traffic analysis. The final EIS needs to address water quality, hazardous wastes, air quality analysis and noise concerns raised by EPA on the draft EIS.

Final EISs

ERP No. F–AFS–L65187–AK, North Revilla Project, Long-Term Timber Sale Contract, Implementation, Tongass National Forest, Ketchikan Administrative Area, Ketchikan Ranger District, Revillagigedo Island, AK.

Summary: EPA continued to have concerns with the effect of the action alternatives on water quality and fisheries. EPA believed that unresolved water quality monitoring issues will make it difficult to ensure that Alaska Water Quality Standards are met and beneficial uses protected.

ERP No. F–AFS–L65197–AK, Campbell Timber Sale, Implementation, Tongass National Forest, Stikine Area, AK.

Summary: EPA had no objection to the preferred alternative as described in the final EIS.

Dated: November 30, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–29616 Filed 12–2–93; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4806–3]

Office of Environmental Equity Grants Program; Solicitation Notice for Fiscal Year (FY) 1994 Environmental Justice Grants to Community Groups

Important Pre-Application Information

Pre-applications must be postmarked no later than February 4, 1994. Pre-applications will serve as the sole basis for evaluation and recommendation for funding. This notice contains all information and forms necessary to submit a pre-application.

Pre-applications for a Federal grant must be mailed to your Environmental Protection Agency (EPA) regional office. (A list of addresses and phone numbers for questions is included at the end of this notice.) EPA expects projects to begin by June 1, 1994. EPA will award grants in Fiscal Year 1994 subject to the amount of appropriated funds.

Purpose of Notice

This notice solicits pre-applications from any community group which is eligible under applicable statutory authorities, (for example, community-based/grassroots organization, school, education agency, college or university, and non-profit organization) and tribal government for grants to support current and new projects to design, demonstrate, or disseminate practices, methods, or techniques which address environmental justice concerns.

Background

In June of 1993, the Office of Environmental Equity of the Environmental Protection Agency (EPA) was delegated granting authority to solicit projects, select suitable projects from among those proposed, supervise such projects, evaluate the results of projects, and disseminate information on the effectiveness of the projects, and feasibility of the practices, methods, techniques and processes in environmental justice areas. Each instrument approved under the environmental equity delegation must be consistent with the Federal Grant and Cooperative Agreements Act of 1977, Public Law 95–24, as amended, 31 U.S.C. 6301; Title 40 of the Code of Federal Regulations, parts 30, 31, 33, 40, 45 and 47, as appropriate; and existing media-specific regulations pertinent to the statement of work.

In its 1992 report, Environmental Equity: Reducing Risk for All Communities, EPA found that people of color and low-income communities experience higher than average exposure to toxic pollutants than the general population. The Office of Environmental Equity is interested in helping these communities to identify and assess these pollution sources, to implement environmental awareness and training programs for affected residents and work with local stakeholders (community-based organizations, academia, industry, local governments) to devise strategies for environmental improvements.

Fiscal Year 1994 will be the first year of the grants program with the amount of awards up to $10,000 per grant. Each of EPA's 10 regions will have approximately $50,000 for grants with a Federal share of $10,000 or less. Recipients will be required to provide at least a 5% match as explained in Section H of this announcement.

FUNDING

The Office of Environmental Equity has approximately $500,000 for this grants program in Fiscal Year 1994. EPA will award grants based on the merits of the pre-application and the availability of funds.

Eligible Activities

A. What Is the Purpose of the Grants Program?

The purpose of the grants program is to provide financial assistance and stimulate a public purpose by supporting projects to any affected community group (for example, community-based/grassroots organization, school, education agency, college or university, and non-profit organization) and tribe who engage or plan to carry out projects to address environmental justice issues. Projects that focus on the design, methods, and techniques to evaluate and solve environmental justice issues of concern to affected communities will be given priority. Funds can be used to develop a new activity or to substantially improve the quality of existing ones.

B. What Specific Activities Will be Eligible to Receive Funding?

The eligible environmental justice activities shall include, but not be limited to:

1. Design and demonstration of field methods, practices, and techniques, including assessment and analysis of environmental justice conditions and problems (for example, socioeconomic impact studies, natural resource clean-up efforts);
2. Projects to understand, assess or address specific local environmental justice issues or problems (for example, reforestation efforts, monitoring of socioeconomic changes in a community as a result of an environmental abuse);
3. Demonstration or dissemination of environmental justice information, including development of equity educational tools and materials (for example, developing or supplementing existing community newsletters);
4. Provision of environmental justice training or related education for community residents, teachers, faculty, or related personnel in a specific geographic area or region (for example workshops, awareness conferences); and
5. Obtain technical expert consultation to access, analyze, and interpret public environmental data for a specific geographic area or region (for example, Geographic Information Systems (GIS), Toxic Release Inventory (TRI) and other databases).

Priority will be given to those projects which will help improve the environmental quality of affected communities by developing: (A) An environmental justice project, activity, method, or technique which may have wide application; (B) a practice, method, or technique which enhances skills in addressing environmental justice issues and problems; (C) an environmental justice education practice, method, or technique which addresses environmental justice issues; and (D) an environmental justice project or activity which establishes or expands information systems for local communities.

C. How Does EPA Define Environmental Justice Under the Environmental Justice Grants Program?

Environmental justice is the fair treatment of people of all races, cultures and income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. Fair treatment means that no racial, ethnic or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from the operation of industrial, municipal, and commercial enterprises and from the execution of federal, state and local, and tribal programs and policies. Environmental justice seeks to ensure that the communities, private industry, local governments, states, tribes, federal government, grass-roots organizations, and individuals act responsibly and ensure environmental protection to all communities. Environmental justice projects or activities should enhance critical thinking, problem solving, and effective decision-making skills. Environmental justice efforts may include, but are not necessarily limited to enhancing the gathering, observing, measuring, classifying, experimenting and other data gathering techniques that assist individuals in discussing, inferring, predicting, and interpreting information about environmental justice issues and concerns. Environmental justice projects should engage and motivate individuals to weigh various issues to make informed and responsible decisions as they work to address environmental inequities.

EPA is interested in funding environmental justice activities that go beyond providing information to community groups or citizens. Dissemination of environmental justice information, by itself, is not an environmental justice project, although such information may be an essential element. Environmental justice information provides facts or opinions about environmental justice issues or problems, but does not necessarily enhance critical thinking, problem

solving, or effective decision-making skills.

D. Who May Submit Pre-Applications and May an Applicant Submit More Than One?

Any affected community group (for example, community-based/grassroots organization, school, education agency, college or university, and non-profit organization) and tribal government may submit a pre-application upon publication of this solicitation.

No organization can have two grants for the same project at one time. EPA will consider only one pre-application for a given project. Organizations may submit more than one pre-application as long as the pre-applications are for separate and distinct projects or activities.

E. May an Individual Apply?

No. Only non-profit organizations, community groups, institutions and tribal governments—not individuals—are eligible. Individuals may have their organizations, institutions, government or association apply. The qualifications of those individuals participating in the proposed project will be an important factor in the selection process. Organizations must be incorporated to receive funds.

Funding Priorities

F. What Type of Projects Will Have the Best Chance of Being Funded?

To increase the chance of successfully competing for funding, the applicant's project should meet the following objective and criteria.

1. The project should meet one or more of the following EPA objectives:

a. To facilitate communication, information exchange, and community partnerships; and/or

b. To motivate the general public to be more conscious of environmental justice issues, resulting in action to address these issues.

2. The project should also develop and demonstrate an environmental justice practice, method, or technique which:

a. May have wide application; and

b. Addresses an environmental justice issue which is of a high priority.

The items discussed above are relative and can be defined differently among various schools, communities, tribes, states, or geographic regions. Therefore, the degree to which a project addresses a high priority environmental justice issue will vary and must be defined by applicants according to their local environmental justice concerns.

Each pre-application should define these terms as they relate to the specific project and include a succinct explanation of how the project can serve as a model in other settings, and how it addresses a high-priority environmental justice issue.

3. The project should also focus on one or more of the following items:

a. Necessary improvements in communication and coordination, identified by the applicant, among existing local, state, tribal and federal environmental programs;

b. Promoting equity in the local community by increasing educational information for people of color and low-income populations; or

c. Teaching about risk reduction, pollution prevention, or geographic protection as potential strategies for addressing environmental justice problems or issues. (These terms are defined below in Supplemental Information).

G. How Much Money May Be Requested and What Size Grant Application Has the Best Chance of Being Funded:

The ceiling for any one grant is $10,000 in Federal funds. EPA's 10 regional offices will award grants. For Fiscal Year 1994, EPA strongly encourages applicants to request grants between $2,000 and $5,000 in Federal funding.

H. Are Matching Funds Required?

Yes. Federal funds for projects shall not exceed 95% of the total cost of such projects. EPA encourages non-Federal matching shares of greater than 5%. The non-Federal share of project costs may be provided in cash or by in-kind contributions and other non-cash support. In-kind contributions often include salaries or other verifiable costs. In the case of salaries, applicants may use either minimum wage or fair market value. The proposed match, including the value of in-kind contributions, is subject to negotiation with EPA. All grants are subject to audit, so the value of in-kind contributions must be carefully documented.

The matching (non-Federal) share is a percentage of the entire cost of the project. For example, if the total project cost is $5,264 then the Federal portion can be no more than $5,000, which is 95% of the total project cost. For this example, the grant recipient would be required to provide $264 for the project. The amount of non-Federal funds, including in-kind contributions, must be briefly itemized in Block 15 of the pre-application form (SF 424) included at the end of this notice. Among other things, EPA funds can not be used as matching funds for other Federal grant match requirements, for construction, or buying furniture.

The Pre-Application

I. What is a Pre-application?

A pre-application is the "Application for Federal Assistance" form (Standard Form 424 or SF 424) and a work plan (described below). These documents contain all the information EPA needs to evaluate the merits of your pre-application. Applicants will not be asked to submit additional information to support their projects, except that finalists may be asked to submit various Federally required forms necessary to complete a formal application (for example, a "Certification Regarding Debarment, Suspension, and Other Responsibility Matters" form).

J. How Must the Pre-application Be Submitted and Specifically What Must the Standard Form (SF) 424 and Work Plan Include?

The applicant must submit one original-signed by a person authorized to receive funds for the applicant-and two copies of the pre-application (double-sided copies encouraged). Pre-applications must be reproducible (for example, stapled once in the upper left hand corner, on white paper, and with page numbers in the upper right hand corner). Pre-applications may not include brochures, video tapes, or any other material not described in Question J.2.

As described above, a pre-application contains an SF 424 and a work plan. The following describes what an SF 424 and a work plan are and what they must contain.

1. Application for Federal Assistance (SF 424). An SF 424 is an official form required for all Federal grants. A completed SF 424 must be submitted as part of your pre-application. This form, along with instructions are included at the end of this notice.

2. Work Plan. A work plan describes the applicant's proposed project. Work plans must be no more than 5 pages total. One page is one side of a single-spaced typed page. The pages must be letter size (8 1/2 x 11), with normal type size (10 or 12 cpi) and at least 1" margins. The only appendices and letters of support that EPA will accept are a budget, resumes of key personnel, and commitment letters.

Work plans must be submitted in the format described below. The percentages next to the items are the weights EPA will use to evaluate the applicant's work plan. Please note that certain sections are given greater weight than others.

I. A concise introduction of no more than one page that states the nature of the organization, how the organization has been successful in the past, purpose of the project, objective, method, project completion plans, target audience, and expected results. (10%)

II. A clear and concise project description which describes the following:

A. A section describing how the project meets one or more of the objectives discussed in Question F.1. (10%)

B. A section describing how the project develops an environmental justice practice, method, or technique discussed in Question F.2. (35%)

C. A section describing how the project focuses on at least one of the items described in Question F.3. (15%)

III. A conclusion discussing how the applicant will evaluate the success of the project, in terms of the anticipated strengths and challenges in implementing the project. (10%)

IV. An appendix with a budget describing how funds will be used in terms of personnel, fringe benefits, travel, equipment, supplies, contract costs, and other. Funds can not be used for construction. The budget must list proposed project milestones with deadlines and estimated cost and completion dates. All costs must be consistent with the Office of Management and Budget (OMB) cost principles, such as A–7 and A–22. (10%)

V. An appendix with one or two page resumes of up to three key personnel. (5%)

VI. An appendix with one page letters of commitment from other organizations with a significant role in the project. Letter of endorsement will not be considered. (5%)

K. When and Where Must Pre-Applications Be Submitted?

An original plus two copies of the pre-application must be mailed to EPA postmarked no later than Friday, February 4, 1994. Pre-applications must be submitted to the EPA regional office for the region where the applicant is located. A list of the addresses of the EPA regional offices and a list of the states which these offices support are included at the end of this notice.

Review and Selection Process

L. How Will Pre-Applications Be Reviewed?

EPA regional offices will review, evaluate and make selections. Pre-applications will be screened to ensure they meet all eligible activities described in Questions A, B, C, D, and E. Reviewers will also evaluate the degree to which the pre-applications meet EPA's objectives and other criteria as discussed in Question F. Applications will be disqualified if they do not meet EPA's basic criteria.

M. How Will the Final Selections Be Made?

After the individual projects are reviewed and ranked as described in Question L, EPA officials in the regions and at headquarters will compare the best pre-applications and make final selections. Factors EPA will take into account include; geographic and socioeconomic balance, project diversity, cost and projects whose benefits can be sustained after the grant is completed.

Regional Administrators will select the grants with concurrence from the Director of the Office of Environmental Equity at EPA headquarters.

N. How Will Applicants Be Notified?

After all pre-applications are received, EPA will mail acknowledgements to each applicant. Once pre-applications have been recommended for funding, EPA will notify those applicants selected and request any additional information necessary to complete the award process. The EPA Regional Environmental Equity Coordinators will notify those applicants whose projects were not funded.

Grant Activities

O. When Should Proposed Activities Start?

Activities can not start before funds are awarded. Start dates are currently targeted for June 1, 1994.

P. How Much Time do Grant Recipients Have to Complete Projects?

Funding may be requested for periods of up to 12 months. However, flexibility is possible depending upon the nature of the project. Activities must be completed within the time frame specified in the grant award. Requests for renewals will receive low priority.

Q. Who Will Perform Projects and Activities?

EPA requires that projects must be performed by the applicant or by a person satisfactory to the applicant and EPA. All pre-applications must identify any person other than the applicant for approval.

R. What Reports Must Grant Recipients Complete?

All recipients must submit final reports for EPA approval prior to the expiration of the project period. Recipients of grants with a Federal share greater than $5,000 may be expected to report on semiannual progress, as well as final project completion. Specific report requirements will be detailed in the award agreement. EPA plans to collect, evaluate, and disseminate grantees' final reports to serve as model programs. Since networking is crucial to the success of the program, grantees may be asked to transmit an extra copy to a central collection point.

S. What Is the Expected Time-frame for the Review and Awarding of the Grants?

December 1993—Request for Applications Notice (RFA) is Published in the **Federal Register**.

December 1993 to February 3, 1994—Eligible grant recipients develop their pre-proposals.

February 4, 1994—Pre-proposals must be postmarked for or received by EPA Regional Offices by this date.

February 4, 1994 to March 30, 1994—EPA officials review and select grants.

March 30, 1994 to May 30, 1994—EPA Regional grants offices process grants and make awards. Applicants will be contacted by the grants office if their pre-proposal was selected for funding. Additional information will be required from the selectees, as described under Section N above.

June 1, 1994—EPA anticipates the grantees projects or activities to begin by or around this date.

Fiscal Year 1995

T. How Can I Receive Information on the Fiscal Year 1995 Environmental Justice Grants Program?

After the Fiscal Year 1994 Solicitation, EPA will develop a new mailing list for the Fiscal Year 1995 Solicitation. If you wish to receive information on the 1995 Environmental Justice Grants Program, you must mail your request along with your name, organization, address and phone number to: Environmental Justice Grants-1995 (3103), U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Available Translations

A Spanish translation of this announcement is available upon request. Please call the Office of Environmental Equity at 1–800–962–6215 for a copy.

Hay traducciones disponibles en espanol. Si usted esta interesado en obtener una traduccion de este anuncio en espanol, por favor llame a la Oficina de Equidad Ambiental conocida como "Office of Environmental Equity", linea de emergencia (1–00–62–215).

Definitions

• *Affected communities*—individuals or groups of individuals which are subject to an actual or potential health, economic, or environmental threat arising from, or which arose from, polluting source(s), or proposed polluting source(s). An example of affected parties include individuals who live near polluting sources and whose health is or may be endangered or whose economic interest are directly threatened or harmed.

• *People of color community*—a population that is classified by the U.S. Bureau of the Census as African American, Hispanic American, Asian and Pacific American, American Indian, Eskimo, Aleut and other non-white persons, whose composition is at least 25% of the total population of a defined area or jurisdiction.

• *Low-income community*—a population that is classified by the U.S. Bureau of the Census as having an aggregated mean income level for a family of four that correlates to $13,359, adjusted through the poverty index using a standard of living percentage change where applicable, and whose composition is at least 25% of the total population of a defined area or jurisdiction.

• *Tribe*—all federally recognized American Indian tribes, pueblos, and rancherios, and Alaska Native Villages. Although, as used in this notice, the term tribe refers to only "federally recognized" indigenous peoples, "state recognized" indigenous peoples are able to apply for grants as "other eligible grass-roots organizations" as long as they are incorporated.

• *Education agency*—any education agency as defined in section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381) and shall include any tribal education agency.

• *Non-profit organization*—an organization, association, or institution described in section 501(c)(3) of the Internal Revenue Code of 1986, which is exempt from taxation pursuant to the provisions of section 501(a) of such Code.

• *Risk reduction*—the process of estimating and comparing the dimensions and characteristics of risks, and determining the feasibility and costs of reducing them, to determine which future actions to take to achieve the greatest reduction of the most serious threats

• *Pollution prevention*—the reduction or elimination of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or the protection of natural resources by conservation. Pollution prevention measures may reduce the amount of pollutants released into the environment as well as the hazards to public health and the environment from such releases.

• *Geographic protection*—efforts to manage environmental problems that are specific to the characteristics of a geographic region.

Jonathan Z. Cannon,

Assistant Administrator, Office of Administration and Resources Management.

Contact Names and Addresses

Region 1

Primary Contact: James Younger, USEPA Region 1, John F. Kennedy Federal Building, One Congress Street, 10th Floor OCR, Boston, MA 02203; 617/565–3427

Secondary Contact: Rhona Julien, 617/573–9655

Region 2

Primary Contact: Lillian Johnson, USEPA Region 2 (2AWM), Javits Federal Building, 26 Federal Plaza, New York, NY 10278; 212/264–7054

Secondary Contact: Natalie Loney, 212/264–0002

Region 3

Primary Contact: Mary Zielinski; USEPA Region 3 (3PM–71), 841 Chestnut Building, 3DA00, Philadelphia, PA 19107–4431; 215/597–6795

Secondary Contact: Dominique Luekenhoff, 215/597–6529

Region 4

Primary Contact: Vivian Malone Jones, USEPA Region 4, 345 Courtland Street, N.E., Atlanta, GA 30365; 404/347–4294

Secondary Contact: Hector Buitrago, 404/347–2200

Region 5

Primary Contact: Dr. William H. Sanders, USEPA Region 5 (S–14J), 77 West Jackson Boulevard, Chicago, IL 60604–3507; 312/353–3808

Secondary Contact: Ethel Crisp, 312/353–3808

Region 6

Primary Contact: Beverly Negri, USEPA Region 6 (6M-P), 1445 Ross Avenue, Dallas, Texas 75202–2733; 214/655–6518

Secondary Contact: Lynda Carroll, 214/655–6500

Region 7

Primary Contact: Hattie Thomas, USEPA Region 7, 726 Minnesota Avenue, Kansas City, KS 66101; 913/551–7003, 1–800–223–0425

Secondary Contact: Richard Sumpter, 913/551–7661

Region 8

Primary Contact: Elmer Chenault, USEPA Region 8 (HWM-FF), 999 18th Street, suite 500, Denver, CO 80202–2405; 303/294–1982

Secondary Contact: Tempa Graves, 303/294–1982

Region 9

Primary Contact: Lori Lewis, USEPA Region 9 (E–1), 75 Hawthorne Street, San Francisco, CA 94105; 415/744–1561

Secondary Contact: Carla Moore, 415/744–1943

Region 10

Primary Contact: Robin Meeker, USEPA Region 10 (MD–142), 1200 Sixth Avenue, Seattle, WA 98101; 206/553–8579

Secondary Contact: Joyce Crosson, 206/553–4029

Headquarters

For further information, contact: Office of Environmental Equity, USEPA (3103), 401 M Street, SW., Washington, DC 20460; 1–800–962–6215.

States and Territories by Region

Region 1

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Region 2

New Jersey, New York, Puerto Rico, Virgin Islands.

Region 3

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

Region 4

Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Region 5

Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Region 6

Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Region 7

Iowa, Kansas, Missouri, Nebraska.

Region 8

Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Region 9

Arizona, California, Hawaii, Nevada, American Samoa, Guam.

Region 10

Alaska, Idaho, Oregon, Washington.

BILLING CODE 6560-50-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction · Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ - ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ - ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (REV. 4-92)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget. Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 Back (Rev. 4-92)

[FR Doc. 93-29278 Filed 12-2-93; 8:45 am]
BILLING CODE 6560-50-C

[FRL-4809-4]

Postponement of the Meeting of the Environmental Requirements for Local Governments Policy Dialogue Advisory Committee

The Environmental Requirements for Local Governments Policy Dialogue Advisory Committee and the Small Town Task Force meetings scheduled for December 7-9, 1993, at the Governor's House Holiday Inn in Washington, DC, has been postponed. The meeting was announced in the **Federal Register** on November 9, 1993 at 58 FR 59463. No meeting will occur on December 7-9. When the new date and time for this meeting are established, it will be announced in a separate notice.

For more information, the public may contact the Designated Federal Officer, Denise Zabinski, at (202) 260-4719.

Shelley H. Metzenbaum,

Associate Administrator, Office of Regional Operations and State/Local Relations.

[FR Doc. 93-29617 Filed 12-2-93; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4809-6]

National Advisory Council for Environmental Policy and Technology, Policy Integration Project, Lead Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), the U.S. Environmental Protection Agency (EPA) gives notice of the next meeting of the Lead Subcommittee of the Policy Integration Project of the National Advisory Council for Environmental Policy and Technology (NACEPT). During the meeting, to be held on Wednesday, December 15, the Lead Subcommittee will discuss final draft working papers and recommendations and review a draft summary of the subcommittee's report to NACEPT.

DATES: The subcommittee will meet on December 15, 1993. The meeting will start at 9 a.m. and end at 4:30 p.m.

ADDRESSES: Room 235, Hall of States, 444 North Capitol Street NW., Washington, DC 20001-1572. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION: Contact Mr. Robert L. Hardaker, Designated Federal Official, U.S. EPA, Office of Cooperative Environmental Management, telephone 202-260-9741.

Dated: November 29, 1993.

Robert L. Hardaker,

Designated Federal Official, Lead Subcommittee.

[FR Doc. 93-29613 Filed 12-2-93 8:45 am]

BILLING CODE 6560-50-M

[FRL-4809-7]

Science Advisory Board Executive Committee, Environmental Futures Committee; Request for Public Comments

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Science Advisory Board (SAB) has undertaken an Environmental Futures Project at the request of EPA Administrator Carol M. Browner. This project involves a one year study to develop procedures to identify environmental problems of the future and to use the new procedures to prepare a list of those problems to guide EPA long range planning.

An Environmental Futures Committee (EFC) was formed by the SAB to coordinate the Environmental Futures Project activities of the Standing Committees of the SAB (the Clean Air Act Compliance Analysis Council, the Clean Air Scientific Advisory Committee, the Drinking Water Committee, the Ecological Processes and Effects Committee, the Environmental Engineering Committee, the Environmental Economics Advisory Committee, the Environmental Health Committee, the Indoor Air/Total Human Exposure Committee, the Radiation Advisory Committee, and the Research Strategies Advisory Committee) and to examine the methods available for environmental scanning, evaluating drivers, and developing future scenarios. The charge to this Committee includes: developing a procedure for short and long-term forecasting of natural and anthropogenic developments which may affect environmental quality and its protection; applying such procedure(s) for detailed examinations of some future developments; and drawing implications from the examinations of future developments and recommending actions for EPA to address them. Meetings of the Committees of the Science Advisory Board occur periodically and details on their agenda, location, and opportunities for public participation are published in the **Federal Register**. For information on upcoming meetings of the EFC refer to FR 50 (205):57599, October 26, 1993.

The Environmental Futures Committee would like to receive copies of other studies of forecasting future environmental trends, problems or scenarios from any individual, business entity, academic institution, government organization, or research organization. The EFC is particularly interested in receiving reports on studies that describe future societal conditions relevant to public health and the environment. EFC is particularly interested in studies, either quantitative or qualitative that have used systematic methods in their accomplishment. It would also be helpful if written responses from experts in forecasting and futures analysis would address the following questions:

1. What method did you use to anticipate future developments?

2. What are the areas of greatest uncertainty in your predictions, estimations, or scenarios?

3. Based on your predictions and trends, what are the implications for impacts to public health and the environment?

4. What advice can you offer to EPA or other Federal Agencies about how to pursue and apply an analysis of future trends and impacts?

Respondents should please send three copies on or before March 11, 1994, to the Environmental Futures Committee, Science Advisory Board (1400-F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. In some cases, the EFC may request up to thirty additional copies of published documents for wider distribution among the SAB. Inquiries about the EFC or its meetings should be mailed to the Designated Federal Officers, Mr. Robert Flaak or Dr. Edward S. Bender, Science Advisory Board (1400-F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or sent by FAX to (202) 260-7118.

It is not the intent of this notice to solicit oral comments rather, we are seeking written comments and documents. Following a review of these documents and comments, the EFC may ask some commenters, representing broad cross sections of opinion, to address the committee on particular issues.

Dated: November 24, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93-29612 Filed 12-2-93; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4809-8]

Science Advisory Board; Research Strategies Advisory Committee; Notification of Public Advisory Committee Conference Call

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given the Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB) will meet by conference call December 17, 1993. The conference call will be from 1:30 p.m. until 3:30 p.m. Eastern Time and is open to the public. The Committee will receive a briefing on an EPA Laboratory Study. The EPA program contact for this study is Mr. Tom Hadd, 202/260-7500, Office of Research Program Management, 401 M Street SW., Washington, DC 20460.

For additional information concerning this teleconference or to obtain an agenda, please contact Mrs. Dorothy Clark, Staff Secretary, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Phone: (202) 260-6552; Fax: (202) 260-7118. Anyone wishing to provide written public comment for the teleconferences should forward thirty-five copies to Mrs. Clark no later than 12 noon on Friday, December 10, 1993. Individuals wishing to participate in the meetings as audience or commenters should call the Designated Federal Officier (DFO) for the RSAC, Dr. Edward Bender at 202/260-2562 or Mr. Robert Flaak at 202/260-6552 as soon as possible as the number of available conference lines is limited. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total.

Dated: November 24, 1993.

A. Robert Flaak,

Acting Staff D[illegible]r, Science Advisory Board.

[FR Doc. 93-29[illegible] Filed 12-2-93; 8:45 am]

BILLING CODE 6560-50

[FRL-4802-1]

Final Modification to NPDES General Permit for the Western Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG290000)

AGENCY: United States Environmental Protection Agency.

ACTION: Final modification of NPDES general permit.

SUMMARY: Region 6 of the United States Environmental Protection Agency (EPA) today modifies NPDES General Permit GMG290000, which authorizes discharges from existing and new dischargers (but not new sources) in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A) to the Western portion of the Outer Continental Shelf of the Gulf of Mexico. As modified, the permit contains conditions implementing recently promulgated Offshore Subcategory Guidelines, contains changes to the critical dilutions at which produced water shall have no chronic toxicity, and addresses various industry concerns on monitoring requirements. EPA Region 6 has also deleted several monitoring conditions it no longer considers necessary. In addition, EPA today issues a general administrative compliance order requiring those dischargers covered by GMG 290000 who cannot comply with the permit's produced water toxicity and/or oil and grease limits to achieve compliance no later than 7 months after becoming aware of such non-compliance.

DATES: All modified permit limitations and requirements shall become effective January 3, 1994 except that the modified produced water toxicity monitoring requirements and critical dilutions stated in table 1 of the permit shall become effective immediately upon publication in accordance with 5 U.S.C. section 553(d)(1), since these changes relieve restrictions on persons regulated under the permit. Unmodified terms of the permit remain effective.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Caldwell, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 655-7513.

SUPPLEMENTARY INFORMATION: Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342, EPA Region 6 renewed NPDES general permit GMG 290000 at 57 FR 54642 (November 19, 1992). Primarily in response to newly promulgated Offshore Subcategory Guidelines and new information allowing a more accurate calculation of produced water critical dilutions, the Region proposed and solicited public comment on various modifications to the renewed permit at 58 FR 41474 (August 4, 1993) and in the Houston Post and New Orleans Times Picayune on August 7, 1993. The comment period closed on September 7, 1993.

Region 6 received written comments from the American Petroleum Institute (API), Offshore Operators Committee (OOC), Arco Oil and Gas Company, Shell Offshore Inc., Oxy USA Inc., Marathon Oil Company, Exxon Company USA, Chevron, M-I Drilling Fluids Co., Biotox Environmental Labs, Coastal Affairs Committee of the Lone Star Chapter of Sierra Club, and Ms. Carolyn Krack.

The Region adopted most modifications it proposed. In some instances, the wording of the proposed permit modification was changed or supplemented to resolve issues raised by the comments. In response to comments submitted, the final modified permit also accommodates use of diffusers, multi-port discharges, and addition of sea water for compliance with the permit's produced water toxicity limits; allows the discharge of produced water derived from facilities in the Territorial Seas to OCS waters of the Western Gulf; and limits the maximum amount of produced water which may be discharged from any point source to OCS waters to 25,000 bbls/day. Region 6 also modified the permit's produced water monitoring requirements. Instead of requiring that all facilities monitor by November 19, 1993, the permit now requires that the monitoring cycle commence on that date.

A copy of the Region's responses to comments may be obtained from Ms. Caldwell at the address listed above.

Other Legal Requirements:

Oil Spill Requirements

CWA section 311 prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges in compliance with NPDES permit limits are excluded from this prohibition, but the modified permit neither precludes enforcement action for violations of CWA section 311 nor relieves permittees from any responsibilities, liabilities, or penalties for other unauthorized discharges of oil or hazardous materials subject to CWA section 311.

Endangered Species Act

As explained at 58 FR 41476, EPA has found that today's modifications to the permit will not adversely affect any listed threatened or endangered species or designated critical habitat and requested written concurrence in that determination from the National Marine Fisheries Service (NMFS) and the United States Fish & Wildlife Service (FWS). On October 20, 1993, NMFS provided such concurrence. On September 17, 1992, FWS informed EPA that no listed species for which it is responsible would be affected by the modification.

Ocean Discharge Criteria Evaluation

At 58 FR 41476, Region 6 determined that discharges in compliance with the proposed modifications to the OCS

permit would not cause unreasonable degradation of the marine environment. Changes to the proposed modifications adopted in response to comments do not render the permit less protective of the marine environment and the Region thus reaffirms its earlier determination.

Coastal Zone Management Act

The Region found the proposed permit modifications consistent with Louisiana's approved Coastal Zone Management Plan and submitted that determination and a copy of the proposed modifications to the permit to the Louisiana Coastal Commission for certification. After informal consultation, the Commission provided such certification on October 14, 1993.

Marine Protection and Sanctuaries Act

Pursuant to the Marine Protection and Sanctuaries Act, the National Oceanographic and Atmospheric Administration has designated the Flower Garden Banks, an area within the coverage of the OCS general permit, a marine sanctuary. The OCS general permit prohibits discharges in areas of biological concern, including marine sanctuaries. No modification adopted today affects that prohibition.

State Water Quality Certification

Because state waters are not included in the area covered by the OCS general permit, its terms today modified are not subject to state water quality certification under CWA section 401.

Executive Order 12866.

The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that order. Guidance on Executive Order 12866 contain the same exemptions on OMB review as existed under Executive Order 12291. In fact, however, EPA prepared a regulatory impact analysis in connection with its promulgation of the guidelines on which a number of the permit's modified provisions are based and submitted it to OMB for review. See 58 FR 12494. Each of the permit modifications which will increase industry compliance costs was considered in that regulatory impact analysis and review.

Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act in EPA submissions for the NPDES program assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports). When it issued the OCS general permit, EPA estimated it would take an affected facility three hours to prepare a request for coverage and 38 hours per year to prepare discharge monitoring reports. Today's modifications will not increase that burden.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires that federal agencies prepare a regulatory flexibility analysis for regulations that will have a significant impact on a substantial number of small entities. In promulgating the Offshore Subcategory Guidelines on which many of today's modifications are based, EPA prepared an economic impact analysis showing they would directly impact no small entities. See 58 FR 12492. Based on those findings and pursuant to 5 U.S.C. 605(b), EPA Region 6 certifies the permit modifications adopted today will not have a significant impact on a substantial number of small entities.

NPDES Permit GMG290000 is hereby modified to read as it appears below. In addition, General Administrative Compliance Order which applies to that permit is hereby issued and appears following NPDES Permit No. GMG290000.

Myron O. Knudson,

Director, Water Management Division EPA Region 6.

Final Modification of the General Permit for the Western Gulf of Mexico Outer Continental Shelf (Permit No. GMG290000)

October 27, 1993

Environmental Protection Agency, Region 6, 1445 Ross Ave., Dallas, TX 75202

Authorization To Discharge Under the National Pollutant Discharge Elimination System

In compliance with the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq. the "Act"), operators of lease blocks located in the Offshore Subcategory of the Oil and Gas Point Source Category of the Gulf of Mexico (defined as seaward of the inner boundary of the territorial seas) are authorized to discharge to Federal Waters of the Gulf of Mexico (defined as 3 miles from shore and beyond) in accordance with effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, and III hereof.

Operators of lease blocks located within the general permit area must submit written notification to the Regional Administrator that they intend to be covered (See Part I.A.2). Unless otherwise notified in writing by the Regional Administrator after submission of the notification, owners or operators requesting coverage are authorized to discharge under this general permit. Operators of lease blocks within the general permit area who fail to notify the Regional Administrator of intent to be covered by this general permit are not authorized under this general permit to discharge pollutants from those facilities.

This permit does not authorize discharges from "new sources" as defined by the Oil and Gas Extraction Point Source Category; Offshore Subcategory Effluent Guidelines and New Source Performance Standards (58 FR 12453, March 4, 1993). Operators of new sources must apply for coverage under permit number GMG390000 and shall state that the facility is a new source in the request for coverage. Facilities which adversely affect properties listed or eligible for listing in the National Register of Historic Places are also not authorized to discharge under this permit.

This permit shall become effective at [_____] Central Daylight Savings Time on [_____].

This permit and the authorization to discharge shall expire at midnight, Central Daylight Savings Time, November 18, 1997.

Signed this [ ] day of [ ].

Myron O. Knudson, P.E.,

Director, Water Management Division, EPA Region 6.

Part I. Requirements for NPDES Permits

Section A. Permit Applicability and Coverage Conditions

1. Operations Covered

This permit establishes effluent limitations, prohibitions, reporting requirements, and other conditions on discharges from oil and gas facilities engaged in production, field exploration, drilling, well completion, and well treatment operations.

The permit coverage area consists of lease blocks located in and discharging to Federal waters in the Gulf of Mexico seaward of the line delineating 3 nautical miles from shore generally seaward of Louisiana and Texas State Waters and shall include lease blocks west of the western boundary of the outer continental shelf lease areas defined as: Mobile, Viosca Knoll (north part), Destin Dome, Desoto Canyon, Lloyd, and Henderson. In addition, permit coverage consists of lease blocks in the territorial seas of Texas and Louisiana which discharge to the above listed Federal Waters of the western

Gulf of Mexico. In Texas, where the state has mineral rights to 3 leagues, some operators with state lease tracts are required to request coverage under this Federal NPDES general permit. This permit does not authorize discharges from facilities discharging to the territorial seas of the Gulf coastal states or from facilities defined as "coastal", "onshore", or "stripper" (see 40 CFR Part 435, Subparts C, D, and E).

2. Notification Requirements

Written notification of intent to be covered including the legal name and address of the operator, the lease block number assigned by the Department of the Interior or the state or, if none, the name commonly assigned to the lease area, and the number and type of facilities located within the lease block shall be submitted fourteen days prior to the commencement of discharge.

Permittees located in lease blocks that (a) are neither in nor adjacent to MMS-defined "no activity" areas, or (b) do not require live-bottom surveys are required only to submit a notice of intent to be covered by this general permit. Permittees who are located in lease blocks that are either in or adjacent to "no activity" areas or require live bottom surveys are required to submit both a notice of intent to be covered that specifies they are located in such a lease block, and in addition are required to submit a notice of commencement of operations.

Permittees located in lease blocks either in or immediately adjacent to MMS-defined "no activity" areas, shall be responsible for determining whether a controlled discharge rate is required. The maximum discharge rate for drilling fluids is determined by the distance from the facility to the "no activity" area boundary and the discharge rate equation provided in Appendix A. The permittee shall report the distance from the permitted facility to the "no activity" area boundary and the calculated maximum discharge rate to EPA with its notice of commencement of operations.

For permittees located in lease blocks that require live-bottom surveys, the final determination of the presence or absence of live-bottom communities, the distance of the facility from identified live-bottom areas, and the calculated maximum discharge rate shall be reported with the notice of commencement of operations.

All notifications of intent to be covered and any subsequent reports under this permit shall be sent to the following address: Enforcement Branch (6W–EA), Region 6, U.S. Environmental Protection Agency, P.O. Box 50625, Dallas, TX 75270.

Operators who have previously submitted a written notification of intent to be covered by this permit need not submit an additional notification of intent to be covered until submitting a notification of intent to be covered by a subsequent permit.

3. Termination of Operations

Lease block operators shall notify the Regional Administrator within 60 days after the permanent termination of discharges from their facilities within the lease block.

4. Intent To Be Covered by a Subsequent Permit

Lease block operators authorized to discharge by this permit shall notify the Regional Administrator on or before May 19, 1997, that they intend to be covered by a permit that will authorize discharge from these facilities after the termination date of this permit (November 18, 1997).

Section B. Effluent Limitations and Monitoring Requirements

1. Drilling Fluids

The discharge of drilling fluids shall be limited and monitored by the permittee as specified in Table 3 of Appendix A and as below.

Special Note: The permit prohibitions and limitations that apply to drilling fluids, also apply to fluids that adhere to drill cuttings. Any permit condition that may apply to the drilling fluid discharges, therefore, also applies to cuttings discharges.

[Exception] The discharge rate limit for drilling fluids does not apply to drill cuttings.

(a) Prohibitions

Oil-Based Drilling Fluids. The discharge of oil-based drilling fluids and inverse emulsion drilling fluids is prohibited.

Oil Contaminated Drilling Fluids. The discharge of drilling fluids which contain waste engine oil, cooling oil, gear oil or any lubricants which have been previously used for purposes other than borehole lubrication, is prohibited.

Diesel Oil. Drilling fluids to which any diesel oil has been added as a lubricant may not be discharged.

(b) Limitations

Mineral Oil. Mineral oil may be used only as a carrier fluid (transporter fluid), lubricity additive, or pill.

Cadmium and Mercury in Barite. There shall be no discharge of drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg (dry weight) or cadmium in excess of 3.0 mg/kg (dry weight). The permittee shall analyze a representative sample of all stock barite used once, prior to drilling each well, and submit the results for total mercury and cadmium in the Discharge Monitoring Report (DMR).

If more than one well is being drilled at a site, new analyses are not required for subsequent wells, provided that no new supplies of barite have been received since the previous analysis. In this case, the results of the previous analysis should be used on the DMR.

Alternatively, the permittee may provide certification, as documented by the supplier(s), that the barite being used on the well will meet the above limits. The concentration of the mercury and cadmium in the barite shall be reported on the DMR as documented by the supplier.

Analyses shall be conducted by absorption spectrophotometry (see 40 CFR part 136, flame and flameless AAS) and the results expressed in mg/kg (dry weight).

Toxicity. Discharged drilling fluids shall meet both a daily minimum and a monthly average minimum 96-hour LC50 of at least 30,000 ppm in a 9:1 seawater to drilling fluid suspended particulate phase (SPP) volumetric ratio using *Mysidopsis bahia*. Monitoring shall be performed at least once per month for both a daily minimum and the monthly average. In addition, an end-of-well sample is required for a daily minimum. The type of sample required is a grab sample, taken from beneath the shale shaker. Permittees shall report pass or fail on the DMR using either the full toxicity test or the partial toxicity test as specified at 58 FR 12512; however, if the partial toxicity test shows a failure, all testing of future samples from that well shall be conducted using the full toxicity test method to determine the 96-hour LC50.

Free Oil. No free oil shall be discharged. Monitoring shall be performed using the static sheen method once per week when discharging. The number of days a sheen is observed must be recorded.

Discharge Rate. All facilities are subject to a maximum discharge rate of 1,000 barrels per hour.

For those facilities subject to the discharge rate limitation requirement because of their proximity to areas of biological concern, the discharge rate of drilling fluids shall be determined by the following equation:

$$R = 10^{[3 \text{ Log } (d/15) + T_i]}$$

Where:

R=discharge rate (bbl/hr)

d=distance (meters) from the boundary of a controlled discharge rate area

T_t=toxicity-based discharge rate term $\{\log (LC50 \times 8 \times 10^{-6})\} / 0.3657$

Drilling fluids discharges (based on a mud toxicity of 30,000 ppm) equal to or less than 544 meters from areas of biological concern shall comply with the discharge rate obtained from the equation above. Drilling fluids discharges which are shunted to the bottom as required by MMS lease stipulation are not subject to this discharge rate control requirement.

Appendix A illustrates the discharge rate equation in the form of a graph.

All discharged drilling fluids, including those fluids adhering to cuttings must meet the limitations of this section except that discharge rate limitations do not apply before installation of the marine riser.

(c) Monitoring Requirements

Drilling Fluids Inventory. The permittee shall maintain a precise chemical inventory of all constituents and their total volume or mass added downhole for each well.

2. Drill Cuttings

The discharge of drill cuttings shall be limited and monitored by the permittee as specified in Appendix A, Table 3 and as below.

Special Note: Any limitation or prohibition of this permit which applies to a drilling fluid also applies to drill cuttings removed from that drilling fluid. Any permit condition that applies to drilling fluid discharges, therefore, also applies to cuttings discharges. Monitoring requirements, however, are not the same.

(a) Prohibitions

Cuttings from Oil Based Drilling Fluids. The discharge of cuttings that are generated while using an oil-based or invert emulsion mud is prohibited.

Cuttings from Oil Contaminated Drilling Fluids. The discharge of cuttings that are generated using drilling fluids which contain waste engine oil, cooling oil, gear oil or any lubricants which have been previously used for purposes other than borehole lubrication, is prohibited.

Cuttings Generated Using Drilling Fluids which Contain Diesel Oil. Drill cuttings generated using drilling fluids to which any diesel oil has been added as a lubricant may not be discharged.

Cuttings Generated Using Mineral Oil. The discharge of cuttings generated using drilling fluids which contain mineral oil is prohibited except when the mineral oil is used as a carrier fluid (transporter fluid), lubricity additive, or pill.

(b) Limitations

Limitations that apply to drilling fluids also apply to drill cuttings.

Cadmium and Mercury in Barite. Drill cuttings generated using drilling fluids to which barite has been added shall not be discharged if such barite contains mercury in excess of 1.0 mg/kg (dry weight) or cadmium in excess of 3.0 mg/kg (dry weight).

Toxicity. Drill cuttings generated using drilling fluids with a daily minimum or a monthly average minimum 96-hour LC50 of less than 30,000 ppm in a 9:1 seawater to drilling fluid suspended particulate phase (SPP) volumetric ratio using *Mysidopsis bahia* shall not be discharged.

Monitoring shall be performed at least once per month for both a daily minimum and the monthly average minimum. In addition, an end-of-well sample is required for a daily minimum. The type of sample required is a grab sample, taken from beneath the shale shaker. Permittees shall report pass or fail on the DMR using either the full toxicity test or the partial toxicity test as specified at 58 *FR* 12512; however, if the partial toxicity test shows a failure, all future samples from that well shall be conducted using the full toxicity test method to determine the 96-hour LC50.

Free Oil. No free oil shall be discharged. Monitoring shall be performed using the static sheen test method once per week when discharging. The number of days a sheen is observed must be recorded.

3. Deck Drainage

(a) Limitations

Free Oil. No free oil shall be discharged, as determined by the visual sheen method on the surface of the receiving water. Monitoring shall be performed once per day when discharging, during conditions when an observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge, and the facility is manned. The number of days a sheen is observed must be recorded.

4. Produced Water

(a) Limitations

Flow Rate. Produced water discharges from all outfalls located within the 100 meters of each other shall not exceed 25,000 bbl/day. This limitation includes any seawater which has been added to the produced water waste stream.

Oil and Grease. Produced water discharges must meet both a daily maximum of 42 mg/l and a monthly average of 29 mg/l for oil and grease. The sample type shall be a 24-hour composite consisting of the arithmetic average of the results of 4 grab samples taken over a 24-hour period. If only one sample is taken for any one month, it must meet both the daily and monthly limits. Samples shall be collected prior to the addition of any seawater to the produced water waste stream. The analytical method is that specified at 40 CFR Part 136.

Toxicity. Produced water discharges must show no observed effect on a 7-day average minimum and monthly average minimum basis as measured by the 7-day chronic toxicity test (7-day NOEC). The No Observable Effect Concentration must be equal to or greater than the critical dilution concentration specified in Table 1 of this permit. Critical dilution shall be determined using Table 1 of this permit and is based on the discharge rate most recently reported on the discharge monitoring report, discharge pipe diameter, and water depth between the discharge pipe and the bottom. The monthly average minimum NOEC value is defined as the arithmetic average of all 7-day average NOEC values determined during the month.

[Exception] Permittees wishing to increase mixing may use a horizontal diffuser, add seawater, or may install multiple discharge ports.

Permittees using a horizontal diffuser shall install the diffuser designed so that there shall be no chronic toxicity at the critical dilution calculated by the following method.

The method for running CORMIX2 is as follows:

1. The horizontal diffuser predicted mixing shall be determined by the permittee using the CORMIX2 model and the Brooks equation (defined in Step 3, below) with the following input conditions:

Density Gradient=0.15 σ_t/m

Ambient seawater density at diffuser depth=1017 kg/m^3

Produced water density=1070 kg/m^3

Current speed=10 cm/sec.

2. Calculate the near field dilution factor (S) at the end of the impingement region, the calculated collapsed plume width (H), and downstream distance where the impingement region ends (x) from the CORMIX2 model.

3. Using the input conditions from Step 1 and calculated factors from Step 2, above, calculate the far field dilution factor, C_i/C, using the Brooks equation:

$$\frac{C_i}{C} = \left(\mathrm{erf}\left[\left(\frac{1.5}{\left(1 + 8AH^{\frac{4}{3}} \frac{t}{H^2}\right)^3 - 1} \right)^{\frac{1}{2}} \right] \right)^{-1}$$

where:

C_i=concentration at end of impingement

C=concentration at edge of 100 m mixing zone

H=collapsed plume width, in meters

A=4/3 power law dispersion parameter=0.000453 $m^{2/3}$/sec

u=current speed

x=downstream distance where impingement region ends (from step 1, above)

t=travel time from end of impingement to 100 m, =(100m − x)/u and;

erf=the error function

4. The total dilution at the 100 m mixing zone is defined as the product of the near-field dilution factor, S, found in step 2 and the far-field dilution factor, C_i/C, calculated is Step 3.

Permittees shall state the calculated critical dilution corresponding to that diffuser on the annual Discharge Monitoring Report (DMR) with a certification that the diffuser is installed. The CORMIX2 model runs shall be retained by the permittee as part of its NPDES records.

Permittees using vertically aligned multiple discharge ports shall provide vertical separation between ports which is consistent with Table 1A of this permit. When multiple discharge ports are installed, the depth difference of the discharge port closest to the sea floor shall be the depth difference used to determine the critical dilution from Table 1 of this permit. The critical dilution value shall be based on the port flow rate (total flow rate divided by the number of discharge ports) and based on the diameter of the discharge port (or smallest discharge port if they are of different styles).

When seawater is added to the produced water prior to discharge, the total produced water flow, including the added seawater, shall be used in determining the critical dilution from Table 1.

(b) Monitoring Requirements

Flow. Once per month, an estimate of the flow (MGD) must be recorded.

Toxicity. The flow used to determine the frequency of toxicity testing shall be the flow most recently reported on the discharge monitoring report for the facility. The required frequency of testing shall be determined as follows:

Discharge rate	Toxicity testing frequency
0–499 bbl/day	Once per year.
500–4,599 bbl/day	Once per quarter.
4,600 bbl/day and above.	Once per month.

The above monitoring periods shall commence the date of publication in the **Federal Register.**

Samples for monitoring produced water toxicity shall be collected after addition of any added substances, including seawater that is added prior to discharge, and before the flow is split for multiple discharge ports. Samples also shall be representative of produced water discharges when scale inhibitors, corrosion inhibitors, biocides, paraffin inhibitors, well completion fluids, workover fluids, and/or well treatment fluids are used in operations.

If the permittee has been compliant with this toxicity limit for one full year after commencement of monitoring, the required testing frequency shall be reduced to once per year.

Bioaccumulation. Facilities which discharge more than 4,600 barrels of produced water per day shall collect and monitor marine organism tissue samples twice per year. The discharge rate used to determine participation under these requirements shall be the flow most recently reported to EPA Region 6 on the discharge monitoring report. Marine organism edible tissue shall be monitored for the following pollutants: Benzo (a) Pyrene, Fluorene, Bis (2-ethylhexyl) Phthalate, Ethylbenzene, Toluene, Benzene, Phenol, Arsenic, Cadmium, Mercury, Radium 226, and Radium 228. Three marine species, with five adults from each of those species, shall be collected and sampled twice annually from the receiving waters. Samples shall be collected within 100 meters downcurrent, from the point of discharge, at the time of discharge of produced water. Organisms taken shall include one species of mollusc, one species of crustacea, and one species of nektonic fish. Species sampled for edible tissue shall be from the following list:

Crustacea	Mollusc	Nektonic fish
Blue crab	Eastern oyster.	Atlantic croaker.
Stone crab	Clam species.	Snapper species.
Shrimp species	Mussel species.	Grouper species.

Sampling shall be conducted once during the summer months (June through August) and once during the winter months (December through February). Results shall be reported in the DMR for the reporting period in which samples are collected and analyzed. Monitoring shall commence by November 19, 1994.

Alternatively, operators required to conduct bioaccumulation monitoring under this permit may submit a plan for an equivalent industry-wide bioaccumulation monitoring study to EPA Region 6 for approval. If Region 6 approves an equivalent bioaccumulation monitoring study, the monitoring conducted under that study shall constitute compliance with the bioaccumulation monitoring requirements of Part I.B.4.(b) of this permit for those permittees who participate in such a study.

Radioactivity. Produced water discharges shall be monitored for Radium 226 and Radium 228 (See Part I.D.7). The flow used to determine the frequency of radiation monitoring shall be the average flow most recently reported on the discharge monitoring report for the facility. The required frequency of testing shall be determined as follows:

Discharge rate	Monitoring frequency
0–499 bbl/day	Once per year.
500–4,599 bbl/day	Once per quarter.
4,600 bbl/day and above.	Once per month.

The above monitoring periods shall commence November 19, 1993. When the permittee has monitored for radioactivity for one full year the required testing frequency shall be reduced to once per year.

5. Produced Sand

There shall be no discharge of produced sand.

6. Well Treatment Fluids, Completion Fluids, and Workover Fluids

(a) Limitations

Free Oil. No free oil shall be discharged. Monitoring shall be performed using the static sheen test method once per day when discharging and the facility is manned. The number of days a sheen is observed must be recorded.

Oil and Grease. Well treatment, completion, and workover fluids must meet both a daily maximum of 42 mg/l and a monthly average of 29 mg/l limitation for oil and grease. The sample type may be either grab, or a 24-hour composite consisting of the arithmetic average of the results of 4 grab samples taken within the 24-hour period. If only one sample is taken for any one month,

it must meet both the daily and monthly limits. The analytical method is that specified at 40 CFR Part 136.

Priority Pollutants. For well treatment fluids, completion fluids, and workover fluids, the discharge of priority pollutants is prohibited except in trace amounts. Information on the specific chemical composition of any additives containing priority pollutants shall be recorded.

[Note] If materials added downhole as well treatment, completion, or workover fluids contain no priority pollutants, the discharge is assumed not to contain priority pollutants except possibly in trace amounts.

(b) Monitoring Requirements

This discharge shall be considered produced water for monitoring purposes when commingled with produced water.

7. Sanitary Waste (Facilities Continuously Manned by 10 or More Persons)

(a) Prohibitions

Solids. No floating solids may be discharged. Observations must be made once per day, during daylight in the vicinity of sanitary waste outfalls, following either the morning or midday meals and at the time during maximum estimated discharge.

(b) Limitations

Residual Chlorine. Total residual chlorine is a surrogate parameter for fecal coliform. Discharge of residual chlorine must meet a minimum of 1 mg/l and shall be maintained as close to this concentration as possible. A grab sample must be taken once per month and the concentration recorded (approved method, Hach CN–66–DPD).

[Exception] Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and the test results maintained at the facility.

8. Sanitary Waste (Facilities Continuously Manned by 9 or Fewer Persons or Intermittently by Any Number)

(a) Prohibitions

Solids. No floating solids may be discharged to the receiving waters. An observation must be made once per day for floating solids. Observation must be made during daylight in the vicinity of sanitary waste outfalls following either the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed must be recorded.

[Exception] Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation and the test results maintained at the facility.

9. Domestic Waste

(a) Prohibitions

Solids. No floating solids or foam shall be discharged. In addition, food waste, comminuted or not, may not be discharged within 12 nautical miles from nearest land. The discharge of all other domestic wastes shall be in accordance with Title 33 CFR Part 151.

(b) Limitations

Solids. Comminuted food waste which can pass through a 25 mm mesh screen (approximately 1 inch) may be discharged 12 or more nautical miles from nearest land.

(c) Monitoring Requirements

An observation shall be made once per day during daylight in the vicinity of domestic waste outfalls following the morning or midday meal and at a time during maximum estimated discharge. The number of days solids are observed must be recorded.

10. Miscellaneous Discharges

Desalination Unit Discharge
Diatomaceous Earth Filter Media
Blowout Preventer Fluid
Uncontaminated Ballast Water
Uncontaminated Bilge Water
Mud, Cuttings, and Cement at the Seafloor
Uncontaminated Freshwater
Uncontaminated Seawater
Boiler Blowdown
Source Water and Sand
Excess Cement Slurry

(a) Limitations

Free Oil. No free oil shall be discharged. Discharge is limited to those times that a visual sheen observation is possible unless the operator uses the static sheen method. Monitoring shall be performed using the visual sheen method on the surface of the receiving water once per week when discharging, or by use of the static sheen method at the operator's option. The number of days a sheen is observed must be recorded.

[Exceptions] Uncontaminated seawater, uncontaminated freshwater, source water and source sand, uncontaminated bilge water, and uncontaminated ballast water may be discharged from platforms that are on automatic purge systems without monitoring for free oil when the facilities are not manned. Additionally, discharges at the seafloor of: muds and cuttings prior to installation of the marine riser, cement, and blowout preventer fluid may be discharged without monitoring with the static sheen test when conditions make observation of a visual sheen on the surface of the receiving water impossible.

Section C. Other Discharge Limitations

1. Floating Solids or Visible Foam

There shall be no discharge of floating solids or visible foam from any source in other than trace amounts.

2. Halogenated Phenol Compounds

There shall be no discharge of halogenated phenol compounds as a part of any waste stream authorized in this permit.

3. Dispersants, Surfactants, and Detergents

The facility operator shall minimize the discharge of dispersants, surfactants and detergents except as necessary to comply with the safety requirements of the Occupational Safety and Health Administration and the Minerals Management Service. This restriction applies to tank cleaning and other operations which do not directly involve the safety of workers. The restriction is imposed because detergents disperse and emulsify oil, thereby increasing toxicity and making the detection of a discharge of oil more difficult.

4. Rubbish, Trash, and Other Refuse

The discharge of any solid material not authorized in the permit (as described above) is prohibited.

This permit includes limitations set forth by the U.S. Coast Guard in its interim final rule implementing Annex V of MARPOL 73/78 for domestic waste disposal from all fixed or floating offshore platforms and associated vessels engaged in exploration or exploitation of seabed mineral resources. These limitations, as specified by Congress (33 U.S.C. 1901, the Act to Prevent Pollution from ships), apply to all navigable waters of the United States.

This permit prohibits the discharge of "garbage" including food wastes, within 12 nautical miles from nearest land. Comminuted food waste (able to pass through a screen with a mesh size no

larger than 25 mm, approx. 1 inch) may be discharged when 12 nautical miles or more from land. Graywater, drainage from dishwater, shower, laundry, bath, and washbasins are not considered garbage within the meaning of Annex V. Incineration ash and non-plastic clinkers that can pass through a 25 mm mesh screen may be discharged greater than 3 miles from nearest land, otherwise ash and non-plastic clinkers can only be discharged beyond 12 nautical miles from nearest land. (See Interim Final Regulations Implementing Annex V of MARPOL 73/78, 54 FR 18384, April 28, 1989).

5. Area of Biological Concern

There shall be no discharge in Areas of Biological Concern, including marine sanctuaries. The Flower Garden Banks has been determined to be a Marine Sanctuary and is within the geographical area covered under this permit.

Section D. Other Conditions

1. Samples of Wastes

If requested, the permittee shall provide EPA with a sample of any waste in a manner specified by the Agency.

2. Drilling Fluids Toxicity Test

The approved test method for permit compliance is identified as:

Drilling Fluids Toxicity Test 58 FR 12453, Appendix 2.

3. Produced Water Toxicity Testing Requirements

(a) The permittee shall test the produced water discharge for toxicity in accordance with the provisions in this section. Toxicity is herein defined as a statistically significant difference at the 95% confidence level) between survival and/or reproduction or growth of the appropriate test organism in a specified effluent dilution and the control (0% effluent).

(b) All test organisms, procedures, and quality assurance requirements used shall be in accordance with the latest revision of "Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms," EPA/600/4–87/028, or the most recent update thereof. The following tests shall be used:

1. Chronic static renewal 7-day survival, growth, and fecundity test using *Mysidopsis bahia* (Method 1007.0).

2. Chronic static renewal 7-day larval survival and growth test using sheepshead minnow (*Cyprinodon variegatus*) (Method 1004.0) or inland silverside minnow (*Menidia beryllina*) (Method 1006.0). However, the permittee is restricted to the use of a single minnow species for all biomonitoring testing.

(c) Five (5) dilutions in addition to an appropriate control (0% effluent) shall be used in the toxicity tests. One of the additional effluent concentrations shall correspond to the whole effluent toxicity (7-day NOEC) limitation established in Part I of this permit.

(d) The samples shall be collected at a point following the last treatment unit. Dilution water used in the toxicity tests will be synthetic water or natural seawater collected from an area unaffected by produced water discharges. The synthetic dilution water must fulfill the requirements of item 7 and have a pH and hardness similar to that of the receiving water, and a salinity as required by the test methods.

(e) A grab sample representative of produced water discharges when scale inhibitors, corrosion inhibitors, biocides, paraffin inhibitors, well completion fluids, workover fluids, and/or well treatment fluids are used in operations shall be collected from outfalls discharging produced water. The toxicity test must be initiated within 36 hours after the collection of the grab. Samples shall be chilled to 4 degrees Centigrade when collected, shipped, and/or stored and shall be stored in a manner which minimizes loss of volatiles.

(f) Test Acceptance

(1) The toxicity test control (0% effluent) must have a survival equal to or greater than 80% to be considered valid. Should the control survival be less than 80%, that test (both the control and all effluent dilutions) shall be repeated.

(2) The mean weight of unpreserved sheepshead minnow larvae at the end of 7 days in the control (0% effluent) must be 0.60 mg or greater. Should the control larval mean weight be less than 0.60 mg, the toxicity test including the control and all effluent dilutions shall be repeated.

(3) The mean weight of mysid shrimp at the end of 7 days in the control (0% effluent) must be 0.20 mg or greater. Should the control mean weight be less than 0.20 mg, the toxicity test including the control and all effluent dilutions shall be repeated.

(4) The minimum number of mysid shrimp females producing eggs must be 50% or greater in the control (0% effluent). Should the number of egg producing females be less than 50%, then the fecundity data cannot be used as an endpoint in the test.

(5) The percent coefficient of variation shall be 40% or less for the control (0% effluent), and the effluent concentration defining the NOEC. Should the percent coefficient of variation be greater than 40% in the control, that test (both the control and all effluent dilutions) shall be repeated.

(g) The permittee shall prepare a full report of the results according to the Report Preparation Section of "Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms." The report shall be retained pursuant to the provisions of Part II.C.3 of this permit. The permittee shall also prepare the toxicity testing information contained in Appendix A, Table 2. The information in Table 2 shall be retained pursuant to the provisions of Part II.C.3 of this permit.

(h) The NOEC (no observed effect concentration) for a specific species is defined as the greatest effluent concentration which does not illicit a response that is statistically different from the control (0% effluent) at the 95% confidence level.

(i) The whole effluent toxicity (7-day NOEC) value to be used in determining DMR reporting values is the lowest NOEC determined during the 7-day test period for either of the two test species specified in this permit. The permittee shall report the 7-day NOEC in the DMR for the reporting period.

4. Bioaccumulation Testing

The approved test methods for bioaccumulation testing of edible fish tissue are:

Organics: Gas Chromatograph/Mass Spectrometric, Method Number 516, Standard Methods for Examination of Water and Waste Water, 16th Edition.

Metals: Electrothermal Atomic Absorption Spectrometry, Method Number 304, Standard Methods for Examination of Water and Waste Water, 16th Edition.

5. Visual Sheen Test

The visual sheen test is used to detect free oil by observing the surface of the receiving water for the presence of a sheen while discharging. The operator must conduct a visual sheen test only at times when a sheen could be observed. This restriction eliminates observations when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g., overcast skies, rough seas, etc.).

The observer must be positioned on the rig or platform, relative to both the discharge point and current flow at the time of discharge, such that the observer can detect a sheen should it surface

down current from the discharge. For discharges that have been occurring for a least 15 minutes previously, observations may be made any time thereafter. For discharges of less than 15 minutes duration, observations must be made during both discharge and at 5 minutes after discharge has ceased.

6. Static Sheen Test

a. Scope and Application. The static sheen test is to be used as a compliance test for the "no free oil" requirement for discharges of drilling fluids; drill cuttings; and well treatment, completion, and workover fluids. For all other discharges with a "no free oil discharge" requirement except deck drainage, the static sheen test is to be used as a compliance test when it is not possible for the operator to accomplish a visual sheen observation on the surface of the receiving water. This would preclude an operator from attempting a visual sheen observation when atmospheric or surface conditions prohibit the observer from detecting a sheen (e.g., during rough seas, etc.). Free oil refers to any oil contained in a waste stream that when discharged will cause a film or sheen upon or a discoloration of the surface of the receiving water.

b. *Summary of Method.* 15 ml samples of drilling fluids; well treatment, completion and workover fluids, formation test fluids, or treated wastewater from drilling fluid dewatering activities, or 15 gm (wet weight basis) samples of drill cuttings or produced sand are introduced into ambient seawater in a container having an air to liquid interface area of 1000 cm^2 (155.5 in^2). Samples are dispersed within the container and observations made no more than one hour later to ascertain if these materials cause a sheen, iridescence, gloss, or increased reflectance on the surface of the test seawater. The occurrence of any of these visual observations will constitute a demonstration that the tested material contains "free oil", and therefore, results in a prohibition on its discharge into receiving waters.

c. *Interferences.* Residual "free oil" adhering to sampling containers, the magnetic stirring bar used to mix drilling Fluids, and the stainless steel spatula used to mix drill cuttings will be the principal sources of contamination problems. These problems should only occur if improperly washed and cleaned equipment are used for the test. The use of disposable equipment minimizes the potential for similar contamination from pipets and the test container.

d. *Apparatus, Materials, and Reagents.*

d.1 Apparatus.

d.1.1 Sampling Containers—1 L polyethylene beakers and 1 L glass beakers.

d.1.2 Graduated cylinder—100 ml graduated cylinder required only for operations where predilution of mud discharges is required.

d.1.3 Plastic disposable weighing boats.

d.1.4 Triple-beam scale.

d.1.5 Disposable pipets—25 ml disposable pipets.

d.1.6 Magnetic stirrer and stirring bar.

d.1.7 Stainless steel spatula.

d.1.8 Test container—open plastic container whose internal cross-section parallel to its opening has an area of 1000 ± 50 cm^2 (155.5 ± 7.75 in^2), and a depth of at least 13 cm (5 inches) and no more than 30 cm (11.8 inches).

d.2 *Materials and Reagents.*

d.2.1 Plastic liners for the test container—Oil free, heavy duty plastic trash can liners that do not inhibit the spreading of an oil film. Liners must be of sufficient size to completely cover the interior surface of the test container. Permittees must determine an appropriate local source of liners that do not inhibit the spreading of 0.05 ml diesel fuel added to the lined test container under the test conditions and protocol described below.

d.2.2 Ambient receiving water.

e. *Calibration.*

None currently specified.

f. *Quality Control Procedures.*

None currently specified.

g. *Sample Collection and Handling.*

g.1 Sampling containers must be thoroughly washed with detergent, rinsed a minimum of three times with fresh water, and allowed to air dry before samples are collected.

g.2 Samples of drilling fluid to be tested shall be taken at the shale shaker after cuttings have been removed. The sample volume should range between 200 ml and 500 ml.

g.3 Samples of drill cuttings will be taken from the shale shaker screens with a clean spatula or similar instrument and placed in a glass beaker. Cuttings samples shall be collected prior to the addition of any washdown water and should range between 200 g and 500 g.

g.4 Samples of well treatment, completion and workover fluids, formation test fluids, and treated wastewater from drilling fluid dewatering activities must be obtained from the holding facility prior to discharge; the sample volume should range between 200 ml and 500 ml.

g.5 Samples must be tested no later than 1 hour after collection.

g.6 Drilling fluid samples must be mixed in their sampling containers for 5 minutes prior to the test using a magnetic bar stirrer. If predilution is imposed as a permit condition, the sample must be mixed at the same ratio with the same prediluting water as the discharged muds and stirred for 5 minutes.

g.7 Drill cuttings must be stirred and well mixed by hand in their sampling containers prior to testing, using a stainless steel spatula.

h. *Procedure.*

h.1 Ambient receiving water must be used as the "receiving water" in the test. The temperature of the test water shall be as close as practicable to the ambient conditions in the receiving water, not the room temperature of the observation facility. The test container must have an air to liquid interface area of 1000±50 cm^2. The surface of the water should be no more than 1.27 cm (1/2 inch) below the top of the test container.

h.2 Plastic liners shall be used, one per test container, and discarded afterwards. Some liners may inhibit spreading of added oil; operators shall determine an appropriate local source of liners that do not inhibit the spreading of the oil film.

h.3 A 15 ml sample of drilling fluid, well treatment, completion and workover fluids, formation test fluids, or treated wastewater from drilling fluid dewatering activities must be introduced by pipet into the test container 1 cm below the water surface. Pipets must be filled and discharged with test material prior to the transfer of test material and its introduction into test containers. The test water-test material mixture must be stirred using the pipet to distribute the test material homogeneously throughout the test water. The pipet must be used only once for a test and then discarded.

h.4 Drill cuttings should be weighed on plastic weighing boats; 15 gram samples must be transferred by scraping test material into the test water with a stainless steel spatula. Drill cuttings shall not be prediluted prior to testing. Also, drilling fluids and cuttings must be tested separately. The weighing boat must be immersed in the test water and scraped with the spatula to transfer any residual material to the test container. The drill cuttings must be stirred with the spatula to an even distribution of solids on the bottom of the test container.

h.5 Observations must be made no later than 1 hour after the test material is transferred to the test container. Viewing points above the test container should be made from at least three sides of the test container, at viewing angles of approximately 60° and 30° from the horizontal. Illumination of the test

container must be representative of adequate lighting for a working environment to conduct routine laboratory procedures. It is recommended that the water surface of the test container be observed under a fluorescent light source such as a dissecting microscope light. The light source shall be positioned above and directed over the entire surface of the pan.

h.6 Detection of a "silvery" or "metallic" sheen, gloss, or increased reflectivity; visual color; or iridescence; or an oil slick, on the water surface of the test container surface shall constitute a demonstration of "free oil". These visual observations include patches, streaks, or sheets of such altered surface characteristics shall constitute a demonstration of free oil. If the free oil content of the sample approaches or exceeds 10 percent, the water surface of the test container may lack color, a sheen or iridescence, due to the increased thickness of the film; thus, the observation for an oil slick is required. The surface of the test container shall not be disturbed in any manner that reduced the size of any sheen or slick that may be present.

If an oil sheen or slick occurs on *less than one-half* of the surface area after drilling muds or cuttings are introduced to the test container, observations will continue for up to one hour. If the sheen or slick increases in size and covers greater than one-half of the surface area of the test container during the observation period, the discharge of the material shall cease. If the sheen or slick does not increase in size to cover greater than one-half of the test container surface area after one hour of observation, discharge may continue and additional sampling is not required.

If a sheen or slick occurs on *greater than one-half* of the surface area of the test container after the test material is introduced, discharge of the tested material shall cease. The permittee may retest the material causing the sheen or slick. If subsequent tests do not result in a sheen or slick covering greater than one-half of the surface area of the test container, discharge may continue.

7. *Radionuclide test.*

The approved test methods for monitoring produced water for radionuclides are:

Radium 226: Method Number 7500–Ra C, Standard Methods for the Examination of Water and Wastewater, Seventeenth Edition, APHA, AWWA, and WPCF.

Radium 228: Method Number 7500–Ra D, Standard Methods for the Examination of Water and Wastewater, Seventeenth Edition, APHA, AWWA, and WPCF.

Part II. Standard Conditions for NPDES Permits

Section A. General Conditions

1. Introduction

In accordance with the provisions of 40 CFR Part 122.41, et. seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES permits set forth in the Clean Water Act, as amended, (herein-after known as the "Act") as well as ALL applicable regulations.

2. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action or for requiring a permittee to apply and obtain an individual NPDES permit.

3. Toxic Pollutants

a. Notwithstanding Part II.A.5, if any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of the Act for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition.

b. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

4. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application shall be submitted at least 180 days before the expiration date of this permit. The Director may grant permission to submit an application less than 180 days in advance but no later than the permit expiration date. Continuation of expiring permits shall be governed by regulations promulgated at 40 CFR 122.6 and any subsequent amendments.

5. Permit Flexibility

This permit may be modified, revoked and reissued, or terminated for cause in accordance with 40 CFR 122.62–64. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

6. Property Rights

This permit does not convey any property rights of any sort, or any exclusive privilege.

7. Duty To Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

8. Criminal and Civil Liability

Except as provided in permit conditions on "Bypassing" and "Upsets", nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the permit may subject the permittee to criminal enforcement pursuant to 18 U.S.C. 1001.

9. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

10. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State Law or regulation under authority preserved by section 510 of the Act.

11. Severability

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the

application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

Section B. Proper Operation and Maintenance

1. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. The permittee is responsible for maintaining adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failure either by means of alternate power sources, standby generators or retention of inadequately treated effluent.

2. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

3. Proper Operation and Maintenance

a. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by permittee as efficiently as possible and in a manner which will minimize upsets and discharges of excessive pollutants and will achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

b. The permittee shall provide an adequate operating staff which is duly qualified to carry out operation, maintenance and testing functions required to ensure compliance with the conditions of this permit.

4. Bypass of Treatment Facilities

a. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Parts II.B.4.b and 4.c.

b. Notice

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall, within 24 hours, submit notice of an unanticipated bypass as required in Part II.D.7.

c. Prohibition of Bypass

(1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and,

(c) The permittee submitted notices as required by Part II.B.4.b.

(2) The Director may allow an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed at Part II.B.4.c(1).

5. Upset Conditions

a. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Part II.B.5.b. are met.

No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

b. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required by Part II.D.7; and,

(4) The permittee complied with any remedial measures required by Part II.B.2.

c. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

6. Removed Substances

Solids, sewage sludges, filter backwash, or other pollutants removed in the course of treatment or wastewater control shall be disposed of in a manner such as to prevent any pollutant from such materials from entering navigable waters. Any substance specifically listed within this permit may be discharged in accordance with specified conditions, terms, or limitations.

Section C. Monitoring and Records

1. Inspection and Entry

The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by the law to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

2. Representative Sampling

Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation. copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time.

The operator shall maintain records at development and production facilities for 3 years, wherever practicable and at a specific shore-based site whenever not practicable. The operator is responsible for maintaining records at exploratory

facilities while they are discharging under the operators control and at a specific shore-based site for the remainder of the 3-year retention period.

4. Record Contents

Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

5. Monitoring Procedures

a. Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.

b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.

c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

6. Flow Measurements

Appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to insure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of less than 10% from true discharge rates throughout the range of expected discharge volumes.

Section D. Reporting Requirements

1. Planned Changes

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR Part 122.29(b); or,

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements listed at Part II.D.10.a.

2. Anticipated Noncompliance

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Transfers

This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such requirements as may be necessary under the Act.

4. Discharge Monitoring Reports and Other Reports

The operator of each lease block shall be responsible for submitting monitoring results for all facilities within each lease block. The monitoring results for the facilities (platform, drilling ship, or semisubmersible) within the particular lease block shall be summarized on the annual Discharge Monitoring Report for that lease block.

Monitoring results obtained during the previous 12 months shall be summarized and reported on a Discharge Monitoring Report (DMR) form (EPA No. 3320–1). In addition, the highest monthly average for all activity within each lease block shall be reported. The highest daily maximum sample taken during the reporting period shall be reported as the daily maximum concentration.

If any category of waste (discharge) is not applicable for all facilities within the lease block, due to the type of operations (e.g., drilling, production) no reporting is required; however, "no discharge" must be recorded for those categories on the DMR. If all facilities within a lease block have had no activity during the reporting period then "no activity" must be written on the DMR. Operators may list a summary of all lease blocks where there is no activity on one DMR. All pages of the DMR must be signed and certified as required by Part II.D.11 and returned when due.

5. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR Part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the Discharge Monitoring Report (DMR). Such increased monitoring frequency shall also be indicated on the DMR.

6. Averaging of Measurements

Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified.

7. Twenty-Four Hour Reporting

a. The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain the following information:

(1) A description of the noncompliance and its cause;

(2) The period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and,

(3) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

b. The following shall be included as information which must be reported within 24 hours:

(1) Any unanticipated bypass which exceeds any effluent limitation in the permit;

(2) Any upset which exceeds any effluent limitation in the permit; and,

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in part II of the permit to be reported within 24 hours.

c. The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

8. Other Noncompliance

The permittee shall report all instances of noncompliance not reported under parts II.D.4 and D.7 at the time monitoring reports are submitted. The reports shall contain the information listed at part II.D.7.

9. Other Information

Where the permittee becomes aware that he failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, he shall promptly submit such facts or information.

10. Changes in Discharges of Toxic Substances

The permittee shall notify the Director as soon as it knows or has reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR part 122, appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) One hundred micrograms per liter (100 µg/l);

(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitro-phenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) The level established by the Director.

b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(1) Five hundred micrograms per liter (500 µg/l);

(2) One milligram per liter (1 mg/l) for antimony;

(3) The level established by the Director.

11. Signatory Requirements

All applications, reports, or information submitted to the Director shall be signed and certified.

a. All permit applications shall be signed as follows:

(1) For a corporation—by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(a) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation; or,

(b) The manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship—by a general partner or the proprietor, respectively.

(3) For a municipality, State, Federal, or other public agency—by either a principal executive officer or ranking elected official. For purposes of this election, a principal executive officer of a Federal agency includes:

(a) The chief executive officer of the agency, or

(b) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

b. All reports required by the permit and other information requested by the Director shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described above;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,

(3) The written authorization is submitted to the Director.

c. Certification. Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

12. Availability of Reports

Except for applications, effluent data, permits, and other data specified in 40 CFR 122.7, any information submitted pursuant to this permit may be claimed as confidential by the submitter. If no claim is made at the time of submission, information may be made available to the public without further notice.

Section E. Penalties for Violations of Permit Conditions

1. Criminal

a. *Negligent Violations.* The Act provides that any person who negligently violates permit conditions implementing section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less $2,500 nor more then $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

b. *Knowing Violations.* The Act provides that any person who knowingly violates permit conditions implementing section 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less $5,000 nor more then $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

c. *Knowing Endangerment.* The Act provides that any person who knowingly violates permit conditions implementing sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

d. *False Statements.* The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See section 309.c.4 of the Clean Water Act.)

2. Civil Penalties

The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

3. Administrative Penalties

The Act provides that any person who violates a permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

a. *Class I Penalty.* Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

b. *Class II Penalty.* Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

Section F. Additional General Permit Conditions

1. When the Regional Administrator May Require Application for an Individual NPDES Permit

The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual NPDES permit when:

(a) The discharge(s) is a significant contributor of pollution;

(b) The discharger is not in compliance with the conditions of this permit;

(c) A change has occurred in the availability of the demonstrated technology or practices for the control or abatement of pollutants applicable to the point sources;

(d) Effluent limitations guidelines are promulgated for point sources covered by this permit;

(e) A Water Quality Management Plan containing requirements applicable to such point source is approved;

(f) The point source(s) covered by this permit no longer:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes;

(3) Require the same effluent limitations or operating conditions;

(4) Require the same or similar monitoring; and

(5) In the opinion of the Regional Administrator, are more appropriately controlled under an individual permit than under a general permit.

(g) The bioaccumulation monitoring results show concentrations of the listed pollutants in excess of levels safe for human consumption.

The Regional Administrator may require any operator authorized by this permit to apply for an individual NPDES permit only if the operator has been notified in writing that a permit application is required.

2. When an Individual NPDES Permit May Be Requested

(a) Any operator authorized by this permit may request to be excluded from the coverage of this general permit by applying for an individual permit.

(b) When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to the owner or operator is automatically terminated on the effective date of this individual permit.

(c) A source excluded from coverage under this general permit solely because it already has an individual permit may request that its individual permit be revoked, and that it be covered by this general permit. Upon revocation of the individual permit, this general permit shall apply to the source.

3. *Permit Reopener Clause*

If applicable new or revised effluent limitations guidelines covering the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR 435) are promulgated in accordance with sections 301(b), 304(b)(2), and 307(a)(2), and the new or revised effluent limitations guidelines are more stringent than any effluent limitations in this permit or control a pollutant not limited in this permit, the permit may, at the Director's discretion, be modified to conform to the new or revised effluent limitations guidelines.

Notwithstanding the above, if an offshore oil and gas extraction point source discharge facility is subject to the ten year protection period for new source performance standards under the Clean Water Act section 306(d), this reopener clause may not be used to modify the permit to conform to more stringent new source performance standards or technology based standards developed under section 301(b)(2) during the ten year period specified in 40 CFR Part 122.29(d).

The Director may modify this permit upon meeting the conditions set forth in this reopener clause.

Section G. Definitions

All definitions contained in section 502 of the Act shall apply to this permit and are incorporated herein by references. Unless otherwise specified in this permit, additional definitions of words or phrases used in this permit are as follows:

1. "Act" means the Clean Water Act (33 U.S.C. 1251 et. seq.), as amended.

2. "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

3. "Annual Average" means the average of all discharges sampled and/or measured during a calendar year in which daily discharges are sampled and/or measured, divided by the number of discharges sampled and/or measured during such year.

4. "Applicable effluent standards and limitations" means all state and Federal effluent standards and limitations to which a discharge is subject under the Act, including, but not limited to, effluent limitations, standards or performance, toxic effluent standards and prohibitions, and pretreatment standards.

5. "Applicable water quality standards" means all water quality standards to which a discharge is subject under the Act.

6. "Areas of Biological Concern" means a portion of the OCS identified by EPA, in consultation with the Department of Interior as containing potentially productive or unique biological communities or as being potentially sensitive to discharges associated with oil and gas activities.

7. "Blow-Out Preventer Control Fluid" means fluid used to actuate the hydraulic equipment on the blow-out preventer or subsea production wellhead assembly.

8. "Boiler Blowdown" means discharges from boilers necessary to minimize solids build-up in the boilers, including vents from boilers and other heating systems.

9. "Bulk Discharge" any discharge of a discrete volume or mass of effluent from a pit tank or similar container that occurs on a one-time, infrequent or irregular basis.

10. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

11. "Completion Fluids" means salt solutions, weighted brines, polymers and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production. These fluids move into the formation and return to the surface as a slug with the produced water. Drilling muds remaining in the wellbore during logging, casing, and cementing operations or during temporary abandonment of the well are not considered completion fluids and are regulated by drilling fluids requirements.

12. "Controlled Discharge Rates Areas" means zones adjacent to areas of biological concern or the territorial seas of the State of Mississippi.

13. "Daily Discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the sampling day. Daily discharge determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily discharge determination of concentration shall be arithmetic average (weighted by flow value) of all samples collected during that sampling day.

14. "Daily Average" (also known as monthly average) discharge limitations means the highest allowable average of daily discharge(s) over a calendar month, calculated as the sum of all daily discharge(s) measured during a calendar month divided

by the number of daily discharge(s) measured during that month. When the permit establishes daily average concentration effluent limitations or conditions, the daily average concentration means the arithmetic average (weighted by flow) of all daily discharge(s) of concentration determined during the calendar month where C = daily concentration, F = daily flow, and n = number of daily samples; daily average discharge =

$$\frac{C_1F_1 + C_2F_2 + \cdots + C_nF_n}{F_1 + F_2 + \cdots + F_n}.$$

15. "Daily Maximum" discharge limitations means the highest allowable "daily discharge" during the calendar month.

16. "Desalinization Unit Discharge" means wastewater associated with the process of creating freshwater from seawater.

17. "Deck Drainage" means any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities covered under this permit.

18. "Development Drilling" means the drilling of wells required to efficiently produce a hydrocarbon formation or formations.

19. "Development Facility" means any fixed or mobile structure that is engaged in the drilling of productive wells.

20. "Diatomaceous Earth Filter Media" means filter media used to filter seawater or other authorized completion fluids and subsequently washed from the filter.

21. "Diesel Oil" means the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification D975–81, that is typically used as the continuous phase in conventional oil-based drilling fluids.

22. "Director" means the U.S. Environmental Protection Agency Regional Administrator or an authorized representative.

23. "Domestic Waste" means material discharged from galleys, sinks, showers, safety showers, eye wash stations, hand washing stations, fish cleaning stations, and laundries.

24. "Drill Cuttings" means particles generated by drilling into the subsurface geological formations including cured cement carried to the surface with the drilling fluid.

25. "Drilling Fluids" means the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. A water-based drilling fluid is the conventional drilling mud in which water is the continuous phase and the suspending medium for solids, whether or not oil is present. An oil based drilling fluids has diesel oil, mineral oil, or some other oil as its continuous phase with water as the dispersed phase.

26. "End of well Sample" means the sample taken after the final log run is completed and prior to bulk discharge.

27. "Environmental Protection Agency" (EPA) means the U.S. Environmental Protection Agency.

28. "Excess Cement Slurry" means the excess mixed cement, including additives and wastes from equipment washdown, after a cementing operation.

29. "Exploratory Facility" means any fixed or mobile structure that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

30. "Fecal Coliform Bacteria Sample" consists of one effluent grab portion collected during a 24-hour period at peak loads.

31. "Grab sample" means an individual sample collected in less than 15 minutes.

32. "Inverse Emulsion Drilling Fluids" means an oil-based drilling fluid which also contains a large amount of water.

33. "Live bottom areas" means those areas which contain biological assemblages consisting of such sessile invertebrates as seas fans, sea whips, hydroids, anemones, ascideians sponges, bryozoans, seagrasses, or corals living upon and attached to naturally occurring hard or rocky formations with fishes and other fauna.

34. "Maximum Hourly Rate" means the greatest number of barrels of drilling fluids discharged within one hour, expressed as barrels per hour.

35. "Muds, Cuttings, and Cement at the Seafloor" means discharges that occur at the seafloor prior to installation of the marine riser and during marine riser disconnect, well abandonment and plugging operations.

36. "National Pollutant Discharge Elimination System" (NPDES) means the national program for issuing, modifying, revoking, and reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under section 307, 318, 402, and 405 of the Act.

37. "New Source" means any facility or activity that meets the definition of "new source" under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistently with all of the following definitions:

(a) The term "water area" as used in the term "site" in 40 CFR 122.29 and 122.2 shall mean the water area and ocean floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development, or production activities.

(b) The term "significant site preparation work" as used in 40 CFR 122.29 shall mean the process of surveying, clearing, or preparing an area of the ocean floor for the purpose of constructing or placing a development or production facility on or over the site.

"New Source" does not include facilities covered by an existing NPDES permit immediately prior to the effective date of the Offshore Subcategory effluent guidelines pending EPA issuance of a new source NPDES permit.

38. "No Activity Zones" means those areas identified by the Minerals Management Service (MMS) where no structures, drilling rigs, or pipelines will be allowed. Those zones are identified as lease stipulations in U.S. Department of Interior, MMS, August, 1990, Environmental Impact Statement for Sales 131, 135, and 137, Western, Central, and Eastern Gulf of Mexico. Additional no activity areas may be identified by MMS during the life of this permit.

39. "Packer Fluid" means low solids fluids between the packer, production string and well casing. They are considered to be workover fluids.

40. "Priority Pollutants" means those chemicals or elements identified by EPA, pursuant to section 307 of the Clean Water Act and 40 CFR 401.15.

41. "Produced Sand" means slurried particles used in hydraulic fracturing, the accumulated formation sands, and scale particles generated during production. Produced sand also includes desander discharge from produced water waste stream and blowdown of water phase from the produced water treating system.

42. "Produced Water" means the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

43. "Production Facility" means any fixed or mobile structure that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations.

43. "Sanitary Waste" means human body waste discharged from toilets and urinals.

44. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which cause them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

44. "Sheen" means a silvery or metallic sheen, gloss, or increased reflectivity, visual color or iridescence on the water surface.

45. "Source Water and Sand" means water from non-hydrocarbon bearing formations for the purpose of pressure maintenance or secondary recovery including the entrained solids.

46. "Spotting" means the process of adding a lubricant (spot) downhole to free stuck pipe.

47. "Territorial Seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

48. "Trace Amounts" means that if materials added downhole as well treatment, completion, or workover fluids do not contain priority pollutants then the discharge is assumed not to contain priority pollutants, except possibly in trace amounts.

49. "Uncontaminated Ballast/Bilge Water" means seawater added or removed to maintain proper draft.

50. "Uncontaminated Freshwater" means freshwater which is discharged without the addition of chemicals; included are (1) discharges of excess freshwater that permit the continuous operation of fire control and utility lift pumps, (2) excess freshwater from pressure maintenance and secondary recovery projects, (3) water released during training and testing of personnel in fire protection, and (4) water used to pressure test new piping.

49. "Uncontaminated Seawater" means seawater which is returned to the sea without the addition of chemicals. Included are (1) discharges of excess seawater which permit the continuous operation of fire control and utility lift pumps (2) excess seawater from pressure maintenance and secondary recovery projects (3) water released during the training and testing of personnel in fire protection (4) seawater used to pressure test piping, and (5) once through noncontact cooling water which has not been treated with biocides.

50. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

51. "Well Treatment Fluids" mean any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled. These fluids move into the formation and return to the surface as a slug with the produced water. Stimulation fluids include substances such as acids, solvents, and propping agents.

52. "Workover Fluids" mean salt solutions, weighted brines, polymers, and other specialty additives used in a producing well to allow safe repair and maintenance or abandonment procedures. High solids drilling fluids used during workover operations are not considered workover fluids by definition and therefore must meet drilling fluid effluent limitations before discharge may occur. Packer fluids, low solids fluids between the packer, production string and well casing, are considered to be workover fluids and must meet only the effluent requirements imposed on workover fluids.

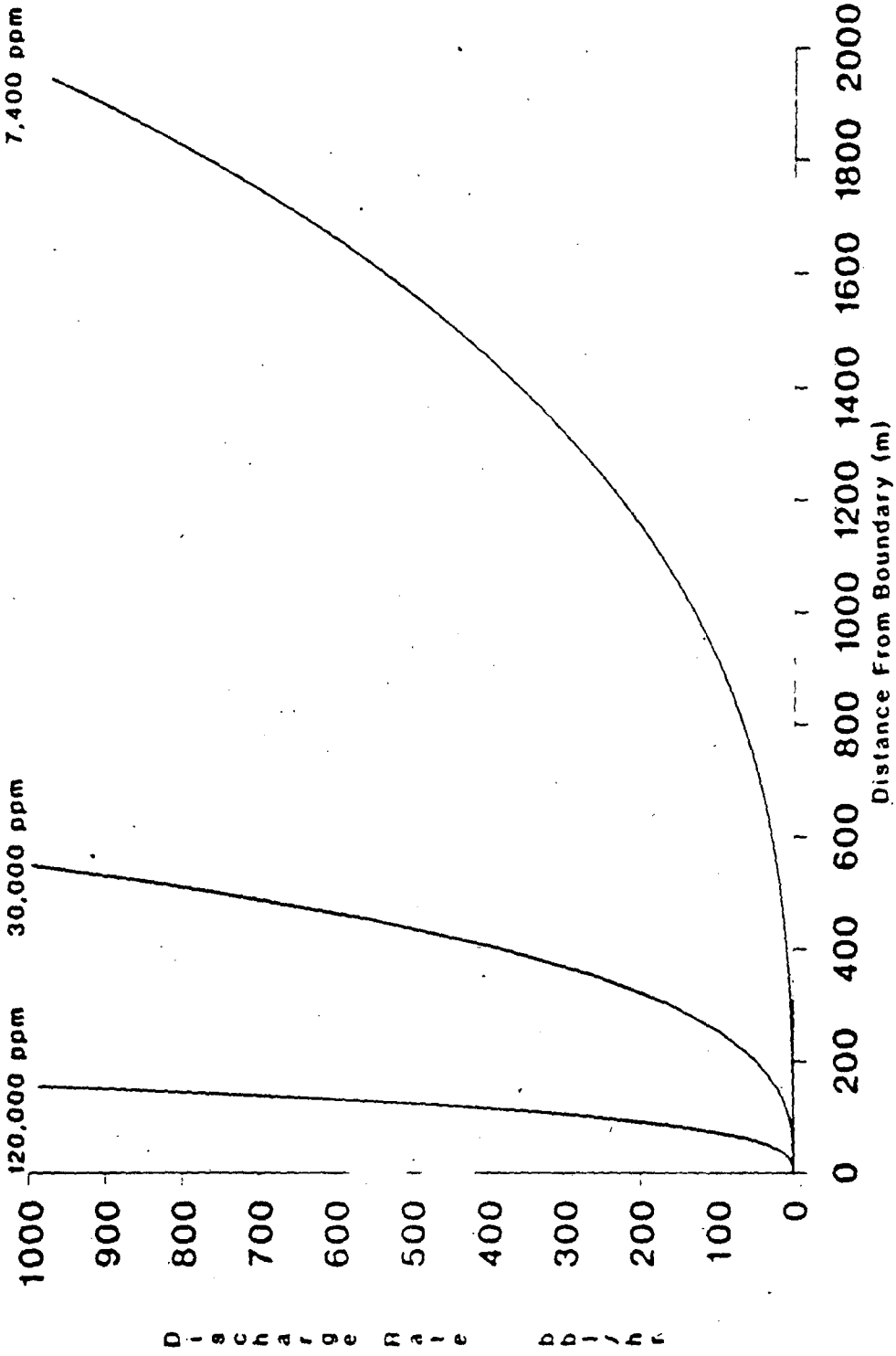
53. The term "MGD" shall mean million gallons per day.

54. The term "mg/l" shall mean milligrams per liter or parts per million (ppm).

55. The term "µg/l" shall mean micrograms per liter or parts per billion (ppb).

BILLING CODE 6560-50-P

Appendix A
Discharge Rate Graph



BILLING CODE 6560-50-C

TABLE 1.—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEAFLOOR 0 TO 4 METERS

Discharge rate (bbl/day)	Pipe diameter						
	>0" to 3"	>3" to 5"	>5" to 7"	>7" to 9"	>9" to 11"	>11" to 16"	>16"
0 to 500	0.17	0.17	0.17	0.17	0.17	0.17	0.04
501 to 1,000	0.45	0.40	0.40	0.40	0.40	0.40	0.08
1,001 to 2,000	1.39	1.08	1.08	1.08	1.08	1.08	0.16
2,001 to 3,000	1.66	1.39	1.32	1.32	1.32	1.32	1.32
3,001 to 4,000	1.97	1.60	1.45	1.45	1.45	1.45	1.45
4,001 to 5,000	1.94	1.77	1.55	1.55	1.55	1.55	1.55
5,001 to 6,000	1.90	1.93	1.66	1.63	1.63	1.63	1.63
6,001 to 7,000	1.86	2.07	1.78	1.70	1.70	1.70	1.70
7,001 to 8,000	1.81	2.20	1.89	1.76	1.76	1.76	1.76
8,001 to 9,000	1.77	2.32	1.99	1.81	1.81	1.81	1.81
9,001 to 10,000	1.73	2.43	2.08	1.86	1.86	1.86	1.86
10,001 to 15,000	1.56	2.64	2.49	2.16	2.03	2.03	2.03
15,001 to 20,000	1.43	2.49	2.85	2.47	2.17	2.17	2.17
20,001 to 25,000	1.34	2.39	3.13	2.75	2.42	2.29	2.29

TABLE 1.—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEAFLOOR GREATER THAN 4 METERS TO 6 METERS

Discharge rate (bbl/day)	Pipe diameter						
	≤0" to 3"	>3" to 5"	>5" to 7"	>7" to 9"	>9" to 11"	>11" to 16"	>16"
0 to 500	0.04	0.04	0.04	0.04	0.04	0.04	0.04
501 to 1,000	0.16	0.15	0.15	0.15	0.15	0.15	0.05
1,001 to 2,000	0.42	0.37	0.37	0.37	0.37	0.37	0.10
2,001 to 3,000	0.80	0.68	0.65	0.65	0.65	0.65	0.15
3,001 to 4,000	1.40	1.15	1.04	1.04	1.04	1.04	0.19
4,001 to 5,000	1.05	0.94	0.86	0.86	0.86	0.86	0.86
5,001 to 6,000	1.15	1.02	0.93	0.92	0.92	0.92	0.92
6,001 to 7,000	1.22	1.10	1.00	0.97	0.97	0.97	0.97
7,001 to 8,000	1.21	1.17	1.06	1.01	1.01	1.01	1.01
8,001 to 9,000	1.19	1.24	1.12	1.05	1.05	1.05	1.05
9,001 to 10,000	1.17	1.30	1.17	1.09	1.09	1.09	1.09
10,001 to 15,000	1.09	1.56	1.41	1.28	1.23	1.23	1.23
15,001 to 20,000	1.02	1.75	1.59	1.45	1.33	1.33	1.33
20,001 to 25,000	0.96	1.69	1.76	1.59	1.46	1.40	1.40

TABLE 1.—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEAFLOOR GREATER THAN 6 METERS TO 8 METERS

Discharge rate (bbl/day)	Pipe diameter						
	>0" to 3"	>3" to 5"	>5" to 7"	>7" to 9"	>9" to 11"	>11" to 16"	>16"
0 to 500	0.04	0.04	0.04	0.04	0.04	0.04	0.04
501 to 1,000	0.07	0.07	0.07	0.07	0.07	0.07	0.07
1,001 to 2,000	0.20	0.18	0.18	0.18	0.18	0.18	0.07
2,001 to 3,000	0.35	0.32	0.31	0.31	0.31	0.31	0.10
3,001 to 4,000	0.56	0.50	0.46	0.46	0.46	0.46	0.13
4,001 to 5,000	0.85	0.74	0.67	0.67	0.67	0.67	0.17
5,001 to 6,000	1.26	1.08	0.95	0.94	0.94	0.94	0.20
6,001 to 7,000	0.78	0.71	0.66	0.65	0.65	0.65	0.65
7,001 to 8,000	0.83	0.76	0.70	0.68	0.68	0.68	0.68
8,001 to 9,000	0.89	0.80	0.74	0.71	0.71	0.71	0.71
9,001 to 10,000	0.89	0.84	0.78	0.74	0.74	0.74	0.74
10,001 to 15,000	0.84	1.01	0.94	0.87	0.85	0.85	0.85
15,001 to 20,000	0.80	1.15	1.07	0.99	0.93	0.93	0.93
20,001 to 25,000	0.76	1.32	1.18	1.09	1.02	0.99	0.99

TABLE 1.—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEAFLOOR GREATER THAN 8 METERS TO 12 METERS

Discharge rate (bbl/day)	Pipe diameter						
	>0" to 3"	>3" to 5"	>5" to 7"	>7" to 9"	>9" to 11"	>11" to 16"	>16"
0 to 500	0.04	0.04	0.04	0.04	0.04	0.04	0.04

TABLE 1.—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEAFLOOR GREATER THAN 8 METERS TO 12 METERS—Continued

Discharge rate (bbl/day)	Pipe diameter						
	>0" to 3"	>3" to 5"	>5" to 7"	>7" to 9"	>9" to 11"	>11" to 16"	>16"
501 to 1,000	0.07	0.07	0.07	0.07	0.07	0.07	0.07
1,001 to 2,000	0.11	0.10	0.10	0.10	0.10	0.10	0.10
2,001 to 3,000	0.14	0.13	0.13	0.13	0.13	0.13	0.13
3,001 to 4,000	0.17	0.16	0.16	0.16	0.16	0.16	0.16
4,001 to 5,000	0.33	0.31	0.29	0.29	0.29	0.29	0.11
5,001 to 6,000	0.45	0.41	0.38	0.38	0.38	0.38	0.13
6,001 to 7,000	0.61	0.55	0.50	0.49	0.49	0.49	0.15
7,001 to 8,000	0.80	0.72	0.66	0.63	0.63	0.63	0.17
8,001 to 9,000	1.06	0.94	0.85	0.80	0.80	0.80	0.19
9,001 to 10,000	0.56	0.52	0.50	0.48	0.48	0.48	0.48
10,001 to 15,000	0.63	0.63	0.60	0.57	0.56	0.56	0.56
15,001 to 20,000	0.61	0.72	0.68	0.65	0.62	0.62	0.62
20,001 to 25,000	0.58	0.80	0.75	0.72	0.68	0.66	0.66

TABLE 1.—PRODUCED WATER CRITICAL DILUTION (PERCENT EFFLUENT) DEPTH DIFFERENCE BETWEEN DISCHARGE PIPE AND SEAFLOOR GREATER THAN 12 METERS

Discharge rate (bbl/day)	Pipe diameter						
	>0" to 3"	>3" to 5"	>5" to 7"	>7" to 9"	>9" to 11"	>11" to 16"	>16"
0 to 500	0.04	0.04	0.04	0.04	0.04	0.04	0.04
501 to 1,000	0.07	0.07	0.07	0.07	0.07	0.07	0.07
1,001 to 2,000	0.11	0.10	0.10	0.10	0.10	0.10	0.10
2,001 to 3,000	0.14	0.13	0.13	0.13	0.13	0.13	0.13
3,001 to 4,000	0.17	0.16	0.16	0.16	0.16	0.16	0.16
4,001 to 5,000	0.21	0.20	0.19	0.19	0.19	0.19	0.19
5,001 to 6,000	0.24	0.23	0.22	0.22	0.22	0.22	0.22
6,001 to 7,000	0.28	0.26	0.25	0.25	0.25	0.25	0.25
7,001 to 8,000	0.32	0.30	0.29	0.28	0.28	0.28	0.28
8,001 to 9,000	0.36	0.34	0.32	0.31	0.31	0.31	0.31
9,001 to 10,000	0.41	0.38	0.36	0.35	0.35	0.35	0.35
10,001 to 15,000	0.28	0.84	0.83	0.81	0.80	0.80	0.80
15,001 to 20,000	0.31	1.01	0.99	0.97	0.67	0.67	0.67
20,001 to 25,000	1.07	1.15	1.13	1.11	1.09	1.08	1.08

TABLE 1A.—MINIMUM VERTICAL PORT SEPARATION DISTANCE TO AVOID INTERFERENCE

Port flow rate (bbl/day)	Minimum separation distance (m)
0–500	3.7
501–1000	4.5

TABLE 1A.—MINIMUM VERTICAL PORT SEPARATION DISTANCE TO AVOID INTERFERENCE—Continued

Port flow rate (bbl/day)	Minimum separation distance (m)
1001–2000	5.4
2001–5000	6.4

TABLE 1A.—MINIMUM VERTICAL PORT SEPARATION DISTANCE TO AVOID INTERFERENCE—Continued

Port flow rate (bbl/day)	Minimum separation distance (m)
5001–7000	6.6
7001–10000	6.6

Permit No.: GMG290000
Permittee:
Facility No.:

MYSIDOPSIS BAHIA Survival, Growth, and Fecundity

Date Composite Collected:
From _____To _____
Test initiated: _____am/pm _____date

DATA TABLE FOR M. BAHIA GROWTH

[Average dry weight in milligrams in replicate chambers]

Effluent Conc (percent)	A	B	C	D	E	F	G
0							
_____							
_____							
_____							

DATA TABLE FOR M. BAHIA GROWTH—Continued

[Average dry weight in milligrams in replicate chambers]

Effluent Conc (percent)	A	B	C	D	E	F	G
_____							
_____							

DATA TABLE FOR M. BAHIA GROWTH

	0%	___%	___%	___%	___%	___%
Mean Dry Weight (mg)						
CV (%)[1]						

[1] Coefficient of variation=standard deviation×100/mean.

PERCENT SURVIVAL

[Percent effluent (%)]

Time of reading	0	____	____	____	____	____
24 h						
48 h						
7 day						

Permit No.: GMG290000
Permittee:
Facility No.:

NUMBER OF FEMALES WITH EGGS @ 7 DAYS

[Percent effluent (%)]

REP	0	____	____	____	____	____
A						
B						
C						
D						
E						
F						
G						
H						
I						
J						
Mean % Fecundity						

MYSIDOPSIS BAHIA Survival, Growth, and Fecundity

1. Indicate statistical package employed to determine the NOEC (Reproduction) as per EPA Methods: _____
2. Enter percent effluent corresponding to the NOEC for reproduction: NOEC reproduction = _____% effluent.
3. Indicate the Statistical Package employed to determine the NOEC (survival) as per EPA Methods: _____
4. Enter percent effluent corresponding to the NOEC for survival: NOEC survival = _____% effluent.

Permit No.: GMG290000
Permittee:
Facility No.:

Sheepshead Minnow or Inland Silverside Minnow Larval Survival and Growth (*Cyprinodon variegatus* or *Menidia beryllina*)

Date Composite Collected: From _____to _____
Test initiated: _____am/pm _____date

Sheepshead or Inland Silverside Minnow Larval Survival and Growth

DATA TABLE FOR SHEEPSHEAD OR INLAND SILVERSIDE MINNOW GROWTH

Effluent Conc (percent)	Average dry weight in milligrams in replicate chambers				Mean dry weight (mg)	CV%[1]
	A	B	C	D		
0						
_____						
_____						

DATA TABLE FOR SHEEPSHEAD OR INLAND SILVERSIDE MINNOW GROWTH—Continued

Effluent Conc (percent)	Average dry weight in milligrams in replicate chambers				Mean dry weight (mg)	CV% [1]
	A	B	C	D		
____						
____						
____						

[1] Coefficient of variation=standard deviation x100/mean.

1. Indicate the Statistical Package employed to determine the NOEC (Growth) as per EPA Methods: _____

2. Enter percent effluent corresponding to the NOEC for growth: NOEC growth=_____% effluent.

Permit No.: GMG290000

Permittee:

Facility No.:

DATA TABLE FOR SHEEPSHEAD OR INLAND SILVERSIDE MINNOW SURVIVAL

Effluent conc (percent)	Percent survival in replicate chambers				Mean percent survival			CV% [1]
	A	B	C	D	24h	48h	7 days	
0								
____								
____								
____								
____								
____								

[1] Coefficient of variation=standard deviation x100/mean.

3. Indicate the Statistical Package employed to determine the NOEC (Survival) as per EPA Methods: _____

4. Enter percent effluent corresponding to the NOEC for survival: NOEC survival=_____% effluent.

5. Enter the percent effluent corresponding to the lowest NOEC determined for either species in this toxicity test: Lowest NOEC=_____% effluent.

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS

Discharge	Regulated and monitored discharged parameter	Discharge limitation/prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded value(s)
Drilling Fluid	Free Oil	No free oil	Once week [1]	Static sheen	Number of days sheen observed.
	Toxicity [2] 96-hr LC50	30,000 ppm daily minimum.	Once/month	Grab	96-hr LC50.
			Once/end of well [3]	Grab	96-hr LC50.
		30,000 ppm monthly average minimum.	Once/month	Grab	96-hr LC50.
	Discharge Rate	1,000 barrels/hour	Once/hour [1]	Estimate	Max. hourly rate.
	Discharge Rate for controlled discharge rate areas [4].	(See Figure 1)	Once/hour [1]	Measure	Max. hourly rate.
	Mercury and cadmium.	No discharge of drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg or cadmium in excess of 3.0 mg/kg (dry weight).	Once prior to drilling each well [6].	Absorption Spectrophotometry.	mg mercury/kg barite, mg cadmium/kg barite.
	Oil Based or Inverse Emulsion Drilling Fluids.	No discharge.			
	Oil Contaminated Drilling Fluids.	No discharge.			
	Diesel Oil	No discharge of drilling fluids to which diesel oil has been added.			

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS—Continued

Discharge	Regulated and monitored discharged parameter	Discharge limitation/prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded value(s)
	Mineral Oil	Mineral oil may be used only as a carrier fluid (transporter fluid), lubricity additive, or pill.			
Drilling Cuttings	Free oil	No free oil	Once/week [1]	Static sheen	Number of days sheen observed.
	Toxicity [2] 96-hr LC50	30,000 ppm daily minimum.	Once/month	Grab	96-hr LC50.
			Once/end of well [3]	Grab	96-hr LC50.
		30,000 ppm monthly average minimum.	Once/month	Grab	96-hr LC50.
	Mercury and cadmium.	No discharge of cuttings generated using drilling fluids to which barite has been added, if such barite contains mercury in excess of 1.0 mg/kg or cadmium in excess of 3.0 mg/kg (dry weight).	Once prior to drilling each well.[6].	Absorption Spectrophotometry.	mg mercury/kg barite, mg cadmium/kg barite.
	Cuttings generated using Oil Based or Inverse Emulsion Drilling Fluids.	No discharge.			
	Cuttings generated using Oil Contaminated Drilling Fluids.	No discharge.			
	Cuttings generated using drilling fluids to which Diesel Oil has been added.	No discharge.			
	Cuttings generated using drilling fluids to which Mineral Oil has been added.	Mineral oil may be used only as a carrier fluid (transporter fluid), lubricity additive, or pill.			
Deck Drainage	Free Oil	No free oil	Once/day [7]	Visual sheen	Number of days sheen observed.
Produced Water	Oil and grease	42 mg/l daily max., 29 mg/l monthly average.	Once/month	Grab [8]	Daily max., monthly average.
	Toxicity	7-day average min. MOEC [9] and monthly average min, NOEC [9].	Rate Dependent [16]	Grab	Lowest NOEC for either of the two species.
	Radium 226 and 228, Bioaccumulation [17].	Monitor	Rate Dependent [16]	Grab	pCi/liter.
	Flow (MGD)	25,000 bbl/day	Once/month	Estimate	Monthly average.
Produced Sand	No Discharge				
Well treatment fluids [10], completion.	Free oil	No free oil	Once/day [1]	Static sheen	Number of days sheen observed.
Fluids [10], and workover fluids [10] (includes packer fluids).	Oil and Grease	42 mg/l daily max., 29 mg/l monthly avg.	Once/month	Grab [8]	Daily max., monthly average.
Sanitary waste [12] continuously manned by 10 or more persons.	Residual chlorine [13] Solids.	1 mg/l (minimum), No Floating Solids.	Once/month, Once/day.	Grab Observation	Concentration, Number of days solids observed.
Sanitary waste [12] continuously manned by 9 or fewer persons of intermittently by any number.	Solids	No floating solids	Once/day	Observation	Number of days solids observed.
Domestic waste [14]	Solids	No floating solids or foam.	Once/day	Observation [15]	Number of days observed.

TABLE 3.—EFFLUENT LIMITATIONS, PROHIBITIONS AND MONITORING REQUIREMENTS—Continued

Discharge	Regulated and monitored discharged parameter	Discharge limitation/prohibition	Monitoring requirement		
			Measurement frequency	Sample type/method	Recorded value(s)
Miscellaneous discharges: Desalinization unit discharge; blowout preventer fluid; uncontaminated ballast water; uncontaminated bilge water; uncontaminated freshwater; mud, cuttings and cement at seafloor; uncontaminated seawater; boiler blowdown; source water and sand; diatomaceous earth filter media; excess cement slurry.	Free oil	No free oil	Once/week[11]	Visual sheen	Number of days sheen observed.

[1] When discharging.
[2] Suspended particulate phase (SPP) with *Mysidopsis bahia* following approved test method. The sample shall be taken beneath the shale shaker; or if there are no returns across the shaker then the sample must be taken from a location that is characteristic of the overall mud system to be discharged.
[3] Sample shall be taken after the final log run is completed and prior to bulk discharge.
[4] See Appendix A, Discharge Rate Graph.
[5] This information shall be recorded but not reported unless otherwise requested by EPA.
[6] Analyses shall be conducted on each new stock of barite used.
[7] When discharging and facility is manned. Monitoring shall be accomplished during times when observation of a visual sheen on the surface of the receiving water is possible in the vicinity of the discharge.
[8] May be based on the arithmetic average of four grab sample results in the 24 hr. period.
[9] See table 1, Appendix A.
[10] No discharge of priority pollutants except in trace amounts. Information on the specific chemical composition shall be recorded but not reported unless requested by EPA.
[11] When discharging for muds, cuttings, and cement at the seafloor and blowout preventer fluid. All other miscellaneous discharges: when discharging, discharge is authorized only during times when visual sheen observation is possible, unless the static sheen method is used. Uncontaminated seawater uncontaminated freshwater, source water and source sand, uncontaminated bilge water, and uncontaminated ballast water from platforms on automatic purge systems may be discharged without monitoring from platforms which are not manned.
[12] Any facility which properly operates and maintains a marine sanitation device (MSD) that complies with pollution control standards and regulations under section 312 of the Act shall be deemed to be in compliance with permit limitations for sanitary waste. The MSD shall be tested yearly for proper operation, and test results maintained at the facility.
[13] Hach method CN–66 DPD approved. Minimum of 1 mg/l and maintained as close to this concentration as possible.
[14] The discharge of food waste is prohibited within 12 nautical miles from nearest land. Comminuted food waste able to pass through a 25 mm mesh screen (approximately 1 inch) may be discharged more than 12 nautical miles from nearest land.
[15] Monitoring shall be accomplished during daylight by visual observation of the surface of the receiving water in the vicinity of sanitary and domestic waste outfalls. Observations shall be made following either the morning or midday meals at a time of maximum estimated discharge.
[16] Once/year for discharges from 0 bbl/day to 499 bbl/day, once/quarter for discharges from 500 bbl/day to 4,599 bbl/day, and once/month for discharges of 4,600 bbl/day and greater.
[17] See Part I.B.4.(b) of this Permit.

United States Environmental Protection Agency, Region 6

In Re: NPDES PERMIT NO. GMG290000

General Administrative Compliance Order

The following findings are made and order issued pursuant to authority vested in the Administrator of the Environmental Protection Agency (EPA) by section 309(a)(3) of the Clean Water Act. 33 U.S.C. 1319(a)(3), and duly delegated to the Regional Administrator, EPA Region 6, and duly redelegated to the undersigned Director, Water Management Division, EPA Region 6. Issuance of this order is not "final agency action" and is subject to judicial review only in connection with an action to enforce its terms.

Findings

I. Pursuant to section 402(a)(1) of the Clean Water Act, 33 U.S.C. 1342, EPA Region 6 modified National Pollutant Discharge Elimination System (NPDES) Permit No. GMG290000 (permit) to impose a new effluent limitation on the oil and grease content of produced water and new critical dilutions for assuring compliance with the permit's existing limitation on produced water toxicity. The new toxicity limits were effective on the publication date of the final notice of modification, and the new oil and grease limits 30 days after publication of the final notice of modification.

II. Permittees under General NPDES Permit No. GMG290000 discharge produced water derived from existing and exploratory Offshore Subcategory facilities. The term "existing facility" means a facility for which significant site preparation was begun prior to January 15, 1993. The term "exploratory facility" means any fixed or mobil structure that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

III. To maintain oil and gas production and comply with the permit's produced water toxicity limits, a significant number of permittees may have to add diffusers, adjust the

discharge outfalls to increase dilution, or modify produced water treatment systems to decrease the toxicity of the discharges. Similarly, a significant number of permittees may have to install new pollution control equipment for compliance with the permit's produced water oil and grease limits.

IV. Such permittees may reasonably take all actions necessary to achieve final compliance with the permit's limits within 6 months of submission of a "Compliance Order Notice", as specified below.

V. Given the large number of persons regulated under the permit, it would be impractical for EPA to issue individual compliance orders to all permit violators or conduct "show cause" meetings to establish individual compliance schedules for all such violators. A general compliance order setting forth procedures for establishing such schedules will avoid delays attendant on such meetings and issuance of individual compliance orders, thus achieving expeditious compliance with the permit's produced water toxicity and oil and grease limitations.

Order

Based on the foregoing findings, it is ORDERED that:

A. Until December 19, 1994 permittees may submit "Compliance Order Notices" to EPA within 30 days of becoming aware of violation of the permit's limitations on toxicity and/or oil and grease for produced water discharges. Such Compliance Order Notices shall be sent to: Enforcement Branch (6W–EA), Region 6, U.S. Environmental Protection Agency, P.O. Box 50625, Dallas, TX 75270.

Upon submission of such a Compliance Order Notice, a permittee shall be a Respondent under this General Administrative Order.

B. Each Compliance Order Notice must include:

1. Identification of the violating facility by name and NPDES facility identification number and its location (by leaseblock), the name and address of its operator, and the name, address, and telephone number of a contact person with whom EPA may further discuss the violation.

2. A brief description of the violation, Respondent's opinion on the cause of the violation, and the basis for that opinion.

3. A commitment to achieve final compliance with the permit's produced water oil and grease and/or toxicity limitations by a specified date, not to exceed six months from submission of the Compliance Order Notice.

C. The terms of each Compliance Order Notice submitted under this Administrative Order shall be considered terms of this Order and shall be enforceable against the Respondent submitting the Compliance Order Notice.

D. Respondent shall provide written notification to EPA Region 6 of a violation of its Compliance Order Notice with its next regularly scheduled discharge monitoring report.

E. Except for its toxicity and/or oil and grease effluent limitations on produced water discharges, for which Compliance Order Notices have been submitted, Respondents shall fully comply with all conditions of NPDES Permit No. GMG290000, including all monitoring and reporting requirements for produced water discharges.

F. Complete all activities necessary to attain full and continuance compliance with NPDES Permit No. GMG290000 as soon as possible, but in no event later than 6 months from submission of a Compliance Order Notice.

G. Operate and maintain all existing pollution control equipment, including oil/water separation equipment, in such a manner as to minimize the discharge of pollutants contained in produced water at all times.

H. Nothing in this Administrative Compliance Order shall preclude EPA Region 6 from taking other appropriate enforcement actions for violations of the permit, including issuing individual administrative compliance orders to any permittee, issuing other general administrative compliance orders, issuing administrative penalty orders, and instituting civil or criminal enforcement actions in courts of competent jurisdiction.

I. This Order shall be effective on publication.

Myron O. Knudson, P.E.,

Director, Water Management Division (6W).

[FR Doc. 93–29510 Filed 12–2–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act of 1974, as Amended; Revisions to System of Records

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: FEMA gives notice of revisions to FEMA/OC–2, Debt Collection Files, in its inventory of records systems subject to the Privacy Act of 1972. The revisions permit release of certain information to other federal agencies for computer and other types of matches so that these agencies may determine the status of debtors. They also permit referral of delinquent debtors' identities to the Internal Revenue Service (IRS).

DATES: The revisions are effective January 3, 1994.

ADDRESSES: Comments on the revisions are invited. Please address any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Sandra B. Jackson, FOIA/Privacy Act Specialist, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (202) 646–3480.

SUPPLEMENTARY INFORMATION: FEMA updated all its Notices of Systems of Records on September 7, 1990, 55 FR 37182 and again on February 12, 1993, 58 FR 8278. Included in the list of notices was the records system identified as FEMA/OC–2, Debt Collection Files (55 FR 37200), which was previously designated FEMA/OC–3, Claims Collection Files and was published on January 5, 1987, 53 FR 343; May 13, 1985, 50 FR 20007; November 26, 1982, 47 FR 53487; October 25, 1983, 48 FR 49376; and March 23, 1983, 48 FR 12133.

FEMA has made the following revisions to FEMA/OC–2:

Disclosure to Federal Agencies for Computer or Other Type of Match

Disclosure Pursuant to 5 U.S.C. 552a(b)(3)

The first sentence is changed to allow disclosures of delinquent debtors' names and social security numbers of any type of match instead of being restricted to only computer matches. The statutory citation is changed from 5 U.S.C. 552a(b)(1) to 5 U.S.C. 552a(b)(3) to permit disclosure outside FEMA for the purpose of conducting computer and other types of matches.

Statutory citations for Disclosures to Federal Agencies for Salary or Retired Pay Offset and for Disclosure to the Internal Revenue Service is changed from 5 U.S.C. 552a(b)(1) to 5 U.S.C. 552a(b)(3) to permit routine purpose disclosures outside FEMA.

Accordingly, FEMA/OC–2 is revised to read as follows:

FEMA/OC–2

SYSTEM NAME:

Debt Collection Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Primary system is located in the Office of Financial Management, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472. Secondary systems may be maintained by the Debt Collection Officers designated for the following offices: Federal Insurance Administration, National Preparedness Directorate, State and Local Programs and Support Directorate, United States Fire Administration, U.S. Fire Academy/National Emergency Training Center and each FEMA Regional Office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are indebted to FEMA.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Debt Collection Files will contain copies of debt collection letters and Optional Form 1114, Bills for Collection, and correspondence to and from the debtor relating to the debt. The files will include such information as the name and address of the debtor; taxpayer's identification number (which may be the social security number); amount of debt or delinquent amount; basis of the debt; date debt arose; office referring debt to the Agency Collections Officer; record of each collection made; credit report or FEMA Form 22–13; financial statement reflecting the net worth of the debtor; date by which debt must be referred to the Agency Collections Officer for further collection action; citation or basis on which debt was terminated or compromised; and the appropriation number under which the Accounts/Notes Receivable was established.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Debt Collection Act of 1982, 31 U.S.C. 3701 et seq.

PURPOSE(S):

Information in the record system is used to collect monies owed FEMA arising out of any administrative or program activities or service administered by FEMA. The Debt Collection files represent the basis for the debt, the amount of the debt, and actions taken by FEMA to collect the debt. The credit report or financial statement provides an understanding of the individual's financial condition with respect to requests for deferment of payment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

When debts are uncollectible, copies of the FEMA Debt Collection file regarding the debt and actions taken to collect the monies are forwarded to the U.S. General Accounting Office, Department of Justice, United States Attorney, or other federal agencies for further collection action. FEMA may also provide copies of debt collection letters, Optional Form 1114, Bill for Collection, and FEMA correspondence to the debtor or to a debt collection agency under contract with FEMA for further collection action. FEMA may also send debtors' names and social security numbers to other federal agencies for computer matches to determine whether such debtors are receiving salary or retired pay from the Federal Government and would be subject to salary or administrative offset. FEMA may also send the debtors' names, social security numbers and amounts owed to federal agencies in order to effect offsets against salaries, retirement payments, or both, if applicable. FEMA may also refer delinquent debtors by name, social security number, social security or other taxpayer identification number, amount owed and date of delinquency to the IRS for collection by offset against tax refunds.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

DISCLOSURE PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f), or the Debt Collection Act of 1982, 31 U.S.C. 3701(a)(3).

DISCLOSURES TO FEDERAL AGENCIES FOR COMPUTER OR OTHER TYPE OF MATCH:

DISCLOSURE PURSUANT TO 5 U.S.C. 552A(B)(3):

Disclosures of delinquent debtors' names and social security numbers may be made to the Defense Manpower Data Center and to other federal agencies for a computer or other type of match to determine whether such debtors are employed as employees of the federal government, are active duty members of the uniformed services, are drawing retired pay from the federal government and are subject to salary or administrative offset to collect debts owed to FEMA.

DISCLOSURES TO FEDERAL AGENCIES FOR SALARY OR RETIRED PAY OFFSET:

DISCLOSURES PURSUANT TO 5 U.S.C. 552A(B)(3):

FEMA may disclose names, social security numbers, amounts of debts past due to federal agencies employing debtors to effect salary or administrative offset against salaries, active duty pay or retirement pay to collect debts owed FEMA under provisions of 5 U.S.C. 5514, 5705(1) and 5724(f).

DISCLOSURE TO THE INTERNAL REVENUE SERVICE:

DISCLOSURE PURSUANT TO 5 U.S.C. 552A(B)(3) AND 31 U.S.C. 3720A:

Disclosure of delinquent debtor's names and social security numbers may be made to the Internal Revenue Service under provisions of 26 U.S.C. 6103(m)(2) and 26 CFR 301.6402–6T(a) for the IRS to provide FEMA with latest addresses known to IRS so that FEMA may notify such delinquent debtors that FEMA intends to take offset against tax refunds that would otherwise be paid to these debtors. If these debtors do not successfully present evidence and arguments which convince FEMA not to have IRS exercise offset, then FEMA will report delinquent debtors by name, social security number, amount of indebtedness and date that the debt became delinquent under the provisions of 31 U.S.C. 3720A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on lists and forms, and in computer processable storage media.

RETRIEVABILITY:

The primary system files are filed by bill for collection number; the secondary systems may be filed by bill for collection number, name, or taxpayer's identification number (which may be the social security number).

SAFEGUARDS:

Personnel screening; hardware and software computer measures; paper records are maintained in locked containers, a locked room, or both. All records are maintained in areas that are secured by building guards during non-business hours. Records are retained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Addresses of delinquent debtors provided by IRS will be maintained in separate bar-locked combination locked file cabinets to which only FEMA Headquarters debt collection personnel have the lock's combination.

RETENTION AND DISPOSAL:

Records are covered by General Records Schedule 6. The file on each debt on which administrative collection

action has been completed shall be retained by Debt Collection Officers' respective program offices not less than one year after the applicable statute of limitations has expired. The file is then transferred to the National Archives & Records Service for a period of six years and three months after the end of the fiscal year in which the debt was closed out by means of the debt being paid, terminated, compromised, or the statute of limitations had run out. However, addresses provided by the IRS under the Federal Tax Refund Offset Program will be shredded either after the debt is collected in full, terminated, suspended, or the offset statute of limitations has expired.

SYSTEM MANAGER(S) AND ADDRESSES:

Chief Financial Officer, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, who is designated the Agency Collections Officer (ACO) by 44 CFR 11.34(a)(1). The ACO is assisted by Debt Collections Officers (DCOs) who are those employees in the regions and in the program offices responsible for initiating bills for collection. If the DCOs are unable to collect the debts, they will refer the bills to the ACO for further action.

NOTIFICATION PROCEDURES:

Individuals wishing to inquire whether this system of records contains information about themselves should contact the system manager, identified above. Written requests should be clearly marked "Privacy Act Request" on the envelope and on the letter. Requests should include full name of the individual, some type of appropriate identification, and current address.

For personal visits, the individuals should be able to provide some acceptable identification, driver's license, employing organization's identification card or other identification card.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Same as Notification Procedures above. The letter should state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. FEMA Privacy Act Regulations are promulgated in 44 CFR part 6.

RECORD SOURCE CATEGORIES:

Directly from the individual, the initial loan application, credit report from the commercial credit bureau, administrative program offices within FEMA, or other federal, state or local agencies which are involved in programs or services administered by FEMA. In the case of addresses being used in the IRS Tax Refund Offset Program for delinquent debtor notification described above, addresses will be provided by the IRS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: November 15, 1993.

James L. Witt,

Director.

[FR Doc. 93–29662 Filed 12–2–93; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

First Union Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Union Corporation, Charlotte, North Carolina; to acquire 5.4 percent of the voting shares of Internet, Inc., Reston, Virginia, and thereby engage in providing data processing and data transmission services to insured depository institutions in connection with a shared electronic funds transfer network of automated teller machines; providing data processing and transmission services to other EFT networks; and providing bank management consulting advice to insured depository institutions in connection with the development of new products such as debit cards and "Smart Cards" pursuant to §§ 225.25(b)(7) and (b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 29, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-29570 Filed 12-2-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Agency for Health Care Policy and Research

Process for Health Care Technology Assessments and Recommendations for Coverage

The Agency for Health Care Policy and Research (AHCPR) is publishing a description of the process used by AHCPR's Office of Health Technology Assessment (OHTA) to conduct assessments of health care technologies for the Public Health Service (PHS).

The Agency for Health Care Policy and Research (AHCPR) was established by the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239, December 12, 1989) under Title IX of the Public Health Service Act (the Act). The AHCPR is to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services through the establishment of a broad base of scientific research and through the promotion of improvements in clinical practice (including the prevention of diseases and other health

conditions) and in the organization, financing, and delivery of health care services. In carrying out these purposes AHCPR, among other activities, conducts and supports specific assessments of health care technologies.

Since the establishment of AHCPR, Title IX, including provisions of the authority for health technology assessments, has been amended by the Agency for Health Care Policy and Research Reauthorization Act of 1992 (Pub. L. 102–410, October 13, 1992) and the National Institutes of Health Revitalization Act of 1993 (Pub. L. 103–43, June 10, 1993).

Section 904(b)(2) of the PHS Act (42 U.S.C. 299a–2(b)(2)) provides that in carrying out health technology assessments, the Administrator, AHCPR, shall consider the safety, efficacy and effectiveness, and as appropriate, the legal, social, and ethical implications and appropriate uses of health care technologies, including geographic factors. Public Law 102–410 added as a requirement that the Administrator also consider the cost-effectiveness of technologies where cost information is available and reliable. Prior to the enactment of Public Law 102–410, consideration of the cost effectiveness of a technology was optional.

Section 904(d)(1) of the Act (42 U.S.C. 299a–2(d)(1)) requires that the Administrator make recommendations with respect to whether specific health care technologies should be reimbursable under federally financed health programs, including recommendations with respect to any conditions and requirements under which such reimbursements should be made.

Section 904(e), as added by Public Law 102–410, requires that the Administrator publish a description of the methodology used to establish priorities for health technology assessments and a description of the process used to conduct technology assessments. A notice on the proposed methodology for establishing priorities is being published separately for comment.

This notice provides a description of the procedures that have been developed over the past several years and that are currently used in the conduct and preparation of all assessments by AHCPR, on behalf of the PHS. The description is not limited to those assessments carried out for purposes of making recommendations for coverage under federally financed health programs.

Written comments on the process are invited. The AHCPR will not respond to individual comments, but will consider all comments received in determining whether to make future modifications in the assessment process. Comments, in writing, should be submitted by January 3, 1994, to: Linda K. Demlo, Ph.D., Director, Office of Program Development, suite 603; 2101 East Jefferson Street; Rockville, Maryland 20857. All comments will be available for public inspection at the Office of Program Development, Telephone (301) 594–1457, weekdays between 8:30 a.m. and 5 p.m.

Definition

As used in this notice, the term "technology" or "health care technology" refers to any discrete service, procedure, or diagnostic or therapeutic modality used to diagnose or treat illness, prevent or mitigate disease, promote patient well-being, or facilitate the provision of health care services.

Current Procedures

The AHCPR, in accordance with sections 904 (b) and (d) of the Act (42 U.S.C. 299a–2 (b) and (d)), conducts assessments on behalf of the PHS on the safety, efficacy, and effectiveness of health care technologies. For assessments initiated since October 13, 1992, the cost-effectiveness of technologies is considered where cost information is available and reliable. Under certain circumstances, the assessment may consider also legal, social, and ethical implications and appropriate uses of such technologies, including consideration of geographic factors. In most instances, assessments address technologies which are being reviewed for purposes of reimbursement (referred to as "coverage") by federally financed health programs. When assessments are performed for purposes of coverage determinations, recommendations as to whether specific technologies should be reimbursable are formulated based upon the completed assessments and forwarded to the requesting agency in accordance with sections 904 (b) and (d) of the PHS Act. The assessment process includes consultation with other available experts, particularly within the PHS. In this role, PHS officials provide technical assistance in the evaluation of medical and scientific information concerning a health care technology. The assessments and the resulting recommendations are used by the requesting agencies in determining coverage policy.

The programs which regularly have consulted AHCPR include the Medicare program administered by the Health Care Financing Administration (HCFA) and the Civilian Health and Medical Programs of the Uniformed Services administered by the Department of Defense, through its Office of Civilian Health and Medical Programs of the Uniformed Services (OCHAMPUS). The assessments and recommendations are prepared by AHCPR's Office of Health Technology Assessment (OHTA).

The process by which HCFA refers an item or service to AHCPR for a health care technology assessment is described in a proposed HCFA rule which was published in the **Federal Register** on January 30, 1989 (54 FR 4302). That proposed rule outlines the criteria and procedures HCFA uses in making Medicare coverage decisions for new health care technologies. The HCFA uses AHCPR assessments in determining whether to issue a Medicare national coverage decision and in formulating the decision, including the determination of whether a technology is safe and effective, the delineation of specific medical conditions for which, and settings in which, the technology would be appropriate, and the qualifications of personnel administering the technology. Requests for assessments are submitted by HCFA, through its Bureau of Policy Development, to AHCPR. Similar requests are forwarded to AHCPR by OCHAMPUS through its Office of Program Development.

After receipt of a request for an assessment, AHCPR, in consultation with other PHS components, evaluates the request to determine if the specific issues in question are appropriate to the assessment process; that is, are the issues raised medical or scientific in nature, and do adequate data exist to permit a conclusion. The assessment process, therefore, may: address questions of clinical effectiveness, comparative clinical effectiveness and risk/benefit ratios; provide analyses and evaluation of published scientific data or clinical outcomes; develop or review patient or institutional selection criteria for particular diagnostic or therapeutic modalities; and provide analyses of the cost effectiveness of various technologies. PHS personnel involved in evaluation of assessment requests include staff of the OHTA, AHCPR; the National Institutes of Health (NIH), selected by and including the Director of the Office of Medical Applications of Research; and the Food and Drug Administration (FDA), selected by and including the Associate Commissioner for Health Affairs. Evaluation of assessment requests may also require periodic consultation with other PHS experts and agencies such as the Centers for Disease Control (CDC), the Substance Abuse and Mental Health Services

Administration (SAMHSA), or the Health Resources and Services Administration (HRSA).

Sometimes confidential, predecisional, or unpublished materials may be provided to AHCPR, particularly by FDA, which may affect the decision to conduct a formal assessment. The AHCPR will protect the confidentiality of such information in accordance with applicable confidentiality statutes (such as 18 U.S.C. 1905, 5 U.S.C. 552(b), sec. 301(j) of the Federal Food, Drug, and Cosmetic Act and sec. 903(c) of the PHS Act) which protect trade secrets, predecisional information and confidential personal information. Throughout the assessment process, in addition to medical and scientific consultation, FDA also provides regulatory consultation, which includes the current status of applicable FDA regulations, any pending actions that FDA may be undertaking with respect to products involved in the technology, and any post marketing surveillance information (e.g., routine inspections of manufacturers).

After evaluation of an assessment request, AHCPR, in consultation with other PHS components, may conclude that the issues are appropriate for a formal assessment and begin the process. However, in some cases, AHCPR may determine that the issues are better suited for a more limited technology review. A technology review is a brief evaluation of a health care technology which may be conducted in lieu of an assessment because: (1) The medical or scientific questions posed are limited and they do not warrant the resources required for a formal assessment; (2) the available evidence is limited and the published medical or scientific literature is insufficient in quality or in quantity for an assessment; or (3) the timeframe available precludes utilization of the full, formal assessment process. In other cases, AHCPR may determine that the issues are not appropriate for either an assessment or a technology review because the issues would be addressed more appropriately by the requesting agency at the utilization review or peer review level, or are of a policy nature rather than medical or scientific.

When AHCPR, in consultation with other PHS components, determines that the review requested is appropriate to the assessment process, AHCPR's OHTA assumes the central role in conducting the assessment and preparing the report. The assessment process emphasizes the participation of interested parties within and outside government. A notice is published in the **Federal Register**, announcing the initiation of the assessment process and inviting public comments and the submission of information concerning the technology in question to OHTA. A period of 60 to 90 days is allowed for public comment. In addition, OHTA routinely contacts groups, such as medical specialty societies, professional and consumer organizations, medical centers, and practitioners, and solicits advice, comments, and data concerning the technology in question.

Consultation is also requested from the FDA, the NIH, and other interested and appropriate Federal agencies in accordance with the requirements of section 904(d)(5) of the Act (42 U.S.C. 299a–2(d)(5)).

Concurrent with publication of the notice in the **Federal Register**, OHTA initiates a comprehensive review of the medical and scientific literature to obtain as much information as is available concerning the technology, service, or procedure under review. Information received in response to the **Federal Register** notice from solicitation of governmental and nongovernmental groups and from the medical literature is reviewed and analyzed.

The quality of the medical and scientific evidence is of paramount importance in formulating assessment conclusions. While all evidence is considered, the greatest importance is given to well-designed studies in which the results are unlikely to be significantly affected by measurement artifact, deficiencies in study design (including patient selection criteria), bias, or misinterpretation. Studies may report seemingly impressive and statistically significant results, which, however, may be due to imprecision or error in measurement, patient selection, or other flaws in study design, and therefore may not be a reflection of a true effect on patient outcome. Prospective, randomized controlled trials provide the most reliable medical and scientific evidence while nonrandomized prospective trials may be subject to selection bias. Cohort and case-control studies may provide valuable data; however, they have inherent limitations. Cohort studies are observational rather than experimental; case-control studies are retrospective, and may be influenced by observer and recall bias. Other uncontrolled studies and descriptive reports may provide useful information, but do not commonly provide definitive medical and scientific evidence concerning the effectiveness of a health care technology. Expert opinion, unverifiable in the absence of supportive objective data, provides little basis upon which to assess the clinical effectiveness of a technology.

Regardless of study design, appropriate evaluation of the quality of evidence requires an adequate description of the methodology used in the conduct of that study. Such detail is necessary to permit conclusion as to the generalizability of the study results to the patient population of interest. Claims of effectiveness in published studies can be interpreted only in light of the study design and its execution. Greater consideration must be given to those designs which are less subject to bias and inferential error. Consequently, AHCPR considers the quality of evidence to be of utmost importance in the assessment process.

After all of the information is analyzed, conclusions are formulated as to the clinical utility and effectiveness of the technology in question as it is applied in the appropriate medical practice setting(s). Emphasis is placed upon the known and potential risks and demonstrated medical benefit to the patient population(s) of interest, and how the risks and benefits compare to those attainable with alternative interventions, if any, as well as the cost-effectiveness of the particular technology. Accomplishment of a biologic or physical effect, in the absence of substantial evidence of an improvement in health status, is not sufficient to permit a conclusive statement of clinical usefulness.

Assessments are reviewed by experts within the PHS who are familiar with the technology in question to ensure that relevant information has been taken into account and that the analyses and conclusions based upon that information are medically and scientifically logical and defensible. In addition, AHCPR has the authority to utilize nongovernmental consultants, selected on the basis of their acknowledged expertise and subject to clearance for conflicts of interest.

Recommendation(s)

If the assessment has been prepared to form the basis for a coverage decision by a federally financed health care program, a set of recommendations regarding coverage is derived by AHCPR based upon the assessment. Section 904(d)(5) of the Act (42 U.S.C. 299a–2(d)(5)) requires that in making such recommendations for coverage, the Administrator of AHCPR cooperate and consult with the Director of the National Institutes of Health (NIH), the Commissioner of the Food and Drug Administration (FDA), and the head of any other interested Federal department or agency. Therefore, AHCPR convenes

a PHS recommendations meeting, which includes representatives from NIH, FDA, and other agencies which have contributed to, or reviewed, the assessment document.

At these PHS recommendation meetings, AHCPR does not solicit or impose upon attending agencies a formal position regarding coverage of the technology in question; rather, representatives from the other PHS agencies are presented the recommendation memorandum and asked if they are in possession of any objective scientific or medical data which would contradict any statement made in the recommendations. Any such data presented are taken into consideration and PHS attendees revise the documents, as appropriate, to reflect the comparative importance of any new evidence. Final amendments to the document are prepared at these meetings, and the recommendations, in accordance with section 904(d) of the Act, then are provided to the requesting program.

Reassessments of health care technologies may be initiated by AHCPR or at the request of another program. Reassessments are conducted when AHCPR determines that additional medically and scientifically significant, objective, published information has become available. In making such determinations, AHCPR consults with other agencies, as appropriate. The reassessment process is identical to the assessment process described above.

FOR FURTHER INFORMATION CONTACT: Published copies of AHCPR's health care technology assessment reports and reviews are generally available 4 to 5 months after completion of the assessment or review. Copies of these are available from the AHCPR Publications Clearinghouse, P.O. Box 8457, Silver Spring, MD 20907. (Phone Toll Free: 1-800-358-9295).

For additional information on the AHCPR assessment process, contact: Thomas V. Holohan, M.D., Director, Office of Health Technology Assessment, Agency for Health Care Policy and Research, 6000 Executive Boulevard, Suite 309, Rockville, MD 20852, (301) 594-4023.

Dated: November 24, 1993.

J. Jarrett Clinton,

Administrator.

[FR Doc. 93-29547 Filed 12-02-93; 8:45 am]

BILLING CODE 4160-90-U

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, November 12, 1993. (Call Reports Clearance Officer on (410) 965-4142 for copies of package.)

1. National Survey of Disability Applicants—0960-Reinstatement. The information on form SSA-3946 will be used by the Social Security Administration (SSA) to provide a two-day "snapshot" of the reasons for increased disability filings. The respondents will be applicants for disability benefits paid by SSA.

Number of Respondents: 18,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 3,000 hours

2. 800 Number Service Evaluation Questionnaires—0960-0465. The information on forms SSA-4305, -.1, -.2 and -.3 will be used by the Social Security Administration (SSA) to evaluate and test the effectiveness of the 800 Number Service that is used by the public to obtain general information as well as file claims or provide information concerning pending claims. The affected public consists of randomly selected individuals who have recently contacted SSA via the 800 number.

Number of Respondents: 4,000
Frequency of Response: 1
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 1,000 hours

3. Request for Social Security Earnings Information—0960-NEW. The form SSA-7050 is used by the Social Security Administration (SSA) to identify the individual or organization requesting earnings information, define the information being requested, provide the requestor with a fee schedule, and authorize such disclosure. If appropriate, SSA sends a statement to the requestor which provides the information sought. The respondents are requestors of earnings information from SSA.

Number of Respondents: 40,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 6,667 hours
OMB Desk Officer: Laura Oliven

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: November 23, 1993.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 93-29175 Filed 12-2-93; 8:45 am]

BILLING CODE 4190-29-P

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Division of Workplace Programs, Room 9-A-54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal

Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800–541–4931/205–263–5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817–282–2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119–5412, 702–733–7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–227–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414–355–4444/800–877–7016

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617–547–8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305–325–5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412–488–7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800–445–6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263/800–833–3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919–549–8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800–876–3652/417–836–3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137–3054, (Outside OH) 800–338–0166/(Inside OH) 800–362–8913 (formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon/MetPath, 140 East Ryan Road, Oak Creek, WI 53154, 800–638–1100 (formerly: Damon Clinical Laboratories; Chem-Bio Corporation; CBC Clinilab)

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214–929–0535 (formerly: Damon Clinical Laboratories)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38–H, Great Lakes, IL 60088–5223, 708–688–2045/708–688–4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511–2597, 804–444–8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, GA 31604, 912–244–4468

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904–787–9006

Drug Labs of Texas, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 601–236–2609 (moved 6/16/93)

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800–627–8200 (formerly: Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800–725–3784/915–687–6877 (formerly: Harrison & Associates Forensic Laboratories)

HealthCare/MetPath, 24451 Telegraph Road, Southfield, MI 48034, Inside MI: 800–328–4142 / Outside MI: 800–225–9414 (formerly: HealthCare/Preferred Laboratories)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713–793–6080

IHC Laboratory Services Forensic Toxicology, 930 North 500 West, Suite E, Provo, UT 84604, 800–967–9766

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, OH 45229, 513–569–2051

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715–389–3734/800–222–5835

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507–284–3631

Med-Chek/Damon, 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200 (formerly: Med-Chek Laboratories, Inc.)

MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515

Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400

MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; moved 12/21/92)

MEDTOX Bio-Analytical, 8600 West Catalpa Avenue, Chicago, IL 60656, 800–872–5221/312–714–9191 (formerly: MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; Bio-Analytical Technologies)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199

MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888

MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000

Metropolitan Reference Laboratories, Inc., 2320 Schuetz Road, St. Louis, MO 63146, 800–288–7293

National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc.)

National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784 (formerly: Med Arts Lab)

National Health Laboratories Incorporated, 5601 Oberlin Drive, Suite 100, San Diego, CA 92121, 619–455–1221

National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710 Outside NC: 919–760–4620/800–334–8627 / Inside NC: 800–642–0894

National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511

National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522

National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100

National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492

National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627 (formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #50, San Antonio, TX 78216, 210–493–3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206–882–3400
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Saint Joseph Hospital Toxicology Laboratory, 601 N. 30th Street, Omaha, NE 68131–2197, 402–449–4940
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191 (formerly: MetWest-BPL Toxicology Laboratory)

The following laboratory is withdrawing from the National Laboratory Certification Program on December 6, 1993:

Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 93–29536 Filed 12–2–93; 8:45 am]
BILLING CODE 4160–20–U

Centers for Disease Control and Prevention

[Announcement No. 401A]

Fiscal Year 1994 Preventive Health Services; Addendum to 401; STD Accelerated Prevention Campaign Project Grants

Introduction

The Centers for Disease Control and Prevention (CDC) announces the anticipated availability of fiscal year (FY) 1994 supplemental funds for programs to prevent infertility caused by sexually transmitted diseases (STDs). This is an addendum to Announcement Number 401. Because of the high rates of chlamydia and gonorrhea in adolescents and young adults and the frequent progression of these infections to upper tract infection and scarring in women, these STDs are a leading cause of preventable infertility.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and to improve the quality of life. This Program focuses on the priority areas of STD, HIV Infection, and Maternal and Infant Health. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under sections 318 (b) and (c) and 318A of the Public Health Service Act [42 U.S.C. 247c (b) and (c) and 247c–1], as amended.

Eligibility

Eligible applicants for this program are current recipients of STD Accelerated Prevention Campaign project grants in HHS Regions III, VII, VIII, and X. Because of the limited availability of funds, eligibility is limited to those HHS Regions that have developed region-wide chlamydia and other STD-related infertility control action plans.

Availability of Funds

Approximately $5,600,000 is expected to be available in FY 1994, to supplement up to 22 grants. The average award is expected to be $255,000, ranging from $50,000 to $750,000. The project period will be up to five years. The funding estimates outlined may differ and are subject to change.

Use of Grant Funds

Project grant funds may be used for costs associated with conducting STD Accelerated Prevention Campaign chlamydia or gonorrhea activities described in the program requirements and funding priority sections of this announcement.

Federal funds are intended to supplement current state and local resources and must be used to assist state and local areas to conduct high-priority activities in targeted areas and populations. Federal funds cannot be used to replace existing state and local support. These funds will be awarded competitively.

Funds to supplement the performance of routine diagnostic tests, the maintenance of STD central registries, the provision of diagnostic and treatment facilities and services, the purchase of automated data processing

equipment, or other expenses normally supported by the grantee must be specifically approved for that purpose.

Purpose

The purpose of the STD Accelerated Prevention Campaign is to stimulate high-quality, interdisciplinary, collaborative STD prevention efforts among relevant health programs and between health programs and communities. This will be accomplished by developing systematic, region-wide, innovative approaches that link programmatic, clinical, laboratory, and epidemiologic activities in order to prevent transmission of STDs and their sequelae. Populations that are disproportionately affected, such as women, infants, and adolescents, will be emphasized. Priority for these supplemental funds will focus on prevention of chlamydia. In addition, existing gonorrhea prevention activities may be augmented in specific high-risk population subgroups.

Program Requirements

The recipient will be responsible, with state and local resources supplemented with Federal assistance, for developing or modifying a comprehensive state STD Accelerated Prevention Campaign chlamydia and gonorrhea action plan. This plan should be developed in coordination with the regional plans currently being developed in each of the four regions in conjunction with state and local health department staff. These plans are to deliver chlamydia and gonorrhea screening services to detect these infections among as many adolescent girls and young adult women as possible. These plans should provide for the following nine program activities.

1. Screening women for chlamydia and gonococcal infections and for secondary conditions (PID) resulting from these infections.

a. Selecting providers to conduct screening activities. Programs should develop local information systems to permit the selection of providers for screening according to chlamydia and gonorrhea prevalence by individual provider or provider category. Pending the development of local information, facilities in the following categories should be identified and recruited in the order listed:

(1) Short-term plans should address each of the following categories of facilities during the first budget year:

(a) Family planning and prenatal clinics since the organization exists to deliver prevention services to the large numbers of adolescents and young adult women who attend these clinics.

(b) STD clinics where high risk women and their partners are seen and other Federal, state or local services are not available.

(c) If possible, short-term plans should also include teen/adolescent clinics, abortion clinics, detention facilities, and/or substance abuse programs due to the high-risk behavior and increased risk of salpingitis among individuals attending these facilities.

(2) Long-term plans should address strategies to involve other providers in the delivery of screening services from the second budget year onward; these providers include:

(a) Those listed in (1)(c) above, if they were not included in the short-term plan;

(b) Primary care clinics, including community, rural, and migrant health centers, emergency rooms, Native American health care centers, and gynecology clinics, where a mixture of high- and low-risk women receive care.

(c) Private physicians caring for sexually active young women.

b. Developing patient selection criteria and data systems to monitor the results of screening. Long-term plans should address developing the capability to evaluate patient selection criteria locally. In choosing patient selection criteria, consideration should include, but not be limited to: presence of mucopurulent cervicitis, young age, new or multiple sex partners, and failure to use barrier contraceptives. Results should be monitored and examined regularly to insure a cost-effective choice of selection criteria and providers.

c. Developing laboratory support systems to ensure the selection of sensitive and specific tests (including confirmation), pursuit of competitive pricing of screening tests, training of laboratory staff, and establishment of adequate quality assurance.

2. Providing treatment to women with known and presumptive chlamydia and gonorrhea, including female sex partners of infected males.

3. Providing counseling to women on the prevention and control of chlamydia and gonorrhea (including counseling on the benefits of locating and assuring treatment for any individual from whom the woman may have contracted chlamydia or gonorrhea and for any individual whom the woman may have exposed to chlamydia or gonorrhea).

4. Providing follow-up services. Initially, patients continuing to meet screening criteria should be retested at least annually. However, systems should be established locally to evaluate the need for such follow-up services.

5. Referrals for other medical services (including reproductive health or substance abuse treatment) for women screened pursuant to paragraph 1, including referrals for evaluation and treatment with respect to HIV infection and other sexually transmitted diseases. Preferably, there should be integration of those services whenever possible.

6. In the case of any woman receiving services described in paragraphs 1 through 5, providing to the sex partner(s) of the women with chlamydia or gonorrhea infection the services described in such paragraphs as appropriate.

Project areas are encouraged to develop information systems to determine the proportion of sex partners that actually receive treatment.

7. Providing outreach services to inform women of availability of the services described in paragraphs 1 through 6. Educational services are needed to alert women to the symptoms of cervical infections and PID, the frequent lack of symptoms and consequent need for screening and partner referral, and the sources of these services.

8. Disseminating information to persons at high risk and providing education on the prevention and control of chlamydia and gonorrhea to the public. In particular, adolescents and young adults need to be made aware of the high prevalence of chlamydia and gonococcal infections and the interventions to prevent them.

9. Providing training to health care providers described in paragraph 1 in carrying out activities described in paragraphs 1 through 6 and to laboratory staff in carrying out the screening described in paragraph 1.

If contracts are to be used to support these activities, they can be awarded only if the applicant and the agencies through which these activities will be conducted agree to maintain expenditures of non-Federal amounts for such activities at a level that is at least the average annual level of such expenditures maintained by the applicant during the state fiscal years, 1992 and 1993. In addition, memoranda of agreement that set out the exact nature of the interstate, regional, and local collaborations must be submitted as part of the application for conducting activities 1 through 9.

Funding Priorities

Priority is given to PHS Region III, VII, VIII, and X applicants, since chlamydia represents their greatest STD problem. As indicated above, project areas should give priority to chlamydia prevention with these funds. Because of

time constraints, comments are not being solicited on these funding priorities.

Award Criteria

Funding will be based on the quality of the required STD Accelerated Prevention Campaign application and the supplemental application requested in this announcement, chlamydia and gonorrhea action plans, the degree of innovation of each application, and the specific needs of individual project areas.

Evaluation Criteria

These applications will be evaluated as a part of the STD Accelerated Prevention Campaign review using the criteria for the required activities described in the guidance for the STD Accelerated Campaign (**Federal Register** Announcement 401, [58 FR 28973], May 18, 1993).

Executive Order 12372 Review

STD Accelerated Prevention Campaign applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to Centers for Disease Control and Prevention (CDC), they should forward them no later than 60 days from the due date of the application to Elizabeth Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.977, Preventive Health Services-Sexually Transmitted Disease Control.

Application Submission and Deadline

The Program Announcement and application kit were sent to all eligible applicants in September 1993.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Linda Long, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road NE., room 300, Atlanta, GA 30305, telephone (404) 842–6511.

Announcement 401A, "Project Grants for Preventive Health Services-STD Accelerated Prevention Campaign Supplement," must be referenced in all requests for information on these projects.

Programmatic assistance in the preparation of applications may be obtained from Gary West, Division of STD/HIV Prevention, National Center for Prevention Services, Centers for Disease Control and Prevention (CDC), Atlanta, GA 30333, telephone (404) 639–8315.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: November 29, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–29582 Filed 12–2–93; 8:45 am]

BILLING CODE 4160–18–P

Advisory Committee to the Director, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director, CDC.

Time and date: 8:30 a.m.–3 p.m., January 25, 1994.

Place: CDC, Auditorium A, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This committee advises the Director, CDC, on policy issues and broad strategies that will enable CDC, the Nation's prevention agency, to fulfill its mission of preventing unnecessary disease, disability, and premature death, and promoting health. The committee recommends ways to incorporate prevention activities more fully into health care. It also provides guidance to help CDC work more effectively with its various constituents, in both the private and public sectors, to make prevention a practical reality.

Matters to be discussed: The agenda will include introductory remarks from the new CDC Director, David Satcher, M.D., Ph.D., and the remainder of time will be used to allow all committee members to present their perspectives of what they believe Dr. Satcher's priorities should be for CDC. Agenda items are subject to change as priorities dictate.

Contact person for more information: Martha F. Katz, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton, Road, NE, Mailstop D–23, Atlanta, Georgia 30333, telephone 404/639–3243.

Dated: November 29, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–29579 Filed 12–2–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 93F–0404]

Hüls America, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hüls America, Inc., has filed a petition proposing that the food additive regulations be amended to change certain specifications for the safe use of glyceryl tristearate.

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0002, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3A4403) has been filed by Hüls America, Inc., Turner Pl., P. O. Box 365, Piscataway, NJ 08855–0365. The petition proposes to amend the food additive regulations in § 172.811 *Glyceryl tristearate* (21 CFR 172.811) to provide broader specifications for the safe use of glyceryl tristearate including

the: acid number, saponification number, and melting point.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: November 23, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-29543 Filed 12-2-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93G-0359]

Teepak, Inc.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Teepak, Inc., has filed a petition (GRASP 3G0397) proposing to affirm that collagen fiber is generally recognized as safe (GRAS) as an ingredient in human food.

DATES: Written comments by February 1, 1994.

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

FOR FURTHER INFORMATION CONTACT: Mary E. Lavecchia, Center for Food Safety and Applied Nutrition (HFS-217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9519.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s) and 409 (21 U.S.C. 321(s) and 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Teepak, Inc., c/o 1001 G St. NW., suite 500 West, Washington, DC 20001, has filed a petition (GRASP 3G0397) proposing that collagen fiber be affirmed as GRAS for use as an ingredient in human food.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before February 1, 1994, review the petition and file comments with the Dockets Management Branch (address above). Two copies of any comments should be filed and should be identified with the docket number found in brackets in the heading of this document. Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. In addition, consistent with the regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency encourages public participation by review of and comment on the environmental assessment submitted with the petition that is the subject of this notice. A copy of the petition (including the environmental assessment) and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 18, 1993.

Douglas L. Archer,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-29544 Filed 12-2-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93D-0312]

Guideline for Submitting Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guideline entitled "Guideline for Submitting Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products." This guideline is intended to provide guidance for the submission of information and data in support of the efficacy of sterilization processes described in drug applications for both human and veterinary drugs.

DATES: Written comments by January 3, 1994.

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

FOR FURTHER INFORMATION CONTACT: Regarding human drug products: Peter Cooney, Center for Drug Evaluation and Research (HFD-160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5818.

Regarding veterinary drug products: Patricia Leinbach, Center for Veterinary Medicine (HFV-143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1672.

SUPPLEMENTARY INFORMATION: In this document, FDA is publishing a guideline for submitting documentation for sterilization process validation in applications for human and veterinary drug products. This guideline is intended to provide guidance for the submission of information and data in support of the efficacy of sterilization processes described in drug applications for both human and veterinary drugs. These recommendations apply to applications (new drug applications, new animal drug applications, abbreviated new drug applications, abbreviated antibiotic applications, and abbreviated new animal drug applications) for sterile drug products. They also apply to previously approved applications when supplements associated with the sterile processing of approved drugs are submitted. Information and data in support of sterility assurance also may be necessary in investigational new drug and investigational new animal drug applications.

The Center for Drug Evaluation and Research's (CDER's) and the Center for Veterinary Medicine's (CVM's) review of the validation of the sterilization process consists of a scientific evaluation of the studies submitted in applications. This evaluation, which is conducted by FDA's review staff, is part of a cooperative effort between the review staff, compliance staff, and field investigators to ensure the overall state of control of the sterile processing of veterinary and human drug products.

This guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person.

Interested persons may, on or before January 3, 1994, submit to the Dockets Management Branch (address above) written comments regarding the guideline. Two copies of any comments are to be submitted, except that

individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. These comments will be considered in determining whether further amendments to, or revisions of, the guideline are warranted.

The text of the guideline follows:

Guideline for Submitting Documentation for Sterilization Process Validation in Applications for Human and Veterinary Drug Products

I. Introduction

A. Purpose

This guideline is intended to provide guidance for the submission of information and data in support of the efficacy of sterilization processes included in drug applications for both human and veterinary drugs. The recommendations in the guideline apply to applications for sterile drug products (new drug applications, new animal drug applications, abbreviated new drug applications, abbreviated antibiotic drug applications, and abbreviated new animal drug applications). These recommendations also apply to previously approved applications when supplements associated with the sterile processing of approved drugs are submitted. Information and data in support of sterility assurance may also be necessary in investigational new drug and investigational new animal drug applications.

In the **Federal Register** of October 11, 1991 (56 FR 51354), the agency published a proposed rule entitled "Use of Aseptic Processing and Terminal Sterilization in the Preparation of Sterile Pharmaceuticals for Human and Veterinary Use." This guideline is not a substitution for or a supplement to that proposed rule. Regardless of whether the applicant uses terminal sterilization or aseptic processing to manufacture a drug product that is purported to be sterile, certain information about the validation of that process should be submitted in the application. This guideline addresses the type of information that should be submitted for both of those types of sterilization.

B. Documenting Sterilization Process Validation

The efficacy of a given sterilization process for a specific drug product is evaluated on the basis of a series of protocols and scientific experiments designed to demonstrate that the sterilization process and associated control procedures can reproducibly deliver a sterile product. Data derived from experiments and control procedures allow certain conclusions to be drawn about the probability of nonsterile product units (sterility assurance level). Based on the scientific validity of the protocols and methods, as well as on the scientific validity of the results and conclusions, the agency concludes that the efficacy of the sterilization process is validated. Whether a drug product is sterilized by a terminal sterilization process, or by an aseptic filling process, the efficacy of the sterilization process may be validated without the manufacture of three production batches. Sterilization process validation data, however, should be generated using procedures and conditions that are fully representative and descriptive of the procedures and conditions proposed for manufacture of the product in the application.

The Center for Drug Evaluation and Research's (CDER's) and the Center for Veterinary Medicine's (CVM's) review of the validation of the sterilization process consists of a scientific evaluation of the studies submitted in the applications. This review is conducted by FDA's review staff and is part of a cooperative effort between the review staff, compliance staff, and field investigators to ensure the overall state of control of the sterile processing of veterinary and human drug products.

Information and data in support of sterility assurance may be provided directly to the application or by specific reference to a drug master file (DMF), a veterinary master file (VMF), or another application. Letters of authorization to refer to the referenced files should be included.

C. Remarks

The agency is considering whether to revise 21 CFR 10.90, therefore, this guideline is not issued under authority of that regulation. This guideline recommends types of information that may be useful to persons submitting drug applications for sterile products. These recommendations are not legal requirements. A person may follow the guideline or may choose to follow alternate procedures. If a person chooses to use alternate procedures, that person may wish to discuss the matter further with the agency to prevent an expenditure of time, money, and effort on activities that may later be determined to be unacceptable to FDA. This guideline does not bind the agency, nor does it create or confer any rights, privileges, or benefits for or on any person. Where this guideline states that a requirement is imposed by statute or regulation, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in this guideline.

This guideline is intended to provide recommendations for the types of information applicants should include in human and animal drug applications. Submission of such information is intended to provide a means by which applicants may conform to the regulatory requirements listed below.

Human Drugs	CFR
Investigational new drug applications	21 CFR 312.23(a)(7)
New drug applications	21 CFR 314.50
Abbreviated new drug applications	21 CFR 314.94 and 314.50
Abbreviated antibiotic drug applications	21 CFR 314.50
Supplements to new drug applications and abbreviated new drug applications.	21 CFR 314.70

Animal Drugs	CFR
Investigational new animal drug applications	21 CFR Part 511
New animal drug applications	21 CFR 514.1
Supplements to new animal drug applications	21 CFR 514.8

II. Information for Terminal Moist Heat Sterilization Processes

The following types of information should be submitted in support of sterility assurance for products produced using terminal moist heat sterilization. Although the following outline directly addresses moist heat processes, the same types of information would generally pertain to other terminal sterilization processes (e.g., ethylene oxide or radiation). (See section III. of this guideline.) The following information should be submitted for each facility to be used in the manufacture of the proposed drug product.

A. Description of the Process and Product

1. The Drug Product and Container-Closure System

Descriptions of the drug product and the container-closure system(s) to be sterilized (e.g., size(s), fill volume, or secondary packaging).

2. The Sterilization Process

A description of the sterilization process used to sterilize the drug in its final container-closure system, as well as a description of any other sterilization process(es) used to sterilize delivery sets, components, packaging, bulk drug substance or bulk product, and related items. Information and data in support of the efficacy of these processes should also be submitted. (See sections II.B. and II.C. of this

document for guidance that will be of further assistance.)

3. The Autoclave Process and Performance Specifications

A description of the autoclave process, including pertinent information such as cycle type (e.g., saturated steam, water immersion, water spray, etc.), cycle parameters and performance specifications including temperature, pressure, time, and minimum and maximum F_0. Identify the autoclave(s) to be used for production sterilization, including manufacturer and model.

4. Autoclave Loading Patterns

A description of representative autoclave loading patterns should be provided.

5. Methods and Controls to Monitor Production Cycles

Methods and controls used to monitor routine production cycles (e.g., thermocouples, pilot bottles, and biological indicators) should be described, including the number and location of each as well as acceptance and rejection specifications.

6. Requalification of Production Autoclaves

A description the program for routine and unscheduled requalification of production autoclaves, including frequency.

7. Reprocessing

A description and validation summary of any program that provides for reprocessing (e.g., additional thermal processing) of product should be provided. Please note that the stability program is also affected by additional thermal processing. For further information concerning the stability program, reference is made to the Center for Drug Evaluation and Research "Guideline for Submitting Documentation for the Stability of Human Drugs and Biologics" and to the Center for Veterinary Medicine "Drug Stability Guideline."

B. Thermal Qualification of the Cycle

1. Heat Distribution and Penetration Studies

Heat distribution and penetration study protocols and data summaries that demonstrate the uniformity, reproducibility, and conformance to specifications of the production sterilization cycle should be provided. Results from a minimum of three consecutive, successful cycles should be provided to ensure that the results are consistent and meaningful.

2. Thermal Monitors

The number of thermal monitors used and their location in the chamber should be described. A diagram is helpful.

3. The Effects of Loading on Thermal Input

Data should be generated with minimum and maximum load to demonstrate the effects of loading on thermal input to product. Additional studies may be necessary if different fill volumes are used in the same container line. Data summaries are acceptable for these purposes. A summary should consist of, for example, high and low temperatures (range), average temperature during the dwell period, minimum and maximum F_0 values, dwell time, run date and time, and identification of the autoclave(s) used. These data should have been generated from studies carried out in production autoclave(s) that will be used for sterilization of the product that is the subject of the application.

4. Information Included in the Batch Record

The batch record supplied with the chemistry, manufacturing, and controls section of the application should identify the validated processes to be used for sterilization and for depyrogenation of any components. This information can be included in the batch record by reference to the validation protocol or standard operating procedure (SOP). Validation information should be provided as described above.

C. Microbiological Efficacy of the Cycle

Validation studies that demonstrate the efficacy (lethality) of the production cycle should be provided. A sterility assurance of 10^{-6} or better should be demonstrated for any terminal sterilization process. This level of sterility assurance should be demonstrated for all parts of the drug product (including the container and closure, if applicable) which are claimed to be sterile. The specific type of study and the methods used to carry out the study (or studies) are product and process specific and may vary from manufacturer to manufacturer. In general, the following types of information and data should be provided.

1. Identification and Characterization of Bioburden Organisms

Describe the methods and results from studies used to identify and characterize bioburden organisms. The amount and type of information supplied may be dependent on the validation strategy chosen. For example, more information may be required for bioburden-based autoclave processes than for overkill processes. Information concerning the number, type, and resistance of bioburden organisms may be necessary, including those organisms associated with the product solution and the container and closure. It may be necessary to identify the most heat-resistant bioburden organisms.

2. Specifications for Bioburden

Specifications (alert and action levels) for bioburden should be provided. A description of the program for routinely monitoring bioburden to ensure that validated and established limits are not exceeded (e.g., frequency of analysis and methods used in bioburden screening). The methods provided should be specific.

3. Identification, Resistance, and Stability of Biological Indicators

Information and data concerning the identification, resistance (D and Z values), and stability of biological indicators used in the biological validation of the cycle should be provided. If biological indicators are purchased from a commercial source, it may be necessary to corroborate the microbial count and resistance, and provide performance specifications.

4. The Resistance of the Biological Indicator Relative to That of Bioburden

Studies characterizing the resistance of the biological indicator relative to that of bioburden may be necessary. Resistance in or on the product (i.e., in the product solution, or on the surface of container-closure parts or interfaces) should be determined as necessary. If spore carriers are used (e.g., spore strips), the resistance of spores on the carrier relative to that of directly inoculated product should be determined, if necessary.

5. Microbiological Challenge Studies

Submit microbiological validation studies that demonstrate the efficacy of the minimum cycle to provide a sterility assurance of 10^{-6} or better to the product under the most difficult to sterilize conditions (e.g., the most difficult to sterilize load with biological indicators at microbiological master sites or in master product or both). Use of a microbiological master product or site should be supported by scientific data. Microbiological master sites or solutions are those sites or solutions in which it is most difficult to kill the biological indicator under sterilization cycles that stimulate production conditions.

D. Microbiological Monitoring of the Environment

Section 211.160 (21 CFR 211.160) requires, in part, the establishment of scientifically sound and appropriate specifications, standards, sampling plans, and test procedures designed to ensure that components, drug products containers closures, in-process materials, and drug products conform to appropriate quality standards. Therefore, a microbiological monitoring program for production areas along with a bioburden monitoring program for product components and process water should be established. Process water includes autoclave cooling water. Applicants should provide information concerning this program. Frequency, methods used, action levels, and data summaries should be included. A description of the actions taken when specifications are exceeded should be provided.

E. Container-Closure and Package Integrity

An applicant should provide scientific validation studies (and data) in support of the microbial integrity of the drug packaging components. The following types of information should be included:

1. Simulation of the Stresses From Processing

Experimental designs should simulate the stresses of the sterilization process, handling, and storage of the drug and their effects on the container-closure system. Physical, chemical, and microbiological challenge studies may be necessary.

2. Demonstrate Integrity Following the Maximum Exposure

Container-closure integrity should be demonstrated on product units that have been exposed to the maximum sterilization cycle(s). If a product is exposed to more than one process, then exposure to the maximum cycle of all processes should be incorporated into the study design.

3. Multiple Barriers

Each barrier that separates areas of the drug product claimed to be sterile should be separately evaluated and validated.

4. The Sensitivity of the Test

The sensitivity of the experimental method used for container-closure integrity testing should be specified and provided.

5. Integrity Over the Product Shelf Life

Microbial integrity of the container-closure system should be demonstrated over the shelf life of the product. (See section V.A. of this guideline.)

F. Bacterial Endotoxins Test and Method

The bacterial endotoxins test used for the product should be described. The description should include qualification of the laboratory, inhibition and enhancement testing and results, determination of noninhibitory concentration and maximum valid dilution. For further information see the agency guideline entitled "Guideline on Validation of the Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices."

G. Sterility Testing Methods and Release Criteria

Sterility test methods should be described and should include the protocol for the selection of representative units during production. When test methods differ significantly from compendial test methods, a demonstration of the equivalency to the compendial method should be provided. Testing performed within barrier systems should be dsecribed, and information concerning validation of the barrier system may be necessary.

H. Evidence of Formal, Written Procedures

Section 211.113(b) (21 CFR 211.113(b)) requires that appropriate written procedures, designed to prevent microbiological contamination of drug products purporting to be sterile, be established and followed. Such procedures are required to include validation of any sterilization process. Therefore, evidence should be provided that there are formal, written procedures describing the elements listed above and that these procedures are followed. Such evidence may consist of SOP's, listing of SOP's, protocols, etc., submitted as part of these elements.

III. Other Terminal Sterilization Processes

Although the information above (sections I.A. through I.G. of this guideline) directly addresses moist heat processes, the same type of information would pertain to other terminal sterilization processes used, singly or in combination, to sterilize a drug product. The types of information outlined are, in general, also applicable to ethylene oxide and radiation (gamma and electron beam). These other processes should be addressed as each applies to the drug product, sterile packaging and in-process sterilization of components. Examples of such information might include: Descriptions of loading configurations; qualification and validation of master load configurations; determination and validation of the efficacy of the minimum cycle to provide sterility assurance at the product master sites; requalification of the cycle; provisions for resterilization; specifications and monitoring program for product bioburden; and container-closure integrity. Specific examples are provided below to demonstrate the application of these concepts to other sterilization processes.

Additional information relating to the effects of sterilization process on the chemical and physical attributes of the drug substance or drug product may be applicable in the chemistry, manufacturing, and controls section of the application.

A. Ethylene Oxide

1. Description of the Sterilizer

The sterilizer(s) and controlled site(s) for prehumidification and aeration of the product load should be described.

2. Cycle Parameters

The parameters and limits for all phases of the cycle, e.g., prehumidification, gas concentration, vacuum and gas pressure cycles, exposure time and temperature, humidity, degassing, aeration, and determination of residuals, should be specified. Specific procedures used to monitor and control routine production cycles to assure that performance is within validated limits should be provided.

3. Microbiological Methods

The microbiological methods (growth medium, incubation temperature, and time interval) for cultivating spores from inoculated samples during validation experiments should be described, as well as the microbiological methods used as part of routine production cycles.

4. Stability

The program for monitoring the stability of packaging and the integrity of the container-closure system barrier over shelf life should be described.

B. Radiation

1. The Facility and the Process

The radiation facility should be identified. The radiation source, method of exposure (i.e., movement through the irradiator), and the type and location of dosimeters used to monitor routine production loads should be described. If the low dose site is not used for routine monitoring, data that show the dose relationship between the two sites should be provided.

2. The Packaging of the Product

The packaging of the drug product within the shipping carton and within the carrier should be described.

3. Multiple-Dose Mapping Studies

Multiple-dose mapping studies for identification of low and high dose sites and demonstration of uniformity and reproducibility of the process should be described.

4. Microbiological Methods and Controls

The microbiological methods and controls used to establish, validate, and audit the efficacy of the cycle should be described.

5. Monitoring Stability

The program for monitoring the stability of packaging and the integrity of the container-closure system barrier over shelf life should be described.

IV. Information for Aseptic Fill Manufacturing Processes Which Should Be Included in Drug Applications

The following types of information should be submitted in support of sterility assurance for products manufactured by aseptic processing.

A. Buildings and Facilities

A brief description of the manufacturing building and facilities should be provided. The following information should be included:

1. Floor Plan

A floor plan of the areas holding the aseptic filling facilities including preparation and holding areas, filtering and filling areas, and gowning rooms. The air cleanliness class of each area should be identified (e.g., Class 100, Class 10,000, Class 100,000). Isolators or barrier systems should be identified.

2. Location of equipment

The placement of all critical equipment, including, but not limited to laminar flow hoods, autoclaves, lyophilizers, filling heads, should be identified. Equipment within barrier or isolation systems should be noted.

B. Overall Manufacturing Operation

The overall manufacturing operation including, for example, material flow, filling, capping, and aseptic assembly should be described. The normal flow (movement) of product and components from formulation to finished dosage form should be identified and indicated on the floor plan described above. The following information should be considered when describing the overall manufacturing operation:

1. Drug Product Solution Filtration

The specific bulk drug product solution filtration processes, including tandem filter units, prefilters, and bacterial retentive filters should be described. A summary should be provided containing information and data concerning the validation of the retention of microbes and compatibility of the filter used for the specific product. Any effects of the filter on the product formulation should be described (e.g., adsorption of preservatives or active drug substance, or extractables).

2. Specifications Concerning Holding Periods

Section 211.111 (21 CFR 211.111) requires, in part, when appropriate, the establishment of time limits for completing each phase of production to ensure the quality of the drug product. Therefore, specifications concerning any holding periods between the compounding of the bulk drug product and its filling into final containers should be provided. These specifications should include, for example, holding tanks, times, temperatures, conditions of storage, etc. Procedures used to protect microbiological quality of the bulk drug during these holding periods should be indicated. Maintenance of the microbiological quality during holding periods may need verification.

3. Critical Operations

The critical operations that expose product or product contact surfaces to the environment (such as transfer of sterilized containers or closures to the aseptic filling areas) should be described. Any barrier or isolation systems should be described.

C. Sterilization and Depyrogenation of Containers, Closures, Equipment, and Components

The sterilization and depyrogenation processes used for containers, closures, equipment, components, and barrier systems should be described. A description of the validation of these processes should be provided including, where applicable, heat distribution and penetration summaries, biological challenge studies (microbiological indicators and endotoxin) and routine monitoring procedures. Validation information for sterilization processes other than moist heat should also be included. Methods and data (including controls) demonstrating distribution and penetration of the sterilant and microbiological efficacy of each process should be submitted. The section of this guideline concerning terminal sterilization contains guidance that may be of further assistance.

1. Bulk Drug Solution Components That are Sterilized Separately

If the bulk drug solution is aseptically formulated from components that are sterilized separately, information and data concerning the validation of each of these separate sterilization processes should be provided.

2. Sterilization Information in the Batch Records

The completed batch record supplied with the chemistry, manufacturing, and controls section of the application should identify the validated process(es) to be used for sterilization or depyrogenation of any container-closure components. This information may be included in the batch record by reference to the validation protocol or SOP.

D. Procedures and Specifications for Media Fills

The procedures and specifications used for media fills, and summaries of results for validation using the same container-closure system and filling process that is to be used for the product should be described. The microbiological testing method(s) used should be described. Any procedural differences between the media fill and the production process should be indicated. A summary of recent media fill results, including failures, should be provided. These data should be obtained using the same filling line(s) that are to be used for the drug product. The following are recommended to be included with the data summary for each media fill run described:

1. The filling room

Identify the aseptic filling area used and relate this to the floor plan provided in section IV.A.1. of this guideline.

2. Container-closure type and size

3. Volume of medium used in each container

4. Type of medium used

5. Number of units filled

6. Number of units incubated

7. Number of units positive

8. Incubation parameters

The incubation time and temperature for each group of units incubated and specifications for any group of units subjected to two (or more) different temperatures should be specified.

9. Date of Each Media Fill

10. Simulations

The procedures used to simulate any steps of a normal production fill should be described. This might include, for example, slower line speed, personnel shift changes, equipment failure and repair, mock lyophilization and substitution of vial headspace gas.

11. Microbiological Monitoring

The microbiological monitoring data obtained during the media fill run should be provided (see section IV.F. of this guideline).

12. Process Parameters

The parameters used for production filling and for media fills (e.g., line speed, fill volume, number of containers filled, or duration of fill) should be compared.

E. Actions Concerning Product When Media Fills Fail

The disposition of product made before and after a failed media fill should be described. The description should include details of investigations, reviews, and how decisions are made to reject or release product.

F. Microbiological monitoring of the environment

The microbiological monitoring program used during routine production and media fills should be described. The frequency of monitoring, type of monitoring, sites monitored, alert and action level specifications, and precise descriptions of the actions taken when specifications are exceeded should be included.

1. Microbiological Methods

The microbiological materials and methods used in the environmental monitoring program should be described. Methods may include sample collection, transport, neutralization of sanitizers, incubation, and calculation of results. The following are sources of microbial contamination and their monitoring should be addressed, including specifications.

a. Airborne microorganisms

b. Microorganisms on inanimate surfaces

c. Microorganisms on personnel

e. Water systems

f. Product component bioburden

2. Yeasts, Molds, and Anaerobic Microorganisms

A description of periodic or routine monitoring methods used for yeasts, molds, and anaerobes should be provided.

3. Exceeded Limits

A description of the actions taken when specifications are exceeded should be provided.

G. Container-Closure and Package Integrity

The methods and results demonstrating the integrity of microbiological barrier of the container-closure system should be summarized. This should include testing for initial validation. Also the procedures used for the stability protocol should be described. For initial validation of microbiological integrity of container-closure systems, product sterility testing is not normally considered sufficient. The sensitivity of the experimental method used for container-closure integrity testing should be specified and provided in the document.

H. Sterility Testing Methods and Release Criteria

Sterility test methods should be described and should include the protocol for the selection of representative units during production. When test methods differ significantly from compendial test methods, a demonstration of the equivalency to the compendial method should be provided. Testing performed within barrier systems should be discussed, and information concerning validation of the barrier system may be necessary.

I. Bacterial Endotoxins Test and Method

The bacterial endotoxins test used for the product, if applicable. This description should include qualification of the laboratory, inhibition and enhancement testing and results, determination of noninhibitory concentration and maximum valid dilution. For further information see the agency guideline entitled "Guideline on Validation of the Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices."

J. Evidence of Formal Written Procedures

Evidence should be provided that there are formal, written procedures describing the above elements and that these procedures are followed. Such evidence may consist of SOP's, or a listing of SOP's or protocols submitted as part of the elements listed above.

V. Maintenance of Microbiological Control and Quality: Stability Considerations

A. Container-Closure Integrity

The ability of the container-closure system to maintain the integrity of its microbial

barrier, and, hence, the sterility of a drug product throughout its shelf life, should be demonstrated. Reference is made to sections II.E. and IV.G. of this guideline. As previously stated, sterility testing at the initial time point is not considered sufficient to demonstrate the microbial integrity of a container-closure system. Documentation of the sensitivity of the container-closure integrity test should be provided.

B. Preservative Effectiveness

The efficacy of preservative systems to control bacteria and fungi inadvertently introduced during drug product use should be demonstrated at the minimum concentration specified for drug product release or at the minimum concentration specified for the end of the expiration dating period, whichever is less. Since the efficacy of preservative systems is judged by their effect on microorganisms, microbial challenge assays should be performed. The United States Pharmacopeia (USP) provides a microbial challenge assay under the title "Antimicrobial Preservatives—Effectiveness." For purposes of the stability protocol, the first three production lots should be tested with a microbial challenge assay at the beginning and end of the stability period. Chemical assays to monitor the concentration of preservatives should be performed at all test intervals. For subsequent lots placed on stability, chemical assays may be adequate to demonstrate the presence of specified concentrations of preservatives, and such testing should be carried out according to the approved stability study protocol.

C. Pyrogen or Endotoxin Testing

For drug products purporting to be pyrogen free, it is recommended that pyrogen or endotoxin tests should be carried out at the beginning and end of the stability period as part of the approved stability study protocol.

VI. Additional Information

Further information concerning content and format of drug applications is available in the form of guidelines and other publications. The following documents contain information related to the topics discussed in this guideline:

"Guideline for Submitting Documentation for the Stability of Human Drugs and Biologics" (CDER).

"Guideline on Validation of the Limulus Amebocyte Lysate Test as an End-Product Endotoxin Test for Human and Animal Parenteral Drugs, Biological Products, and Medical Devices" (CDER, CVM, CBER, and CDRH).

"Guideline on Sterile Drug Products Produced by Aseptic Processing" (CDER).

"Drug Stability Guideline" (CVM).

Dated: November 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-29646 Filed 12-2-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93N-0072]

Form for Reporting Serious Adverse Events and Product Problems With Human Drug and Biological Products and Medical Devices; Extension of Deadline for Required Use by Drug Manufacturers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is extending the deadline for mandatory use of FDA Form 3500A by drug manufacturers for adverse event reporting required by FDA regulations until a final rule is issued in the **Federal Register** by FDA which will amend the current regulations and require the use of new Form 3500A.

DATES: The use of FDA Form 3500A will not be required by drug manufacturers until FDA issues in the **Federal Register** a final rule modifying the existing adverse drug experience regulation to require the use of FDA Form 3500A in place of FDA Form 1639. The use of FDA Form 3500A will not be required by biologics manufacturers, user facilities (for device reporting), device distributors, and device manufacturers until finalization of the respective adverse event reporting regulations. However, all manufacturers, distributors and device user facilities are encouraged to begin using FDA Form 3500A immediately.

ADDRESSEES: Ten copies or fewer of FDA Form 3500A and a copy of the instructions for completing the form are available by contacting the following offices:

For drug manufacturers: Division of Epidemiology and Surveillance (HFD-730), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. A guideline for postmarketing reporting of adverse drug experiences is available from the CDER Executive Secretariat Staff (HFD-8), Center for Drug Evaluation and Research, 7500 Standish Pl., Rockville, MD 20855;

For biologic licensees: Adverse Experience Branch (HFM-220), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448; and

For user facilities, distributors and device manufacturers: Division of Small Manufacturers Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. The device coding manual for use with Form FDA 3500A may also be obtained from this address.

Bulk copies of FDA Form 3500A may be obtained by writing to the Consolidated Forms and Publications Distribution Center, 3222 Hubbard Rd., Landover, MD 20785.

Manufacturers, distributors, and device user-facilities, may use an FDA approved computer-generated facsimile of FDA Form 3500A. A facsimile may be submitted for FDA review and written approval to MedWatch (HF-2), Office of the Commissioner, FDA, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dianne L. Kennedy, Office of the Commissioner (HF-2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-0117.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 3, 1993 (58 FR 31596), FDA announced the availability of a new form for reporting adverse event and product problems with human drug products, biologic products, medical devices (including in vitro diagnostics), special nutritional products (dietary supplements, medical foods, infant formulas), and other products regulated by FDA. There are two versions of the form. One version (FDA Form 3500) is for use by health professionals for voluntary adverse event and product problem reporting; the other version (FDA Form 3500A) is intended for use by manufacturers, distributors, and device user facilities for mandatory reporting as required by applicable statute or FDA regulation.

The voluntary version of the form (FDA Form 3500) was effective June 3, 1993, while the mandatory version (FDA Form 3500A) was to have been required for use by drug manufacturers on November 30, 1993, and upon finalization of the respective adverse event reporting regulations for biologic and device manufacturers and distributors and for device user facilities. User facilities, distributors, and all manufacturers were encouraged to begin using FDA Form 3500A immediately.

The use of FDA Form 3500A will be required for all mandatory reporting when FDA has finalized the respective adverse event reporting regulations. FDA is preparing to issue a final rule for adverse experience reporting for licensed biological products (see proposed regulation 44 FR 24233, April 24, 1979) along with a proposal to amend the adverse drug and biological

experience reporting regulations that will require, among other things, that FDA Form 3500A be used in place of FDA Form 1639.

In addition, FDA is also preparing a final rule on medical device user facility, distributor, and manufacturer reporting. (See proposed regulation 56 FR 60024, November 26, 1991.) This final rule will also require the use of FDA Form 3500A for all mandatory medical device reporting. These final rules will provide consistency with the provisions of FDA Form 3500A. However, the agency encouraged manufacturers, distributors, and user-facilities to begin using FDA Form 3500A as soon as possible.

Adverse events associated with vaccines should continue to be reported on a Vaccine Adverse Event Reporting System Form and not on FDA Form 3500A.

Dated: November 26, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 93-29540 Filed 11-30-93; 8:53 am]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-93-1917; FR-3350-N-60]

Federal Property Suitable as Facilities to Assist the Homeless

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

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 3, 1993.

ADDRESS: For further information, contact Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 26, 1993.

Mark C. Gordon,

Deputy Assistant Secretary for Operations/ Chief of Staff.

[FR Doc. 93-29318 Filed 12-2-93; 8:45 am]

Billing Code 4210-29-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-010-4191-03]

Final Environmental Impact Statement and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability; final environmental impact statement and record of decision for Newmont Gold Company's South Operations Area Project.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, notice is hereby given that the Bureau of Land Management, U.S. Department of the Interior has prepared, by a third party contractor, a Final Environmental Impact Statement (FEIS) on Newmont Gold Company's South Operations Area Project in Northeastern Nevada, and has made copies of the document available for public review. Also available is the FEIS's associated Record of Decision (ROD) approving the findings of the EIS on Newmont's amended Plan of Operations.

As provided in CEQ regulation 40 CFR 1506.10(b)(2), an exception to the required thirty day delay between the release of the FEIS and its associated ROD has been granted. Therefore, the ROD is being released simultaneously with the FEIS.

DATES: Written comments on the FEIS will be accepted until close of business on January 3, 1994. No public meetings are scheduled.

ADDRESSES: A copy of the FEIS and ROD can be obtained from: Bureau of Land Management, Elko District Office, Attn: David Vandenberg, EIS Coordinator, P.O. Box 831, Elko, NV 89803.

The FEIS and ROD are available for inspection at the following locations: BLM State Office (Reno), Carson City, Ely, and Elko County Libraries, and the University of Nevada libraries in Reno and Las Vegas.

FOR FURTHER INFORMATION CONTACT: For additional information, write to the above address or call David Vandenberg at (702) 753-0200.

Dated: November 23, 1993.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93-29489 Filed 12-2-93; 8:45 am]

BILLING CODE 4310-HC-M

[NM-940-4110-03; NMNM 63804]

Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97-451, a petition for reinstatement of Oil and Gas Lease NMNM 63804, Sandoval County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from September 1, 1993, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective September 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Martha A. Rivera, BLM, New Mexico State Office, (505) 438-7584.

Dated: November 24, 1993.

Ida T. Viarreal,

Acting Chief, Adjudication Section.

[FR Doc. 93-29565 Filed 12-2-93; 8:45 am]

BILLING CODE 4310-FB-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32391]

Wallkill Valley Railroad, Inc.—Operation Exemption—Acquisition and Operation—John E. Rahl

Wallkill Valley Railroad, Inc. (Wallkill), a noncarrier, has filed a

notice of exemption to operate a 400-foot segment of rail line between milepost 0.40 and milepost 0.40+400 at Kingston, NY. The segment is part of the 10.94-mile Wallkill Branch between milepost 0.40 at Kingston and milepost 11.34 at New Paltz, NY, that Consolidated Rail Corporation (Conrail) was authorized to abandon in Docket No. AB–167 (Sub-No. 59N), Consolidated Rail Corporation—Abandonment Between Kingston and New Paltz, NY (not printed), served January 6, 1982. In 1986, Wallkill's president, John E. Rahl, acquired the line from Conrail. Mr. Rahl now proposes to lease the entire 10.94-mile line to Wallkill. This notice is limited to Wallkill's proposed operation of the 400-foot segment.

Wallkill previously filed a notice of exemption to operate the entire line. That notice was rejected in Finance Docket No. 31909, Wallkill Valley Railroad Company—Between Kingston and New Paltz, NY (not printed), served December 28, 1992, because of environmental concerns about the line which had not been operated for more that 10 years and needed to be rebuilt. On January 7, 1993, Wallkill filed a petition in Finance Docket No. 32230, Wallkill Valley Railroad Company—Petition for Exemption of Construction and Operation, to exempt its construction and operation of the line. The Commission's Section of Energy and Environment (SEE) is conducting an environmental analysis of the proposed reconstruction and operation of the remainder of the Wallkill Branch. SEE will shortly issue a separate environmental document analyzing Wallkill's proposed operation of the 400-foot segment at Kingston.

Any comments on Wallkill's proposed operation must be filed with the Commission and served on: Louis E. Gitomer, Suite 210, 919 18th Street, NW, Washington, DC 20006.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Interested persons may obtain a copy of the SEE's analysis of Wallkill's proposed operation at Kingston by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE at (202) 927–6248. Comments on environmental matters must be filed within 15 days after the document is available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 24, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29751 Filed 12–2–93; 8:45 am]

BILLING CODE 7035–01–P

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 or 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 Collection

(1) Petition by Entrepreneur to Remove the Conditions
(2) I–829. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. This form is for a conditional resident alien entrepreneur who obtained such status through a qualifying investment to apply to remove the conditions on his/her residence.
(5) 200 annual respondents at 1.08 hours per response
(6) 216 annual burden hours
(7) Not applicable under Section 3504(h)

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Application—Dedicated Commuter Lane Program
(2) I–823 through I–823A and I–823B. Immigration and Naturalization Service
(3) Annually
(4) Individuals or households. At land border ports of entry participating in the dedicated commuter lane program, this form will be used by frequent crossers to voluntarily apply for permission to use the dedicated commuter lane
(5) 200,000 annual respondents at .664 hours per response
(6) 132,800 annual burden hours
(7) Not applicable under Section 3504(h)

(1) Application Booklets—Attorney General's Honor Program, Summer Law Intern Program, Law Student Program
(2) None. Office of Attorney Personnel Management
(3) On occasion
(4) Individuals or households. The application booklets describe the three programs and solicit information from applicants which aids in the interviewing and hiring procedures.
(5) 6,700 annual respondents at 1.0 hour per response
(6) 6,700 annual burden hours
(7) Not applicable under Section 3504(h)

Public comment on these items is encouraged.

Dated: November 29, 1993.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 93–29555 Filed 12–2–93; 8:45 am]

BILLING CODE 4410–10–M

Drug Enforcement Administration

[Docket No. 93–19]

William E. Brown, D.O.; Grant of Restricted Registration

On November 24, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to William E. Brown, D.O. (Respondent), of Oklahoma City, Oklahoma, proposing to deny his application for registration as a practitioner in Schedules III through V, on grounds that his registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f). The DEA based its proposed denial on grounds that the Respondent's previous application for registration was denied in April 1990, on findings by the Acting Administrator that the Respondent's application was not in the public interest, and that there had been insufficient evidence to show that the Respondent had been rehabilitated and would not succumb to the pressures of abusing controlled substances in the future; and that the Respondent failed to show that his efforts at rehabilitation were successful, nor demonstrate that he had attended courses on the proper handling of controlled substances.

Respondent, through counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Paul A. Tenney. Following prehearing procedures, a hearing was held in Oklahoma City on May 18, 1993. On August 2, 1993, in his findings of fact, conclusions of law, and recommended ruling, the administrative law judge recommended that the Respondent's application for a DEA Certificate of Registration be approved subject to restrictions consistent with those limitations imposed upon him by the Oklahoma State Board of Osteopathic Examiners (Board).

No exceptions were filed to Judge Tenney's opinion, and on September 2, 1993, the administrative law judge transmitted the record to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

As a threshold matter, the administrative law judge found that the parties agreed to accept the facts found in the final order of the Acting Administrator denying Respondent's previous application for registration, 55 FR 17832 (April 27, 1990), as facts in this proceeding. In October 1984, the Respondent was convicted of fifteen felony counts involving the receipt of controlled substances by fraud. The State of Oklahoma sentenced the Respondent to five years imprisonment, all but ninety days suspended. As a result of this conviction the Respondent's osteopathic license was revoked and his controlled substances privileges suspended. In September 1986, the Respondent's probation was revoked based upon a violation of being intoxicated in the workplace, and he was sentenced to one year imprisonment. Subsequently, in June 1987, the Respondent's osteopathic license was reinstated. The Respondent holds a current Oklahoma State osteopathic license and is authorized under State law to handle Schedule III through V controlled substances, with certain limitations, including that the Respondent utilize triplicate serially numbered prescriptions; accept no samples; not dispense any scheduled drugs from his office; and submit copies of said prescriptions monthly to the Board. The Board further recommended that the Respondent submit monthly documentation of his attendance at Alcoholics Anonymous. The Board also recommended that the DEA approve the Respondent to dispense Schedules III through V controlled substances consistent with the restrictions placed upon his State authorization.

The Respondent filed an application for DEA registration in January 1989. In February 1990, the Deputy Assistant Administrator, Office of Diversion Control, issued on Order to Show Cause to the Respondent proposing to deny his application on grounds that his registration would be inconsistent with the public interest. The Respondent waived his right to a hearing and submitted a one-page handwritten statement on his own behalf. The Acting Administrator denied the application, basing his decision solely upon the evidence contained in the investigative file and Respondent's written statement, in which the Respondent outlined his attendance at a drug treatment program, Alcoholics Anonymous meetings, and an impaired physician support group, as well as his submission to periodic drug screening. No other evidence was submitted. In his final order, the Acting Administrator commended the Respondent for his recent efforts toward rehabilitation, but found that there was insufficient evidence to show that the Respondent had been rehabilitated, and to ensure that he would not succumb to the pressures of abusing controlled substances in the future. The Acting Administrator suggested that the Respondent "will need to demonstrate that he has attended courses on the proper handling of controlled substances before again applying for registration."

The administrative law judge found that Respondent filed a second application for registration in October 1990. The Oklahoma City DEA office initiated an investigation to determine whether the application should be granted. A DEA Investigator testified that Respondent represented that he had received a recommendation from the Oklahoma Board, but the Investigator was unable to obtain the Board Order. Consequently, the DEA determined that there was insufficient evidence to show that Respondent had gained the appropriate education and rehabilitation, and referred the matter to DEA Headquarters for initiation of administrative proceedings. In August 1992, Investigators again contacted the Respondent to determine if he had received any training since his reapplication. Later that month, the Respondent submitted documentation of education, training and rehabilitation to the local DEA office, including the State Board's recommendation, certificates evidencing continuing medical education courses, letters from physicians regarding the Respondent's drug status and sobriety, and drug screening laboratory results. Although many of these documents were available before the previous final order, the Respondent had not submitted them to the Administrator for consideration.

The administrative law judge found that the Respondent demonstrated that he has attended courses on the proper handling of controlled substances; that the Respondent's testimony and character evidence indicated that Respondent has been rehabilitated and he will likely not succumb to the pressures of abusing controlled substances in the future; and that the Respondent has demonstrated a legitimate professional need for a DEA registration limited to Schedules III through V.

The Administrator may deny an application for registration if he determines that such registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board or disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. *Henry J. Schwarz, Jr., M.D.*, Docket No. 88–42, 54 FR 16422 (1989).

The Government argued that all five factors are relevant to this proceeding. The administrative law judge found that as to factor (1), the Oklahoma Board has restored the Respondent's license and his Schedule III through V controlled substance privileges. As to factors (2) through (5), the Government argued that the Respondent acted in a manner inconsistent with the public interest as he prescribed Schedule II substances under fictitious names for use by himself and his former wife; in 1978, he reported 350,000 dosage units of a Schedule IV controlled substance as stolen from his place of business; during the period 1977 through 1981, the Respondent was listed by DEA as an "excessive purchaser" of controlled substances; and in February 1983, he issued prescriptions for controlled substances while unregistered. Further, the Government argues that the Respondent was convicted in 1984, of felonies involving controlled substances; and in 1986, the Respondent's probation was revoked due to intoxication in the workplace.

The administrative law judge found that the Government has made a prima facie case under 21 U.S.C. 823(f). Judge Tenney further found however, that on balance, the mitigating factors with respect to the Respondent's rehabilitation outweigh his past misconduct. Respondent attended and continues to attend continuing medical education courses. Respondent presented evidence that he has maintained sobriety for a long period of time and his prognosis for complete recovery is very good. Finally, there is evidence of remorse for his prior conduct, and he appears to have stabilized his personal life.

Judge Tenney found that matters of rehabilitation and mitigation were essential to the resolution of the public interest issue and concluded that the Administrator should approve the Respondent's application with limitations consistent with his State controlled substance authority. The Respondent must utilize triplicate serially numbered prescriptions; not accept controlled substance samples; not dispense, other than by prescription, any controlled substance; and submit to the Oklahoma State Board of Osteopathic Examiners a copy of all prescriptions he issues. The Administrator concurs with the administrative law judge's assessment and adopts the findings of fact, conclusion of law, and recommended ruling of the administrative law judge in its entirety.

The Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration in Schedules III through V of William E. Brown, D.O., be, and it hereby is, granted, subject to the restrictions as noted herein. This order is effective on December 3, 1993.

Dated: November 19, 1993.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 93–29553 Filed 12–2–93; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 92–66]

Myrtle L. Miller, D.O.; Denial of Application for Registration

On March 31, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Myrtle L. Miller, D.O. (Respondent), of Duncannon, Pennsylvania, proposing to deny her application for registration as a practitioner. The statutory basis for seeking the denial of the application was that Respondent's registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f).

The Order to Show Cause alleged that in January 1988, Respondent was arrested and charged by the State of Tennessee with 72 counts of writing prescriptions for controlled substances without a legitimate medical purpose; that in October 1988, the Respondent's previous DEA Certificates of Registration were revoked as inconsistent with the public interest; and that she had her Tennessee osteopathy license revoked in August 1990.

Respondent, by counsel, filed a request for hearing on the issues raised by the Order to Show Cause, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was conducted in Lancaster, Pennsylvania on November 24, 1992.

On June 2, 1993, the administrative law judge issued her opinion and recommended ruling in this matter in which she recommended that the Respondent's application for registration be denied. No exceptions were filed by either party, and on July 14, 1993, the administrative law judge transmitted the record to the Administrator. The Administrator has carefully considered the entire record in this matter and, pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge credited the testimony of the DEA Investigator who testified at the hearing in this matter that the Tennessee Board of Osteopathic Examiners (Board) initiated a proceeding against the Respondent in 1990. The Respondent refused to accept the Notice of Charges and Hearing delivered to her residence, and as a result, the Board issued an Order of Default "to protect the public from the Respondent's ignorant and illicit practice of osteopathic medicine." There was testimony that the DEA Investigator interviewed Tennessee law enforcement personnel regarding the underlying allegations of Respondent's improper prescribing of controlled substances, and learned that Respondent prescribed controlled substances without performing any physical examination and for no legitimate medical purpose. Additionally, the Investigator learned that Respondent was indicted on 72 counts of feloniously dispensing controlled substances and 32 counts of Medicare and Medicaid fraud. As of the date of the hearing no criminal trial had been held.

The administrative law judge found that on February 11, 1988, the Administrator of DEA immediately suspended Respondent's previous DEA Certificates of Registration based upon a finding that her conduct at that time posed an imminent danger to the public health and safety. The immediate suspension was accompanied by an Order to Show Cause and was personally served on Respondent. She failed to respond to the Order to Show Cause and was considered to have waived her right to a hearing. The Administrator concluded that Respondent prescribed controlled substances for no legitimate medical purpose and as a result, issued a final order on October 6, 1988, revoking her

Certificates of Registration. See 53 FR 39361 (1988).

The Respondent, testified that she holds a license to practice osteopathy in the Commonwealth of Pennsylvania and stated that her Tennessee license to practice "probably" had been revoked, but that she had no prior notice. Respondent first stated that "[she didn't] know" if criminal charges were pending in Tennessee, and later admitted that she had been arrested and had been represented by an attorney in that criminal proceeding.

The Respondent argued that, although she had been arrested, she was never convicted of any crime; that she was unaware of her rights with regard to the prior DEA revocation of her registration; and that she was denied due process by the State of Tennessee when they revoked her osteopathic license. Respondent concluded since she was properly licensed in Pennsylvania, that the Government should not use the previous State and Federal actions as a basis to deny her application.

The Administrator may deny an application for registration if he determines that such registration would be inconsistent with the public interest. Pursuant to 21 U.S.C. 823(f), "[i]n determining the public interest, the following factors will be considered:

(1) The recommendation of the appropriate State licensing board of disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct as may threaten the public health or safety."

It is well established that these factors are to be considered in the disjunctive, i.e., the Administrator may properly rely on any one or a combination of factors, and give each factor the weight he deems appropriate. Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

The administrative law judge found factors one, two, four and five relevant. Judge Bittner found as to factor one, that the State of Tennessee revoked the Respondent's license to practice osteopathy; as to factor two and factor five, that the Government failed to establish by a preponderance of the evidence respectively that Respondent wrote prescriptions without a legitimate medical purpose or engaged in Medicare/Medicaid fraud with respect to those prescriptions; and that as to factor four and five, the DEA revoked a previous registration of the Respondent in 1988.

The administrative law judge found that the Respondent was evasive and nonresponsive in her answers, and continuously denied ever having received or seen any documents relevant to her criminal indictment, State Board disciplinary proceeding, or DEA revocation, some of which her attorney introduced into evidence at the hearing in this matter. Furthermore, the Respondent's previous attorney was advised of her DEA revocation, and the Order to Show Cause was personally served on Respondent by DEA personnel. Judge Bittner found that the Respondent's lack of credibility indicates a refusal to acknowledge that her prescribing practices have caused her to be subjected to professional disciplinary action and criminal prosecution. Such a refusal warrants the inference that she is not willing or capable of accepting the responsibilities of a DEA registration.

The administrative law judge found that although the Respondent remains licensed in Pennsylvania, the State of Tennessee revoked the Respondent's osteopathic license; that the Administrator's final order revoking the Respondent's prior DEA registrations is a factor relevant to "conduct which may threaten the public health and safety"; and that the Respondent's testimony evinced her unwillingness or inability to comprehend the charges against her and their consequences. Judge Bittner concluded that despite her finding that the Government did not prove the actual conduct upon which the State of Tennessee and the DEA based their prior revocations, in light of the above, the Respondent's registration would not be in the public interest.

The Administrator adopts the opinion and recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. The Administrator finds that Respondent's registration would be inconsistent with the public interest, and her pending application for registration must be denied. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that the application for a DEA Certificate of Registration of Myrtle L. Miller, D.O., be, and it hereby is, denied. This order is effective December 3, 1993.

Dated: November 19, 1993.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 93–29552 Filed 12–2–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to the requirements of Public Law 95–602, I hereby certify that the Consumer Price Index for All Urban Consumers rose 2.8 percent between October 1992 and October 1993 from a level of 141.8 (1982–84=100) in October 1992 to a level of 145.7 (1982–84=100) in October 1993.

Signed at Washington, DC, on the 23d day of November 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–29609 Filed 12–2–93; 8:45 am]

BILLING CODE 4510–24–M

Senior Executive Service; Appointment of a Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individual is hereby appointed to a three-year term on the Department's Performance Review Board:

Edmundo A. Gonzales

FOR FURTHER INFORMATION CONTACT: Mr. Larry K. Goodwin, Director of Personnel Management, room C5526, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC, 20210, telephone: (202) 219–6551.

Signed at Washington, DC, this 29th day of November, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–29604 Filed 12–2–93; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

[TA-W-29,191]

Crawford Home Fashions, Richmond, VA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 1, 1993 in response to a worker petition which was filed by the Mid-Atlantic Region and Synthetics Division of the Amalgamated Clothing and Textile Workers Union, on behalf of workers at Crawford Home Fashions (a.k.a. Daisy Decorative Products), Richmond, Virginia.

The Department of Labor has been unable to contact the officials of Crawford Home Fashions (a.k.a. Daisy Decorative Products) to obtain the necessary data regarding the subject firm in order to make a determination. Further, neither Union nor State agency officials have any information or records regarding the subject firm. Since the essential information is not available for the Department to make a determination as to whether the workers at the subject firm are eligible for adjustment assistance benefits, the investigation has been terminated.

Signed at Washington, DC this 23rd day of November 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-29606 Filed 12-2-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,758]

Santa Fe Drilling Co., Houston, TX; Notice of Revocation of Revised Certification

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Revised Certification on Reopening for workers of the subject firm on May 6, 1992, applicable to all workers of the subject firm in Houston, Texas. The Notice was published in the **Federal Register** on May 22, 1992 (57 FR 21828).

At the request of the State Agency the Department reviewed the revised certification for workers of Santa Fe Drilling Company in Houston, Texas. New information from the company shows that the workers have not been engaged in exploration or drilling activities since February, 1988. Other findings show that the Santa Fe Drilling Company is a foreign corporation, the workers worked in Kuwait and are not covered under any State unemployment insurance program.

Accordingly, the Department is revoking its revised certification for workers of Santa Fe Drilling Company.

Signed at Washington, DC, this 19th day of November 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-29608 Filed 12-2-93; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of November, 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-28,088; Season-All Industries, Inc., Indiana, PA

TA-W-29,033; ITT Rayonier, Grays Harbor Pulp & Lignin Products Div., Hoquium, WA

TA-W-29,034; ITT Rayonier, Grays Harbor Paper Co., Hoquium, WA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-29,094; Mueller Corp., Shelby, OH

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-29,068; Northern Shipping Co., Philadelphia, PA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-29,027; Air Wisconsin, Inc., Outagamie County Airport, Appleton, WI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-29,095; Aerojet Electric Systems, Azusa, CA

Sales of electronic sensing systems at Aerojet Electric Systems, Azusa, CA increased in 1992 compared to 1991 and in the first six months of 1993 compared to the same period in 1992.

TA-W-29,078; Brush Fuses, Inc., Glendale Heights, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-29,079; Brush Fuses, Inc., Nogales, AZ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-29,170; Zenith Wire Line Service, Inc., Lindsay, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

Affirmative Determinations

TA-W-29,145; Heritage Custom Looseleaf, Springfield, OH

A certification was issued covering all workers separated on or after September 30, 1992.

TA-W-29,231; Poli-Twine Southern, Inc., Scottsboro, AL

A certification was issued covering all workers separated on or after October 6, 1992.

TA-W-29,119; Kenbridge Sportswear/ Hampton Industries, Inc., Kenbridge, VA

A certification was issued covering all workers separated on or after September 28, 1992.

TA-W-29,030; Owens Corning Fiberglass Corp., Berlin, NJ

A certification was issued covering all workers separated on or after August 5, 1992.

TA-W-29,012; OMC Systematched Parts & Accessories, A Div. of Outboard Marine Corp., Beloit, WI

A certification was issued covering all workers separated on or after August 30, 1992.

TA-W-29,083; TA-W-29,084, TA-W-29,085; Darrah Fashions BR3, Darrah Fashions BR2, Darrah Fashions BR1, Birdsboro, PA

A certification was issued covering all workers separated on or after September 15, 1992.

I hereby certify that the aforementioned determinations were issued during the month of November, 1993. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: November 23, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-29607 Filed 12-2-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,789]

SIA America, Alliance, Ohio; Negative Determination on Remand

By an order dated August 23, 1993, the United States Court of International Trade (USCIT) in *Former Employees of Swiss Industrial Abrasives* v. *Secretary of Labor*, (USCIT 92-08-00547) remanded this case to the Department for further investigation.

The remand stated that the Department did not investigate production declines at SIA of America that were due to outsourcing.

The Department was directed to obtain statistical information breaking down imports and sales along product lines and in volume.

Further, the remand stated that the Department did not investigate whether SIA Switzerland phased out production at SIA America in favor of serving the market with imports through a distribution agreement with Sancap, the successor firm in Alliance.

The Department's initial denial was based on the fact that the "contributed importantly" test of the Workers Group Eligibility Requirements of the Trade Act was not met. The Department's survey showed that none of the respondents increased their purchases of imports while decreasing their purchases from SIA America in Alliance, Ohio.

The initial findings showed that the Alliance plant produced abrasives and that the plant closed on February 4, 1992 and was sold to Sancap. The findings on reconsideration show that the Alliance plant closed for non-trade reasons.

The findings on remand confirm the Department's negative determination for workers at SIA America in Alliance, Ohio. New findings show that there was no outscourcing of production from the Alliance plant during the relevant period applicable to the petition.

The new findings on remand also show a decline (in volume) of company imports of abrasives, both in absolute and relative terms, in 1991 compared to 1990.

New findings on remand show sales, production and import data disaggregated by product line for the Alliance plant in 1990, 1991, and 1992. The data was reported by volume. These findings show that company imports for every major product line decreased absolutely in 1991 compared to 1990. Further, the findings on remand show that the portion of imports to domestic sales and production declined for every major product product line in 1991 compared to 1990 save one (discs) which accounted for less than 3 percent of Alliance's sales and production in 1990.

Other findings on remand show that Sancap, the successor firm at Alliance, reported increased production and sales of abrasives in 1992 when compared to SIA America's production and sales in 1991. Sancap plans to further increase domestic production.

Additional information was obtained addressing the workers' new claims of changing the country of origin on the labels and boxes. The new information shows that SIA America's inventory was included in Sancap's purchase of SIA America. Company officials indicated that there was no need to change labels on boxes but did, at times, repackage boxes when customers orders were different from that contained in the inventoried SIA packages. However, even then, the country of origin was printed on the backside of the abrasives.

Other findings show that, during Sancap's initial start up, the SIA name was removed from the diamond on the backside of abrasives since the firm was no longer SIA America. Company official indicated that very little material was made using this print.

The union's claim that imports increased since 1978 is not relevant to the investigation at hand. The petition was dated January 16, 1992 and the Department investigated imports in 1990 and in 1991—the period relevant to the petition.

Conclusion

After reconsideration on remand, I affirm the original notice of negative determination to apply for adjustment assistance to former workers of SIA America in Alliance, Ohio.

Signed at Washington, DC, this 22nd day of November 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-29605 Filed 12-2-93; 8:45 am]

BILLING CODE 4510-30-M

[Unemployment Insurance Program Letter (UIPL) No. 23-92, Change 2]

Unemployment Compensation for Federal Employees (UCFE)—Coverage Ruling for Employees and Members of Agricultural Promotion Boards and Marketing Agreement and Order Administrative Committees

Employment and Training Order No. 2-92 redelegates the authority and assignment of responsibility to the Director, Unemployment Insurance Service, for making rulings of "Federal service" under the UCFE program. The attached UIPL contains an update of a listing of Agricultural Promotion Boards and Marketing Agreement and Order Administrative Committees contained under UCFE Program Coverage Ruling No. 92-1 which was previously published in the **Federal Register** on April 17, 1992 (Vol. 57, No. 75; pages 13761-13762). The UIPL No. 23-92, Change 2, is published below.

Dated: November 22, 1993.

Doug Ross,

Assistant Secretary.

Classification: UCFE

Correspondence symbol: TEUMI

Date: November 10, 1993.

Directive: Unemployment Insurance Program Letter No. 23-92, Change 2

To: All State Employment Security Agencies

From: Mary Ann Wyrsch, Director, Unemployment Insurance Service.

Subject: Unemployment Compensation for Federal Employees (UCFE)—Coverage Ruling for Employees and Members of Agricultural Promotion Boards and Marketing Agreement and Order Administrative Committees

Rescissions: UIPL No. 23-92 and No. 23-92, Change 1

Expiration Date: November 30, 1994

1. *Purpose.* To forward to the State employment security agencies (SESAs) an updated listing of Agriculture boards and committees previously submitted in the below referenced program letters.

2. *References.* UIPL No. 23-92, dated April 21, 1992, and UIPL No. 23-92, Change 1, dated May 20, 1993.

3. *Background.* The Department of Agriculture recently requested a coverage ruling for employees of six additional boards to be covered for UCFE benefits within the meaning of 5 U.S.C. 8501(1). Therefore, the listing, previously approved under UCFE Program Coverage Ruling No. 92–1 and contained in the referenced program letters, has been updated to include these additional boards. It has been determined that the *employees* (not members) of these six boards are Federal employees and perform "Federal service" for UCFE program purposes. The six boards listed below are wholly owned instrumentalities of the United States and, therefore, are exempt from FUTA under Section 3306(c)(6) of the Internal Revenue Code of 1986. They are:

a. Lime Board (7 U.S.C. 6201–6212; 7 CFR Part 1212)

b. Mushroom Council (7 U.S.C. 6101–6112; 7 CFR Part 1209)

c. National Fluid Milk Processor Promotion Board (7 U.S.C. 6401–6417; 7 CFR Part 1160 (Proposed))

d. National Watermelon Promotion Board (7 U.S.C. 4901–4916; 7 CFR Part 1210)

e. Pecan Marketing Board (7 U.S.C. 6001–6013; 7 CFR Part 1211)

f. United Soybean Board (7 U.S.C. 6301–6311; 7 CFR Part 1220)

4. *Action Required.* SESA administrators are requested to distribute this updated listing immediately to the appropriate State agency staff responsible for UCFE, tax, and appellate operations.

5. *Inquiries.* Questions should be directed to the appropriate Regional Office.

6. *Attachment.* Updated Listing of Agricultural Promotion Boards and Marketing Agreement and Order Administrative Committees.

Attachment to UIPL No. 23–92, Chg. 2

Agricultural Promotion Boards and Marketing Agreement and Order Administrative Committees As of September 1993

Listed below are the six additional boards where it has been determined that the employees perform "Federal service" for UCFE program purposes within the meaning of 5 U.S.C. 8501(1).

1. Lime Board (7 U.S.C. 6201–6212; 7 CFR Part 1212).

2. Mushroom Council (7 U.S.C. 6101–6112; 7 CFR Part 1209).

3. National Fluid Milk Processor Promotion Board (7 U.S.C. 6401–6417; 7 CFR Part 1160 (Proposed).

4. National Watermelon Promotion Board (7 U.S.C. 4901–4916; 7 CFR Part 1210).

5. Pecan Marketing Board (7 U.S.C. 6001–6013; 7 CFR Part 1211).

6. United Soybean Board (7 U.S.C. 6301–6311; 7 CFR Part 1220).

The following boards were previously contained in UCFE Program Coverage Ruling No. 92–1 as an attachment to UIPL No. 23–92 and No. 23–92, Change 1.

1. National Dairy Promotion and Reserach Board (7 U.S.C. 4501–4513; 7 CFR Part 1150).

2. Honey Board (7 U.S.C. 4601–4612; 7 CFR Part 1240).

3. National Potato Promotion Board (7 U.S.C. 2611–2627; 7 CFR Part 1207).

4. Cotton Board (7 U.S.C. 2101–2118; 7 CFR Part 1205).

5. National Pork Board (7 U.S.C. 4801–4819; 7 CFR Part 1250).

6. Cattlemen's Beef Promotion and Research Board (7 U.S.C. 2901–2911; 7 CFR Part 1260).

7. Egg Board (7 U.S.C. 2701–2718; 7 CFR Part 1250).

The following committees were previously contained in UCFE Program Coverage Ruling No. 92–1 as an attachment to UIPL No. 23–92 and No. 23–92, Change 1, and are established under 7 U.S.C. 601–674; 7 CFR Parts 905–998.

1. Citrus Administrative Committee—Florida.

2. Texas Valley Citrus Committee.

3. Navel Orange Administrative—California & Arizona.

4. Valencia Orange Administrative Committee—California and Arizona.

5. Lemon Administrative Committee—California & Arizona.

6. Florida Lime Administrative Committee.

7. Florida Avocado Administrative Committee.

8. Nectarine Administrative Committee—California.

9. Control Committee—California; Pear Commodity Committee; Plum Commodity Committee; Peach Commodity Committee.

10. Georgia Peach Industry Committee.

11. Colorado Peach Administrative Committee.

12. Kiwifruit Administrative Committee—California.

13. Washington Fresh Peach Marketing Committee.

14. Washington Apricot Marketing Committee.

15. Washington Cherry Marketing Committee.

16. Washington-Oregon Fresh Prune Marketing Committee.

17. California Desert Grape Administrative Committee.

18. Tokay Grape Industry Committee—California.

19. Winter Pear Control Committee—Oregon, Washington, and California.

20. Papaya Administrative Committee—Hawaii.

21. Cranberry Marketing Committee—Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Oregon, Minnesota, Washington, and Long Island, New York.

22. Northwest Fresh Bartlett Marketing Committee—Oregon and Washington.

23. California Olive Committee.

24. Idaho Eastern Oregon Potato Committee.

25. State of Washington Potato Committee.

26. Oregon-California Potato Committee.

27, Colorado Potato Administrative Committee.

28. Maine Potato Committee (currently inactive).

29. Southeastern Potato Committee—Virginia & North Carolina.

30. Vidalia Onion Committee—Georgia.

31. Idaho-Eastern Oregon Onion Committee.

32. South Texas Onion Committee.

33. Texas Valley Tomato Committee.

34. Florida Tomato Committee.

35. Florida Celery Committee.

36. South Texas Lettuce Committee.

37. South Texas Melon Committee.

38. Almond Board of California.

39. Filbert/Hazelnut Marketing Board—Oregon & Washington.

40. Walnut Marketing Board—California.

41. Far West Spearmint Oil Administrative Committee.

42. California Date Administrative Committee.

43. Raisin Administrative Committee—California.

44. Prune Marketing Committee—California.

45. Peanut Administrative Committee—Georgia.

[FR Doc. 93–29610 Filed 12–2–93; 8:45 am]
BILLING CODE 4510–30–M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment

procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I:
- Pennsylvania, PA930055 (Dec. 3, 1993)
- Pennsylvania, PA930056 (Dec. 3, 1993)
- Pennsylvania, PA930057 (Dec. 3, 1993)
- Pennsylvania, PA930058 (Dec. 3, 1993)
- Pennsylvania, PA930059 (Dec. 3, 1993)
- Pennsylvania, PA930060 (Dec. 3, 1993)

Volume II:
- Michigan, MI930062 (Dec. 3, 1993)
- Texas, TX930091 (Dec. 3, 1993)
- Texas, TX930092 (Dec. 3, 1993)
- Wisconsin, WI930031 (Dec. 3, 1993)
- Wisconsin, WI930032 (Dec. 3, 1993)
- Wisconsin, WI930033 (Dec. 3, 1993)
- Wisconsin, WI930034 (Dec. 3, 1993)

Volume III:
- Alaska, AK930004 (Dec. 3, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:
- Arkansas, AR930008 (Feb. 19, 1993)
- District of Col., DC 930001 (Feb. 19, 1993)
- Georgia, GA930001 (Feb. 19, 1993)
- Kentucky, KY930004 (Feb. 19, 1993)
- Maryland, MD930034 (Feb. 19, 1993)
- Maryland, MD930036 (Feb. 19, 1993)
- Pennsylvania, PA930039 (Aug. 20, 1993)
- Pennsylvania, PA930041 (Sept. 3, 1993)
- South Carolina, SC930023 (Feb. 19, 1993)
- Tennessee, TN930001 (Feb. 19, 1993)

Volume II:
- Illinois, IL930001 (Feb. 19, 1993)
- Illinois, IL930002 (Feb. 19, 1993)
- Illinois, IL930003 (Feb. 19, 1993)
- Illinois, IL930004 (Feb. 19, 1993)
- Illinois, IL930005 (Feb. 19, 1993)
- Illinois, IL930006 (Feb. 19, 1993)
- Illinois, IL930007 (Feb. 19, 1993)
- Illinois, IL930008 (Feb. 19, 1993)
- Illinois, IL930009 (Feb. 19, 1993)
- Illinois, IL930011 (Feb. 19, 1993)
- Illinois, IL930012 (Feb. 19, 1993)
- Illinois, IL930013 (Feb. 19, 1993)
- Illinois, IL930014 (Feb. 19, 1993)
- Illinois, IL930015 (Feb. 19, 1993)
- Illinois, IL930016 (Feb. 19, 1993)
- Illinois, IL930017 (Feb. 19, 1993)
- Kansas, KS930005 (Feb. 19, 1993)
- Minnesota, MN930007 (Feb. 19, 1993)
- Oklahoma, OK930014 (Feb. 19, 1993)
- Texas, TX930008 (Feb. 19, 1993)
- Texas, TX930010 (Feb. 19, 1993)

Volume III:
- California, CA930001 (Feb. 19, 1993)
- California, CA930002 (Feb. 19, 1993)
- Hawaii, HI930001 (Feb. 19, 1993)
- Idaho, ID930001 (Feb. 19, 1993)
- Washington, WA930003 (Feb. 19, 1993)
- Washington, WA930006 (Feb. 19, 1993)
- Washington, WA930007 (Feb. 19, 1993)
- Washington, WA930010 (Feb. 19, 1993)
- Washington, WA930013 (Aug. 27, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC This 26th day of November 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93-29403 Filed 12-2-93; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefits Administration

[Application No. D-9439, et al.]

Proposed Exemptions; Ackman, Marek, Boyd & Simutis Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Ackman, Marek, Boyd & Simutis Profit Sharing Plan (the Plan) Located in Kankakee, Illinois

[Application No. D-9439]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by two individually directed accounts in the Plan (the Accounts) of J. Dennis Marek (Mr. Marek) and Mr. Boyd of 7.68 acres of unimproved land (the Parcel) to Mr. Marek, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The proposed sale will be a one-time cash transaction;

(b) The Plan and the Accounts will incur no expenses as a result of the transaction; and

(c) As a result of this transaction, the Accounts will receive the greater of: (1) ½ each of the original acquisition cost of the Parcel plus any proportionate holding costs; or (2) ½ each of the fair market value of the Parcel as determined by a qualified independent appraiser at the time the transaction is consummated.

Summary of Facts and Representations

1. The Plan, established in 1974, is a profit sharing plan with thirteen active participants. As of July 1993, the Plan had more than $2,000,000 in assets and Mr. Marek's Account had $568,507.22 in assets. The Plan allows for investment discretion with respect to the individual accounts by the account holders, the four highly compensated employees of Ackman, Marek, Boyd, & Simutis, Ltd. (the Employer). Mr. Marek is an officer, director, and a greater than 10 percent shareholder of the Employer. The sponsor of the Plan is the Employer, an Illinois subchapter "C" corporation that practices law.

2. On November 2, 1987, Mr. Marek's Account and Mr. Boyd's Account in the Plan, each acquired an undivided ½ interest in 130 acres of farmland (the Land) located in Kankakee County, Illinois, for an aggregate purchase price of $147,000 ($1,125 per acre) from James and Joyce Butler, who were unrelated parties with respect to the Plan. The Parcel is a 7.68-acre corner of the west side of the Land. Mr. Marek represents that for the period 1987 through and including 1992, the Accounts paid real estate taxes (i.e., the holding costs) for the Land in the aggregate amount of $6,533.00.[1] Mr. Marek also represents that the Land is not adjacent to any other property owned by other parties in interest. At the time of acquisition, the respective interests in the Land represented 31% of Mr. Marek's Account and 41% of Mr. Boyd's Account. It is represented that since 1988, Mr. Butler[2] has continued to farm the Land and has been leasing the Land from the Accounts at a rate of $110 per acre, the price which was negotiated at the time of the original acquisition between the Accounts and Mr. Butler. It is represented that the leasing price was based on crop production of the Land and prevailing prices in the community at the time of the original acquisition of the Land.

3. Mr. Marek desires to purchase the 7.68-acre Parcel from the Accounts in a one-time cash transaction for the purpose of building a primary residence. At the time of the sale, a separate deed for the Parcel will be issued to Mr. Marek as the new owner and the sale proceeds will be deposited one-half in Mr. Marek's Account and

[1] The original purchase price of the 7.68-acre Parcel was $8,640 (7.68×$1,125). However, during the years 1987 through 1992, the aggregate real estate taxes allocable to the Parcel were $386, resulting in a total holding cost of $9,026 for the Parcel to the Accounts. Because the current fair market value for the Parcel is $16,896, and is greater than $9,026, Mr. Marek in this transaction will pay at least $16,896 to the Accounts.

[2] Mr. Marek represents that a written lease (the Lease) for the period commencing March 1990 through February 28, 1991, was entered into between First of America Trust Company, at that time the trustee for the Land on behalf of the Accounts, as the lessor, and Mr. Butler, as the lessee. The Lease was written for the period described above, but Mr. Butler continued to farm the Land under the same terms as the Lease as a holdover tenant for the years 1991 through 1993. The Department expresses no opinion through the proposal of this exemption as to whether the acquisition and holding of the interests in the Land and the leasing of the Land by the Accounts resulted in violations of any provisions of part 4 of title I of the Act.

one-half in Mr. Boyd's Account. On January 25, 1993, Ronald Rosenbloom (Mr. Rosenbloom), a qualified appraiser with Rosenbloom Realty, appraised the Parcel by relying on the sales comparison appraising method and concluded that the Parcel currently has a fair market value of $2,200 per acre. Mr. Rosenbloom represents that he is independent of the parties to this transaction although he has prepared appraisals for some of Mr. Marek's clients per Mr. Marek's request. Mr. Rosenbloom states that the extent of these contacts are de minimus and did not affect his independent judgment as an appraiser in this matter. In additional statements of July 1 and July 29, 1993, Mr. Rosenbloom indicated that the 7.68 acres had a fair market value of $16,896, and that no premium above the fair market value was merited due to the fact that the Parcel is a part of and adjacent to the portion of the Land owned by Mr. Marek's Account.[3]

4. Mr. Marek represents that the transaction will be a one-time cash sale, and that neither the Plan nor the Accounts will sustain any expense as a result of the transaction. The fair market value of the Parcel has been determined by an independent qualified appraiser. Furthermore, as a result of this transaction, the Accounts will receive the greater of: (a) ½ each of the original acquisition cost of the Parcel plus any proportionate holding costs; or (b) ½ each of the fair market value of the Parcel as determined by a qualified independent appraiser at the time the sale is consummated. Mr. Marek also represents that at the time he becomes an owner of the Parcel, there will be separate tax bills and separate leasing agreements from the rest of the Land held by the Accounts if any portion of the Parcel is to be farmed by unrelated third parties. Mr. Marek also represents that he will pay the real estate taxes for the Parcel for the relevant period of his ownership of the Parcel during the year 1993.

5. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time cash transaction;

(b) The Plan and the Accounts will incur no expenses as a result of the transaction; and

(c) As a result of this transaction, the Accounts will receive the greater of: (1) ½ each of the original acquisition cost of the Parcel plus any proportionate holding costs; or (2) ½ each of the fair market value of the Parcel as determined by a qualified independent appraiser at the time the transaction is consummated.

Notice to Interested Person

Because the only Plan assets involved in the proposed transaction are those in Mr. Marek's Account and in Mr. Boyd's Account and they are the only participants affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days after the date of publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan, telephone (202) 219–8883. (This is not a toll-free number).

Couch Distributing Company Amended and Restated Money Purchase Pension Plan (the Plan) Located in Watsonville, CA

[Application No. D–9482]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of a judgment (the Judgment), to Mr. George W. Couch, III, a party in interest with respect to the Plan, provided: (1) The sale is a one-time transaction for cash; (2) the Plan is not required to pay any fees or commissions in connection therewith; (3) Mr. Couch purchases the Judgment for its outstanding principal amount and pays any past due interest as well as additional interest accruing at the statutory rate on the Judgment to the date of the purchase; (4) the Plan receives a complete return of its investment; (5) any additional consideration that Mr. Couch receives pursuant to the Judgment which is in excess of the purchase price is applied to litigation expenses and the balance paid to the Plan; (6) an independent fiduciary determines that the transaction is appropriate for the Plan and in the best interest of its participants and beneficiaries.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 94 participants and total assets of $4,606,290 as of June 30, 1993. The trustees of the Plan (the Trustees) are Messrs. Geoffrey A. Couch, George W. Couch, III and John D. Gilmore. These individuals are the sole persons having investment discretion over the Plan's assets.

2. Couch Distributing Company (CDC), the Plan sponsor, is a wholesale distributor of beer, soft drinks and water in the California counties of Monterey, San Benito and Santa Cruz. CDC maintains its principal place of business in Watsonville, California.

3. Mr. Couch, a co-Trustee of the Plan, is an officer and director of CDC. He also owns more than 50 percent of the issued and outstanding stock of CDC.

4. On or about October 17, 1990, the Plan made a loan of $250,000 to Rule Enterprises (RE), a real estate developer and an unrelated party from Modesto, California. The loan, which was evidenced by a promissory note (the Note), carried interest at the rate of 17½ percent per annum. The Note was to be repaid in nine months in quarterly installments of interest. At the end of the loan term, the outstanding principal balance would become due and payable. Note payments were to commence on February 1, 1991.

5. The Note was secured by a first deed of trust (the Deed of Trust) on a 2.11 acre parcel of unimproved real property (the Property) located at 1495 Salvador Avenue, Napa, California. In addition, the Note was guaranteed by the two principal shareholders of RE, Messrs. Jerold C. Rule and Ronald C. Dale.

The applicant represents that the Trustees believed the Note was an appropriate investment for the Plan because of its attractive interest rate and the fact that it appeared to be secured by real property in a rapidly growing area. Further, the Plan had made previous loans to RE and the Trustees relied on the payment pattern established by RE with respect to these obligations.

6. CDC administered the Note on behalf of the Plan at no charge. Up to and including April 30, 1991, RE paid $10,938 in interest, but no principal. Thereafter, no further payments were made on the Note despite repeated demands for payment by the Trustees.

[3] The Department notes herein that any use by Mr. Marek and/or by any other parties in interest with respect to the Plan of the remaining Land owned by the Accounts following the grant of this exemption may constitute a prohibited transaction under section 406 of the Act. Accordingly, no relief is provided herein for any prohibited transactions under section 406 of the Act which would result if Mr. Marek or any other parties in interest use the remaining Land.

On August 12, 1992, the Trustees obtained an environmental evaluation of the Property from Messrs. Theodore G. Erler, P.E., President and Paul B. Hoffey, Project Manager of Erler and Kalinowski, Inc., a firm of consulting engineers and scientists, located in San Mateo, California and unrelated parties. In the course of preparing the environmental evaluation, the consultants discovered that the adjacent property was contaminated and that ground water contamination had spread to the Property. The consultants also discovered that a silk screening business had formerly occupied the Property and that as a result of this prior activity, there was possible further contamination of the Property from toxic substances used in this enterprise.[4]

7. In addition to the environmental study, the Trustees obtained an appraisal report of the Property from Messrs. Kurt F. Stahr, Certified General Real Estate Appraiser and R. Dean Stahr, MAI, Certified General Real Estate Appraiser, independent appraisers affiliated with Associated Services Appraisal Partners, Inc. of Napa, California. As of August 19, 1992, the appraisers placed the fair market value of the Property at $180,000. However, they noted that this value estimate did not reflect clean-up costs which would be incurred for existing hazardous materials on the Property and which would need to be deducted once the costs had been established.

8. On March 1, 1993, the Trustees, on behalf of the Plan, commenced litigation against RE and Messrs. Rule and Dale in the Superior Court of the State of California, County of Napa (the Court). The Trustees sought to foreclose on the Property and obtain a money judgment from the defendants. There were no bids on the Property. After a contested hearing, the Court entered judgment in favor of the Plan in the amount of $368,463. Under California law, the Judgment accrues interest at the statutory rate of 10 percent per annum from March 1, 1993.

9. As a result of the foreclosure proceeding, all rights inuring to the Plan under the Note and the Deed of Trust were merged into the Judgment. Currently, the Judgment is a non-performing asset of the Plan and the individual defendants are in bankruptcy. Because collection of the Judgment appears to be in doubt, the Trustees have determined to dispose of it to prevent loss to the Plan. The Trustees also believe that no third party would purchase the Judgment or that if a purchase were possible, it would be at a large discount. Therefore, an administrative exemption is requested from the Department in order that the Trustees can sell the Judgment to Mr. Couch.

10. Mr. Couch proposes to purchase the Judgment for its outstanding principal amount and pay any past due interest and additional interest (calculated at the statutory rate of 10 percent per annum) accruing on the Judgment from March 1, 1993 to the date of purchase. According to the applicant, as of July 1, 1993, the aggregate purchase price for the Judgment was $381,164. Also according to the applicant, additional interest accrues at the rate of $101 per day.

11. To acquire the Judgment, Mr. Couch will make a cash payment to the Plan. In addition, the Plan will not be required to pay any fees or commissions in connection with the sale. If Mr. Couch recovers additional amounts from the Judgment that are in excess of his purchase price, these additional amounts will be applied to litigation expenses in obtaining the Judgment and the balance will be paid to the Plan.

12. The Trustees have appointed Jeffrey N. Clayton and the law firm of Callister, Duncan & Nebeker as the independent fiduciary for the Plan with respect to the proposed sale. Mr. Clayton, an attorney, has extensive experience in the pension and employee benefit fields.

Mr. Clayton represents that both he and his firm are not related to the parties involved in the proposed transaction. He states that he has reviewed the terms of the proposed sale including relevant documents and believes the transaction would be in the best interest of the Plan and its participants and beneficiaries. Mr. Clayton notes that the Plan has a non-performing asset of questionable value and doubtful collectibility. If the Judgment were collectible, he states that the total amount which the Plan could recover would be the Judgment amount plus interest at the statutory rate. Because Mr. Couch has offered to purchase the Judgment for its full face amount plus interest as it accrues at the statutory rate, Mr. Clayton explains that the Plan will recover 100 percent of its investment in addition to interest accruing on the investment to the date of the Judgment as well as all interest accruing after the date of the Judgment at the 10 percent statutory rate. Mr. Clayton also states that the Plan will have cash which it can invest in appropriate, income-producing investments.

Mr. Clayton represents that both he and his firm will undertake the reponsibility of monitoring the proposed sale transaction, particularly verifying that the appropriate payment is made to the Plan.

13. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) the sale will be a one-time transaction for cash; (b) the Plan will not be required to pay any fees or commissions in connection therewith; (c) Mr. Couch will purchase the Judgment for its outstanding principal balance and pay any past due interest as well as additional interest accruing at the statutory rate on the Judgment to the date of the purchase; (d) the Plan will receive a complete return of its investment; (e) any additional consideration that Mr. Couch receives pursuant to the Judgment which is in excess of the purchase price will be applied to litigation expenses and the balance paid to the Plan; and (f) an independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interest of its participants and beneficiaries.

Notice To Interested Persons

Notice of the proposed exemption will be provided to all interested persons within 7 days of the publication of the notice of pendency in the **Federal Register**. Such notice will be given to interested persons by personal delivery or by first class mail. The notice will include a copy of the notice of pendency as published in the **Federal Register** and will inform interested persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Written comments and hearing requests are due within 37 days of the publication of the notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Money Purchase Retirement Plan of Local 567, I.B.E.W. (the Plan) Located in Falmouth, Maine

[Application D–9465]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55

[4] The Department expresses no opinion herein on whether the decision by the Trustees to invest Plan assets in the Note with RE violated any of the provisions of part 4 of title I the Act.

FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed lease (the Lease) of 360 square feet of office space (the Office Space) in a commercial office building located in Falmouth, Maine, to the Plan by the Local No. 567, International Brotherhood of Electrical Workers (I.B.E.W.), Building Corporation (the Building Corporation), a corporation which is wholly-owned by the Local No. 567 of the I.B.E.W., AFL–CIO (the Union), a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (a) The terms of the Lease are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) an independent, qualified appraiser determines annually the fair market rental value of the Office Space; (c) the Lease payments are adjusted annually by an independent, qualified fiduciary, to assure that such Lease payments are not greater than the fair market rental value of the Office Space; (d) the independent, qualified fiduciary determines that the transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; and (e) the independent, qualified fiduciary monitors the transaction and the conditions of the exemption and takes whatever action is necessary to enforce the Plan's rights under the Lease.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan, sponsored by the Union, which provides retirement benefits from contributions required by certain collective bargaining agreements between the Union and participating employers. As of April 30, 1993, the Plan had total assets of $4,725,260 and 250 participants.

2. The Plan is administered by six trustees (the Trustees), three of whom are appointed by the Union (the Union Trustees) and three of whom are appointed by area contractors who employ Union laborers (the Employer Trustees). The Union Trustees are Messrs. Milton McBreairty, James Maller, and David Twitchell. The Employer Trustees are Messrs. Thomas Driscoll, David Bradbury, and John Penny. The Employer Trustees are not affiliated with either the Union or the Building Corporation. The Trustees make investment decisions for the Plan.

3. The Union has its business offices and other facilities in a building (the Building) located at 240 Old Gray Road, Falmouth, Maine. The Building, which is owned by the Building Corporation, consists of a single-story building situated on approximately two and one-half acres of land. The Union occupies the Building, which includes Union offices and a Union meeting hall. Union members are also participants in the Plan.

4. Since October 1, 1992, the Plan has been occupying the Office Space, which is approximately twenty-five percent of the Building, without the payment of rent and at sufferance.[5] Because of the Building's current availability and its proximity to the Union facilities and services used by Plan participants, the Trustees wish to negotiate a proposal with the Building Corporation to lease (the Lease) the Office Space to the Plan.

The applicant states that the Lease would constitute the payment by a plan for office space to a party in interest within the meaning of section 408(b)(2) of the Act. The applicant states further that the Lease would otherwise meet the requirements of 29 CFR 2550.408b–2, relating to section 408(b)(2), and be statutorily exempt from the prohibitions of section 406(a) of the Act, but for the participation by the Union Trustees in the decision to have the Plan engage in the proposed transaction.[6] The Declaration of Trust for the Plan requires that a majority of the Trustees, which necessarily includes at least one Union Trustee, vote to cause the Plan to enter into any transaction such as the proposed lease. However, if the Union Trustees exercise their fiduciary authority to cause the Plan to enter into the Lease, the transaction may constitute a violation of section 406(b)(2) of the Act. Therefore, the Trustees request an administrative exemption from the Department to permit the Plan to lease a portion of the Building from the Building Corporation under the terms and conditions described herein.

5. The Lease has an initial term of five years with two extension terms, each one for an additional five-year period. During the first year, the Lease payment will be fixed at $3,816 per year or $318 per month. All Lease payments will be paid in equal monthly installments. Subsequent Lease payments will be adjusted annually by the Plan's independent, qualified fiduciary on each anniversary date of the Lease to assure that such Lease payments are not greater than the fair market rental of the Office Space.

The Lease provides for the following: (i) An unconditional right for the Plan to terminate at any time upon sixty days' notice without penalty; (ii) a right for the Plan to occupy free a portion of the Building, pending fit-up of the Office Space, (iii) a right for the Plan to receive written notice and a cure period for payment defaults as well as other defaults, and (iv) self-help and set off rights which allow the Plan to take action on behalf of the Building Corporation in the case of default and the right to set off such costs against the Lease payments. The Lease also provides that the Plan will have use of a common lunchroom, common bathrooms, and a common parking lot in addition to the use of the Office Space.

With regard to costs, the Building Corporation will pay for the initial fit-up of the leasehold space; all utilities, except the Plan's separate telephone service; maintenance and repairs of the Building, including structure, mechanical systems and windows, janitorial services, real estate taxes, casualty insurance for the Building; and all interior and exterior common area expenses. The Plan's only occupancy costs above the Lease payments will be its telephone service, any personal property taxes on its equipment, and routine maintenance of the interior of its single office.

6. The Office Space was appraised by David J. Cashman (Mr. Cashman) of Cashman Associates, an independent commercial real estate manager and developer located in Bangor, Maine. Cashman Associates represents that it is experienced at determining of market rental value of commercial office space. Cashman Associates further represent that it is unrelated to and independent of the Union, the Building Corporation, and its affiliates.

By letter dated August 31, 1993, Mr. Cashman placed the fair market rental value of the Office Space, which includes a charge for use of the common area, at $3816 per year. Mr. Cashman states that it is customary in lease situations to have a common area charge to the tenant to compensate the landlord for the expense of the common area. Mr.

[5] The applicants represent that the prior use of office space by the Plan without the payment of rent to the Building Corporation is statutorily exempt under section 408(b)(2) of the Act. The Department expresses no opinion in this proposed exemption on whether the use of such office space satisfies the terms and conditions of section 408(b)(2) of the Act and is, thus, statutorily exempt.

[6] The Department expresses no opinion as to whether the Lease constitutes the payment by a plan for office space to a party in interest within the meaning of section 408(b)(2) of the act or whether the Lease is statutorily exempt from the prohibitions of section 406(a) of the Act by virtue of section 408(b)(2) of the Act.

Cashman utilized the market approach valuation by using recent sales from twelve comparable properties in the greater Portland area.

7. The Trustees have also employed the services of Cashman Associates to serve as the independent, qualified fiduciary for the Plan with respect to the Lease. Cashman Associates represents that it has extensive experience in the development, sales and management of commercial office space, commercial retail facilities and multi-unit residential projects. On June 25, 1993, the Trustees signed an agreement with Cashman Associates (the Agreement) under which Cashman Associates agreed to serve as a fiduciary within the meaning of section 3(21) of the Act. Cashman Associates states that it understands and acknowledges its duties, responsibilities, and liabilities in acting as a fiduciary with respect to the Plan, based upon consultation with counsel experienced with the fiduciary responsibility provisions of the Act.

Under the Agreement, Cashman Associates agreed to perform the following services: (i) To annually appraise the fair market rental value of the Office Space and adjust the Lease payments accordingly; (ii) to review and negotiate on behalf of the Plan the Lease provisions and to recommend to the Trustees whether the Lease and any proposed amendments thereto are in the best interests of the Plan; and (iii) to ensure that any provisions of the Lease remain in the best interests of the Plan. In addition, Cashman Associates represents that it will decide whether the Plan should terminate the Lease or renew the Lease for each of the five-year extension periods.

8. By letter dated August 31, 1993, Mr. Cashman of Cashman Associates analyzed the terms of the Lease as a representative of Cashman Associates. Mr. Cashman represents that the proposed transaction would be in the best interests of the participants and beneficiaries of the Plan because the Lease payments are consistent with the fair market rental value for similar properties. Mr. Cashman states that the Lease provides some specific provisions designed to be beneficial to the Funds, such as an early termination clause without penalty, the tenant's ten-day written notice of payment default, and the tenant's right to take action on behalf of the defaulting landlord and set off such costs against the rent. Mr. Cashman states that these conditions could not be obtained in the open market without having to pay a higher rental to reflect the increased costs and risks to the landlord.

9. In summary, the applicant represents that the statutory criteria of section 408(a) of the Act are satisfied with respect to the Lease because: (a) The terms of the Lease will be at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (b) Cashman Associates, as an independent, qualified appraiser, will determine annually the fair market rental value of the Office Space; (c) the Lease payments will be adjusted annually by Cashman Associates, acting as the Plan's independent, qualified fiduciary, to assure that such Lease payments are not greater than the fair market rental value of the Office Space; (d) Cashman Associates will determine that the transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; and (e) Cashman Associates will monitor the transaction and the conditions of the Lease and take what ever action is necessary to enforce the Plan's rights thereunder.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Schwebke-Shiskin & Associates, Inc. Profit Sharing Plan and Trust (the Plan) Located in Miramar, Florida

[Application No. D–9520]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b) (1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan to Schwebke-Shiskin & Associates, Inc. (SSA), the Plan's sponsor and a party in interest with respect to the Plan, of certain real property (the Property), for cash, provided the following conditions are satisfied: (a) The Plan pays no fees or commissions in connection with the transaction; (b) the sales price of the Property will be the greater of $1,068,000 or the fair market value of the Property on the date of the sale as determined by a qualified, independent appraiser; (c) SSA will pay to the Internal Revenue Service (the Service) in timely fashion all excise taxes due in connection with the past leasing of the Property by the Plan to SSA; and (d) to the extent that the Plan received less than fair market rental value from SSA in connection with the past leasing of the Property, SSA will make the Plan whole, with appropriate interest, for any such shortfall, within 60 days of the granting of the exemption proposed herein.

Summary of Facts and Representations

1. The Plan is a defined contribution plan that has approximately 100 participants. The approximate aggregate fair market value of the Plan's assets is currently $1,800,000.

2. On July 19, 1988 the Plan purchased a parcel of real estate from Sunbeam Properties, Inc., an unrelated third party, for $321,588. The Plan then contracted with D.I.C. Commercial Construction Corp., another unrelated party, to construct an office building on the real estate. The building was constructed for a total cost of $741,094. The building and real estate together constitute the Property.

3. Effective March 1, 1989, the Plan as lessor executed a lease agreement with SSA for a term of five years for the Property. The lease was a triple net lease with the annual lease payment set at an amount equal to or exceeding the fair market rent for similar office space in the area. On November 16, 1989, the lease was "restructured" retroactive to March 1, 1989, with the only change being an increase in the monthly payment from $5,000 to $6,700. The "restructured" lease was prepared after the Plan obtained written recommendations from several independent parties who were asked to review the lease. The difference between the $6,700 per month and the prior $5,000 monthly payments was made up in a lump sum payment from SSA to the Plan. The Plan has received all required lease payments on a timely basis. The lease transaction has resulted in the Plan receiving cash payments in excess of $360,000.

4. SSA now desires to purchase the Property from the Plan in order to undo the on-going prohibited transaction resulting from the lease. Messrs. Gary Dinka and Robert Love of American Realty Consultants, Inc., independent real estate appraisers, have appraised the Property as having a fair market value of $1,000,000 as of July 1, 1993. SSA proposes to purchase the Property from the Plan for a total purchase price of $1,068,000. The Plan will be receiving all cash from SSA. Although the Property has been appraised at $1 million, SSA will be purchasing the Property at the higher figure, which is

slightly in excess of the Plan's original cost for the Property.

5. The applicant acknowledges that the on-going lease of the Property constitutes a prohibited transaction for which no exemptive relief is being proposed, and that all required Forms 5330 have been filed with the Service. In this regard, SSA has paid the excise taxes due for 1989 in full. SSA filed Forms 9465 (an agreement with the Service to pay the excise taxes due on an installment basis) with respect to the 1990–1992 Forms 5330 and is making, and will continue to make, timely payments in accordance therewith. Such installment payments have been accepted by the Service. With respect to the lease payments which have been made in 1993, SSA represents that it will file the appropriate Form 5330 and pay the excise taxes relating thereto on or before the due date of the 1993 Form 5330. In addition, the applicant represents that to the extent the Plan received less than fair market rental value from SSA for the Property, SSA will make up the shortfall, together with appropriate interest, within 60 days of the date of granting of the exemption proposed herein.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act because: (a) the sale is a one-time transaction for cash; (b) no commissions or other expenses will be paid by the Plan in connection with the transaction; (c) the sale will permit the Plan to undo an on-going prohibited transaction; (d) the proposed sales price is greater than the fair market value of the Property as determined by a qualified independent appraiser; and (e) SSA has filed and will file with the Service all appropriate Forms 5330 in connection with the past leasing of the Property and will pay all excise taxes arising as a result of such lease.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under the applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Stanley Pichney IRA, Arthur Millman IRA, William Millman IRA, and Bernard Blum IRA (Collectively, the IRAs) Located in New York, NY

[Application Nos. D–9554 thru D–9557]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash redemption by Homemaker Industries, Inc. (the Corporation) of its issued and outstanding shares of common stock (the Shares) held by the IRAs; provided that: (1) The fair market value of the Shares is received by the IRAs, as determined on the date of the redemption by a qualified, independent appraiser, and (2) the IRAs do not incur any expenses in connection with the proposed redemption.

Summary of Facts and Representations

1. The IRAs are individual retirement accounts as described in section 408(b) of the Code, which are sponsored by four individuals: Messrs. Stanley Pichney, Arthur Millman, William Millman, and Bernard Blum.[7] With the exception of the Bernard Blum IRA that is self-directed by Mr. Blum, the other three IRAs are managed by an independent trustee. The Chase Manhattan Bank, N.A. is authorized to exercise discretionary decisions for investments, including redemptions, of both the Arthur Millman IRA and the William Millman IRA. Likewise, the Boston Safe Deposit and Trust Company is authorized to exercise discretionary decisions for investments of the Stanley Pichney IRA.

The only assets currently held by the IRAs are 385.797 Shares that were acquired by the IRAs during 1987 when an employee stock ownership plan (ESOP) was terminated. The Shares were distributed by the ESOP and were rolled over into the IRAs by their respective individual sponsors. The IRAs holdings of the Shares are as follows:

	Shares
Stanley Pichney IRA	190.797
Arthur Millman IRA	146.000
William Millman IRA	41.000
Bernard Blum IRA	8.000
Total	385.797

[7] Messrs. Arthur Millman and William Millman are brothers.

2. The Corporation,[8] a New York corporation with its principal offices in New York City, manufactures and distributes braided rugs from its facilities in South Carolina and Tennessee; and also imports and distributes woven rugs from India. The principal customers of the Corporation are major discount chains and consumers who purchase rugs through catalogs of direct-mail companies.

Mr. Stanley Pichney is President of the Corporation with responsibility for sales, pricing, purchasing, and design functions. Mr. Arthur Millman is Executive Vice President of the Corporation and is responsible for production.

The Corporation has 439.553 shares of common stock issued and outstanding. Although the Corporation is closely held, the applicants represent that no absolute control is held by any one person. The common stock, as currently authorized and distributed, is not listed or traded on any public market, and it is represented that it is unlikely that the common stock will be traded in the future. Furthermore, the applicants state that there is no intention by the shareholders to sell the Corporation. The applicants also represent that historically the Corporation has not paid dividends, and it is prohibited from doing so in the foreseeable future by the Corporation's source of revolving credit, the Fleet Credit Corporation, located in Providence, Rhode Island.

In addition to the approximately 385 Shares held by the IRAs, the following five persons individually hold approximately 53 Shares.

	Shares
Stanley Pichney	14.422
Arthur Millman	13.448
William Millman	2.916
Melvin Merians	22.000
Bernard Blum	0.970
Total	53.756

3. The applicants seek an exemption from the prohibited transaction provisions of the Code in order that the Shares held by the IRAs may be redeemed. The redemption of the Shares is part of a plan of recapitalization

[8] The Corporation does not sponsor the IRAs nor have any involvement with them.

adopted on October 8, 1993, by the Board of Directors of the Corporation, consisting of Messrs. Stanley Pichney, Arthur Millman, and Melvin Merians. The plan of recapitalization, which requires shareholder approval, first proposes to authorize and increase the number of shares of common stock of the corporation from the existing amount of 2,000 shares to 2 million shares with each issued and outstanding share split into 1,000 shares. After the authorized shares are increased and split, the Corporation proposes to redeem all of the Shares held by the IRAs and a number of shares held individually by Messrs. Melvin Merians and Bernard Blum. Consideration for the redemption is to be the fair market value of the Shares as determined by a qualified, independent appraiser.

As of September 27, 1993, an independent appraiser, Keeley Management Company of Radnor, Pennsylvania determined the fair market value of the Shares to be $25.78 per share (adjusted for the 1,000 for 1 stock split). Prior to redeeming the Shares, the applicants represent that an updated evaluation will be obtained from the independent appraiser to assure that the IRAs receive the fair market value of the redeemed Shares.

4. The applicants, which are the Corporation, the sponsors of the IRAs, and the two independent trustees, represent that the redemption of the Shares from the IRAs will enable sponsors of the IRAs to diversify their respective investment portfolios into income producing investments. In addition, the IRAs will be able to obtain liquid assets that will enable them to meet their distribution requirements and minimize their investment risks. Furthermore, three of the IRAs are protected by the discretionary authority of the two independent trustees in their voting as shareholders of the Corporation. The applicants represent that there is the additional protection for the IRAs of the qualified appraiser in its independent determination of the fair market value of the Shares. Also, the applicants represent that the proposed transaction will be a one-time transaction for cash which can be easily monitored with no expenses incurred by the IRAs.

5. In summary, the applicants represent that the proposed transactions will satisfy the criteria of section 4975(c)(2) of the Code because (a) the redemptions will be for the fair market value of the Shares and a one-time transaction for cash; (b) the IRAs will not incur any expenses in connection with the redemptions; (c) the fair market value of the Shares will be determined on the date of the redemptions by a qualified, independent appraiser; (d) the proposed redemptions will enable the IRAs to convert illiquid, non-income producing assets to income producing, liquid, and diversified investments and meet the distribution requirements of the IRAs to the respective participants and their beneficiaries; and (e) the proposed redemption transactions will be subject to a vote of approval by the shareholders of the Shares, which includes the two independent trustees, the Chase Manhattan Bank, N.A. and the Boston Deposit and Trust Company.

NOTICE TO INTERESTED PERSONS: Since the sponsors of the IRAs are the only persons affected by the proposed transactions, there is no need to distribute notice to interested persons. Comments and requests for a hearing are due 30 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 29th day of November, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–29554 Filed 12–2–93; 8:45 am]

BILLING CODE 4510–29–P

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Columbia River Basin Fish and Wildlife Program

November 26, 1993.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final amendments to the Columbia River Basin Fish and Wildlife Program (measures for resident fish and wildlife).

SUMMARY: Pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, *et seq.*) the Pacific Northwest Electric Power and Conservation Planning Council (Council) has adopted final amendments to the Columbia River Basin Fish and Wildlife Program (program). The amendments include major changes to the resident fish and wildlife provisions of the program. Copies of the amendments, the Council's responses to comments received in the amendment process, and findings on amendment recommendations, are available on request. See "**FOR FURTHER INFORMATION**", below.

Background

The Council is in the fourth phase of a process to amend the Columbia River Basin Fish and Wildlife Program (program). In phases one through three, the Council adopted amendments regarding anadromous fish. Phase four, which addresses resident fish and wildlife issues, began in December, 1992. The Council adopted final amendments and a response to comments on for phase 4 on November 10, 1993.

FOR FURTHER INFORMATION CONTACT: For copies of the final phase four amendments to the Columbia Basin Fish and Wildlife Program (request document no. 91–20), the phase four response to comments, which includes findings on amendment recommendations (request document no. 92–21), or other information, contact the Council's Public Affairs Division, 851 SW. Sixth Avenue, suite 1100, Portland, Oregon 97204 or (503) 222–5161, toll free 1–800–222–3355.

Edward W. Sheets,

Executive Director.

[FR Doc. 93–29541 Filed 12–2–93; 8:45 am]

BILLING CODE 0000–00–M

POSTAL RATE COMMISSION

[Docket No. A94–3; Order No. 995]

Inavale, NE 68952, Doris Hunter and Others, Petitioners; Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: November 22, 1993.

Before Commissioners: W.H. "Trey" LeBlanc, III, Vice Chairman; H. Edward Quick, Jr.; Wayne A. Schley.

Docket Number: A94–3.

Name of Affected Post Office: Inavale, Nebraska 68952.

Name(s) of Petitioner(s): Doris Hunter and others.

Type of Determination: Consolidation.

Date of Filing of Appeal Papers: November 16, 1993.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the November 16, 1992 filing date of this appeal (39 U.S.C. 404(b)(5)). In the interest of expedition, in the light of the 120-day decision schedule, the Commission reserves the right to request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Commission reserves the right to ask petitioners for more information.

If the Postal Service files a brief or motion to dismiss or a motion to affirm the appeal, the Postal Service may incorporate by reference any memoranda it previously filed in this docket.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by December 1, 1993.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedure Schedule in the **Federal Register**.

By the Commission.

Charles L. Clapp,

Secretary.

Inavale, Nebraska 68952

November 16, 1993—Filing of Appeal letters.

November 22, 1993—Commission Notice and Order of Filing of Appeal.

December 13, 1993—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

December 21, 1993—Petitioners' Participant Statements or Initial Briefs [*see* 39 CFR 3001.115(a) and (b)].

January 10, 1994—Postal Service's Answering Brief [*see* 39 CFR 3001.115(c)].

January 25, 1994—Petitioners' Reply Briefs should Petitioners choose to file them [*see* 39 CFR 3001.115(d)].

February 1, 1994—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

March 15, 1994—Expiration of the Commissioner's 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 93–29578 Filed 12–2–93; 8:45 am]

BILLING CODE 7710–FW–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before February 1, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Secondary Market Disclosure and Assignment Form.

Form No.: SBA Form 1088.

Frequency: On Occasion.

Description of Respondents: SBA Participating Lenders.

Annual Responses: 5,000.

Annual Burden: 10,000.

Dated: November 16, 1993.

Calvin Jenkins,

Director, Office of Administrative Services.

[FR Doc. 93–29576 Filed 12–2–93; 8:45 am]

BILLING CODE 8025–01–M

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of Reporting Requirements Submitted for Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying

the public that the agency has made such a submission.

DATES: Comments should be submitted on or before January 30, 1994. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: 1993 Health Benefits Survey

Form No.: N/A.

Frequency: One Time Survey.

Description of Respondents: Small and Large Businesses.

Annual Responses: 87.

Annual Burden: 47.

Dated: November 19, 1993.

Calvin Jenkins,

Director, Office of Administrative Services.

[FR Doc. 93–29577 Filed 12–2–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2692]

Arkansas; Declaration of Disaster Loan Area

Polk County and the contiguous counties of Howard, Montgomery, Pike, Scott, and Sevier in the State of Arkansas, and LeFlore and McCurtain Counties in the State of Oklahoma constitute a disaster area as a result of damages caused by severe storms and tornadoes which occurred on November 13, 1993. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 21, 1994 and for economic injury until the close of business on August 22, 1994 at the address listed below:

Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., suite 102, Ft. Worth, TX 76155;

or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	7.900
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 269212 for Arkansas and 269312 for Oklahoma. For economic injury the numbers 812900 for Arkansas and 813000 for Oklahoma.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 22, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–29571 Filed 12–2–93; 8:45 am]

BILLING CODE 8025–01–M

Notification of Extension of Filing Deadline

This is to give notice that the deadline for filing applications for physical disaster loans as a result of the Midwest floods has been extended an additional 30 days to December 15, 1993 for all nine states that had counties Presidentially declared as disaster areas. Those states and their respective declaration numbers are:

Illinois—2662
Iowa—2661
Kansas—2669
Minnesota—2664
Missouri—2663
Nebraska—2667
North Dakota—2670
South Dakota—2668
Wisconsin—2660

All other information remains the same, i.e., the termination date for filing applications for economic injury loans will remain as previously published for each state.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 22, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–29575 Filed 12–2–93; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2669]

Kansas; Amendment #11; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended, effective October 29, 1993, to include Sheridan and Trego Counties in the State of Kansas as a disaster area as a result of damages caused by flooding and severe storms beginning on June 28, 1993 and continuing through October 5, 1993.

All counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is December 15, 1993, and for economic injury the deadline is April 25, 1994.

The economic injury number for Kansas is 793500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 23, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–29574 Filed 12–2–93; 8:45 am]

BILLING CODE 8025–01–M

Correction to Delegation of Authority No. 12–D, Revision 3; Redelegation of Disaster Assistance

AGENCY: Small Business Administration.

ACTION: Correction to Delegation of Authority.

SUMMARY: This document corrects an error in Delegation of Authority No. 12–D (Revision 3), published in the **Federal Register** at 58 FR 57891 (October 27, 1993). The increased amount of disaster assistance referred to therein is available for disasters occurring on or after April 1, 1993, not on or before April 1, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Deegan, Director, Office of Operations, Disaster Assistance, (202) 205–6734.

SUPPLEMENTARY INFORMATION: On October 27, 1993, the Small Business Administration (SBA) published Delegation of Authority No. 12–D, Revision 3 (Delegation of Authority), which amended the delegation of authority governing officials within the SBA Office of Disaster Assistance to reflect, inter alia, an increase in the aggregate amount of disaster assistance available to a single borrower. (58 FR 57891)

SBA is publishing this document to correct an error contained in the Delegation of Authority. Specifically, the fourth sentence of the Delegation of

Authority incorrectly states that the increase in the aggregate amount of disaster assistance available to a single borrower, from $500,000 to $1,500,000, is effective for disasters occurring on or before April 1, 1993. The sentence should read as follows:

This document amends that delegation to reflect an increase in the aggregate amount of disaster assistance available to a single borrower, from $500,000 to $1,500,000, for disasters occurring on or after April 1, 1993.

* * * * *

Dated: November 24, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–29572 Filed 12–2–93; 8:45 am]

BILLING CODE 8025–01–M

[License No. 03/03–0197]

WestVen Limited Partnership; Notice of Issuance of a Small Business Investment Company License

On March 15, 1993, a notice was published in the **Federal Register** (58 FR 13813) stating that an application had been filed by WestVen Limited Partnership, 208 Capitol Street, Third Floor, Charleston, West Virginia 25301, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) for a license to operate as a small business investment company.

Interested parties were given until close of business April 14, 1993 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 03/03–0197 on November 1, 1993, to WestVen Limited Partnership to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 29, 1993.

Charles R. Hertzberg,

Associate Administrator for Investment.

[FR Doc. 93–29573 Filed 12–2–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, Melbourne Regional Airport, Melbourne, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Melbourne Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 30, 1992, the FAA determined that the noise exposure maps submitted by the Melbourne Airport Authority under part 150 were in compliance with applicable requirements. On October 22, 1993, the Administrator approved the Melbourne Regional Airport noise compatibility program. All of the recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Melbourne Regional Airport noise compatibility program is October 22, 1993.

FOR FURTHER INFORMATION CONTACT: Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–3596, (407) 648–6583. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Melbourne Regional Airport, effective October 22, 1993.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical users, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

The Melbourne Airport Authority submitted to the FAA on May 1, 1992, the noise exposure maps, descriptions,

and other documentation produced during the noise compatibility planning study conducted from October 2, 1991, through April 19, 1993. The Melbourne Regional Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 30, 1992. Notice of this determination was published in the **Federal Register** on July 15, 1992.

The Melbourne Regional Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1997. It was requested that FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on April 26, 1993, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained twelve (12) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective October 22, 1993.

Outright approval was granted for all of the specific program elements. The approval action was for the following program elements:

Measure and Description	NCP Pages
Operational Measures	
1. Aircraft pilots conducting missed approach training on Runway 9R will be directed to begin the missed approach turn before the minimum decision height at a minimum distance of 1/2 to 1 mile before the end of the runway and then continue turning to a 220 degree heading. This revised procedure will be accomplished through agreements between the Airport and Air Traffic Control and notification of pilots and flight training schools. FAA Action: Approved. Any agreement reached subject to this measure shall include a provision that the full ILS approach procedure including the published missed approach is available upon the request of the pilot in command. Use of this procedure should place most of the flights northwest of the residential area.	Pgs. 36–37 and 63; Exhibit 13; Table 10; and Appendix VIII.
2. The Runway 9L/27R touch-and-go flight pattern will be redefined by airport rule to direct aircraft pilots to fly "immediately west" of Wickham Road rather than "over" the road. The rule will indicate that except when directed by air traffic control, the preferred centerline is immediately west of Wickham Road. To implement this procedure, local policies will be developed, appropriate notices to airmen will be prepared, and advisory letters will be sent to flight schools operating at the airport. FAA Action: Approved. The ATCT has advised the airport operator to implement this measure through incorporation into the airport rule. Deviations from the established traffic pattern may be authorized at any time by the ATCT for reasons of safety or air traffic operations.	Pgs. 39–40 and 63; Exhibit 14; Table 10; and Appendix VIII.
3. Pilots of general aviation propeller aircraft departing on Runway 27L will be cleared to continue on the runway heading until reaching the western end of the runway before turning to the south. Although this will not completely avoid aircraft flyovers of Melbourne Village, a residential area, it will increase their altitude over the area. FAA Action: Approved.	Pgs. 36 and 63; Appendix VIII; and Table 10.
4. A number of communities are located directly adjacent to the airport boundaries which are affected by maintenance engine run-up noise. The current engine maintenance activity at the airport occurs from a Grumman Corporation maintenance facility and from periodic air carrier aircraft maintenance following mechanical problems. Two new maintenance facilities, United Express and Allied Aviation, are also planning to locate on the airport. The Melbourne Airport Authority will construct a noise barrier between Runways 27L and 27R in a central location at the airport. A run-up apron and connecting taxiway will also be required. The barrier will meet all FAR Part 77 requirements and will not obstruct visibility from the control tower to any existing or proposed runways or taxiways. FAA Action: Approved.	Pgs. 40–47 and 63–64; Exhibits 14A and 14B; Tables 6A and 10; and Appendix IX.
5. Nighttime engine maintenance run-ups are currently restricted between 10 p.m. and 7 a.m. Run-up noise was frequently mentioned as a problem during the public meetings. To reduce the noise impact from this activity, the Melbourne Airport Authority will modify airport rules and regulations to increase the time of restriction to between 9 p.m. and 7 a.m. as a voluntary measure. However, night run-ups due to an emergency or other circumstances beyond the control of the maintenance base could occur with the Authority's approval. FAA Action: Approved as a voluntary measure. This modification should reduce run-up noise to the nearest communities between 9 p.m. and 10 p.m.	Pgs. 38, 46, and 63; and Table 10.
Land Use Measures	
1. It is recommended that an airport overlay zone be established by ordinance by Brevard County and the Cities of Melbourne and West Melbourne. The overlay zones would basically include the areas shown as flight corridor limits on Exhibits 15 and 16 in the Noise Compatibility Program document. However, each political entity would use existing identifiable features such as roads or political boundaries to clearly define the overlay zone boundaries. This overlay zoning will define the areas of applicability for the airport related noise control measures. FAA Action: Approved.	Pgs. 58, and 68; Exhibits 15 and 16; and Table 10.

Measure and Description	NCP Pages
2. It is recommended that the zoning and land use measures for Brevard County and the Cities of Melbourne and West Melbourne be modified to incorporate the land use compatibility strategies developed in the Part 150 Program to reduce aircraft-related noise impacts. To address airport noise which is objectionable to some residents outside the 65 DNL contour, the study also includes Florida Department of Transportation Airport Compatible Land Use Guidelines to augment the FAA FAR Part 150 Compatible Land Use Guidelines. This measure includes building codes to require that all new buildings or residential structures constructed within the aircraft-noise impacted areas be built and insulated to meet certain exterior to interior noise level reductions. In the residential area located directly east of the airport, the zoning of vacant tracks of land to commercial would be considered for requests made by property owners or developers for those lands currently adjacent to commercial activity. For vacant lots within the interior residential areas, zoning for residential uses of a higher density than those currently zoned would not be approved and development would be limited to low density residential infill or aviation compatible development. Vacant land west of the airport inside the flight corridor which is zoned for residential use has access only through residential areas. Therefore, this land would not be rezoned to industrial unless these access restrictions were eliminated. If these constraints cannot be eliminated, then the transfer of development rights will be considered. FAA Action: Approved.	Pgs. 48, 56–58, and 68; and Tables 7, 8, and 10.
3. It is recommended that the disclosure of noise levels or locations of flight corridors to prospective buyers of property near the airport be accomplished by sending a letter containing noise-related information to all real estate brokers operating within the flight corridor area. A list of brokers operating within the greater Melbourne area will be obtained from the State Board of Realtors. It would then be the responsibility of the brokers to notify prospective property owners of the possibility of aircraft flyovers and related noise. These notices can be effective in channeling noise sensitive individuals away from high noise areas. FAA Action: Approved. This measure would alert potential occupants to the existence of the airport and its related noise levels on homes in airport impact area.	Pgs. 54, 58, and 68; Exhibits 15 and 16; Table 10; and Appendix VIII.
4. It is recommended that applicable local governments require navigational easements for new development within the designated flight corridor as part of the current zoning and site plan approval process. An easement to provide a right of flight and a right which allows aircraft to make noise over the land or prevent the continuation of unprotected noise sensitive uses on the property would be secured by the local governments and provided to the Airport Authority. This measure will be effective in reducing future noise conflicts resulting from future incompatible development. FAA Action: Approved.	Pgs. 54, 58, and 68; Exhibits 15 and 16; Table 10; and Appendix VI.
5. It is recommended that applicable local governments, as an option for minimizing future incompatible development, consider the transfer of development rights on a case-by-case basis as part of the current zoning and site plan approval process. The transfer of development rights is defined as the transfer of development rights from areas that are currently undeveloped within a noise impact area but has already received incompatible land use development rights to locations outside the noise impact area. FAA Action: Approved.	Pgs. 59, and 68; Exhibits 15 and 16; and Table 10.
6. It is recommended that local governments notify the Melbourne Airport Authority of applications for development or changes in land use or zoning and hearing dates (i.e., site plan approvals, rezoning, subdivision applications) within the noise contour and the flight corridor areas. This will allow the Airport Authority to provide input regarding possible incompatible uses of future development. FAA Action: Approved.	Pgs. 59 and 68; Exhibits 15 and 16; and Table 10.
7. The Melbourne Airport Authority will purchase incompatible residential property located within the 65 DNL contour when Federal funding is available. After purchase, the Airport Authority will either remove the incompatible structure or sell the property with navigation easements included in the property deed. FAA Action: Approved. Acquisition of these properties and relocation of residents are governed by regulations issued under the provisions of the Uniform Relocation Assistance Act (49 CFR part 24).	Pgs. 55, 59, and 68; and Table 10.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on October 22, 1993. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Melbourne Airport Authority.

Issued in Orlando, Florida on November 9, 1993.

W. Dean Stringer,

Acting Manager, Orlando Airports District Office.

[FR Doc. 93–29595 Filed 12–2–93; 8:45 am]

BILLING CODE 4910–13–M

Receipt of Noise Compatibility Program and Request for Review

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Seattle-Tacoma International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150 by The Port of Seattle. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR Part 150 for Seattle-Tacoma International Airport were in compliance with applicable requirements effective April 15, 1993. The proposed noise compatibility program will be approved or disapproved on or before May 18, 1994.

EFFECTIVE DATE: The effective date of the FAA's review of the noise compatibility program is November 19, 1993. The public comment period ends January 21, 1994.

FOR FURTHER INFORMATION CONTACT: Dennis Ossenkop, FAA, Airports Division, ANM–611, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Seattle-Tacoma International Airport which will be approved or disapproved on or before May 18, 1994. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that has been found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Seattle-Tacoma International Airport effective on November 19, 1993.

It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 18, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, paragraph 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to the local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Independence Avenue, SW., room 615, Washington, DC.

Federal Aviation Administration, Airports Division, ANM–600, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056.

Seattle-Tacoma International Airport, Seattle, Washington.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, November 19, 1993.

David A. Field,

Acting Manager, Airports Division, ANM–600, Northwest Mountain Region.

[FR Doc. 93–29586 Filed 12–2–93; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

The Edmund S. Muskie Fellowship Program

AGENCY: United States Information Agency.

ACTION: Request for proposals.

SUMMARY: The United States Information Agency (USIA) announces opportunities in two categories for regionally and professionally accredited U.S. institutions offering degrees and executive education programs at the master's level in business administration, economics, law, public administration, pre-academic, or English as a Second Language (ESL) programs, to host graduate students from Armenia, Azerbaijan*, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzia, Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, or Uzbekistan for degree, certificate, non-degree, or professional development programs under the auspices of the 1994 Edmund S. Muskie Fellowship Program.

Opportunities are available in two categories of programs:

Category A: U.S. host institutions for Muskie Fellows for one or two year degree, certificate, or professional development programs in business administration, economics, law, or public administration. Priority will be given to institutions which can provide academic guidance and professional development support to Fellows and which have experience working with international students.

U.S. institutions currently hosting 1993 Muskie Fellows in degree, certificate, or professional development programs that wish to receive Fellows again in 1994 in the same field of study will not be required to complete the institutional application for Category A providing the academic program, support services, and cost-sharing remain consistent with current levels. Current host institutions must demonstrate intent to receive 1994 Fellows in the same field(s) through a separate process outlined below. Current host institutions that wish to host Fellows in a different field must submit a full application for Category A to be eligible to receive students in that discipline.

Cateogry B: U.S. host institutions providing pre-academic and/or ESL programs for five or more Muskie Fellows. Pre-academic orientation programs, generally occurring in the summer, should last from three to four weeks in length and include academic and cultural components to assist the Fellows in their adjustment to the U.S. and in their specific academic field of study. ESL programs, generally occurring in the summer, should be from four to twelve weeks and be tailored to different language skill levels. Institutions applying to host Fellows under Category A which would also like to provide ESL or pre-academic programs for fewer than five Fellows need not submit a separate application for Category B. All institutions applying to host five or more Fellows for ESL or pre-academic training must complete an application and budget for Category B.

Each category has separate conditions and requirements, which are stated in this announcement. It is the responsibility of each institution to complete the appropriate application material.

DATES: Deadline for Proposals: Completed applications must be received at the appropriate office (listed below) by 5 p.m. Eastern Standard Time, on Friday, January 28, 1994. Faxed documents will not be accepted, nor will documents postmarked on January 28, 1994, but received at a later date. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

* *Please note:* Programs with Azerbaijan are subject to restrictions of section 907 of the Freedom Support Act: Employees of the Government of Azerbaijan or any of its instrumentalities are excluded from participation, and no U.S. participant overseas may work for the Government of Azerbaijan or any of its instrumentalities. In addition, the Government of Azerbaijan and/or its instrumentalities will have no control in the actual selection of participants.

ADDRESSES: The original and three copies of the proposal should be submitted by the deadline and addressed as follows:

For Degree and Non-Degree Programs in Business Administration and for Two-Year Degree Programs in Public Administration: The Edmund S. Muskie Fellowship Program, c/o ACTR/ACCELS, 1776 Massachusetts Avenue, NW., suite 700, Washington, DC 20036.

For Degree, Non-Degree and Certificate Programs in Economics: The Edmund S. Muskie Program, c/o IREX, 1616 H Street, NW., Washington, DC 20006.

For Degree Programs in Law and for One-Year Programs in Public Administration: The Edmund S. Muskie Fellowship Program, c/o The Soros Foundation, 888 Seventh Avenue, suite 1901, New York, NY 10106.

For Professional Development Programs in Business Administration, Economics, Law, or Public Administration: The Edmund S. Muskie Fellowship Program, c/o The Institute of International Education, 809 United Nations Plaza, New York, NY 10017–3580, Attn: Martha Loerke.

Applications for Category B should be sent to one of the above institutions. Institutions competing in both categories should indicate that information on the application forms.

FOR FURTHER INFORMATION CONTACT: Interested U.S. institutions should write ACTR/ACCELS, IIE, IREX, or the Soros Foundation to request application packets, which include guidelines and award criteria. Ted Kniker, 202–250–0525.

SUPPLEMENTARY INFORMATION: The Edmund S. Muskie Program is administered by USIA through grants to the following organizations: The American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study (ACTR/ACCELS), the Institute of International Education (IIE), the International Research & Exchanges Board (IREX), and the Soros Foundation. Under these grants ACTR/ACCELS, IIE, IREX, and the Soros Foundation are responsible for the recruitment, selection, academic placement, and monitoring of Fellows.

Overall authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87–256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange, to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of the American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

Program Overview

The Edmund S. Muskie Program was established in Fiscal Year 1992 to promote democratic and economic development in Armenia, Azerbaijan,* Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzia Latvia, Lithuania, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. It is an academic program providing graduate level instruction in business administration, economics, law, and public administration along with exposure to the concepts of market economics and democratic principles. A professional affiliation experience and networking opportunities are major program components.

Fellows are identified through a merit-based, open competition and a rigorous selection process implemented by ACTR/ACCELS, IIE, IREX, and the Soros Foundation, in conjunction with USIA, professional associations, and U.S. faculty from the four academic fields. Semi-finalists in all disciplines will take the Test of English as a Foreign Language (TOEFL). Candidates for degree programs in business administration will take the Graduate Management Admission Test (GMAT), and candidates for degree programs in economics will take the Graduate Record Examination (GRE). Candidates for the law program must have an undergraduate law degree from their home country. Fellows are matched with universities by academic interest and need.

To be eligible for a Muskie Fellowship, applicants must be citizens of one of the fifteen countries targeted by the Program, have successfully completed an undergraduate program, be proficient in spoken and written English at the time of application, demonstrate professional aptitude and leadership potential in the field of specialization, and be under the age of 40. Applicants for professional development programs must have a minimum of three years relevant work experience in addition to an undergraduate degree. Individuals currently enrolled in academic programs in the U.S., persons working or earning a living in the United States, spouses of U.S. citizens, or individuals who have applied for an immigrant visa or political asylum to any country are not eligible for the Muskie Program. Muskie Fellows, under the terms of the grant and under the laws governing the student visa required for participation in the Program, must return to their home country for a period of at least two years immediately upon completion of the academic program and internship. No financial or administrative support or provision is made for dependents under the Muskie Program.

Muskie Fellows receive scholarships for international transportation, domestic transportation within the United States, stipend, health insurance, full or partial tuition, room/board, and other expenses.

Currently 145 students are enrolled at U.S. institutions under the auspices of the 1993 Muskie Program. Approximately 140 Fellows will be selected for participation in the 1994 Muskie Program.

Program Guidelines

Category A

The Muskie Fellowship comprises the degree, non-degree, certificate, and professional development programs outlined below. Fellows will enter U.S. graduate studies in the 1994 fall semester.

Degree, Non-Degree, and Certificate Programs

In general, Fellows with degree awards in business administration and economics should take part in two-year academic programs leading to the degree of Masters of Business Administration (MBA) or Master of Arts (MA), respectively. Internships should take place during the summer between the first and second years of study. All programs in law must lead to the Master of Laws (LLM) degree. Fellows with awards in law generally participate in nine-month LLM programs followed by a three-month internship; however, longer LLM programs are also admissible. Fellows with degree awards in public administration should take part in one- or two-year programs leading to the Masters of Public Administration (MPA) or Master of Arts (MA) degree. In some cases, certificates

may be awarded instead of degrees. Muskie Fellows may also participate in non-degree graduate study programs, with the exception of those Fellows studying Law. Three-month internships should take place during the summer of 1995, after one year of academic study.

Professional Development Programs

The Professional Development awards are specifically designed for mid-career professionals with at least three years substantive work experience prior to application. The non-degree programs in business administration, economics, and public administration generally include two semesters of tailored academic study at the graduate level, followed by up to three months of practical training. The law program for mid-career professionals should lead to the LLM degree with up to three months of practical training after the period of academic study.

Program Requirements and Review Criteria

U.S. institutions may apply to receive Fellows individually or in groups of two to ten people representing one or any combination of the four disciplines. Host institutions for 1994 Muskie Fellows will be selected by ACTR/ACCELS, IIE, IREX, the Soros Foundation, and USIA, based on the following criteria:

a. Strength of academic program—Academic rigor and demonstrated capacity to meet participant needs.

b. Track record—Experience working with and providing a full range of support services for international students.

c. Professional support—Ability to facilitate professional affiliations and internships.

d. Academic support—Capacity to assign a faculty advisor and a Muskie Program coordinator to provide academic guidance, logistical support, and assistance in arranging enrichment activities.

e. Cost-effectiveness—Ability to provide a high quality program for lowest costs. A key measure of cost-effectiveness is the host institution's program cost per Fellow. The Agency also reviews the ratio of cost-sharing to program costs exhibited through such means as tuition scholarships, fellowships, or reduced room and board expenses.

f. Geographic diversity—The Agency seeks to achieve maximum geographic diversity in the selection of host institutions.

g. Evaluation plan—Proposals should outline methods for monitoring the academic progress and integration of Fellows into the campus and community.

h. Adherence of proposed activities to the criteria outlined above and the goals of the Edmund S. Muskie Fellowship Program.

Institutions receiving two or more Fellows are encouraged to provide commensurate cost-sharing for such groups. Institutions applying to host Fellows for degree, certificate, or professional development programs, that would also like to provide ESL or pre-academic programs for fewer than five Fellows need not submit a separate application for Category B.

The academic interests and professional needs of candidates selected as Fellows will be considered in the final designation of U.S. host institutions.

Proposals must be submitted to ACTR/ACCELS, IIE, IREX, or the Soros Foundation, according to discipline and type of program (degree, non-degree, or professional development), as indicated above.

Current Host Institutions

Institutions currently hosting Fellows under the 1993 Program are eligible to receive students in 1994. In order to apply to host Fellows in the same field(s), universities must submit a letter confirming that the academic program, professional and enrichment support, and adherence to other grant requirements will, at a minimum, remain consistent with current levels. The letter must also indicate the desired number of Fellows to be hosted, the type of program in which they will be placed (degree, non-degree, or professional development), the name of the Muskie coordinator, and the amount of cost-sharing provided for each Fellow, adjusted as needed for 1994–95 costs. Current host institutions need to contact the appropriate organization for the required budget worksheet that must be submitted along with the letter. Letters must be received by the contact organization by January 28, 1994.

Category B

U.S. institutions interested in hosting five or more Fellows for pre-academic or ESL programs should apply under Category B. Pre-academic programs should be designed to assist Fellows in their adjustment to the U.S. and generally should last three to four weeks in length. Institutions may apply to host Fellows in pre-academic programs specifically designed to prepare international students for graduate study in business administration, economics, law, or public administration in the U.S., or may apply to place Fellows in programs that offer a more general introduction to the U.S. educational system and American culture. Coursework may include U.S. instructional methods, research techniques, grading systems, faculty-student relations, computer skills, and basic concepts and terms related to the disciplines. The programs may also include lectures and information on such topics as the U.S. system of government, U.S. economic institutions and structure, minorities and society, the U.S. media, and U.S. culture.

ESL programs should last from four to twelve weeks in length and should allow for different levels of language proficiency. They should help Fellows attain sufficient levels of English language proficiency to begin graduate-level study in the U.S. Fellows will participate in ESL programs during the summer of 1994.

Program Requirements and Review Criteria

U.S. institutions may apply to receive five or more Fellows representing one or any combination of the four disciplines. Host U.S. institutions for 1994 Muskie pre-academic and ESL programs will be selected by ACTR/ACCELS, IIE, IREX, the Soros Foundation, and USIA based on the following criteria:

a. Strength of academic program—Academic rigor and demonstrated capacity to meet participant needs.

b. Track record—Experience working with and providing a full range of support services for international students.

c. Cost-effectiveness—Ability to provide a high quality program for lowest costs. A key measure of cost-effectiveness is the host institution's program cost per Fellow. The Agency also reviews the ratio of cost-sharing to program costs exhibited through such means as tuition scholarships, fellowships, or reduced room and board expenses.

d. Geographic diversity—The Agency seeks to achieve maximum geographic diversity in the selection of host institutions.

e. Evaluation plan—Proposals should outline methods for the evaluation of pre-academic or ESL program success.

f. Adherence of proposed activities to the criteria outlined above and the goals of the Edmund S. Muskie Fellowship Program.

Proposals must be submitted to ACTR/ACCELS, IIE, IREX, or the Soros Foundation, according to discipline and type of program as indicated above.

Agency Cost Sharing Guidelines (All Categories)

U.S. institutions hosting Muskie Fellows are strongly encouraged to provide cost-sharing for tuition and/or room and board expenses, so that greater numbers of students may take part in the program. Cost sharing may also be in the form of direct program and participant costs. Indirect and administrative costs will not be considered allowable cost-sharing items, nor will these costs be covered by the Muskie program. The basis for determining the value of cash and inkind contributions must be in accordance with OMB Circular A–110, Attachment E—Cost Sharing and Matching and should be described in the proposal. In the event the Recipient does not provide the minimum amount of cost sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Preference will be given to institutions that provide cost-sharing on direct participant costs. While the Agency strongly encourages cost-sharing, it is not a requirement. Applicants unable to offer cost-sharing are eligible to apply.

Application Disclaimer (All Categories)

The terms and conditions published in this RFP are binding and may not be modified by any USIA, ACTR/ACCELS, IIE, IREX, or Soros Foundation representative. Explanatory information provided by USIA, ACTR/ACCELS, IIE, IREX, or the Soros Foundation that contradicts published language will not constitute an award commitment on the part of the Government or the implementing organization. Final awards cannot be made until funds have been fully appropriated by Congress, allocated, and committed through internal USIA procedures.

Notification

Applications will be notified in writing of the results of the review process on or about April 15, 1994. Final placement of students at institutions is subject to the specific academic interests and needs of individuals selected as Muskie Fellows.

Please note: Under both Category A and B, USIA retains the right to determine final selection decisions with regard to the competition for institutions to host Muskie Fellows. The Agency also reserves the right to determine final placement decisions.

Options for Renewal

Subject to the availability of funding and the satisfactory performance of host institutions, USIA, on behalf of the Muskie Fellowship Program, may invite grantee organizations to submit proposals for renewal of awards.

Dated: November 29, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93–29557 Filed 12–2–93; 8:45 am]

BILLING CODE 8230–01–M

International Creative Arts Exchanges for Public and Private Non-Profit Organizations

AGENCY: United States Information Agency.

ACTION: Request for proposal.

SUMMARY: The Creative Arts Exchanges Division (E/DE) of the U.S. Information Agency's (USIA) Office of Arts America announces a program of awards to private, non-profit organizations to support projects for artists and arts administrators. These will consist of residencies and/or study tours in which artists from the United States and other countries work and learn together. Interested applicants are invited to request and read the complete **Federal Register** announcement before submitting their proposals.

DATES: This action is effective from the publication date of this notice through February 28, 1994, for projects whose activities will begin between July 1, 1994, and December 31, 1994. All applications must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on February 28, 1994. Faxed documents will not be accepted, nor will documents postmarked on February 28, 1994 but received at a later date.

For projects that begin after December 31, 1994, competition details will be announced in the **Federal Register** on or about June 1, 1994. Inquiries concerning technical requirements are welcome prior to submission of applications.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: E/DE Discretionary Grant Competition, Grants Management Division (E/XE), room 336, 301 4th Street, SW., Washington, DC 20547.

Awards are contingent upon the availability of funds.

FOR FURTHER INFORMATION AND APPLICATION PACKETS:

Please contact the Creative Arts Exchanges Division (E/DE) of U.S. Information Agency's Office of Arts America, 301 4th Street, SW., Washington, DC 20547; telephone: (202) 619–5338).

SUPPLEMENTARY INFORMATION: The Creative Arts Exchanges Division (E/DE) works with U.S. non-profit organizations on cooperative international group projects that introduce American and foreign participants to each other's cultural and artistic life and traditions. It also supports international projects in the United States or overseas involving composers, choreographers, filmmakers (see guidance below), playwrights, theater designers, writers and poets, visual artists, museum professionals (see guidance below), managers and administrators of arts institutions and organizations (see guidance below).

E/DE particularly seeks projects with organizations with expertise in the arts as well as broad outreach and networking capabilities into American arts activities nationwide. These projects should involve U.S. Information Service (USIS) posts worldwide to carry out activities supportive of the USIA mission to increase mutual understanding between the United States and other countries and to promote international cooperation in educational and cultural fields. USIS' role in such projects should be substantive and integral and not purely facilitative.

Common Provisions

Projects supported by E/DE awards share some or all of the following features:

1. An international exchange of professionals in the fields listed above.
2. The development of institutional linkages between American organizations and their counterparts in other counties.
3. Travel to or from the United States, preferably in both directions.
4. Competition in which USIS posts nominate foreign candidates for awards, while the American arts organizations select the award-winners.
5. Assurances of quality, fairness, balance and openness in the selection of American project participants.
6. A non-political character representative of the diversity of American political, social and cultural life.

Special Conditions

1. Proposals should involve more than one country. However, single-country

projects that have strong USIS-post support and clearly demonstrate the potential for creating and strengthening linkages between foreign and U.S. institutions are also welcome.

2. Proposals are subject to review and comment by the USIS posts in the relevant countries.

3. Proposals involving foreign organizations should identify them and clearly define their role in the project. Prospective applicants would do well to consult with USIS posts regarding such organizations prior to submitting their proposals.

4. Proposals centering on films or videos must deal with the creative aspects of film or video making. Projects should be written for professional partners, not for amateur or student groups. Projects may include story development, other aspects of the creative processes, or management issues like funding and distribution. They should not include film or video festivals, installations, seminars, competitions, full scale film production or distribution, or any other type of project prohibited in this announcement.

5. Proposals centering on arts presenters, administrators, and managers should feature exchanges involving these professionals exclusively.

6. E/DE is the major supporter of the American Association of Museums (AAM) International Partnerships Among Museums (IPAM) program. Museums interested in international projects should address queries to the Office of International Programs, American Association of Museums, 1225 Eye Street, NW., Washington, DC 20005; telephone (202) 289–1818; FAX: (202) 289–6578. We will not accept direct applications from museums for international projects (see Program Exclusions, below).

Program Exclusions

1. Projects should be artistic, intellectual, and cultural, not technical. Vocational and technical training projects are ineligible for support.

2. Scholarship programs or proposals for long-term academic study or training are ineligible for support.

3. Speaking tours, conferences or seminars, research projects, research for project development purposes, youth or youth-related activities (participants' age under 25), publications, student and/or faculty exchanges, or projects for the exchange of amateurs or semi-professionals are all ineligible.

4. E/DE does not accept proposals to support performing arts productions or tours, film or video festivals, film/video installations, full-scale film production or distribution, international arts competitions, community-level arts presentations or festivals for general audiences, visual arts exhibits, museum projects except for those under the AAM/IPAM program (see above), or projects in the fields of the historical and cultural conservation and preservation.

5. USIA is a major supporter of Sister Cities International and Partners of the Americas. It has agreed to fund administrative expenses of these organizations' national offices, but will not fund projects arising from sister city and partner state relationships once they are established.

Budgetary Requirements

1. There must be a minimum of 33% cost sharing of the project cost. Cost sharing may be in the form of allowable direct or indirect costs. The recipient must maintain written records to support all allowable costs which are claimed to be its contribution to cost participation, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E—Cost Sharing and Matching—and should be described in the proposal. In the event the recipient does not provide a minimum of 33% cost sharing following the award, the Agency's contribution will be reduced in proportion to the recipient's contribution.

2. Administrative costs must be no more than 20% of the total amount requested from USIA.

3. E/DE awards are limited to $200,000. E/DE will consider requests for $100,000 or more only for projects that are internationally regional, multi-regional or worldwide in scope. Awards are limited to $60,000 for organizations with less than four years' experience in conducting international exchange programs.

4. Allowable costs are those defined in the application packet, which is available upon request.

5. The recipient's proposal shall include the cost of an audit that:

—Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

—Complies with the requirements of American Institutes of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

—Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

—Preparation of basic financial statements and other accounting services; and

—Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

Definition of Administrative Costs

Administrative costs are defined as salaries, benefits and other direct and indirect costs incurred.

Important note for universities: The U.S. Information Agency defines American faculty salaries as an administrative expense, regardless of how the faculty time is to be used.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate USIA geographic area offices, and budget and contract offices. Proposals may also be reviewed by the Agency's General Counsel. Review criteria are listed in the application packet, which is available upon request. Funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for awards resides with USIA's contracting officer.

Technical Requirements

Proposals can only be accepted for review when they are fully in accord with the terms of this request for proposals, as well as with requirements stipulated in the application package.

Notice

The terms and conditions published in the request for proposals are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of request for proposals does not constitute an award commitment on the part of the Government. Final awards cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about June 1, 1994. Awards will be subject to periodic reporting and evaluation requirements.

Dated: November 29, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93-29556 Filed 12-2-93; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 231
Friday, December 3, 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 MARITIME COMMISSION.

TIME AND DATE: 10:00 a.m.—December 8, 1993.

PLACE: Hearing Room One—800 North Capitol St., NW., Washington, DC 20573–0001.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED: Fact Finding Investigation No. 20—*Service Contracts Negotiations with Shippers' Associations and Non-Vessel-Operating Common Carriers*—Consideration of Report of Investigative Officer.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,
Secretary.

[FR Doc. 93–29762 Filed 12–1–93; 2:34 pm]

BILLING CODE 6730–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 9, 1993.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Secretary of Labor v. Allan Goode,* Docket No. WEVA 91–2096. (Issues include whether the judge erred in finding that Allan Goode knowingly authorized, ordered or carried out a violation of the mine's roof control plan within the meaning of 30 U.S.C. § 820(c).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 93–29768 Filed 12–1–93; 3:02 pm]

BILLING CODE 6735–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 6, 1993.

A closed meeting will be held on Thursday, December 9, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, December 9, 1993, at 10:00 a.m., will be:

Institution of injunctive actions.
Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brian Lane at (202) 272–2400.

Dated: December 1, 1993.

Jonathan G. Katz,
Secretary.

[FR Doc. 93–29777 Filed 12–1–93; 3:56 pm]

BILLING CODE 8010–01–M

federal register

Friday
December 3, 1993

Part II

Department of Housing and Urban Development

24 CFR Parts 246 and 266

Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans; Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 246 and 266

[Docket No. R-93-1685; FR-3383-I-01]

RIN 2502-AF94

Housing Finance Agency Risk-Sharing Program for Insured Affordable Multifamily Project Loans

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

ACTION: Interim rule.

SUMMARY: This interim rule introduces a new mortgage insurance program authorized by the Housing and Community Development Act of 1992. The program is designed to increase the supply of affordable multifamily units by allowing State and local housing finance agencies (HFAs) to originate and service mortgage loans that are fully insured by HUD's Federal Housing Administration. Under the program, participating HFAs are required to share in the risk associated with monetary losses that may be incurred as a consequence of any loan defaults.

DATES: Effective date: January 3, 1994.

Expiration date: Paragraph (e) of § 246.1 and part 266 will expire December 5, 1994.

Comments due date: February 1, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours (weekdays 7:30 a.m. to 5:30 p.m.) at the above address.

FOR FURTHER INFORMATION CONTACT: For questions concerning subparts A-E, contact Jessica Franklin, Director, Policies and Procedures Division, Office of Insured Multifamily Housing Development, room 6116, (202) 708-2556; subpart F, contact Albert B. Sullivan, Director, Office of Multifamily Housing Management, room 6160, (202) 708-3730; subpart G, contact John Stahl, Director, Multifamily Accounting and Servicing Division, room 6258, (202) 708-0223; Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Hearing- and speech-impaired persons may call (202) 708-4594. (Telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The burden for collecting the required information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, Other Matters. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410-0500; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

I. Introduction

Section 542(c) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (1992 Act) authorizes the HUD Secretary to enter into risk-sharing agreements with qualified State or local Housing Finance Agencies (HFAs) to test the effectiveness of certain Federal mortgage loan credit enhancements. (Section 542(c) is a part of subtitle C, title V of the 1992 Act. Section 541 provides that subtitle C, which is comprised of sections 541 through 544, may be cited as the "Multifamily Housing Finance Improvement Act." This interim rule implements only section 542(c).) The ultimate purpose of this program is to increase the supply of affordable multifamily housing through partnerships where the Department provides full insurance under a risk-sharing agreement, to test the effectiveness of providing new forms of Federal credit enhancement for multifamily loans, an intended benefit of which would be increased credit ratings on bond-financed mortgage loans. HUD envisions that, under this program, HFAs will have greater access to capital markets and be able to provide affordable housing in a manner that is both timely and efficient.

The basic structure of the program allows HFAs to carry out certain HUD functions under the program, including the assumption of loan management and property disposition responsibilities for defaulted loans. In the event of a loan default, the HFA is required to share with HUD in any loss arising as a consequence of the loan default.

Section 542(c) prescribes certain requirements for this program, and also authorizes the Secretary to issue such regulations as may be necessary to carry out the program.

II. Legislative Background

The statute contains definitions for what constitutes "multifamily housing" (section 544(1)), a "qualified" HFA (section 544(2)), and "affordable housing" (section 542(c)(7)). These definitions have been incorporated into the regulation at 24 CFR 266.5. In addition, section 542(c) prescribes a number of requirements for the program, which may be summarized as follows:

General: HUD is required to execute risk-sharing agreements with qualified HFAs.

Mortgage insurance: Risk-sharing agreements must provide for HUD to fully insure mortgage loans originated by or through HFAs, and for reimbursement to HUD by HFAs for a portion of any losses incurred on the insured loans.

Risk apportionment: The percentage of loss assumed by HUD and the HFA (risk apportionment) must be specified in the risk-sharing agreement between HUD and the HFA. HUD intends to execute a single agreement with each HFA, but the agreement will recognize that the risk apportionment may vary among project loans that are originated by a single HFA. The loan loss percentage for a particular project will be reflected in that project's underlying loan documentation and in an addendum to the risk-sharing agreement.

Reimbursement capacity: The application for participation in this program must demonstrate that the HFA has the financial capacity to fulfill its reimbursement obligations.

Underwriting standards: A qualified HFA that agrees to accept 50 percent or more of the risk of loss on a loan may

employ its own underwriting standards, loan terms and conditions. However, where HUD retains more than 50 percent of the risk, it may impose additional underwriting standards, loan terms and conditions.

Other requirements: Section 542(c) also requires HUD to establish a schedule for mortgage insurance premiums that reflects the risk apportionment for the loan. Lower or nominal premiums will apply to HFAs that assume a greater share of the risk of loss. In addition, HUD is prohibited from applying "identity of interest" provisions in risk-sharing agreements (section 542(c)(5)); and GNMA is prohibited from issuing securities for loans insured under the program (section 542(c)(6)).

Finally, HUD may issue commitments for mortgages that, in the aggregate, do not exceed 30,000 units between now and September 30, 1995 (section 542(c)(4)). The Congress may expand the program after that date, but no determination will be made until the Secretary has submitted reports (including any recommendations for legislation) to the Congress, as required under section 542(d)(3). See, section 542(c)(4).

III. The Regulation

The legislation authorizing this program prescribes certain requirements in relation to eligibility and risk apportionment. As a matter of policy, in its formulation of this regulation, HUD has decided to afford qualified HFAs very broad responsibility for the administration of the program, although HUD will monitor HFAs' activities. In addition to underwriting and processing loans, HFAs will service loans, provide management oversight of the projects, and dispose of properties subject to the mortgages that fall into default. The regulation provides for sanctions in the event that an HFA is found to be in noncompliance with the requirements of the regulation.

It is to be noted that, for this program, Congress in section 542(c)(2)(E) of the 1992 Act has assigned to qualified HFAs the responsibility for using their own "underwriting standards and loan terms and conditions for purposes of loans to be insured under this subsection" without further review by the Secretary, except that the Secretary may impose "additional underwriting criteria and loan terms and conditions" in cases where the Secretary retains more than 50 percent of the risk of loss. Further, Congress has authorized HUD through section 542(c)(8) to issue such regulations as may be necessary to carry out this risk-sharing program.

In cases involving "insurance upon completion," HUD will be responsible for final endorsement of the mortgage note for insurance. In cases involving "insurance of advances," HUD will be responsible for the initial endorsement of the mortgage note for insurance in a maximum amount set forth on the note. The amount of the insurance, however, will be only to the extent of advances approved during the construction process. The Department has decided to delegate to HFAs the responsibilities for the insurance of advances and cost certification functions. These functions are relevant to the insurance process and are carried out by HUD in full insurance programs under the National Housing Act.

In looking at the legal propriety of these delegations, it is to be noted that there is no express statutory language in section 542(c) authorizing them, and the legislative history specifically does not address the issue. Therefore, the Department has focused on three additional factors in case law in deciding whether a delegation is legally sustainable, i.e., the importance of the authority being delegated and degree of discretion involved, the limitation of the delegation, and an assessment of any conflicts of interest. The Department does not believe the direct assignment of certain listed functions precludes delegation of additional functions. Further, case law, e.g., *Fleming* v. *Mohawk and Power Co.*, 331 U.S. 111 (1947), suggests that a statutory provision such as section 542(c)(8), which authorizes HUD to issue such regulations as may be necessary to carry out the risk-sharing program, is a source of authority to delegate. The actions described below relate to these factors and are designed to support the legal delegability of the insurance of advances and cost certification functions.

Since the functions proposed for delegation are integral to the insurance process, the Department has determined that the delegation would be legally sustainable if HUD retains the authority to make adjustments to the insured mortgage amount during the period up to and including the time of final endorsement, which it has done in § 266.417. As long as the Department retains such ultimate authority, case law supports the legality of such a delegation. See *NLRB* v. *Duval Jewelry Co. of Miami, Inc.*, 357 U.S. 1 (1958).

HUD's reservation of final authority to adjust the insured mortgage amount is not meant to suggest that HUD will, as a matter of policy, routinely review all decisions of HFAs about the insurance of advances and cost certification processes. For example, the Commissioner could review the insurance of advances and cost certification processes on a random basis and, up to and including the time of final endorsement, correct errors by adjusting the amount of mortgage insurance. Examples of such reviews of the insurance of advances process could involve a HUD evaluation, following an HFA approval of an advance, to determine whether such approval is consistent with construction progress. The Department could assess whether other mortgageable items were supported with proper bills and/or receipts before funds were approved and advanced for insurance. The Department also could consider whether the loan remains in balance by comparison of actual disbursements against a project completion schedule and other loan closing documents. Unless additional requirements are imposed by HUD because it insures more than 50 percent of the risk, the review at cost certification would only involve an assessment that the maximum insurable mortgage amount is supported by costs incurred and approved for the project by the HFA. By this reservation of authority to adjust the mortgage amount, HUD also is reducing any adverse effect from fees, which are linked to mortgage amount, that the HFAs may earn in connection with the project loan.

Notwithstanding the retention by HUD of ultimate authority to adjust the insured mortgage amount, the HFAs still would be carrying out an important function in connection with the insurance of advances and cost certification processes. The delegation of this function is consistent with Congress' view in section 542(a) that the relationship between HUD and HFAs is to be a partnership and that major functions are to be the responsibilities of the HFAs as evidenced by the direct assignment of functions in section 542(c)(2)(E).

The regulation will be contained in a new part 266 in title 24 of the Code of Federal Regulations, which consists of six subparts. A brief summary of each subpart follows.

Subpart A—General Provisions

Initially, subpart A sets forth the purpose and scope of the regulation. It cites the legislative background, and indicates HUD's policy decision to vest broad responsibility for the conduct of the program in participating HFAs. Subpart A also includes definitions of terms used throughout the regulation.

Section 266.10, Fund allocations, indicates that HUD will issue a notice

in the **Federal Register** inviting State and local HFAs to apply to participate in the program. (HUD's notice inviting applications and setting forth terms and conditions related to filing applications is published in today's issue of the **Federal Register**.) Section 266.10(d) describes the manner in which HUD plans to allocate units among HFAs (with each HFA allocated a minimum of 100 units). A state-wide cap on units will be determined by a formula based upon population. Within the unit cap, the number of units that may be allocated to particular State agencies and particular local agencies is further defined by a formula.

Section 266.15 describes key components that must be included in the risk-sharing agreement executed between HUD and the HFA. Among other things, the risk-sharing agreement will reflect the agreed upon risk apportionment; the number of units allocated to the HFA; description (i.e., incorporation by reference) of the HFA's standards and procedures for underwriting and servicing of loans; and a list of required HFA certifications designed to assure its proper performance under the program. (The list of certifications is not comprehensive and is subject to change as circumstances and experience dictate.)

Subpart A contains sections indicating that future regulatory amendments will not impair previously recognized contract rights and that HUD has no obligation to recognize or deal with parties other than the HFA, in the latter's role as mortgagee of record under a contract of mortgage insurance. Section 266.30 provides that the provisions of 24 CFR part 246 do not apply to this program. The Department will not be utilizing its constitutional authority to preempt local rent control laws for projects with mortgages insured under part 266. Representatives of HFAs have advised the Department that many HFAs, both State and local, already have such authority and, therefore, the absence of access to the Federal preemption authority would in no way restrict or interfere with the manner in which HFAs currently operate. Since the program involves risk to both HFAs and the Federal government, the Federal interest will be adequately protected by HFAs who use their preemption authority to protect their own interests.

The interim rule also contains a general waiver provision in § 266.35. Under that section, the Commissioner may, upon a finding of good cause, waive any provision in part 266 that is not a statutory requirement, except that the Commissioner will not consider waivers of financial requirements for participating HFAs or underwriting standards required by HUD for Level II participants. All waivers granted under § 266.35 will be in writing and will be published in the **Federal Register**, as required by section 7(q) of the Department of Housing and Development Act (42 U.S.C. 3535(q)).

Subpart B—Agency Requirements

Initially, subpart B describes the criteria HFAs must meet to qualify under the program. The Department interprets the definition of "qualified housing finance agency" as it appears in section 544 of the 1992 Act to include HFAs that have received an overall rating of "A" on their general obligation bonds as opposed to having received an "A" rating on single issues of general obligation bonds. The latter interpretation would be inconsistent with section 544 (2)(A) and (2)(C), which requires evidence of a strong financial capability. Such a construction would permit an HFA with one strong bond issue and several other issuances with a rating below "A" to claim that they met the qualified agency criteria. The Department does not construe this to be in accordance with the intent of Congress.

Two levels of approval—Level I and Level II—are described in § 266.100. The primary distinction between the two levels is in the level of risk apportionment an HFA agrees to undertake. HFAs participating at Level I are those that will assume 50 percent or more of the risk associated with a loan default. Level II participants will assume less than 50 percent of the risk.

The regulation requires any applicant HFA (whether it selects either Level I or Level II, or both Level I and Level II approval) to meet eligibility standards and application requirements. Eligibility is predicated on an HFA's demonstrable high financial capacity and/or experience and capability in the field of multifamily housing. Application requirements are designed to elicit the HFA's (legal and other) capacity to function in the program.

Subpart B also sets forth minimum reserve requirements that must be met by participating HFAs (§ 266.110). An HFA is required to maintain its basic sound financial capacity at all times. An HFA that qualifies for the program under the criteria in section 544(2) (A) or (B) of the 1992 Act (i.e., is designated "top-tier, or the equivalent thereof" or receives an overall rating of "A" on its general obligation bonds from a nationally recognized rating agency) will not be required to maintain additional reserves unless determined necessary by the Commissioner. "Other agencies," i.e., those that qualify based on other criteria, will be required to establish minimum reserve requirements that are set forth in § 266.110(b). Any HFA that initially qualifies under, but later loses, the "top-tier or equivalent" designation or an overall rating of "A" on its obligation bonds will be required to immediately establish and maintain the reserve amounts required for "other agencies" by § 266.110(b).

Sections 266.115–266.125 describe the monitoring and evaluation activities and requirements of the program, the kinds of HFA conduct that could give rise to sanctions by the Department, and the nature of sanctions that HUD may impose. The interim rule provides HFAs the right to an informal hearing where sanctions have been applied.

Finally, § 266.130 provides that HFAs may obtain reinsurance for their portion of the risk and describes the conditions under which reinsurance will be permitted.

Subpart C—Program Requirements

Subpart C contains program requirements such as project eligibility and fair housing and equal opportunity requirements. It also describes review functions to be retained by HUD as well as those delegated to HFAs.

Project size and affordability requirements in the interim rule follow the authorizing legislation. Subject to requirements in the regulation, mortgage insurance will be available under this program for project new construction and substantial rehabilitation, and for existing projects without substantial rehabilitation. Similarly, projects receiving section 8 or other rental subsidies are eligible for insurance under the program, subject to limitations on the rent levels. These limits are designed to ensure that project rents are clearly adequate to support the mortgage. Other eligible projects include single room occupancy (SRO) projects, board and care and assisted living facilities, and projects designed for persons 62 years of age or more. Transient housing, hotels, nursing homes and intermediate care facilities, and projects located in military impact areas are ineligible for insurance under this program.

HUD will retain responsibility for assessing the "previous participation" of mortgagors, contractors, consultants or management agents in HUD programs, for project compliance with environmental statutes and regulations, and for intergovernmental review. HUD will delegate to HFAs the functions pertaining to a project's affirmative fair

housing marketing plan and certain activities under the Davis-Bacon Act.

Section 542(c) of the Act does not statutorily require payment of prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act on projects receiving mortgage insurance under the pilot program. However, the Department has administratively determined to require payment of Davis-Bacon wage rates on certain projects receiving mortgage insurance under the program. As provided in § 266.225 of the rule, Davis-Bacon wage rates will be required to be paid to all laborers and mechanics (except volunteers) employed by contractors and subcontractors on projects: (1) For which advances are insured under this part; (2) which involve new construction or substantial rehabilitation; and (3) which will contain 12 or more dwelling units. Davis-Bacon requirements will apply only if all of these conditions are met, unless Davis-Bacon wage rates are applicable by reason of assistance from another Federal program. [For example, if assistance under section 8 is also used in connection with a project under this part that involves minor rehabilitation, Davis-Bacon requirements would apply to the project if it contains nine or more section 8-assisted units.] The Department has decided to require payment of Davis-Bacon wage rates to ensure that prevailing wage requirements under this program are generally comparable to similar provisions required by statute for multifamily mortgage insurance programs under the National Housing Act.

The interim rule also states that while the Commissioner retains responsibility for enforcement of labor standards under this section, the Commissioner may delegate to the HFA information collection (e.g., payroll review and routine interviews) and other routine administration and enforcement functions, subject to monitoring by the Commissioner. The Department intends to delegate such routine administration and enforcement functions to HFAs. This delegation is consistent with the Department's decision to delegate many of the functions relating to insurance of individual projects to the HFAs. The delegation is also consistent with the Department's longstanding delegation of routine Davis-Bacon functions to States and local governments under the Community Development Block Grant program.

Subpart D—Processing, Development and Approval

Subpart D describes functions that the HFA and HUD will undertake in relation to a loan origination and HUD insurance endorsement.

An HFA that assumes 50 percent or more of the risk associated with a loan may use its own underwriting standards and loan terms and conditions to underwrite and approve loans. Where an HFA assumes less than 50 percent of the risk, underwriting standards and loan terms and conditions are subject to HUD review, modification and approval. The interim rule provisions also cover responsibilities of HFAs concerning such matters as project feasibility, acceptability of the mortgagor, and inspections during the project construction period.

Section 266.310 provides the circumstances where HUD will insure loan advances, or agree to insure the entire mortgage upon completion of construction. Where a mortgage is endorsed for insurance, the interim rule provides that the HFA must remain the mortgagee of record for as long as mortgage insurance is in force.

Subpart E—Mortgage and Closing Requirements; HUD Endorsement

Subpart E contains requirements that relate to the mortgage and the property that secures the insured loan.

The Department recognizes that section 542(c)(2)(E) provides that HFAs are permitted to use their own underwriting standards and loan terms and conditions for purposes of underwriting loans to be insured under this program where the HFA is assuming 50 percent or more of the risk of loss. Where the Secretary retains more than 50 percent of the risk of loss, section 542(c)(2)(E) permits the Secretary to impose additional underwriting criteria and loan terms and conditions on loans to be insured under the program. However, it is the Department's view that Congress intended, in enacting section 542(c), to develop a fiscally prudent mortgage insurance program. The Department believes that Congress did not intend to preclude HUD regulations that would provide: (1) that the HUD-insured mortgage constitute a first lien; (2) that the HUD-insured mortgage be regularly amortizing; (3) that the insured mortgage contain a covenant against the change in use of the insured property; (4) that the insured mortgage contain a covenant requiring the mortgagor to keep the property, which is security for the mortgage, insured against loss due to fire or other hazards; and (5) that the regulatory agreement executed by the mortgagor contain a provision requiring that the mortgagor be a sole asset mortgagor.

First Lien Requirement

The requirement that the insured mortgage be a first lien on the property is a fundamental requirement in all the Department's primary insurance programs. The Department views the "first lien" requirement as essential because it protects the Department's interest by eliminating any possibility that HUD's interest under the insured mortgage could be extinguished by a superior lien holder in the event of a foreclosure of a superior lien on the property. In the context of the HFA risk-sharing program, the first lien requirement is also designed to protect the HFA's interest, since the HFA shares a portion of the risk of loss with HUD.

Amortization

The Department does not believe that Congress, in its enactment of section 542(c), intended to permit the use of riskier financing practices such as balloon payment terms and negative amortizations. Use of these types of financing practices in insured programs could increase the chances that an insured mortgage would go into default or otherwise increase the Department's exposure on a mortgage where the terms of the financing permitted negative amortization. It is the Department's view that requiring a mortgage to be regularly amortizing would curtail the use of riskier financing practices that could jeopardize the stability of the insured loan.

Change in Use

The Department's purpose in requiring that a mortgage insured under this program contain a covenant prohibiting a change in use of the insured property was to carry out the intent of Congress that the mortgage insurance be used to provide affordable residential housing, rather than for some commercial enterprise, such as a hotel or office building.

Hazard Insurance

The Department does not believe that Congress, in enacting the section 542(c) risk-sharing program, intended for the Secretary to insure a mortgage on a project that is not insured against damage or destruction due to fire or other hazards. Additionally, the Department cannot conceive of an HFA making a loan on a project that is not insured against loss due to hazards. The requirement that a mortgagor under a mortgage have hazard insurance is a

standard mortgage industry practice. Additionally, it is the Department's position that hazard insurance is a fundamental requirement of Federal mortgage insurance to protect the public fisc against loss of public assets and, therefore, must be required in this program.

Single Asset Mortgagor

The requirement that a mortgagor be a single asset mortgagor is a requirement that is critical to the Department's ability to prevent the mortgagor of an insured project from commingling funds of the insured project with other assets that a mortgagor entity might own, if permitted. If the Department were to allow a mortgagor entity to own assets other than the insured project, this would increase the chances of a mortgagor siphoning off funds from an insured project for use in a conventionally-financed project. This could result in the mortgagor of the insured mortgage suffering severe financial difficulty, possibly defaulting on the insured mortgage and a subsequent insurance claim being filed by the HFA. In addition, the assets of an insured project could become at risk, as a result of their application to the debts of a conventionally-financed project in financial difficulty where both projects have the same owner.

Other provisions in subpart E pertain to the closing of a mortgage loan. The closing will be held by the HFA, which is then required to submit a closing docket (with required documentation) to HUD for insurance endorsement. The required documentation is set forth in the interim rule as well.

Subpart F—Project Management and Servicing

Subpart F sets out the rules for HFAs to service loans and manage projects.

The HFA will have broad responsibility for the administration of this program, including monitoring and determining the compliance of the project owner with the requirements of this rule. HUD will not hold or be a party to any mortgage or note instruments between the mortgagor and the HFA. HUD will, however, monitor the performance of the HFA to determine its compliance with this subpart.

Section 266.505 lists certain requirements that must be included in the regulatory agreement that is executed by the HFA and the project owner. Those requirements are necessary to assure that the owner will maintain the sound financial and physical condition of the project, and maintain the project as an affordable housing resource. Section 266.510 describes the responsibilities of the HFA for annual project inspections, review of an owner's compliance with the affirmative fair housing marketing plan, and analysis of the owner's annual audit and recordkeeping.

Subpart G—Contract Rights and Obligations

Subpart G contains provisions with regard to the mortgage insurance premium (MIP) in §§ 266.600–266.608. In accordance with section 542(c)(3), the interim rule provides for a "sliding scale" of MIP payments, with reduced amounts payable in inverse proportion to the increase in an HFA's risk apportionment. Risk apportionment percentages range from 10 to 90 percent. At the high end, an HFA assuming 90 percent of the risk would be required to pay a .05 percent MIP based upon the average outstanding principal balance (without taking into account delinquent payments or prepayments) per annum. At the other end of the spectrum, an HFA assuming 10 percent of the risk would be required to pay a .45 percent MIP based upon the average outstanding principal balance per annum.

Subpart G also contains provisions on insurance endorsement and assignments. Endorsement of the original credit instrument will indicate the Commissioner's insurance of the mortgage. Section 542(c)(2)(B) of the 1992 Act provides for full mortgage insurance for loans originated by or through qualified HFAs. While this provision clearly permits qualified HFAs to underwrite loans for other HFAs or mortgage entities or to sell their loans in the secondary market, the Department discussed this option with HFA representatives with particular concern about how the HFA would maintain its risk-sharing obligation in such transactions. In view of the complexities of implementing this aspect of the statute and the desire to implement the pilot program in a timely manner, it was agreed between the HFAs and HUD that entities other than approved HFAs would not be permitted to be mortgagees originating loans to be insured under this program. The one exception was with respect to the transfer of partial interest under a participation agreement. Section 266.616 permits the transfer of up to 100 percent of the beneficial interest in a loan or a pool of loans insured under part 266, provided that, among other things, the HFA remains the mortgagee of record and is the party with whom the Commissioner deals under the contract of mortgage insurance.

Section 266.620 describes the circumstances under which the contract of insurance will terminate. These are (1) payment in full of the mortgage; (2) acquisition of the mortgaged property by the HFA and notification to the Commissioner that no claim for insurance benefits will be made; (3) acquisition of the property at a foreclosure sale by a party other than the HFA; (4) notification by the HFA to the Commissioner of voluntary termination; (5) a finding of fraud or material misrepresentation on the part of the HFA or its successors with respect to the contract of insurance; or (6) receipt by the Commissioner of an application for final claims settlement.

The latter part of subpart G describes the procedures for filing a claim upon a default, determining the amount of the claim, and payment of the claim. Section 266.630 describes the requirements for filing for a partial payment of a claim. This section is intended to avoid full insurance claim payments by providing the HFA with flexibility to deal with a nonperforming mortgage where the default is due to circumstances beyond the mortgagor's control and the financial relief provided by the HFA is sufficient to restore the financial viability of the project. When the conditions of this section are met, an HFA may reduce the unpaid principal balance of the insured mortgage by up to 50 percent and may defer delinquent interest. The HFA must secure the mortgagor's repayment of this relief with a second mortgage, which can have deferred amortization thereby allowing the mortgagor to repay the second mortgage in increasingly larger amounts as the project's cash flow improves.

Under this partial claim procedure, upon the HFA providing the above-described relief, HUD makes a partial claim payment to the HFA in an amount that is a percentage of the relief provided by the HFA to the mortgagor. The percentage is equal to HUD's percentage of the risk of loss on the original mortgage loan or 50 percent, whichever is less. The HFA, in turn, must remit to HUD the same percentage of all amounts that it collects on its second mortgage.

When HUD pays a claim (i.e., entire amount, in cash), § 266.638 provides that the HFA will issue a debenture (or a promissory note, a bond, or any other instrument, hereinafter referred to as "debenture") to HUD for the full amount of the claim. The debenture will have a term of five years in order to afford the HFA ample time to work with the mortgagor to cure the default or foreclose and/or resell the project. During the five year period, the HFA

will pay HUD interest on the debenture, due and payable on the anniversary of the claim payment. At the end of five years, or at the point of settlement when the debenture is paid, HUD will determine the amount of losses to be apportioned between HUD and the HFA.

Sections 266.640 through 266.658 concern the final disposition of a claim, including the HFA's ability to accept a deed-in-lieu of foreclosure; the use of an appraisal to determine property value in the absence of a foreclosure sale; the manner in which the amount of a loss is determined; and final settlement.

IV. Justification for Interim Rule; Consultations

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. However, part 10 provides for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public comment is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public comment is impracticable because section 542(c) directed that the program be implemented quickly and limited the amount of time the program could be in operation. Postponing the effectiveness of the interim rule to allow for public comments would unduly delay the program's implementation and its objective to increase the number of affordable housing units.

The Department has adopted a policy of setting a date for expiration of an interim rule unless a final rule is published before that date. This "sunset" provision appears in § 266.1(c) of the rule, and provides that the interim rule will expire on a date 12 months from publication unless a final rule is published before that date.

As part of the process of development of this rule, the Department has consulted with industry representatives, including representatives of state and local HFAs, in order to structure the initial [interim] program in a manner that lends itself to immediate and feasible implementation. The purpose of the consultations was to discuss, informally, how the objectives of section 542(c) could best be achieved with minimum administrative burden on the HFAs and HUD. The comments of the HFAs, as well as the transcription of a meeting held on May 3, 1993 in Washington, DC between HUD and HFA representatives, are part of the public file for this rule, and are available for public inspection. The Department took into consideration the comments and suggestions made by the participants in those discussions, and through this interim rule, seeks further comments from these groups and other members of the public.

In addition to the consultations just described, HUD has entered into consulting contracts with representatives of a state housing finance agency and of a local housing finance agency for the purpose of assisting HUD in developing and analyzing issues relative to the rule, assessing public comments, and developing the final rule.

V. Other Matters

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 [44 U.S.C. 3501–3520]. The following provisions of the interim rule have been determined by the Department to contain collection of information requirements:

Reference in rule	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
§ 266.105(b)	20	1	20	12	240
§ 266.105(c)	10	1	10	15	150
§ 266.115(d)(2)	15	2	30	4	120
§ 266.210	125	1	125	2	250
§ 266.215(a)	125	1	125	1.5	187.5
§ 266.215(b)	100	1	100	100	10,000
§ 266.420(b)	125	1	125	5	625
§ 266.505(b)(7)	250	1	250	2	500
§ 266.510(a)	250	1	250	8	2,000
§ 266.510(b)	15	1	15	7	105
Total annual burden					14,177.5

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 implementing section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the Office of Rules and Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410–0500.

Executive Order 12866, Regulatory Planning and Review

This interim rule was reviewed and approved by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review, which was signed by the President on September 30, 1993.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this interim rule before publication and by approving it certifies that the interim rule will not have a significant economic impact on a substantial number of small entities. The program will provide a new system of Federal credit enhancements to expand the Nation's supply of affordable housing. Qualified State and local housing finance agencies will participate in the program on a voluntary basis.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the provisions of this interim rule will not have a significant impact on family formation,

maintenance or well being, except to the extent that the program authorized by the interim rule will increase the supply of affordable housing, thereby improving the ability of families to find decent and affordable housing. Any such impact is beneficial and merits no further review under the Order.

Executive Order 12611, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, Federalism, has determined that the policies contained in this interim rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The Department has specifically provided in this interim rule that its regulation on preemption of State or local rent control laws does not apply to this program. Any preemption of those laws for purposes of the housing provided under the program will be done under authority granted the HFAs by State or local law. All authority delegated to HFAs by HUD under this program was done so because the Department believes that is the intent of Congress under section 542(c).

Semi-Annual Agenda of Regulations

This interim rule was listed as item number 1533 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56429) under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 246

Grant programs—housing and community development, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Mortgage insurance, Low and moderate income housing, Reporting and recordkeeping requirements.

In accordance with the reasons set forth in the preamble, title 24 of the Code of Federal Regulations is amended as follows:

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

1. The heading of subchapter B of chapter II is revised to read "Subchapter B—Mortgage and Loan Insurance Programs Under National Housing Act and Other Authorities".

PART 246—LOCAL RENT CONTROL

2. The authority citation for part 246 is revised to read as follows:

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

3. Section 246.1 is amended by adding paragraph (e), to read as follows:

§ 246.1 Scope and effect of regulations.

* * * * *

(e) This part applies to mortgages insured under the National Housing Act. It does not apply to mortgages insured under section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707).

4. Part 266 is added to read as follows:

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

Subpart A—General Provisions

Sec.
266.1 Purpose and scope.
266.5 Definitions.
266.10 Fund allocations.
266.15 Risk-Sharing Agreement.
266.20 Effect of amendments.
266.25 Limitation on HUD insurance liability.
266.30 Nonapplicability of 24 CFR part 246.
266.35 Waivers.

Subpart B—Housing Finance Agency Requirements

266.100 Qualified housing finance agency (HFA).
266.105 Application requirements.
266.110 Reserve requirements.
266.115 Program monitoring and evaluation.
266.120 Actions for which sanctions may be imposed.
266.125 Scope and nature of sanctions.
266.130 Reinsurance.

Subpart C—Program Requirements

266.200 Eligible projects.
266.205 Ineligible projects.
266.210 HUD-retained review functions.
266.215 Functions delegated by HUD to HFAs.
266.220 Nondiscrimination in housing and employment.
266.225 Labor standards.

Subpart D—Processing, Development, and Approval

266.300 HFAs accepting 50 percent or more of risk.
266.305 HFAs accepting less than 50 percent of risk.
266.310 Insurance of advances or insurance upon completion; applicability of requirements.
266.315 Recordkeeping requirements.

Subpart E—Mortgage and Closing Requirements; HUD Endorsement

266.400 Property requirements—real estate.
266.402 Recordation.
266.405 Title.
266.410 Mortgage provisions.
266.415 Mortgage lien and other obligations.
266.417 Authority to adjust mortgage insurance amount.
266.420 Closing and endorsement by the Commissioner.

Subpart F—Project Management and Servicing

266.500 General.
266.505 Regulatory agreement requirements.
266.510 HFA responsibilities.
266.515 Record retention.
266.520 Program monitoring and compliance.

Subpart G—Contract Rights and Obligations

Mortgage Insurance Premiums

266.600 Mortgage insurance premium: Insurance upon completion.
266.602 Mortgage insurance premium: Insured advances.
266.604 Mortgage insurance premium: Other requirements.
266.606 Mortgage insurance premium: Duration and method of paying.
266.608 Mortgage insurance premium: Pro rata refund.

Insurance Endorsement

266.612 Insurance endorsement.

Assignments

266.616 Transfer of partial interest under participation agreement.

Termination

266.620 Termination of Contract of Insurance.
266.622 Notice and date of termination by the Commissioner.

Claim Procedures

266.626 Notice of default and filing an insurance claim.
266.628 Initial claim payments.
266.630 Partial payment of claims.
266.632 Withdrawal of claim.
266.634 Reinstatement of the contract of insurance.
266.636 Insuring new loans for defaulted projects.
266.638 Issuance of HFA Debenture.
266.640 Foreclosure and acquisition.
266.642 Appraisals.
266.644 Application for final claim settlement.

266.646 Determining the amount of loss.
266.648 Items included in total loss.
266.650 Items deducted from total loss.
266.652 Determining share of loss.
266.654 Final claim settlement and HFA Debenture redemption.
266.656 Recovery of costs after final claims settlement.
266.658 Program monitoring and compliance.

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 266.1 Purpose and scope.

(a) *Authority and scope.* (1) Section 542 of the Housing and Community Development Act of 1992 directs the Secretary of the Department of Housing and Urban Development, acting through the Federal Housing Administration, to carry out programs that will demonstrate the effectiveness of providing new forms of Federal credit enhancement for multifamily loans. Section 542, entitled, "Multifamily Mortgage Credit Demonstrations," provides new independent insurance authority that is not under the National Housing Act.

(2) Section 542(c) of the Housing and Community Development Act of 1992 specifically directs the Secretary to carry out a pilot program of risk-sharing with qualified State and local housing finance agencies (HFAs). The qualified HFAs are authorized to underwrite and process loans. HUD will provide full mortgage insurance on affordable multifamily housing projects processed by such HFAs under this program. Through risk-sharing agreements with HUD, HFAs contract to reimburse HUD for a portion of the loss from any defaults that occur while HUD insurance is in force.

(3) The extent to which HUD will direct qualified HFAs regarding their underwriting standards and loan terms and conditions is related to the proportion of the risk taken by an HFA.

(b) *Purpose.* The primary purpose of this pilot program is to test effectiveness of providing new forms of credit enhancement for multifamily loans, i.e., utilization of full insurance by HUD, pursuant to risk-sharing agreements with qualified housing finance agencies, for the development of affordable housing. The utilization of Federal credit enhancements should increase access to capital markets and, thereby, increase the supply of affordable multifamily housing. By permitting HFAs to underwrite, process, and service loans and to manage and dispose of properties that fall into default, HUD expects affordable housing to be made available to eligible families and individuals in a timely manner.

(c) *Expiration of rule.* Paragraph (e) of § 246.1 and part 266 will expire on December 5, 1994.

§ 266.5 Definitions.

Act means the Housing and Community Development Act of 1992, as amended.

Affordable housing means a project in which 20 percent or more of the units are both rent-restricted and occupied by families whose income is 50 percent or less of the area median income as determined by HUD, with adjustments for household size, or in which 40 percent (25 percent in New York City) or more of the units are both rent-restricted and occupied by families whose income is 60 percent or less of the area median income as determined by HUD, with adjustments for household size. A residential unit is rent-restricted if the gross rent with respect to such unit does not exceed 30 percent of the imputed income limitation applicable to such unit.

Board and Care/Assisted Living Facility means a residential facility for independent living that is regulated by State or local government that provides continuous protective oversight and assistance with the activities of daily living to frail elderly persons or other persons needing such assistance. Continuous protective oversight may range from as little as awareness on the part of management staff of residents' whereabouts (and the ability to intervene in the event of crisis) to a higher level of services and assistance. Assistance with the activities of daily living may include, but is not limited to, bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, meal preparation, shopping, supervision of medication, and housework.

Commissioner means the Federal Housing Commissioner or his or her authorized representative.

Contract of insurance means the agreement evidenced by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in this part and the applicable provisions of the Act.

Credit subsidy means the cost of a direct loan or loan guarantee under the Federal Credit Reform Act of 1990 as defined in subpart B of title 13 of the Omnibus Budget Reconciliation Act of 1990 (Pub.L. 101–508, approved Nov. 5, 1990).

Debenture means the instrument issued by the HFA to HUD upon payment of an insurance claim by HUD. The instrument must be in the standard form of a State or Municipal Debenture issued under the Uniform Commercial Code, where applicable, and must be supported by the full faith and credit of the HFA. The instrument must define the terms and conditions and the risk-sharing portion which the HFA will pay at the end of the term of the Debenture, and must be for the full amount of the claim payment. The term *Debenture* may include similar instruments, such as promissory notes and bonds, as mutually agreed upon by the Commissioner and the HFA.

Designated offices means the HUD Field Offices that are assigned the responsibility for program monitoring, imposing or recommending sanctions for program violations, and conducting informal hearings.

Firm approval letter means a letter issued by HUD to an HFA upon the positive completion of the HUD-retained reviews described in § 266.210. The letter will apportion units, insuring authority, and credit subsidy to the project and provide that, so long as the HFA is in good standing and absent fraud or misrepresentation by the HFA, HUD will endorse the project mortgage for insurance upon presentation by the HFA of the required Closing Docket and certifications required by this part and the Commissioner's administrative requirements.

Gross rent includes any utility allowance determined by the Secretary after taking into account such determination under section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). It does not include any payment under section 8 or any comparable rental assistance program (with respect to such unit or occupants thereof), nor does it include any fee for a supportive service that is paid to the owner of the unit (on the basis of the low-income status of the tenant of the unit) by any governmental program of assistance (or by an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) and exempt from tax under section 501(a) of the Code (26 U.S.C. 501(a)) if such program (or organization) provides assistance for rent and the amount of assistance provided for rent is not separable from the amount of assistance provided for supportive services. It also does not include any rental payment to the owner of the unit to the extent such owner pays an equivalent amount to the Farmers Home Administration under section 515 of the Housing Act of 1949 (42 U.S.C. 1485).

Housing finance agency or *HFA* means any public body, agency, or instrumentality created by a specific act of a State legislature or local municipality empowered to finance activities designed to provide housing and related facilities, through land acquisition, construction or rehabilitation. The term State includes the several States, Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa and the Virgin Islands.

Insured mortgage means a valid single first lien on property that has first priority for payment and for which the credit instrument has been endorsed for insurance by the Commissioner or his or her duly authorized representative.

Level I participants means HFAs that elect to take 50 percent or more of the risk of loss in 10 percent increments on mortgages issued under this program.

Level II participants means HFAs that elect to take 10 or 25 percent of the risk of loss on mortgages issued under this program, dependent on the loan-to-replacement cost or loan-to-value ratio of the project to be insured.

Mortgage means such a single first lien upon the real estate as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the real estate is situated, together with the credit instruments, if any, secured thereby.

Mortgagee means the original lender under a mortgage and its successors and assigns approved by the Commissioner.

Mortgagor means the original borrower under a mortgage and its successor and assigns.

Multifamily housing means property consisting of five or more rental dwelling units of housing. These units may be detached, semi-detached, or row houses, or multifamily structures.

Qualified HFA means an HFA that meets the requirements described in § 266.100(a).

Risk-Sharing Agreement means a contract between an HFA and the Commissioner that incorporates the terms, obligations, and conditions specified in this part.

Secondary financing means any grant, loan, inferior lien, or other form of indebtedness used during loan origination prior to HUD endorsement to finance a multifamily property insured under this part which is inferior to the insured mortgage as defined above and does not have first priority for payment.

Single Room Occupancy, or SRO, projects means multifamily projects consisting of units that are not required to contain food preparation or sanitary facilities for occupancy by single individuals capable of independent living.

Supportive services means any service provided under a planned program of services designed to enable residents of a residential rental property to remain independent and avoid placement in a hospital, nursing home, or intermediate care facility for the mentally or physically handicapped. In the case of a single room occupancy unit, the term includes any service provided to assist tenants in locating and retaining permanent housing. This definition is to be used in conjunction with the "gross rent" calculation.

§ 266.10 Fund allocations.

(a) *Notice of availability of insuring authority.* HUD will announce the availability of insuring authority through publication of a Notice in the **Federal Register**. Such Notice will invite qualified HFAs to submit an application for approval under this part. The Notice will indicate the deadline date for submission of applications, required documentation, the address to which the applications must be submitted and other relevant information.

(b) *Annual apportionment.* A portion (up to ⅔, or 20,000 units) of the total insuring authority for the 30,000 units available under the pilot program will be reserved from HUD's maximum insuring authority for the pilot program at the beginning of Fiscal Year 1994. The unallocated balance of units and any unused insuring authority will be reserved at the beginning of Fiscal Year 1995. The corresponding credit subsidy will be reserved in an amount sufficient to cover the maximum risk HUD could assume in the event of a loss, i.e., 90 percent. Upon endorsement of each mortgage, the credit subsidy will be reduced in accordance with the actual amount of risk HUD assumes.

(c) *Set-aside.* Each approved HFA will be given a unit set-aside using the allocation system described in paragraph (d) of this section. Only a portion of each HFA's set-aside in excess of its minimum will be initially allocated. A review of each HFA's performance at a later date will determine the amount of any additional allocation. Where HUD determines that an HFA will not use the full amount of its set-aside, the units will be reallocated to other HFAs as needed.

(d) *HFA risk-sharing allocation system.* (1) Each approved HFA will be allocated a minimum of 100 units. Requests for less than the minimum will not be accepted for this pilot program. HFAs that do not demonstrate the capacity to use at least 100 units during the pilot will not be approved for participation.

(2) A State-wide unit cap will be established for each State represented by an approved State or local housing finance agency. The initial State-wide unit caps will be based on the number of units remaining after deducting the minimum allocation for all approved HFAs from the 20,000 units. Each State's cap will be a portion of this remainder, based on the ratio of the total population in that State to the total population of all States in which approved HFAs are located.

(3) The local HFA set-aside will be the lesser of:

(i) The number of units requested by the local HFA in its application; or

(ii) The minimum allocation plus the portion of the State-wide unit cap represented by the ratio of the population in the jurisdiction of the local HFA to the total population of the State in which the local HFA is located.

(4) The State HFA set-aside will be the lesser of:

(i) The number of units requested by the State HFA in its application; or

(ii) The minimum allocation plus the number of units remaining from the State-wide unit cap after deduction of any set-aside, or set-asides, of any participating local HFA, or HFAs, within the State's boundaries.

(5) Any units not allocated will be retained by the Commissioner for future allocation.

(6) The remaining 10,000 units and any other unallocated units will be allocated during Fiscal Year 1995.

(e) Each allocation to an HFA will be reserved in a Risk-Sharing Agreement (and amendments thereto) executed by the HFA and HUD. The Agreement will specify the insuring authority and number of units allocated to the HFA.

§ 266.15 Risk-Sharing Agreement.

(a) *Requirement for participation.* Execution of a Risk-Sharing Agreement is a prerequisite to participation in this program.

(b) *Provisions.* The Agreement will include, but not necessarily be limited to, the following:

(1) The allocation of units, insuring authority and credit subsidy set aside for the HFA;

(2) The risksharing level or levels at which the HFA has been approved to participate in the program;

(3) The standards and procedures, and loan terms and conditions, to be used by the HFA in originating, underwriting, closing, project management and servicing of loans and for disposing of defaulted properties (which may be

incorporated by reference to existing HFA documents);

(4) The identification of the individuals responsible for the overall underwriting decision (Chief Underwriter) and for project management, servicing, and property disposition (Housing Management Director), principal staff, and identification of individuals, with specimen signatures, with authority to sign loan documents or otherwise commit the HFA;

(5) Certifications by the HFA that it:

(i) Will allow periodic auditing and review by the Commissioner and the HUD Inspector General and their authorized agents regarding the HFA's participation in the program and permit an inspection and examination of its financial records, and records associated with loans insured under this part;

(ii) Will notify HUD promptly in writing any time the HFA changes principal staff, persons authorized to commit the HFA, and operating procedures, underwriting standards and procedures, and loan terms and conditions. Level II HFAs must also obtain the prior written approval of the Commissioner before implementing any amendment to the HFA's underwriting standards and procedures, and loan terms and conditions.

(iii) Has fully disclosed all underwriting standards and procedures, loan terms and conditions;

(iv) Will at all times comply with program financial requirements and notify HUD of any pending and actual changes that would adversely affect HFA operations or financial status;

(v) Will provide HUD with a copy of its annual certified audit report;

(vi) Will comply with all Fair Housing and Equal Opportunity requirements, i.e., the Fair Housing Act, as implemented by 24 CFR part 100; title VI of the Civil Rights Act of 1964, as implemented by 24 CFR part 1; the Age Discrimination Act of 1975, as implemented by 24 CFR part 146; section 504 of the Rehabilitation Act of 1973, as implemented by 24 CFR part 8; titles II and III of the Americans with Disabilities Act of 1990, as implemented by 28 CFR part 35; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135; the Equal Credit Opportunity Act, as implemented by 12 CFR part 202; Executive Order 11063, as amended, as implemented by 24 CFR part 107; Executive Order 11246, as implemented by 41 CFR part 60; other applicable Federal laws and all regulations issued pursuant to these authorities in lending or investing funds in real estate mortgages; and applicable State and local fair housing and equal opportunity laws.

(vii) Will perform all functions in connection with loans originated under this program including underwriting, loan approval, servicing (including workouts), and disposition functions;

(viii) Has Lender's fidelity bond/surety bond and errors and omissions insurance;

(ix) Will abide by all applicable requirements issued by HUD for performing its functions under this part;

(x) Will issue debentures acceptable to HUD as collateral pending final settlement of a claim;

(xi) Will comply with the affordable housing requirements set forth under this part;

(xii) Will remain mortgagee of record on each loan underwritten under this part for the term of the mortgage insurance;

(xiii) Will follow other applicable Federal rules and regulations.

(6) An agreement to submit an annual certification that there has been no basic change in its organization, business activities, financial status or other information that was submitted in its application to participate in the program, and that the HFA has complied with all eligibility requirements during the past year, and if there has been any such change, the certification required by this paragraph must state the nature of the change;

(7) An agreement that any reinsurance of the HFA's share of the loss will be subordinate to the HUD insured first mortgage and will not affect reimbursement to HUD notwithstanding the timing of the actual settlement between the HFA and the reinsurer; and

(8) An agreement that all appraisal functions will be completed by Certified General Appraisers, licensed in the State in which the property is located, and that all appraisal functions will be completed in accordance with the Uniform Standards of Professional Appraisal Practice.

§ 266.20 Effect of amendments.

The Commissioner may amend the regulations in this part from time to time. Amendments to the regulations will not adversely affect the interest of a lender under a Contract of Insurance on any mortgage already insured or on any mortgage to be insured on which HUD has already issued its firm approval letter.

§ 266.25 Limitation on HUD insurance liability.

The Commissioner shall have no obligation to recognize or deal with anyone other than the HFA in its role as mortgagee of record and as party to a risk-sharing agreement with HUD with respect to the rights, benefits, and obligations of the HFA under the contract of insurance.

§ 266.30 Nonapplicability of 24 CFR part 246.

The provisions of 24 CFR part 246 do not apply to projects that are security for mortgages insured under this part.

§ 266.35 Waivers.

Upon completion of a determination and finding of good cause, the Commissioner may waive any provision of this part in any particular case subject only to statutory limitations, except that no waivers will be provided with respect to financial requirements for participating HFAs or underwriting standards required for Level II participants. Each waiver must be in writing supported by documentation of the facts and reasons that formed the basis for the waiver. HUD will publish a **Federal Register** notice informing the public of all waivers granted under this section in accordance with section 7(q) of the Department of Housing and Urban Development Act and HUD policies regarding publication of waivers.

Subpart B—Housing Finance Agency Requirements

§ 266.100 Qualified housing finance agency (HFA).

(a) *Qualifications.* To participate in the program, an HFA must apply and be specifically approved for the Pilot Program described in this part, in addition to being a HUD-approved mortgagee in accordance with 24 CFR 202.10 through 202.19. The HFA must maintain eligibility by continuing to comply with the requirements set forth in the Risk-Sharing Agreement and this part. To qualify for participation in the program described in this part, an HFA must:

(1) Carry the designation of "top tier" or its equivalent as evaluated by Standard and Poor's or any other nationally recognized rating Agency; or

(2) Receive an overall rating of "A" for the HFA for its general obligation bonds from a nationally recognized rating agency; or

(3) Otherwise demonstrate its capacity as a sound and experienced HFA based on, but not limited to, experience in financing multifamily housing, fund balances, administrative capabilities, investment policy, internal controls, financial management, portfolio quality, and State or local support; and

(4) Be a HUD-approved multifamily mortgagee in good standing; and

(5) Have at least five years experience in multifamily underwriting; and

(6) Demonstrate that it does not fall into any of the following categories:

(i) The Department of Justice has brought a civil rights suit against the Agency, and the suit is pending;

(ii) There has been an adjudication of civil rights violation in a civil action brought against the HFA by a private individual, unless the HFA is operating in compliance with a court order, or implementing a HUD-approved compliance agreement designed to correct the areas of noncompliance;

(iii) There are outstanding findings of noncompliance with civil rights statutes, Executive Orders, or regulations as a result of formal administrative proceedings, or the Secretary has issued a charge against the HFA under the Fair Housing Act, unless the HFA is operating under a compliance agreement designed to correct the areas of noncompliance.

(b) *Approval levels.* Approval levels consist of the following:

(1) Level I approval to originate, service, and dispose of multifamily mortgages where the HFA uses its own underwriting standards and loan terms and conditions, and assumes 50 to 90 percent of the risk of loss (increments of 10 percent).

(2) Level II approval to originate, service, and dispose of multifamily mortgages where the HFA uses underwriting standards and loan terms and conditions approved by HUD, and:

(i) When the loan-to-replacement cost ratio for new construction and substantial rehabilitation projects or the loan-to-value ratio for existing projects are greater than or equal to 75 percent, the HFA shall assume 25 percent of the risk of loss.

(ii) When the loan-to-replacement cost ratio for new construction and substantial rehabilitation or the loan-to-value ratio for existing projects are less than 75 percent, the HFA shall assume 10 percent, or 25 percent at the HFA's option, of the risk of loss.

(3) For HFAs who plan to use Level I and Level II processing, the underwriting standards and loan terms and conditions to be used on Level II loans must be approved by HUD.

§ 266.105 Application requirements.

(a) *Applications for approval as a HUD-approved multifamily mortgagee.* HFAs that are not HUD-approved mortgagees at the time of their application to participate in the pilot program must submit, concurrently, separate applications for approval to participate in the program and for approval to operate as a HUD-approved mortgagee. Application for approval as HUD-approved mortgagee must be submitted to HUD in accordance with the requirements established under 24 CFR 202.10 through 202.19.

(b) *Applications for participation in pilot program.* Applications from HFAs for approval to participate in the pilot program under this part must contain:

(1) Evidence that the application fee of $10,000 has been wire-transferred to the U.S. Treasury in accordance with instructions in the Notice described in § 266.10(a). This fee will not be refunded once the application has been accepted for review.

(2) Opinion of legal counsel that the HFA has the necessary powers to participate in the pilot program. The opinion for an HFA with an overall rating of "A" on its general obligation bonds must also state that the general obligation will extend to the HFA's responsibilities under the Risk-Sharing Agreement and any debenture issued by the HFA to the Commissioner. If the opinion of counsel does not include this statement, the HFA must comply with the provisions of § 266.110(b).

(3) A copy of the HFA's procedures manual which describes, among other things, the manner in which the HFA will process mortgage loans, including their underwriting standards; a description of the approval process; the HFA fee schedule; a description of loan management, loan servicing, and property disposition activities; and the manner in which the HFA's and mortgagor's reserves and escrows (including letters of credit) will be established and controlled. The manual must also include a processing flow chart and an organizational chart.

(4) A plan describing how the HFA will ensure the highest quality compliance with all HFA and HUD requirements for the origination, processing, underwriting, insurance of advances, cost certification, loan closing, construction and permanent loan management, servicing and disposition of all projects insured or proposed to be insured under this part and for monitoring all work performed by contract personnel, if any.

(5) Identification of the individual responsible for the overall underwriting decision (chief underwriter), and the individual responsible for project management, loan servicing and property disposition (housing management director). These functions may not be contracted out by the HFA. The HFA may contract with outside sources for technical processing and loan servicing services. However, the application must demonstrate internal staff capacity to review and evaluate the work product of the contract sources and to make final underwriting, servicing, and property disposition conclusions.

(6) A description of oversight by State or local governmental agencies.

(7) A copy of the HFA's administrative manual covering its investment policies and overall business and financial practices.

(8) A statement containing the number of units the HFA proposes to process to initial endorsement stage during Federal Fiscal Year 1994, and Federal Fiscal Year 1995, respectively. (Note: The Federal Fiscal Year begins on October 1st, and ends on September 30th.)

(9) HFA declaration of the risk-sharing arrangement it has selected i.e., Level I, Level II, or both Level I and Level II.

(10) Documentation containing:

(i) For HFAs that carry the designation of "top tier" or its equivalent, as evaluated by Standard and Poors or any other nationally recognized rating agency, evidence of such designation;

(ii) For HFAs that currently receive an overall rating of "A" for its general obligation bonds from a nationally recognized rating agency, evidence of such a rating; or

(iii) For any other HFA, evidence, as described in paragraph (c) of this section, that demonstrates its capacity as a sound and experienced agency based on, but not limited to, its experience in financing multifamily housing, fund balances, administrative capabilities, investment policy, internal controls and financial management, portfolio quality and State or local support.

(11) A certification from the HFA that it will at all times comply with the financial requirements in § 266.110 and, where applicable, maintain required reserves in a dedicated account in liquid funds (i.e., cash, cash equivalents, or readily marketable securities) in a financial institution acceptable to HUD.

(12) Copies of audited financial statements for the HFA's last three fiscal years. (An unaudited interim financial statement must also be submitted if the latest audited statement is more than six months old.)

(13) Sample debenture form issued by the HFA.

(c) *Additional application requirements for HFAs without top-tier designation or overall rating of "A" on general obligation bonds.* HFAs without top-tier designation or an overall rating of "A" on general obligation bonds must submit, in addition to the items described in paragraph (b) of this

section, among other things, a description of the geographic boundaries served (e.g., city, county); a description of the organizational history which includes their authority to issue bonds and tax credits; length of time in business; general portfolio statistics; a description of all mortgage lending activities, including volume and default and foreclosure rates; structure; a summary of delinquent loans in the last 12 months and the present status of each; relationship to the State or local Government, subsidiary or similar entity; and experience in multifamily housing.

§ 266.110 Reserve requirements.

(a) *HFAs with top-tier designation or overall rating of "A" on general obligation bonds.* An HFA with a top tier or equivalent designation or an HFA with an overall rating of "A" on its general obligation bonds is not required to have additional reserves so long as the HFA maintains that designation or rating, unless the Commissioner determines that a prescribed level of reserves is necessary. If the designation or rating is lost, the HFA must immediately establish a reserve account funded in accordance with the requirements set forth in paragraph (b) of this section. The reserve account must reflect all loans in the HFA's portfolio endorsed under this part.

(b) *Other HFAs.* (1) For other HFAs, a specifically identified dedicated account consisting entirely of liquid assets (i.e., cash or cash equivalents or readily marketable securities) must be established and maintained in a financial institution acceptable to HUD. This account may be drawn upon by HUD and may be used by the HFA only with the prior written approval of HUD for the purpose of meeting the HFA's risk-sharing obligations under this part. The account must be established prior to the HFA's approval under this part in an initial amount of not less than $500,000. Thereafter, the HFA must deposit at each loan closing and thereafter maintain the following additional amounts in the dedicated account:

(i) $10.00 per $1,000 of the unpaid principal balance that is equal to or less than $50 million; plus

(ii) $7.50 per $1,000 of the unpaid principal balance that is greater than $50 million and less than $150 million; plus

(iii) $5.00 per $1,000 of the unpaid principal balance that is greater than $150 million.

(2) The Commissioner may determine that higher levels of reserves may be necessary.

§ 266.115 Program monitoring and evaluation.

(a) *HFA certifications.* HUD will rely heavily on the certifications required of an HFA under this part and such additional certifications as the Commissioner may require in his or her administrative procedures. An HFA's continued participation in the program is predicated upon compliance with these certifications and its recommending for endorsement only those mortgages that comply with requirements of the program, including the HFA's origination, underwriting and closing procedures incorporated by reference into the Risk-Sharing Agreement.

(b) *Monitoring and evaluation.* Monitoring and evaluation activities will focus on compliance with program requirements and performance of the HFA in meeting program objectives of providing affordable housing. They will enable HUD to evaluate the effectiveness of the program as required by section 542(d)(3) of the Act.

(c) *Responsibility for monitoring and evaluation.* The Commissioner or his or her designee will be responsible for overall program monitoring and evaluation.

(d) *HFA submissions.* (1) For each loan insured under this part, basic underwriting and closing information must be submitted in a format specified by HUD and must accompany the closing docket submitted in accordance with § 266.420(b). Information relative to project management and servicing (including disposition) will be required after endorsement.

(2) The HFA must submit semi-annual reports setting forth the original mortgage amounts and outstanding principal balances on mortgages the HFA has underwritten, and the status of all projects insured under this part (e.g., current, in default, acquired, under workout agreement, in bankruptcy). For projects where the mortgagor has declared bankruptcy, the HFA must submit information containing the date the bankruptcy was filed and the date the HFA requested the Court to dismiss the bankruptcy proceedings.

§ 266.120 Actions for which sanctions may be imposed.

Results of monitoring or other program reviews may serve as the basis for the Commissioner's imposing sanctions on the HFA. Violations for which sanctions may be imposed include, but are not limited to:

(a) Commission of fraud or making a material misrepresentation by the HFA with respect to any mortgage insured or to any other matter under this part.

(b) Assignment or transfer of interest in any insured mortgage not in accord with the requirements of this part.

(c) Engagement in business practices that do not conform to generally accepted practices of prudent lenders or that demonstrate irresponsibility.

(d) Actions or conduct for which sanctions are imposed against the HFA by HUD's Mortgagee Review Board under 24 CFR 25.9.

(e) Failure to:

(1) Reveal in its application for participation in the program all the information required by this part;

(2) Notify HUD in a timely manner of any pending or actual changes that would adversely affect HFA operations or financial status;

(3) Comply with all eligibility requirements for participation in the program;

(4) Issue debentures in the event of an initial claim payment by HUD, or to reimburse HUD for payment of a claim;

(5) Maintain its top tier designation or overall rating of "A" on general obligation bonds (or if such designation or rating is lost, comply with paragraph (e)(6) of this section);

(6) Establish and maintain a dedicated account, if required, or meet other financial obligations under this program;

(7) Perform underwriting, insurance of advances, cost certification, management, servicing or property disposition functions in a prudent and acceptable manner based on the standards incorporated by reference into the Risk-Sharing Agreement;

(8) Submit financial and other reports required by this part;

(9) Comply with any regulatory requirement or with the Risk-Sharing Agreement;

(10) Maintain any other standards HUD may have established for participation in this program;

(11) Enforce the regulatory agreement provisions with respect to individual projects;

(12) Maintain a default ratio acceptable to HUD relative to the HFA's own portfolio and the defaults experienced under this part by other program participants;

(13) Consider adequately special risk circumstances without compensating for the higher risks of such transactions (*e.g.*, high loan-to-value ratios in areas with high vacancy or default rates); or

(14) Remit mortgage insurance premiums on a timely basis or failure to refund or credit mortgagor's accounts with overpaid mortgage insurance premiums.

§ 266.125 Scope and nature of sanctions.

(a) *Actions by Designated Office.* Depending on the nature and extent of the noncompliance with the requirements of this part, the Designated Office may take any of the following actions:

(1) Require that the HFA execute a trust agreement, establish a trust account in accordance with such agreement, and fund such account which may be drawn upon by HUD for purposes of meeting the HFA's risk-sharing obligations;

(2) Require the HFA to assume a higher portion of risk for the subject and future mortgages;

(3) Recommend to the Commissioner that the HFA be required to contract its loan servicing or property disposition functions to a third party;

(4) Recommend to the Commissioner that the mortgage insurance be terminated in cases of fraud or material misrepresentation by the HFA, or transfer of interest in an insured mortgage or assignment of the mortgage not in accord with the requirements of this part;

(5) Recommend to the Commissioner that approval for the HFA to participate in the program be suspended or withdrawn;

(6) Recommend to the Commissioner that the HFA's mortgagee approval be withdrawn pursuant to 24 CFR part 25 or that penalties be imposed pursuant to 24 CFR part 30;

(7) Require additional financial or other reports as may be necessary to monitor the activities of the HFA more closely.

(b) *Actions by Headquarters.* HUD Headquarters may impose any of the sanctions set forth or recommended in paragraph (a) of this section based upon its responsibilities for monitoring and overall program oversight.

(c) *Effect of suspension or withdrawal.* A suspension or withdrawal action will not affect any mortgage insurance endorsement in effect on the date of the suspension or withdrawal action.

(d) *HFA right to informal hearing.* (1) Any sanction imposed by a Designated Office in writing will be immediately effective, will state the grounds for the action, and provide for the HFA's right to an informal hearing before the manager or his or her designee in the Designated Office. The HFA may request an informal hearing within 10 working days of receipt of the suspension or withdrawal action and the Designated Office shall give the HFA an opportunity to be heard within 10 working days of receipt of the HFA's request. The HFA may be represented by counsel. The Designated Office Manager, or his or her designee, will advise the HFA in writing of the decision within 10 working days of the informal hearing, which decision will constitute final HUD action.

(2) Sanctions imposed by Headquarters will be handled in a similar manner, except that the informal hearing shall be before the Commissioner or his or her designee.

§ 266.130 Reinsurance.

Reinsurance will be permitted for the portion of the HFA risk, subject to the following requirements:

(a) Neither HUD's nor the HFA's position shall be subordinated;

(b) The reinsurance may not be used to reduce any reserve or fund balance requirements; and

(c) Such reinsurance does not incur an obligation to the Federal Government.

Subpart C—Program Requirements

§ 266.200 Eligible projects.

(a) *Minimum project size.* Projects insured under this part must consist of five or more rental dwelling units of housing on one site. The site may consist of two or more non-contiguous parcels of land situated so as to comprise a readily marketable real estate entity within an area small enough to allow convenient and efficient management. The units may be detached, semi-detached, or row houses, or multifamily structures.

(b) *New construction or substantial rehabilitation.* Insurance under this part shall be for the purpose of financing the new construction or substantial rehabilitation of projects meeting the other requirements of this part as follows:

(1) *New construction* occurs when all project and construction elements are installed as part of the work.

(2) *Substantial rehabilitation* is any combination of the following work to the existing facilities of a project that aggregates to at least 15 percent of project's value after the rehabilitation and that results in material improvement of the project's economic life, liveability, marketability, and profitability: Replacement, alteration and/or modernization of building spaces, long-lived building or mechanical system components, or project facilities. Substantial rehabilitation may include but not consist solely of any combination of: minor repairs, replacement of short-lived building or mechanical system components, cosmetic work, or new project additions.

(c) *Existing projects.* Financing of existing properties without substantial rehabilitation is allowed.

(1) If an existing multifamily project is being acquired and HUD insurance under this part will be used to facilitate the acquisition of projects to increase the supply of affordable housing, such acquisitions are permissible if the HUD insured mortgage does not exceed the sum of the total cost of acquisition, cost of financing, cost of repairs, and reasonable transaction costs as determined by the Commissioner.

(2) If the property is subject to an HFA-financed loan to be refinanced and such refinancing will result in the preservation of affordable housing, refinancing of these properties is permissible if project occupancy is not less than 93 percent (to include consideration of rent in arrears), based on the average occupancy in the project over the most recent 12 months, and the mortgage does not exceed an amount supportable by the lower of the unit rents being collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market area that are similar in amenities and location to the project for which insurance is being requested. The HUD-insured mortgage may not exceed the sum of the existing indebtedness, cost of refinancing, the cost of repairs and reasonable transaction costs as determined by the Commissioner. If a loan to be refinanced has been in default within the 12 months prior to application for refinancing, the HFA must assume not less than 50 percent of the risk.

(d) *Projects receiving Section 8 rental subsidies or other rental subsidies.* Projects receiving project-based housing assistance payments under section 8 of the U.S. Housing Act of 1937 or other rental subsidies and meeting the requirements of this part may be insured under this part only if the mortgage does not exceed an amount supportable by the lower of the unit rents being or to be collected under the rental assistance agreement or the unit rents being collected at unassisted projects in the market that are similar in amenities and location to the project for which insurance is being requested.

(e) *SRO projects.* Single room occupancy (SRO) projects, as defined in § 266.5, are eligible for insurance under this part. Units in SRO projects must be subject to 30-day or longer leases; however, rent payments may be made on a weekly basis in SRO projects.

(f) *Board and care/assisted living facilities.* Board and care projects and assisted living facilities may be insured

if the facilities meet the definition of those terms in § 266.5.

(g) *Elderly projects.* Projects or parts of projects specifically designed for the use and occupancy by elderly families. An elderly family means any household where the head or spouse is 62 years of age or older, and also any single person who is 62 years of age or older.

(h) *Zoning requirements.* Projects insured under this part must meet applicable zoning and other State/local government requirements.

§ 266.205 Ineligible projects.

The following projects and facilities are not eligible for insurance under this part:

(a) *Transient housing or hotels.* Rental for transient or hotel purposes. For purposes of this part, rental for transient or hotel purposes means:

(1) Rental for any period less than 30 days, or

(2) Any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishing and laundering of linens, or valet service.

(b) *Projects in military impact areas.* A project located in a military impact area, as determined by HUD. A military impact area is one in which:

(1) Military-connected households comprise 20 percent or more of the total households in the market area. Military-connected households include households of military personnel and civilian employees of the Department of Defense, as well as persons employed in businesses in the area that provide services, supplies or material to the installation;

(2) There is concern about the continued stability of the current level of military strength and mission at the military installation, based upon Defense Base Closure and Realignment Commission reports; or

(3) A total reduction in military households would result in soft rental market conditions and a rental vacancy rate in the civilian housing market of 10 percent or more for at least two years.

(c) *Retirement service centers.* Projects designed for the elderly with extensive services and luxury accommodations that provide for central kitchens and dining rooms with food service or mandatory services.

(d) *Nursing homes or intermediate care facilities.* Nursing homes and intermediate care facilities licensed and regulated by State or local government and providing nursing and medical care.

§ 266.210 HUD-retained review functions.

Certain functions are retained by the Commissioner. The HFA must submit any information or certification required by the Commissioner to permit determination of compliance with requirements concerning:

(a) *Previous participation of principals.* Previous participation of the principals of the mortgagor, general contractor, consultant or management agent in accordance with the Previous Participation and Clearance Review Procedures of 24 CFR 200.210 through 200.218.

(b) *Environmental review requirements.* To determine compliance with the requirements of the National Environmental Policy Act of 1969 and related laws and authorities, the HUD Field Office will visit each project site proposed for insurance under this part and prepare the applicable environmental reviews as set forth in 24 CFR part 50 and for the related environmental criteria and standards in 24 CFR part 51. These requirements must be completed before HUD may issue the firm approval letter.

(c) *Intergovernmental review.* Intergovernmental review of Federal programs under Executive Order 12372, as implemented in 24 CFR part 52.

(d) *Subsidy layering.* The Commissioner, or such delegation to Housing Credit Agencies as may be in effect by regulation hereafter, shall review all projects receiving tax credits and some form of HUD assistance for any excess subsidy provided to individual projects and reduce subsidy sources in accordance with outstanding guidelines.

(e) *Davis-Bacon Act.* The Commissioner shall obtain and provide to the HFA the appropriate Department of Labor wage rate determinations under the Davis-Bacon Act, where they apply under this part.

§ 266.215 Functions delegated by HUD to HFAs.

The following functions are delegated by HUD to the HFAs:

(a) *Affirmative Fair Housing Marketing Plan (AFHMP).* The HFA will perform information collection, reviews and ministerial activities associated with the review and approval of the AFHMP for all projects. (Enforcement of fair housing and equal opportunity laws is the responsibility of HUD.)

(b) *Labor standards and prevailing wage requirements.* The HFA will perform information collection (e.g., payroll review and routine interviews) and other routine administration and enforcement functions regarding labor standards, in accordance with § 266.225(e). (Enforcement of Davis-Bacon prevailing wage requirements and labor standards is the responsibility of HUD.)

(c) *Insurance of advances.* The HFA will approve periodic advances of mortgage insurance proceeds during construction of the project subject to terms specified by the Commissioner.

(d) *Cost certification.* The HFA will perform cost certification functions on each insured loan subject to terms specified by the Commissioner.

(e) *Lead-Based Paint.* The HFA will perform functions related to Lead-Based Paint requirements subject to terms specified by the Commissioner.

§ 266.220 Nondiscrimination in housing and employment.

The mortgagor must certify to the HFA that, so long as the mortgage is insured under this part, it will:

(a) Not use tenant selection procedures that discriminate against families with children, except in the case of a project that constitutes "housing for older persons" as defined in section 807(b)(2) of the Fair Housing Act (42 U.S.C. 3607(b)(2));

(b) Not discriminate against any family because of the sex of the head of household;

(c) Comply with the Fair Housing Act, as implemented by 24 CFR part 100; titles II and III of the Americans with Disabilities Act of 1990, as implemented by 28 CFR part 35; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135; the Equal Credit Opportunity Act, as implemented by 12 CFR part 202; Executive Order 11063, as amended, and implemented by 24 CFR part 107; Executive Order 11246, as implemented by 41 CFR part 60; other applicable Federal laws and regulations issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity laws. In addition, a mortgagor that receives Federal financial assistance must also certify to the HFA that, so long as the mortgage is insured under this part, it will comply with title VI of the Civil Rights Act of 1964, as implemented by 24 CFR part 1; the Age Discrimination Act of 1975, as implemented by 24 CFR part 146; and section 504 of the Rehabilitation Act of 1973, as implemented by 24 CFR part 8.

§ 266.225 Labor standards.

(a) *Applicability of Davis-Bacon.* (1) All laborers and mechanics employed by contractors or subcontractors on a project insured under this part shall be paid not less than the wages prevailing in the locality in which the work was performed for the corresponding classes of laborers and mechanics employed in

construction of a similar character, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), where the project meets all of the following conditions:

(i) Advances for the project are insured under this part;

(ii) The project involves new construction or substantial rehabilitation; and

(iii) The project will contain 12 or more dwelling units.

(2) Projects that do not meet these conditions are not subject to Davis-Bacon wage rates except to the extent required as a condition of other Federal assistance to the project.

(b) *Volunteers.* The provisions of this section shall not apply to volunteers under the conditions set out in 24 CFR part 70. In applying part 70, insurance under this part shall be treated as a program for which there is a statutory exemption for volunteers.

(c) *Labor standards.* Any contract, subcontract, or building loan agreement executed for a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall comply with all labor standards and provisions of 29 CFR parts 1, 3 and 5 that would be applicable to a mortgage insurance program to which Davis-Bacon wage rates are made applicable by statute.

(d) *Advances.* (1) No advance under a mortgage on a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall be eligible for insurance under this part unless the HFA determines (in accordance with the Commissioner's administrative procedures) that the general contractor or any subcontractor or any firm, corporation, partnership or association in which the contractor or subcontractor has a substantial interest was not, on the date the contract or subcontract was executed, on the ineligible list established by the Comptroller General, pursuant 29 CFR 5.12, issued by the Secretary of Labor.

(2) No advance under any mortgage on a project subject to Davis-Bacon wage rates under paragraph (a) of this section shall be insured under this part unless there is filed with the application for the advance, and no such mortgage shall be insured under this part unless there is filed with the HFA after completion of the construction or substantial rehabilitation, a certificate or certificates in the form required by the Commissioner, supported by such other information as the Commissioner may prescribe, certifying that the laborers and mechanics employed in the construction of the project involved have been paid not less than the wages determined by the Secretary of Labor to be prevailing in accordance with paragraph (a) of this section.

(e) *Responsibility for enforcement and administration.* The Commissioner retains responsibility for enforcement of labor standards under this section, but the Commissioner may delegate to the HFA information collection (e.g., payroll review and routine interviews) and other routine administration and enforcement functions, subject to monitoring by the Commissioner. Where routine administration and enforcement functions are delegated to the HFA, the HFA shall bear financial responsibility for any deficiency in payment of prevailing wages or, where applicable under 29 CFR part 1, any increase in compensation to a contractor, that is attributable to any failure properly to carry out its delegated functions. For example, failure of an HFA to supply or ensure inclusion of the proper contract clauses or wage determination in a contract or building loan agreement may require the HFA to fund increased compensation to a contractor as the result of increased wages attributable to incorporation of the proper clauses and wage determination.

Subpart D—Processing, Development, and Approval

§ 266.300 HFAs accepting 50 percent or more of risk.

(a) *Underwriting standards.* An HFA electing to take 50 percent or more of the risk on loans may use its own underwriting standards and loan terms and conditions (as disclosed and submitted with its application) to underwrite and approve loans without further review by HUD.

(b) *HFA responsibilities.* The HFA is responsible for the performance of all functions except those HUD-retained functions specified in §§ 266.210 and 266.225(e). After acceptance of an application for a loan to be insured under this part, the HFA must:

(1) Determine that a market for the project exists, taking into consideration any comments from the HUD Field Office relative to the potential adverse impact the project will have on existing or proposed Federally insured and assisted projects in the area.

(2) Establish the maximum insurable mortgage and review plans and specifications for compliance with HFA standards;

(3) Determine the acceptability of the proposed mortgagor and management agent;

(4) Approve the Affirmative Fair Housing Marketing Plan; and

(5) Make any other determinations necessary to ensure acceptability of the proposed project.

(c) *HUD-retained reviews.* After positive completion of the HUD-retained reviews specified in § 266.210(a), (b), and (c), the HUD Field Office will issue a firm approval letter which, among other things, will apportion units, insuring authority, and credit subsidy to the project.

(d) *Inspections and other reviews.* The HFA is responsible for inspections during construction, processing and approving advances of mortgage proceeds during construction, review and approval of cost certification, and closing of the loan.

(e) *Endorsement of mortgage note for insurance.* So long as the HFA is in good standing, and absent fraud or material misrepresentation on the part of the HFA, the Commissioner or designee will endorse the mortgage note for insurance upon presentation by the HFA of the Closing Docket and certifications required in § 266.420(b), subject to HUD's right to adjust under § 266.417.

§ 266.305 HFAs accepting less than 50 percent of risk.

(a) *Underwriting standards.* The underwriting standards and loan terms and conditions of any HFA electing to take less than 50 percent of the risk on certain projects are subject to review, modification, and approval by HUD in accordance with § 266.100(b)(2). These HFAs may assume 25 percent or 10 percent of the risk depending upon the loan-to-replacement-cost or loan-to-value ratios of the projects to be insured as specified in § 266.100(b)(2)(i) and (ii).

(b) *HFA responsibilities.* The HFA is responsible for the performance of all functions except those HUD-retained functions specified in § 266.210 and 266.225(e). After acceptance of an application for a loan to be insured under this part, the HFA must:

(1) Determine that a market for the project exists, taking into consideration any comments from the HUD Field Office relative to the potential adverse impact the project will have on existing or proposed Federally insured and assisted projects in the area;

(2) Establish the maximum insurable mortgage, and review plans and specifications for compliance with HFA standards as approved by HUD;

(3) Determine the acceptability of the proposed mortgagor and management agent;

(4) Approve the Affirmative Fair Housing Marketing Plan; and

(5) Make any other determinations necessary to ensure acceptability of the proposed project.

(c) *HUD-retained reviews.* After positive completion of the HUD-retained reviews specified in § 266.210(a), (b), and (c), the HUD Field Office will issue a firm approval letter which, among other things, will apportion units, insuring authority, and credit subsidy to the project.

(d) *Inspections and other reviews.* The HFA is responsible for inspections during construction, processing and approving advances of mortgage proceeds during construction, review and approval of cost certification, and closing of the loan.

(e) *Endorsement of mortgage note for insurance.* So long as the HFA is in good standing, and absent fraud or material misrepresentation on the part of the HFA, the Commissioner or designee will endorse the mortgage note for insurance upon presentation by the HFA of the Closing Docket and certifications required in § 266.420(b), subject to HUD's right to adjust under § 266.417.

§ 266.310 Insurance of advances or insurance upon completion; applicability of requirements.

(a) *General.* HUD will agree to insure periodic advances of mortgage proceeds or to insure the entire mortgage upon completion of construction for projects involving new construction or substantial rehabilitation. Existing projects without the need for substantial rehabilitation will be considered insurance upon completion cases. In insurance upon completion cases, only the permanent loan is insured and a single endorsement is required after satisfactory completion of construction, substantial rehabilitation or repairs. In periodic advances cases, progress payments approved by the HFA and both an initial and final endorsement on the mortgage are required.

(b) *Insurance of advances.* Periodic advances will be authorized by the HFA subject to terms specified by the Commissioner.

(c) *Insurance upon completion.* (1) *New construction and substantial rehabilitation.* An HFA may approve a loan that will be insured upon completion of construction of the project. The HFA approval must prescribe a designated period during which the mortgagor must start construction or substantial rehabilitation. If construction or rehabilitation is started as required, the approval will be valid for the period estimated by the HFA for construction and loan closing, including any extension approved by the HFA.

(2) *Existing projects with no substantial rehabilitation.* Existing projects with or without repairs are only insured upon completion, although HFAs may permit noncritical repairs to be completed after endorsement upon establishment of escrows acceptable to the HFA.

(d) *Requirements applicable to both periodic advances and insurance upon completion cases.* (1) *Inspections.* The HFA must inspect projects under this part at such times during construction, substantial rehabilitation, or repairs as the HFA determines. The inspections must be conducted to assure compliance with plans and specifications, work write-ups, and other contract documents.

(2) *Approval of advances.* At all times, the loan must be kept in balance, and advances approved only if warranted by construction progress evidenced through HFA inspection, as well as in accord with plans, specifications, work write-ups and other contract documents. In approving advances, HFAs must make certain that other mortgageable items are supported with proper bills and/or receipts before funds can be approved and advanced for insurance.

(3) *Cost certification.* In order to ensure that the final amount for insurance is supported by certified costs:

(i) The mortgagor (and general contractor, if there is an identity of interest with the mortgagor) must execute a certificate of actual costs, in a form acceptable to the HFA, when all physical improvements are completed to the satisfaction of the HFA and before final endorsement; and

(ii) The cost certification provided by the mortgagor must be audited by an independent public accountant.

(4) *Contestability.* Although the HFA has authority to approve the mortgagor's (and general contractor's) certification of cost, the certification will be contestable by the Commissioner during the period up to and including final endorsement of the mortgage. After final endorsement, the certification will be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor (and/or general contractor).

(5) *Assurance of completion.* The mortgagor must furnish assurance of completion of the project in accordance with any requirements of the HFA as to form and amount.

(6) *Latent defects escrow.* The mortgagor must furnish an escrow or other form of assurance required by the HFA to ensure that latent defects can be remedied within the time period required by the HFA.

(e) *Mortgagee of record.* The HFA must remain the mortgagee of record as long as mortgage insurance is in force.

§ 266.315 Recordkeeping requirements.

The mortgagor and the builder, if there is an identity of interest with the mortgagor, shall keep and maintain records of all costs of any construction or other cost items not representing work under the general contract and to make available such records for review by the HFA or HUD, if requested.

Subpart E—Mortgage and Closing Requirements; HUD Endorsement

§ 266.400 Property requirements—real estate.

The mortgage must be on real estate held:

(a) In fee simple;

(b) Under a renewable lease of not less than 99 years; or

(c) Under a lease executed by a governmental agency, or other lessor approved by the HFA, that has a term at least 10 years beyond the end of the mortgage term.

§ 266.402 Recordation.

At the time of initial endorsement in the case of insurance of advances or at the time of final endorsement in the case of insurance upon completion, the HFA shall make certain that the mortgage and the regulatory agreement are recorded.

§ 266.405 Title.

(a) *Eligibility of title.* Marketable title to the mortgaged property must be vested in the mortgagor on the date the mortgage is filed for record.

(b) *Title evidence.* The HFA must receive a title insurance policy that ensures that marketable title is vested in the mortgagor, that a survey acceptable to the HFA has been performed, and that no existing impediments to title concern, or exist on, the property.

§ 266.410 Mortgage provisions.

(a) *Form.* The mortgage and note must be executed on a form approved by the HFA for use in the jurisdiction in which the property is located.

(b) *Mortgagor.* The mortgage must be executed by a mortgagor determined eligible by the HFA.

(c) *First lien.* The mortgage must be a single first lien on property that has first priority for payment and that conforms with property standards prescribed by the HFA.

(d) *Single asset mortgagor.* The mortgage must require that the mortgagor is a single asset mortgagor.

(e) *Amortization.* The mortgage must provide for complete amortization (i.e.,

regularly amortizing) over the term of the mortgage.

(f) *Use restrictions.* The mortgage must contain a covenant prohibiting the use of the property for any purpose other than the purpose intended on the day the mortgage was executed.

(g) *Hazard insurance.* The mortgage must contain a covenant, acceptable to the HFA, that binds the mortgagor to keep the property insured by one or more standard policies for fire and other hazards stipulated by the HFA. A standard mortgagee clause making loss payable to the HFA must be included in the mortgage. The HFA is responsible for assuring that insurance is maintained in force and in the amount required by this paragraph and the mortgage. The HFA must ensure that the insurance coverage is in an amount that will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment. If the mortgagor does not obtain the required insurance, the HFA must do so and assess the mortgagor for such costs. These insurance requirements apply as long as the HFA retains an interest in the project and final claim settlement has not been completed or the contract of insurance has not been otherwise terminated.

(h) *Modification of terms.* The mortgage must contain a covenant requiring that, in the event that the HFA and owner agree to a modification of the terms of the mortgage (*e.g.*, to reflect a reduction of the interest rate if reductions are realized in the underlying bond rates for the project), Section 8 rents would be reduced in accordance with HUD guidelines.

(i) *Regulatory Agreement.* The mortgage must contain a provision incorporating the Regulatory Agreement by reference.

§ 266.415 Mortgage lien and other obligations.

(a) *Liens.* At the initial and final closing of the loan, the mortgagor and the HFA must certify, and the HFA must determine, that the property covered by the mortgage is free from all liens other than the lien of the insured mortgage, except that the property may be subject to such inferior lien or liens as approved by the HFA as long as the insured mortgage has first priority for payment.

(b) *Contractual obligations.* At the final closing of the loan, the mortgagor and the HFA must certify, and the HFA must determine, that all contractual obligations in connection with the mortgage transaction, including the purchase of the property and the improvements to the property, are paid. An exception is made for obligations that are approved by the HFA and determined by the HFA to be of a lesser priority for payment than the obligation of the insured mortgage.

§ 266.417 Authority to adjust mortgage insurance amount.

In order to protect the mortgage insurance funds, the Commissioner has authority in his or her sole discretion, at any time prior to and including final endorsement, to adjust the amount of the mortgage insurance.

§ 266.420 Closing and endorsement by the Commissioner.

(a) *Closing.* Before disbursement of loan advances in periodic advances cases, and in all cases after completion of construction, repair or substantial rehabilitation, the HFA must hold a closing and submit a closing docket with required documentation to the Commissioner or the Commissioner's authorized Departmental representative for insurance of the mortgage by endorsement of the mortgage note. The note must provide that the mortgage is insured under Section 542(c) of the Housing and Community Development Act of 1992 and the regulations set forth at 24 CFR part 266 in effect on the date of endorsement. The note must also specify the date of endorsement, i.e., the date of HUD endorsement of the project mortgage, and the risk of loss assumed by the HFA and by HUD.

(b) *Closing docket.* The HFA's submission must include a certification that it has obtained written HUD approval of compliance with the requirements referred to in § 266.210, and certifications and information as follows:

(1) Information concerning the mortgage amount and term, location, number and type of units, income and expenses, rents, projects and market occupancy percentages, value/replacement cost, interest rate, and similar statistical information in accordance with the Commissioner's administrative procedures.

(2) Copies of the amortization schedule, Note and Risk-Sharing Agreement.

(3) Certification that the loan has been processed, prudently underwritten (including a determination that a market exists for the project), cost certified (if the project is being submitted for final endorsement) and closed in full compliance with the HFA's standards and requirements (or where the mortgage is insured under Level II, in full compliance with the underwriting standards and loan terms and conditions as approved by HUD).

(4) At the time of final endorsement, a certification for periodic advances cases, if submitted for final endorsement, that advances were made proportionate to construction progress.

(5) A copy of the HFA-approved cost certification if the project is submitted for final endorsement.

(6) A certification that equal employment requirements are followed.

(7) A certification that the HFA has reviewed and approved the Affirmative Fair Housing Marketing Plan and found it acceptable.

(8) A certification that a dedicated account, if required, has been increased in accordance with § 266.110(b).

(9) Certifications required under § 266.415 concerning liens and contractual obligations.

(10) Copies of the Hazard Insurance Policy with a clause making the loss payable to the HFA.

(11) For projects subject to Davis-Bacon prevailing requirements under § 266.225, the certification and information concerning payment of prevailing wage rates required by § 266.225(d).

(12) Certified copies of mortgage (deed of trust) with attached regulatory agreement, and note for HUD files.

Subpart F—Project Management and Servicing

§ 266.500 General.

The HFA will have full responsibility for the administration of the provisions of this subpart and for managing and servicing projects insured under this part. The HFA is responsible for monitoring and determining the compliance of the project owner in accordance with the provisions of this subpart. HUD will monitor the performance of the HFA, not the project owner, to determine its compliance with the provisions covered under this subpart.

§ 266.505 Regulatory agreement requirements.

(a) *General.* (1) The HFA must execute a Regulatory Agreement, in recordable form, between the mortgagor and the HFA to be in force for the duration of the insured mortgage and note or bond. The Regulatory Agreement must include a description of the property. The Regulatory Agreement must be incorporated by reference into the mortgage and recorded with the mortgage.

(2) The Regulatory Agreement executed between the HFA and the mortgagor must be binding upon the

mortgagor and any of its successors and assigns and upon the HFA and any of its successors for so long as the mortgage is insured by HUD or HUD holds an HFA debenture issued in connection with a claim arising from the insured mortgage. The HFA may not assign the Regulatory Agreement.

(3) The HFA will enforce the Regulatory Agreement and take actions against any mortgagors who violate its provisions. Such actions may involve a declaration of default and application to any court for specific performance of the agreement.

(b) *Requirements.* The Regulatory Agreement must require the mortgagor to comply with the provisions of this part and obligate the mortgagor, among other things, to:

(1) Make all payments due under the mortgage and note/bond.

(2) Where necessary, establish a sinking fund for future capital needs.

(3) Maintain the project as affordable housing, as defined in § 266.5.

(4) Continue to use dwelling units for their original purposes.

(5) Comply with such other requirements as may be established by the HFA and set forth in the Regulatory Agreement.

(6) Maintain the project in good physical condition.

(7) Maintain complete books and records established solely for the project and provide the HFA with an audited financial statement based on these books and records and performed in accordance with standards for financial audits of the U. S. General Accounting Office's government auditing standards, issued by the Comptroller of the United States.

(8) Comply with the Affirmative Fair Housing Marketing Plan and all other fair housing and equal opportunity requirements.

(9) Operate as a single entity mortgagor.

(10) Make books and records available for HUD or General Accounting Office (GAO) review with appropriate notification.

(11) Permit HUD officials or employees to inspect the project upon request by the Commissioner.

(c) *Enforcement.* The Regulatory Agreement shall be enforced by the HFA.

§ 266.510 HFA responsibilities.

(a) *Inspections.* The HFA must perform annual physical inspections of the projects and provide a copy of the inspection report to HUD. If a project is not in safe and sanitary condition, the HFA must provide a summary to HUD of actions required, with target dates, to correct unresolved findings.

(b) *Annual audits of projects.* The HFA must analyze projects' annual audits and provide a copy to HUD along with a summary of unresolved findings and actions planned, with target dates, to correct unresolved findings.

(c) *HFA's annual financial statement.* The HFA must provide HUD with an annual audited financial statement in accordance with the requirements of 24 CFR part 44.

§ 266.515 Record retention.

(a) *Loan origination and servicing.* Records pertaining to the mortgage loan origination and servicing of the loan must be maintained for as long as the insurance remains in force.

(b) *Defaults and claims.* Records pertaining to a mortgage default and claim must be retained from the date of default through final settlement of the claim for a period of no less than three years after final settlement.

§ 266.520 Program monitoring and compliance.

HUD will monitor the performance of the HFA in accordance with the provisions covered under this subpart.

Subpart G—Contract Rights and Obligations

Mortgage Insurance Premiums

§ 266.600 Mortgage insurance premium: Insurance upon completion.

(a) *Initial premium.* For projects insured upon completion, on the date of the final closing, the HFA shall pay to the Commissioner an initial premium equal to the prescribed percentage, in the sliding scale chart that is shown in § 266.604(b), of the face amount of the mortgage.

(b) *Premium payable with first payment of principal.* On the date of the first payment of principal the HFA shall pay a second premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage from the final closing date to the year following the date of the first principal payment, less the amount paid on the date of the final closing.

(c) *Subsequent premiums.* Until one of the conditions is met under § 266.606(a), the HFA on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments, or partial claim payment under § 266.630, or prepayments, for the year following the date on which the premium becomes payable.

§ 266.602 Mortgage insurance premium: Insured advances.

(a) *Initial premium.* For projects involving insured advances, on the date of the initial closing, the HFA shall pay to the Commissioner an initial premium equal to the prescribed percentage, in the sliding scale chart that is shown in § 266.604(b), of the face amount of the mortgage.

(b) *Interim premium.* On each anniversary of the initial closing, the HFA shall pay an interim mortgage insurance premium equal to the prescribed percentage of the face amount of the mortgage. The HFA shall continue to pay the interim mortgage insurance premiums until the date of the first principal payment.

(c) *Premium payable with first payment of principal.* On the date of the first principal payment, the HFA shall pay a mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment. The HFA shall adjust this payment by deducting an amount equal to the portion of the last premium paid that is attributable to the months after the date of the first payment to principal. Any partial month is to be counted as a whole month. The HFA shall remit the net adjusted mortgage premium to the Commissioner and refund the amount of the adjustment (over-payment) to the mortgagor.

(d) *Subsequent premiums.* Until one of the conditions is met under § 266.606(a), the HFA on each anniversary of the date of the first principal payment shall pay to the Commissioner an annual mortgage insurance premium equal to the prescribed percentage of the average outstanding principal obligation of the mortgage, without taking into account delinquent payments, prepayments, or a partial claim payment under § 266.630, for the year following the date on which the premium becomes payable.

§ 266.604 Mortgage insurance premium: Other requirements.

(a) *Premium calculations on or after first principal payment.* The premiums payable to the Commissioner on and after the first principal payment shall be calculated in accordance with the amortization schedule prepared by the HFA for final closing and the prescribed percentage as set forth in the sliding scale chart in paragraph (b) of this section without taking into account delinquent payments or prepayments.

(b) *Prescribed percentages.* The following sliding scale chart provides the prescribed percentage, based upon the respective share of risk, that is to be used in calculating mortgage insurance premiums under this section:

Percentage share of risk		Prescribed percentage for calculating HFA's annual MIP
HUD	HFA	
90	10	.45
75	25	.375
50	50	.25
40	60	.2
30	70	.15
20	80	.1
10	90	.05

(c) *Closing information.* The HFA shall provide final closing information to the Commissioner within 15 days of the final closing in a format prescribed by the Commissioner. In addition, the HFA shall submit a copy of the amortization schedule. This amortization shall be used to compute and collect all future mortgage insurance premiums subject to § 266.600(c) or § 266.602(d). If the mortgage is modified, the HFA shall submit to the Commissioner a copy of the revised amortization schedule, which shall be used to compute and collect all future mortgage insurance premiums subject to § 266.600(c) or § 266.602(d).

(d) *Due date for premium payments.* Mortgage insurance premiums are due on the first day of the month of the anniversary of the first payment to principal. Any premium received by the Commissioner more than 15 days after the due date, shall be assessed a late charge of 4 percent of the amount of the premium payment due. Mortgage insurance premiums that are paid to the Commissioner more than 30 days after the due date shall begin to accrue interest at the rate prescribed by the Treasury Fiscal Requirements Manual.

§ 266.606 Mortgage insurance premium: Duration and method of paying.

(a) *Duration of payments.* Mortgage insurance premium payments must continue annually until one of the following occurs:

(1) The mortgage is paid in full;

(2) A deed to HFA is filed for record;

(3) An application for initial claim payment is received by the Commissioner; or

(4) The Contract of Insurance is otherwise terminated.

(b) *Method of payment.* The HFA shall pay any mortgage insurance premium required by this part in cash.

§ 266.608 Mortgage insurance premium: Pro rata refund.

If the Contract of Insurance is terminated by payment in full or is terminated by the HFA on a form prescribed by the Commissioner, after the date of the first payment to principal, the Commissioner shall refund any mortgage insurance premium for the period after the effective date of the termination of insurance. The refund shall be mailed to the HFA for credit to the mortgagor's account. In computing the pro rata portion of the annual mortgage insurance premium, the date of termination of insurance shall be the last day of the month in which the mortgage is prepaid or the Commissioner receives a notification of termination, whichever is later. No refund shall be made if the insurance was terminated because of the submission of an application for initial claim payment or if the termination occurs before the date of the first payment to principal.

Insurance Endorsement

§ 266.612 Insurance endorsement.

(a) *Initial endorsement.* The Commissioner shall indicate his or her insurance of the mortgage by endorsing the original credit instrument.

(b) *Final endorsement.* When all advances of mortgage proceeds have been made and all other applicable terms and conditions have been complied with to the satisfaction of the Commissioner, the Commissioner shall indicate on the original credit instrument the total of all advances that have been approved for insurance and again endorse such instrument.

(c) *Effect of endorsement.* From the date of initial endorsement, the Commissioner and the HFA shall be bound by the provisions of this subpart to the same extent as if they had executed a contract including the provisions of this subpart and the applicable sections of the Act.

Assignments

§ 266.616 Transfer of partial interest under participation agreement.

The HFA may not assign the mortgage. However, a partial interest in an insured mortgage or pool of insured mortgages may be transferred under a participation agreement or arrangement (such as a declaration of trust or the issuance of pass-through certificates), without obtaining the approval of the Commissioner, if the following conditions are met:

(a) Legal title to the insured mortgage or mortgages shall be held by the HFA; and

(b) The participation agreement, declaration of trust or other instrument under which the partial interest is transferred shall provide that:

(1) The HFA shall remain mortgagee of record under the contract of mortgage insurance;

(2) The Commissioner shall have no obligation to recognize or deal with anyone other than the HFA with respect to the rights, benefits, and obligations of the mortgagee under the contract of insurance; and

(3) The mortgagor shall have no obligation to recognize or do business with any one other than the HFA or, if applicable, its servicing agent with respect to rights, benefits, and obligations of the mortgagor or the mortgagee under the mortgage.

Termination

§ 266.620 Termination of Contract of Insurance.

The Contract of Insurance shall terminate if any of the following occurs:

(a) The mortgage is paid in full;

(b) The HFA acquires the mortgaged property and notifies the Commissioner that it will not file an insurance claim;

(c) A party other than HFA acquires the property at a foreclosure sale;

(d) The HFA notifies the Commissioner of Termination of Insurance (voluntary termination);

(e) The HFA or its successors commit fraud or make a material misrepresentation to the Commissioner with respect information culminating in the Contract of Insurance on the mortgage or while the Contract of Insurance is in existence;

(f) The receipt by the Commissioner of an Application for Final Claims Settlement;

(g) If the HFA acquires the mortgaged property and fails to make an initial claim.

§ 266.622 Notice and date of termination by the Commissioner.

The Commissioner shall notify the HFA that the Contract of Insurance has been terminated and shall establish the effective date of termination. The termination shall be the last day of the month in which one of the events specified in § 266.620 occurs.

Claim Procedures

§ 266.626 Notice of default and filing an insurance claim.

(a) *Definition of default.* (1) A monetary default exists when the mortgagor fails to make any payment due under the mortgage.

(2) A covenant default exists when the mortgagor fails to perform any other covenant under the provision of the mortgage or the regulatory agreement, which is incorporated in the mortgage. An HFA becomes eligible for insurance benefits on the basis of a covenant default only after the HFA has accelerated the debt and the owner has failed to pay the full amount due, thus converting a covenant default into a monetary default.

(b) *Date of default.* For purposes of this subpart, the date of default is:

(1) The date of the first uncorrected failure to perform a mortgage covenant or obligation; or

(2) The date of the first failure to make a monthly payment that is not covered by subsequent payments, when such subsequent payments are applied to the overdue monthly payments in the order in which they were due.

(c) *Notice of default.* If a default (as defined in paragraph (a) of this section) continues for a period of 30 days, the HFA must notify the Commissioner within 10 days thereafter, unless the default is cured within the 30-day period. Unless waived by the Commissioner, the HFA must submit this notice monthly, on a form prescribed by the Commissioner, until the default has been cured or the HFA has filed an application for an initial claim payment. In cases of mortgage acceleration, the mortgagee must first give notice of the default.

(d) *Timing of claim filing.* Unless a written extension is granted by HUD, the HFA must file an application for initial claim payment within 75 days from the date of default and may do so as early as the first day of the month following the month for which a payment was missed. Upon request of the HFA, HUD may extend, up to 180 days, the deadline for filing a claim. In those cases where the HFA certifies that the project owner is in the process of transacting a bond refunder, refinancing the mortgage, or changing the ownership for the purpose of curing the default and bringing the mortgage current, HUD may extend the deadline for filing a claim beyond 180 days.

§ 266.628 Initial claim payments.

(a) *Determination of initial claim amount.* (1) The initial claim amount is based on the unpaid principal balance of the mortgage note as of the date of default, plus interest at the mortgage note rate from date of default to date of initial claim payment. The mortgage note interest component of the initial claim amount is subject to curtailment as provided in paragraph (b) of this section.

(2) HUD shall make an initial claim payment to the HFA that is equal to the initial claim amount, less any delinquent mortgage insurance premiums, late charges and interest, assessed under § 266.604(d).

(3) The HFA must use the proceeds of the initial claim payment to retire any bonds or any other financing mechanisms securing the mortgage within 30 days of the initial claim payment. Any excess funds resulting from such retirement or repayment shall be returned to HUD within 30 days of the retirement.

(b) *Curtailment of interest for late filings.* In determining the mortgage note interest component of the initial claim amount, if the HFA fails to meet any of the requirements of this section within the specified time (including any granted extension of time), HUD shall curtail the accrual of mortgage note interest by the number of days by which the required action was late.

(c) *Method of payment.* HUD shall pay the claim in cash.

§ 266.630 Partial payment of claims.

(a) *General.* When the Commissioner receives a claim for a partial payment under § 266.626(d), the Commissioner may make a partial payment of claim in accordance with the requirements of this section. If the HFA has not previously received a partial claim payment, the HFA may file a claim for a partial claim payment under § 266.630. Otherwise, the HFA must file for an initial claim payment under § 266.628.

(b) *HFA submission.* In addition to any other requirements set forth in administration instructions, the HFA must provide the following information with its application for a partial claim payment:

(1) The amount by which the HFA will reduce the principal on the insured mortgage and the amount of delinquent interest on the insured mortgage that the HFA will defer based on the anticipated closing date; and

(2) A certification that: (i) The amount of the principal reduction of the insured first mortgage does not exceed 50 percent of the unpaid principal balance;

(ii) The relief resulting from the partial claim payment when considered with other resources available to the project are sufficient to restore the financial viability of the project;

(iii) The project is or can (at reasonable cost) be made structurally sound;

(iv) The management of the project is satisfactory;

(v) The default under the insured mortgage was beyond the control of the mortgagor.

(c) *Claim processing*—(1) *Acceptable application.* If the HFA's application is acceptable, the Commissioner shall notify the HFA to process the partial payment, which will include the modification of the existing mortgage and the execution by the mortgagor of a second mortgage payable to the HFA. When the second mortgage is closed, the HFA shall notify the Commissioner, in a form and manner prescribed in administrative instructions. Upon receipt of notice from the HFA, the Commissioner shall make the partial claim payment.

(2) *Unacceptable application.* If the application is unacceptable, the Commissioner shall either advise the HFA of the information needed to make the application acceptable or return the application for further action. The HFA is granted an extension of 30 days from the date of any notification for further action.

(d) *Requirements.* (1) *One partial claim payment.* Only one partial claim payment may be made under a contract of insurance.

(2) *Partial claim payment amount.* The amount of the partial claim payment is equal to the amount of relief provided by the HFA in the form of a reduction in principal and a reduction of delinquent interest due on the insured mortgage times the lesser of HUD's percentage of the risk of loss or 50 percent.

(3) *HFA second mortgage.* Repayment of the relief provided by the HFA must be secured by a second mortgage to the HFA. This second mortgage may provide for postponed amortization and may not be assigned by the HFA. This second mortgage is not insured under this part and may not be insured under any other HUD-related insurance program.

(4) *Partial claim repayment by HFA.* The HFA must remit to HUD a percentage of all amounts collected on the HFA's second mortgage within 15 days of receipt by the HFA. The applicable percentage is equal to the percentage used in paragraph (d)(2) of this section to determine the partial claim payment amount. Payments made after the 15th day must include a 5 percent late charge plus accrued interest at the debenture rate.

(5) *Certified statements of amounts collected.* As long as the second mortgage remains of record, the HFA must submit to the Commissioner an annual certified statement of the amounts collected by the HFA. The HFA must submit a final certified

statement within 30 days after the second mortgage is paid in full, foreclosed, or otherwise terminated.

§ 266.632 Withdrawal of claim.

In case of a default and subsequent filing of claim, the HFA shall determine the form of workout or modification and will inform HUD of the type of mortgage relief determined to be appropriate. If the default is cured after the claim is made but before the initial claim payment is paid by HUD, the HFA may, in writing, withdraw the claim, and insurance will continue as if the default had not occurred.

§ 266.634 Reinstatement of the contract of insurance.

(a) *Conditions for reinstatement.* After the initial claim payment, HUD may reinstate the contract of insurance on the following conditions:

(1) The HFA has not acquired the project;

(2) The mortgagor has cured the default; and

(3) The HFA requests that HUD reinstate the contract of insurance.

(b) *Notification of reinstatement.* If reinstatement is acceptable to HUD, HUD shall notify the HFA of the date the contract of insurance will be reinstated and shall advise the HFA of the payment needed to reinstate the contract of insurance.

(c) *Payment.* Within 30 days of the date of the notice under paragraph (b) of this section, the HFA shall pay HUD an amount equal to the initial claim amount, as determined under § 266.628(a)(1), plus an amount equal to the accrued and unpaid interest on the HFA Debenture through the reinstatement date, plus an amount equal to the mortgage insurance premium for the period from the date of reinstatement of the contract of insurance to the next anniversary date for payment of the mortgage insurance premium.

(d) *Cancellation of debenture.* Upon receipt from the HFA of the amount specified in paragraph (c) of this section, HUD shall return the HFA debenture for cancellation.

(e) *Continuation of contract of insurance.* Upon reinstatement, the contract of insurance shall continue as if the default had not occurred.

§ 266.636 Insuring new loans for defaulted projects.

The HFA may not make another loan that is insured under this part to the same owner in the same project if HUD has paid a claim under this part.

§ 266.638 Issuance of HFA Debenture.

(a) *Condition to initial claim payment.* As a condition to receiving an initial claim payment, the HFA must issue an instrument in the form of a debenture to HUD within 30 days of the initial claim payment. The HFA Debenture shall meet the following requirements and shall be in a form that has been approved by HUD as part of the application approval process.

(b) *Term of HFA Debenture.* The HFA Debenture shall be dated the same date that the initial claim payment is issued. The HFA Debenture shall have a term of five years in order to afford the mortgagor ample time to cure the default or the HFA time to foreclose and/or resell the project. HUD may provide a written extension of the five year term if the HFA certifies and provides documentation that the project owner has filed bankruptcy and the HFA is taking action to have the project discharged from the bankruptcy. The HFA Debenture shall, during this extended period, continue to bear interest as described below at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. Interest shall be due and payable annually on the anniversary date of the initial claim payment. Interest is due on the full face amount of the HFA Debenture through the term of the HFA Debenture or through the date an application for final claim payment is received by the Commissioner.

(c) *HFA Debenture amount.* (1) The HFA Debenture shall be for the full initial claim amount as determined under § 266.628(a)(1) (minus any excess funds returned to HUD under § 266.628(a)(3)).

(2) The full amount of the HFA Debenture shall be payable to HUD upon maturity, unless the HFA Debenture is canceled because of:

(i) A reinstatement of the contract of insurance under § 266.634; or

(ii) Final claim settlement under § 266.654.

(d) *HFA Debenture interest rate.* The HFA Debenture shall bear interest at HUD's published debenture rate at the earlier of initial endorsement or final endorsement. Interest shall be due and payable annually on the anniversary date of the initial claim payment and on the date of redemption when redeemed or canceled before an anniversary date. Interest shall be computed on the full face amount of the HFA Debenture through the term of the HFA Debenture.

(e) *Form of HFA Debenture.* The HFA Debenture should follow the standard form of a State/Municipal Debenture issued under the Uniform Commercial Code, where applicable, and shall be supported by the full faith and credit of the HFA. For HFAs that operate as departments or divisions of States or units of local government and where such HFAs cannot pledge the full faith and credit of the HFA, such HFAs may collateralize their obligation through a letter of credit, reinsurance, or other forms of credit acceptable to the Commissioner.

(f) *Debenture registration.* Unless otherwise required by law, including State or local laws, or other governing bodies, HUD will not require the HFA Debenture to be "Registered" (with the Securities and Exchange Commission) as it is a direct, or private, placement, and not a public offering, that is supported by the full faith and credit of the HFA.

§ 266.640 Foreclosure and acquisition.

The HFA is not required to foreclose the insured mortgage. It may accept a deed-in-lieu of foreclosure.

§ 266.642 Appraisals.

Where actions taken or caused to be taken by the HFA have the effect of the recovery of less than the face amount of the HFA Debenture held by HUD, an appraisal should be made to determine the value of the project. The appraisal should assume a willing buyer and a willing seller. The appraisal must be done within the 45 day period immediately preceding the date when the HFA files an application for final claim settlement. If at the time of final claim settlement the HFA has not sold the project, an appraisal should be made to determine the value of the project at its highest and best use.

§ 266.644 Application for final claim settlement.

The HFA shall file an application for final settlement in accordance with the Commissioner's administrative procedures not later than 30 days after any of the following:

(a) Sale of the property after foreclosure or after acquisition by deed-in-lieu of foreclosure; or

(b) Expiration of the term of the HFA debenture.

§ 266.646 Determining the amount of loss.

The amount of the total loss to be shared by HUD and the HFA is equal to:

(a) The amount of the initial claim payment;

(b) Plus all items set forth in § 266.648; and

(c) Less all items set forth in § 266.650.

§ 266.648 Items included in total loss.

In computing the total loss, the following items are added to the amount described in § 266.646(a):

(a) The amount of all payments that the HFA made from its own funds and not from project income for:

(1) Taxes, special assessments, and water bills that are liens before the Mortgage; and

(2) Fire and hazard insurance on the property.

(b) A reasonable amount of acquisition costs actually paid by the HFA. These costs may not include loss or damage resulting from the invalidity or unenforceability of the Mortgage lien or the unmarketability of the Mortgagor's title.

(c) Reasonable payments that the HFA made from its own funds and not from project income for:

(1) Preservation, operation and maintenance of the property;

(2) Repairs necessary to meet the requirements of local laws; and

(3) Expenses in connection with the sale of property.

(d) The amount of HFA Debenture interest paid by the HFA to HUD.

§ 266.650 Items deducted from total loss.

In computing insurance benefits, the following items are deducted from the amounts described in § 266.646(a) and (b):

(a) All amounts received by the HFA on account of the mortgage after the date of default;

(b) All cash, and/or funds related to the mortgaged property, including deposits and escrows made for the account of the mortgagor that the HFA holds (or to which it is entitled);

(c) The amount of any undrawn balance under a letter of credit that the HFA accepted in lieu of a cash deposit for an escrow agreement;

(d) Any net income from the mortgaged property/project that the HFA received after the date of default.

(e) The proceeds from the sale of the project or the appraised value of the project as provided in § 266.642 as follows:

(1) If the HFA disposes of the project through a negotiated sale, the amount deducted shall be the higher of the sales price or the appraised value.

(2) If the HFA disposes of the project through a competitive bid procedure approved by the Commissioner, the amount deducted shall be the sales price, even if it is lower than the appraised value.

(3) If the HFA has not disposed of the project within 5 years from the date of issuance of the HFA Debentures (unless an extension has been granted pursuant to § 266.638), the amount deducted shall be the appraised value.

(f) Any and all claims that the HFA has acquired in connection with the acquisition and sale of the property. Claims include but are not limited to returned premiums from canceled insurance policies, interest on investments of reserve for replacement funds, tax refunds, refunds of deposits left with utility companies, and amounts received as proceeds of a receivership.

(g) The amount of daily HFA Debenture interest accrued but not paid from the anniversary date of the last HFA Debenture interest payment to the date of final settlement.

§ 266.652 Determining share of loss.

The total loss computed in § 266.646 shall be shared by HUD and the HFA in accordance with their respective percentage of risk as specified in the note and the addendum to the Risk-Sharing Agreement between HUD and the HFA.

§ 266.654 Final claim settlement and HFA Debenture redemption.

(a) *Final claim payment.* If the initial claim amount, as determined under § 266.628(a)(1), is less than HUD's share of the loss, HUD shall make a final claim payment to the HFA that is equal to the difference between HUD's share of the loss and the initial claim amount and shall return the HFA Debenture to the HFA for cancellation.

(b) *HFA reimbursement payment.* If the initial claim amount, as determined under § 266.628(a)(1), is more than HUD's share of the loss, the HFA shall, within 30 days of notification by HUD of the amount due, remit to HUD an amount that is equal to the difference between the initial claim amount and HUD's share of the loss. The funds must be remitted in a manner prescribed in the Commissioner's administrative procedures. The HFA Debenture will be considered redeemed upon receipt of the cash payment. A 5 percent penalty will be charged and interest at the debenture rate will begin to accrue if the cash payment is not received within the prescribed period.

(c) *Losses.* Losses sustained as a consequence of the (sole) negligence of an HFA (e.g., failure to acquire adequate hazard insurance where such insurance is available) shall be the sole obligation of the HFA, notwithstanding the risk apportionment otherwise agreed to by HUD and the HFA.

(d) *Supplemental claim.* Any supplemental claim must be filed within one year from date of final claim settlement.

§ 266.656 Recovery of costs after final claim settlement.

If, after final claim settlement, the HFA recovers additional sums as the result of the sale of the project or otherwise, the total amount of such recovery shall be shared by HUD and the HFA in accordance with the prescribed percentage of shared risk.

§ 266.658 Program monitoring and compliance.

HUD will monitor the performance of the HFA for compliance with the provisions of this subpart.

Dated: November 24, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-93-3675; FR-3529-N-01]

Invitation for Applications for Approval to Participate in Housing Finance Agency Risk-Sharing Program for Insured Multifamily Housing

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

ACTION: Notice of invitation for applications.

SUMMARY: This Notice invites qualified Housing Finance Agencies (HFAs) to participate in the pilot program authorized under section 542(c) of the Housing and Community Development Act of 1992. Section 542(c) authorizes the Secretary to enter into HUD mortgage insurance commitments processed by State and local HFAs for up to a total of 30,000 multifamily units for Fiscal Years 1993, 1994, and 1995. (An interim rule implementing section 542(c) is being published elsewhere in today's **Federal Register**.)

EFFECTIVE DATE: Applications deadline is February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jessica A. Franklin, Director, Policies and Procedures Division, Office of Insured Multifamily Housing Development, room 6142, U.S. Department of Housing and Urban Development, 451 Seventh St. SW., Washington, DC 20410. Telephone: (202) 708-2556; TDD: (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Introduction

In today's **Federal Register**, the Department is publishing an interim rule (24 CFR part 266) implementing section 542(c) of the Housing and Community Development Act of 1992 authorizing a multifamily mortgage insurance risk-sharing pilot program. The purpose of the program is to demonstrate the effectiveness of providing new forms of Federal credit enhancement for the development of affordable multifamily housing by State and local HFAs.

This Notice invites qualified State and local HFAs to submit applications for approval to participate. There are 30,000 multifamily units available to be insured through this pilot program through fiscal year 1995.

Program Summary

Qualified HFAs, approved to participate in the program, will originate, underwrite, and close loans for HUD multifamily mortgage insurance for projects requiring new construction and substantial rehabilitation as well as certain acquisitions and refinancings. Upon presentation of appropriate certifications, HUD will endorse such loans for full mortgage insurance. HFAs will be responsible for the full range of loan management, servicing, and property disposition activities.

Through a Risk Sharing Agreement, HFAs may contract to assume from 10 to 90 percent of the risk on each loan they underwrite. In turn, HUD will commit to pay 100 percent of the outstanding principal mortgage balance upon default of the loans and filing of a claim. The loss, if any, will be determined at a later date, and HUD and the HFA will share such loss in accordance with the amount of risk assumed by each under the Risk Sharing Agreement. HFAs assuming less than 50 percent of the risk on loans must have their underwriting standards and loan terms and conditions approved by HUD. HFAs assuming 50 percent or more of the risk may use their own underwriting standards and loan terms and conditions without further approval from HUD.

This document contains information on: (1) The number of units to be allocated under the program; (2) application requirements; (3) the application process; (4) the deadline and place for application submission; (5) acceptability standards; (6) the Risk Sharing Agreement; and (7) the allocation process.

Application Requirements and Process

The interim rule sets forth standards for qualified HFAs at 24 CFR 266.100. A qualified HFA may submit an application to participate in the pilot program under § 266.105 of the rule. HUD will review the application to determine if the applicant meets all requirements of the rule and demonstrates the ability to underwrite, originate, process, close, service, manage, and dispose of multifamily loans in a prudent manner.

While an HFA may contract with outside sources for technical services, e.g., architectural/engineering, cost, mortgage credit and appraisal services, and loan servicing, the application must demonstrate that the HFA has the internal staff capacity to review and evaluate the work product of the contractors, to make the underwriting conclusions, and to adequately oversee the HFA's loan portfolio. HUD further expects that such expertise will have been in place for a period of time sufficient for the HFA to have an established track record in its ability to perform multifamily loan processing, loan management (including workouts), and property disposition.

Section 266.105(b)(10)(iii) of the rule requires that HFAs that do not have a top-tier rating or have not received an overall rating of "A" on their general obligation bonds must submit additional materials as evidence of their overall capability. Such HFAs must complete the Housing Finance Agency Questionnaire (Attachment "A") and submit it with their application. In reviewing the responses to the Questionnaire, HUD will assess the strength of the HFA based on the Acceptability Standards listed below.

All applications must include the name, title, and telephone number of the person most familiar with the material contained therein for contacting for clarification and further information. If HUD requires additional data from an HFA, the HFA will have five business days from the date notification is received by the HFA to submit such data to the appropriate HUD official. (If notification is by mail, an HFA will be presumed to receive notification five business days from the date of such notification.) HUD will notify applicants of approval or disapproval within 60 days of the deadline for receipt of applications.

Prior to approval, certain HFAs must establish a specifically identified dedicated account (see Attachment "B") consisting entirely of liquid assets (i.e., cash or cash equivalents or readily marketable securities) in a financial institution acceptable to HUD. Such an institution has assets of not less than $100,000,000; is organized under the laws of the United States or a State thereof; and is regulated and examined by the Comptroller of the Currency, Federal Deposit Insurance Corporation or the Federal Reserve Board, has a long-term bank deposit rating of "A-1" or better by Moody's Investors Service or "A+" rating by Standard and Poor's. Reserve requirements are set forth in § 266.110 of the regulations.

When the HFA is determined by HUD to be qualified to participate in the program, the Department will forward the Risk Sharing Agreement to the HFA for signature. The HFA must return the executed document, along with evidence that the dedicated reserve account has been established (where appropriate). After receipt of the documents, HUD will return a copy of

the Risk Sharing Agreement executed on behalf of the Department and notify the HFA that it may begin using its unit allocation.

Acceptability Standards

HUD will review the applications of HFAs that do not have a top-tier rating or have not received an overall rating of "A" on their general obligation bonds in accordance with the following standards:

1. Demonstrated capability to carry out program responsibilities, including continuity of management, staff qualifications and experience and the HFA's established track record of performing multifamily loan processing, servicing, loan management (including capability to enforce regulatory agreements and to perform workouts), and property disposition for the types of loans eligible under the program.

2. Adequacy of the HFA's administrative capabilities, including quality controls to ensure sound underwriting and loan management.

3. Soundness of the HFA's multifamily portfolio, including default experience.

4. Strength of the relationship between the HFA and the State or local government.

5. The HFA's fiscal soundness, including amounts and sources of revenues for housing activities and its investment policies for fund balances (if any), how it proposes to meet any monetary obligations required under the program, and the adequacy of funding to commit to the level requested in the application.

Risk Sharing Agreement

Upon notification of approval, each HFA will enter into a Risk Sharing Agreement similar to that shown in Attachment "C" which will allocate the number of units and the insuring authority and credit subsidy available to the HFA in accordance with the unit allocation formula. The Agreement will also set forth other obligations of the HFA. No HFA will be authorized to process loans for mortgage insurance until it has received HUD-approved mortgagee status, been approved under the Risk Sharing pilot program, and has executed a Risk Sharing Agreement and, where required, provide evidence to the Department that it has established a dedicated reserve account. (An HFA must apply to be a HUD-approved mortgagee no later than at the time it submits an application for approval under the pilot program.)

Allocation Process

Annual allocation. A portion (up to ⅔ or 20,000 units) of the total insuring authority for the 30,000 units available under the pilot program will be reserved from HUD's maximum insuring authority for this program at the beginning of Fiscal Year 1994. The corresponding credit subsidy will be reserved in an amount sufficient to cover the maximum risk HUD could assume in the event of loss, i.e., 90 percent. Upon endorsement of each mortgage, the credit subsidy will be reduced in accordance with the actual amount of the risk HUD assumes. The unallocated balance (10,000 units) and any unused insuring authority with the appropriate credit subsidy will be reserved at the beginning of Fiscal Year 1995.

Minimum allocation. A minimum of 100 units will be allocated to each HFA. Requests for less than the minimum will not be considered for this pilot. An HFA that cannot demonstrate the capacity to use 100 units during the pilot will not be approved.

State-wide unit cap. A unit cap will be established for each State represented by an approved State or local HFA based on population.

Set-aside. Each approved HFA will be given a set-aside using the system defined below. Each HFA's initial allocation will only be a portion of its total set-aside in excess of the minimum allocation. The remainder will be held back until the Commissioner has reviewed the HFA's use of this allocation. Such review will determine the amount of additional units to be allocated from the set-aside (or from the 10,000 unallocated units for Fiscal Year 1995), if any. Where HUD determines that an HFA will not use the full amount of its set-aside, the units will be allocated to other HFAs.

Allocation system. (1) Each approved HFA will be allocated a minimum of 100 units.

(2) A State-wide unit cap will be established for each State represented by an approved State or local HFA. The initial State-wide unit cap will be based on the number of units remaining after deducting from the 20,000 units the minimum allocations for all approved HFAs. Each State's cap will be a portion of this remainder, based on the ratio of the total population in the State to the total population of all States in which approved HFAs are located.

(3) State HFA set-asides will be the minimum allocation plus the lesser of:

(i) The number of units requested by the State HFA in its application; or

(ii) The number of units remaining from the State-wide set-aside after deducting the set-aside(s) of any participating local HFAs within the State's boundaries.

(4) Local HFA set-asides will be the minimum allocation plus the lessor of:

(i) The number of units requested by the HFA in its application; or

(ii) The portion of the State-wide unit cap represented by the ratio of the population in the jurisdiction of the local HFA to the total population of the State in which the local HFA is located.

(5) Any units not allocated will be retained by the Commissioner for future allocation.

(6) The remaining 10,000 units and any unallocated units will be allocated during Fiscal Year 1995.

Each allocation will be reserved in a Risk Sharing Agreement (and amendments thereto) executed by the HFA and HUD. The Agreement will specify the number of units, insuring authority, and credit subsidy allocated to the HFA.

Application Deadline

The deadline for receipt of applications for participation in the pilot program authorized under 24 CFR part 266 is 4:00 pm, Eastern Time on February 1, 1994. Applications received after that date and time will not be accepted, and will be returned to the sender. Applications sent by FAX are NOT acceptable. Draft handbook instructions will be available for HUD Field Offices and HFAs. Qualified agencies may call Jessica Franklin at 202–708–2556 for a copy. This is not a toll free number.

Review of Applications

Qualified HFAs are encouraged to submit applications prior to the end of the 60-day period, as applications will be reviewed and approved as they are received. Once the regulation is effective and an HFA is approved, the HFA may immediately use its 100-unit minimum allocation. Further allocations by the formula described herein will be made only after approval decisions have been made for all applications received by the deadline.

Address for Application Submission

Applications for participation in the pilot program authorized under 24 CFR part 266 must be identified on the envelope or wrapper and submitted as follows: Director, Office of Insured Multifamily Housing Development, Application for Housing Finance Agency Pilot Program, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., room 6142, Washington, DC 20410.

Applicants must submit an original and three copies (a FAX copy of the application is NOT acceptable) of the application to the above address on or before 4:00 pm, Eastern Time, on February 1, 1994.

Applications for approval as a HUD-Approved Mortgagee must be identified on the envelope or wrapper and be submitted on or before 4 p.m., Eastern Time on February 1, 1994 to the following address: Director, Office of Lender Activities and Land Sales Registration, Application for Housing Finance Agency Pilot Program, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., room 9146, Washington, DC 20410.

Application Fee

All applicants must submit their application fee through FEDWIRE. The Federal Deposit System offers individual and corporate remitters the ability to move funds electronically from their bank account to the U.S. Treasury. The remitter identifies the payment and the Department of Housing and Urban Development as the government agency to be credited on the funds transfer message. Instructions for the applicant's bank to follow for transferring funds by FEDWIRE are contained in Attachment "D".

Other Matters

Paperwork Reduction Act. The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. Information on the estimated public reporting burden is provided in the preamble of the interim rule implementing this program (24 CFR part 266) published elsewhere in today's **Federal Register**.

Environment, Federalism, Family. Findings with regard to the National Environmental Policy Act, Executive Order 12612 (Federalism), and Executive Order 12606 (The Family) have been made under the interim rule for this program (24 CFR part 266), published elsewhere in today's **Federal Register**.

Accountability in the Provision of HUD Assistance. On March 14, 1991 (56 FR 11032), HUD published a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. (Part 12 defines "assistance" as including insurance of a loan or mortgage.) On January 16, 1992, HUD published, at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation of section 102. The provisions of part 12, subpart C, are applicable to assistance awarded under this Notice. HUD will make available to the public for five years any applicant disclosure reports submitted in connection with this Notice. Update reports will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Prohibition against Lobbying Activities. The use of assistance under this Notice is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Prohibition against Lobbying of HUD Personnel. Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance. Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 29912), and is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Dated: November 24, 1993.

Nicolas P. Retsinas,

Assistant, Secretary for Housing-Federal Housing Commissioner.

Attachment "A" Housing Finance Agency Questionnaire Section 542(c)

Responses to this questionnaire fulfill the documentation requirements pursuant to 24 CFR 266.10 (d)(4)(iii). All HFAs seeking approval to participate in the Housing Finance Agency Risk-Sharing pilot program who do not have "top-tier" designation or an overall rating of "A" on their general obligation bonds from one of the nationally recognized rating agencies must complete this questionnaire.

The questionnaire addresses 7 different aspects of the HFA and are consistent with conditions set forth in section 542(d)(2) of the Housing and Community Development Act of 1992. Applicants should be careful to craft responses so that they clearly address the issues and the Acceptability Standards set forth in the body of this Notice. Responses should represent a summary of the detailed information that may be found in the HFA's operating, administrative and quality control manuals. In order to ensure that the Department can expeditiously review and approve applications, All Narrative Responses are limited to 15 pages. Responses to questions related to the portfolio (item II) may be presented in tabular form, where appropriate, and attached as exhibits to the 10 page narrative responses. The Department encourages HFAs to prepare responses in a manner similar to that which might be used for the HFAs Annual Reports and reports to the Board of Directors.

I. Organizational History

Describe the history and organizational background of the Housing Finance Agency (HFA). Indicate how long it has been in existence, what is the HFA's mission, when it began to finance multifamily loans, the legal basis for issuing bonds and/or tax credits, and an overall description of its multifamily lending activities.

Describe the HFA's relationship to the state or local government, as appropriate. Describe state or local government interaction with the HFA to address housing needs; the department or division of the state or local government to which the HFA reports. State whether or not state or local government officials serve on the HFA's board of directors and describe, if any, the role state or local officials play in the HFA's program operations.

Discuss any state or local appropriations for the past 5 years and any anticipated appropriations over the next 3 years to support the HFA's housing goals. Describe how the HFA's budget is developed and approved and any state or local approval required to issue bonds or otherwise allocate HFA resources to projects or housing programs.

Identify any problems the HFA or any of its in-house staff or contract employees may have experienced in previous HUD programs and the types of functions performed. Indicate how the HFA will prevent recurrence of such problems.

II. Portfolio Information

Indicate how many multifamily loans have been financed within the past 10 years (1982 through 1992), by year. Include the number and type of projects (family assisted living, cooperative, etc.) and units in each, type of loan (first mortgage, second, gap loan, credit support, new construction, rehabilitation, refinancing with or without repairs, etc.) and original mortgage amounts, outstanding principal balances, status (current, default, foreclosed, workouts) and location (urban/suburban/rural).

If the HFA has processed fewer than 25 multifamily loans in the past 5 years, indicate how many loan applications the HFA received that were not approved, the reasons they were rejected (include information about type of project, project size, mortgage amounts and locations proposed).

For the multifamily loans currently in the HFA's portfolio, indicate how many are HFA owned, owned by other public agencies, non-profit organizations, privately owned and other ownership types.

Describe the types of residents served in your projects (family, elderly, etc.). Indicate the median income within the HFA's operating jurisdiction, the percent of units occupied with incomes below 80% and 50% of that median and what is the average size of families served in projects not targeted to the elderly.

III. Staff Capacity

Identify the skills (general background and years of experience in that skill and with the HFA) (Do not attach resumes.) of personnel currently employed by the HFA who will have key responsibilities under the pilot program. Include in-house loan processing, loan management and technical staff (e.g., architects, engineers, construction inspectors, cost analysts, mortgage credit analysts, appraisers, market analysts, loan management, servicing and property disposition personnel), technical review personnel, the person(s) responsible for making overall underwriting decisions (the chief underwriter) and the person responsible for overall loan management, servicing and disposition, including workouts.

Indicate how long has this staff capacity has existed in the HFA and the amount of attrition and turnover during the past two years, especially any turnover in key management positions.

Identify any loan processing or management functions performed by contract personnel, HFA qualification requirements for such personnel, procedures followed by the HFA for monitoring performance of, and for reviewing and evaluating work products of, contract personnel, and the experience of the HFA personnel responsible for the monitoring, review and evaluation of contract services.

Describe the counsel on staff or retained by the HFA that are experienced in real estate transactions, bankruptcy, litigation and foreclosure to conduct mortgage loan closings, assist in the preparation of endorsement packages, and provide legal services in dealing with underwriting and servicing matters requiring legal advice or action.

IV. Technical Capacity

A. Architect, Engineering and Cost

Describe the A&E and Cost services the HFA provides in the development of plans and specifications and the role it plays in reviewing the final plans and specifications submitted for the project. Describe the depth of review (i.e., does the HFA tend to accept documents or reject them until satisfied).

Describe any construction/repair inspection procedures and requirements for project completion and guarantee/warrantee/latent defect inspections. For loans involving construction advances, describe the process and criteria for releasing advances.

If any architectural, engineering or cost functions are contracted out, describe the qualification and experience requirements for contractors in each skill.

Describe the controls in place to assure quality work performance and products whether performed by in-house staff or contractors.

B. Valuation

Describe the qualifications of the HFA's appraisers and their experience in preparing appraisals for multifamily housing. Provide the qualifications of the individual responsible for reviewing those appraisals and his/her authority to make changes in the appraisal documents and/or conclusions.

If any appraisal functions are contracted out, describe the qualification and experience requirements for contract appraisers and the HFA controls in place to assure quality work performance and products.

Describe the controls in place to assure that all appraisers, in-house or contract, meet program certification and licensing requirements and that all appraisals will be completed pursuant to the Uniform Standards of Professional Appraisal Practice.

C. Market Analysis

Describe the HFA's practice for assuring that a market exists for the proposed project. State whether the HFA conducts its own market analyses or relies upon studies submitted by the developer/sponsor. Describe who (position) reviews the studies, whether prepared inside of or outside of the HFA, the qualifications of that individual and state whether market findings of principal analyst can be modified or overridden and by whom.

D. Mortgage Credit

Describe the background, qualification and experience in banking, accounting, financing or commercial lending of the individual responsible for the financial analysis portion of loan processing. Describe how the credit/financial analysis will be integrated with the overall underwriting analysis and whether, and/or under what conditions, the analyst's recommendations or findings may be modified.

State whether HFA conducts its own mortgage credit analyses or uses

contractors and the HFA's controls to ensure quality performance. Describe whether or not the conclusions can be modified or overridden and by whom.

V. Operating Procedures

Provide a flow chart indicating how project-related decisions are made within the HFA. Include the following elements and a brief description of the HFA's operating procedures for each: the HFA's loan origination, processing, market analysis, underwriting, loan approval, closing, cost certification, construction administration, loan management, and loan servicing and property disposition functions. Indicate who (position) is responsible for what functions and when those functions are performed. Describe the HFA's internal controls to assure compliance with HFA procedures.

A. Cost Certification

Describe the HFA's cost certification process and its controls to assure the absence of fraud and misrepresentation. Describe how the HFA will assure that costs are legitimate and that all project improvements are in place prior to accepting the certification. Indicate how the cost certification process addresses mortgage excesses and if there are mandatory mortgage prepayments.

B. Loan Approval

If loans are approved by a loan committee or similar body (including the board of directors), state whether the committee can override recommendations of the chief underwriter. If so, describe under what circumstances and what documentation is required to support the override. Describe the composition of the committee.

If there is a loan amount below which loans are not referred to committee or other circumstances under which loans are not so referred, describe the circumstances and describe that approval process.

If loans are normally not referred to a committee, indicate who has the approval authority and his/her position/role/function within the HFA.

If loans are subject to review and/or approval by an entity outside of the HFA, describe such circumstance and the review/approval process.

C. Loan Servicing

Describe the HFA's overall loan servicing system including its ability to track loans individually, any delinquent loan servicing system, procedures to physically inspect and evaluate mortgaged properties, to control and monitor borrower bankruptcy proceedings, claims filing procedures, and foreclosure monitoring. Describe how the HFA will enforce the regulatory agreement.

Describe the degree to which portfolio oversight is computerized and periodic reports are provided to management, including the board of directors.

Describe the background and experience of the individuals responsible for loan servicing. If contract personnel are used, describe the in-house monitoring procedures used to assure quality performance by the contractors.

Describe the HFA's requirements for project audits and reviews, qualifications for auditors and procedures for resolving management review and financial audit deficiency findings.

D. Workout Procedures

State the number of workout plans the HFA has developed over the last 5 years. Describe several (at least 5) cases where the HFA developed and implemented workout plans for defaulted projects during the last 5 years, the circumstances that led to the workout, the elements of the workout agreement and how well that project is performing against the workout plan. If an agency has had no experience with workouts, describe how workout plan would be developed and identify any tools or strategies, the agency would propose to use to establish the elements of a workout agreement.

VI. Financial Capability

Describe the amount and sources of funds the HFA has available to support multifamily housing programs. If funds are earmarked for specific projects or programs, or otherwise have a contingent liability, indicate how much and for what purpose. Indicate how much of the funds are unrestricted, how those funds are governed (e.g., approval of the board of directors or state or local government) and the eligible uses of these funds. Identify any funding sources available to supplement less than break-even projects.

Indicate the overall percentage of total unrestricted funds to total debt and the percentage of liquid unrestricted funds to total mortgages outstanding.

Describe the collateral the HFA will use if it does not have the authority to pledge its full faith and credit to back debentures issued against claims.

Describe how the HFA intends to fund the dedicated account, its procedures for assuring required balances are in place at all times and that the amounts are increased at each loan closing. Describe the funding source (all funds in the account must be liquid) for the dedicated account and identify the financial institution in which the HFA proposes to maintain these funds.

Describe the circumstances or conditions under which other governmental entities or public bodies have access to the HFA's funds.

Describe briefly, the types of financial and quality control audits performed on the HFA. Indicate the state or local HFA or authority that has responsibility for conducting the annual financial audit and when that audit is conducted.

Describe the mechanism for disposing/resolving audit findings.

Identify any periodic reports required for the board of directors and/or other organizational oversight body.

VII. Investment Policies

Describe how investment decisions are made within the HFA and the level at which they are made. Identify the institutions in which funds are invested, by amount and type of investment. Describe the procedures in place to generate financial reports, changes in fund balances, and changes in financial position. Describe procedures in place for the prompt notification to HUD of negative changes in the HFA's financial position.

Attachment "B"—Housing Finance Agency Section 542(C) Dedicated Reserve Account

The following information is required to evidence establishment of a dedicated reserve account in an initial amount of $500,000 to be used solely in connection with the Housing Finance Agency Risk-Sharing Pilot Program. Thereafter, the HFA shall make additional deposits at each loan closing in accordance with 24 CFR 266.110.

Duplicate originals of the attached agreement and one copy must be forwarded by the HFA to a financial institution with whom it intends to establish a Dedicated Reserve Account. In each of the attached agreements and on the copy, such financial institution will certify to the existence of the dedicated reserve account by inserting the date the account was established, the account number, and the account balance. Upon completion of the certification, the financial institution shall sign and return an original and one copy to the HFA which, in turn, will forward the original to HUD. The HFA should retain a duplicate copy for its records. This information must be submitted to Linda D. Cheatham, Director, Office of Insured Multifamily Housing Development, room 6142, 451 Seventh Street, SW., Washington, DC

20410 prior to the HFA's approval to participate in the program.

Agreement for HFA'S Dedicated Reserve Account

HFA Name _____
Address _____
(Street Number)

_____
(City, State and Zip Code)
Date _____

_____
(Name of Institution

_____
(Street)

_____
(City, State, and Zip Code)

You are authorized and requested to establish a Reserve Account to be specifically designated "(HFA NAME)/HUD Risk-Sharing". This account may be drawn upon by the Department of Housing and Urban Development (hereinafter "HUD") and may be used by the HFA only with the prior written approval of HUD for the purpose of meeting the HFA's risk-sharing obligations under this program.

This letter is submitted to you in duplicate originals. Please execute the duplicate originals of the certificate below, acknowledging the existence of such account, so that we may present an original signed by you to HUD. Specimen signatures of HUD and HFA representatives are enclosed.

_____
(Signature of HFA authorized official)

To Be Completed By The Financial Institution

TO: The Department of Housing and Urban Development

The undersigned institution certifies to HUD that the above account was established on _____in the amount of _____in this institution under account number _____and agrees with the HFA named above and HUD to honor withdrawals from the account as set forth above and agrees to send quarterly statements regarding the account to both HUD and the HFA. The financial institution further certifies that it:

(1) Has assets of not less than $100,000,000;

(2) Is organized under the laws of the United States or a State thereof;

(3) Is regulated and examined by the Comptroller of the Currency, Federal Deposit Insurance Corporation or the Federal Reserve Board; and

(4) Has a long-term bank deposit rating of "A–1" or better by Moody's Investors Service or "A+" by Standard and Poor's.

_____
(Name of Institution)

By: _____
Title: _____
Date: _____

Specimen Signatures of HUD Authorized Officials

The following individuals are authorized to withdraw from the HFA/HUD Risk-Sharing Account on behalf of HUD and/or approve on behalf of HUD, the withdrawal of funds from the Account by the HFA:

_____
Linda D. Cheatham,
Director, Office of Insured Multifamily Housing Development.

_____
Joseph E. Malloy,
Deputy Director, Office of Insured Multifamily Housing Development.

_____
Albert B. Sullivan,
Director, Office of Multifamily Housing Management.

_____
Dean Reger,
Deputy Director, Office of Multifamily Housing Management.

_____
Frank M. Malone,
Director, Office of Preservation and Disposition.

_____
Audrey Hinton,
Deputy Director, Office of Preservation and Disposition.

Specimen Signatures of HFA Authorized Officials

Based upon prior approval from HUD, the following individuals are authorized to withdraw funds from the HFA/HUD Risk-Sharing Account on behalf of the HFA:

(Name) _____
(Title) _____
(Name) _____
(Title) _____

Attachment 'C' Risk-Sharing Agreement

This Agreement is entered into on this _____day of _____, 19____, by and between

_____

_____

whose address is

_____

and its successors (hereinafter referred to as "HFA") and the undersigned Secretary of Housing and Urban Development and his/her successors and assigns acting by and through the Assistant Secretary for Housing-Federal Housing Commissioner (hereinafter referred to as "Commissioner").

Article I—Set-Aside/Allocation

A. In furtherance of this Agreement, the Commissioner has made an initial set-aside of _____units of affordable multifamily housing to be originated by the HFA, with a set-aside of $_____ of insuring authority and $_____of credit subsidy (collectively called funding authority).

B. Of the units and funding authority set-aside to the HFA, _____units, $_____in insuring authority and $_____in credit subsidy will be initially allocated to the HFA upon execution of this Agreement.

C. Any set-aside of units and funding authority in excess of the initial allocation will be held back by the Commissioner until the Commissioner has reviewed the HFA's use of its initial allocation. Upon completion of the Commissioner's review, the Commissioner will make a determination as to whether he/she will advance all or a portion of the remaining units and funding authority to the HFA or allocate all or a portion of the remaining units and funding authority to another housing finance agency.

D. The Commissioner reserves the right to modify the number of units, insuring authority and credit subsidy set forth in this Agreement to: (1) Set-aside or allocate additional units, insuring authority and credit subsidy in excess of the initial set-aside and allocation set forth above, or (2) to reduce such set-aside and allocations based on the Commissioner's review of the HFA's use of its prior allocation(s). Any such changes shall be incorporated by an addendum to this Agreement.

Article II—Insurance Authority

In connection with mortgages to be endorsed for full insurance by the Commissioner under section 542(c) of the Housing and Community Development Act of 1992 (hereinafter referred to as "Section 542(c)") as amended and the regulations adopted by the Commissioner pursuant thereto, the Commissioner hereby delegates to the HFA the authority to approve, in insurance of advances cases, periodic advances subject to terms specified by the Commissioner. The Commissioner also delegates to the HFA the authority to approve certificates of actual costs submitted by mortgagors of each loan made by the HFA which is to be insured under section 542(c).

a. Prior to approving any periodic advance on a mortgage to be insured under section 542(c), the HFA must ensure that the loan is in balance and approve advances only if warranted by

construction progress evidenced through HFA inspection, as well as being in accord with plans, specifications, work write-ups and other contract documents.

b. The certificate of actual costs executed by the mortgagor must be in a form acceptable to the HFA and submitted when all physical improvements are completed to the satisfaction of the HFA and before final endorsement of the mortgage, and must be audited by an independent public accountant. The independent public accountant must file a certificate regarding the accuracy of the mortgagor's certificate of actual cost, which certificate shall include a statement that the accounts, records and supporting documents have been examined in accordance with generally accepted audit standards to the extent necessary to verify the actual costs. Kickbacks, rebates, trade discounts, or other payments to mortgagors of mortgages insured under section 542(c) or to any of the mortgagors officers, directors, stockholders or partners shall not be permissible for inclusion in the mortgagor's certificate of actual cost.

Article III—Certifications

In consideration of the endorsement for full insurance by the Commissioner of loans covering the units set-aside in Article I, Paragraph A of this Agreement, and in order to comply with the requirements of the risk-sharing program established by section 542(c) and the regulations adopted by the Commissioner pursuant thereto, the HFA agrees and certifies for itself, and its successors, that in connection with any mortgage insured under section 542(c) and so long as the Commissioner is obligated to insure mortgages pursuant to this Agreement that:

A. The HFA has been approved by the Commissioner as a Level I _____, and/or Level II _____ [check one or both as appropriate] Participant as set forth in 24 CFR 266.5 and 266.100(b).

B. The following individuals (principal staff) are employed by the HFA as the persons responsible for the overall underwriting decision and for project management, loan servicing and property disposition with respect to loans insured or to be insured under section 542(c):

_____

(Name and Title)

_____

(Name and Title)

The HFA agrees to notify the Commissioner promptly in writing any time the HFA changes principal staff.

C. The following individuals, whose names, titles and specimen signatures appear below, have the authority to sign loan documents on behalf of the HFA and otherwise commit the HFA under the risk sharing program.

_____

(Name and Title)

_____

(Signature)

_____

(Name and Title)

_____

(Signature)

The HFA agrees to notify the Commissioner promptly in writing of any changes of individuals authorized to sign loan documents on behalf of the HFA and provide the Commissioner with specimen signatures of such new individuals.

D. The HFA shall allow periodic auditing and review by the Commissioner, the Inspector General and the General Accounting Office or their duly authorized agents regarding the HFA's participation in the risk-sharing program.

E. The HFA will permit an inspection and examination of its financial records and records associated with loans insured under section 542(c) by the Commissioner or his duly authorized agents upon request.

F. The HFA has fully disclosed and provided copies of all of its underwriting standards and procedures, loan terms and conditions to the Commissioner, and, if the HFA operates as, or originates or processes any loans as a Level II agency, it has obtained the Commissioner's prior written approval to utilize such underwriting standards and procedures, loan terms and conditions. The HFA's originating, underwriting, closing, project management, servicing and property disposition procedures utilized in processing and servicing the loans insured or to be insured under section 542(c) are incorporated herein by reference and made a part hereof.

G. The HFA will notify the Commissioner before implementing any amendment to the HFA's underwriting standards and procedures, loan terms and conditions and will provide the Commissioner with copies of any amendments within ____ days after the amendment has been approved by the HFA. If the HFA operates as, or originates or processes any loans as, a Level II agency, it will also obtain the prior written approval of the Commissioner before implementing any amendment to its underwriting standards and procedures, loan terms and conditions.

H. If the HFA (a) does not meet the qualification requirements of 24 CFR 266.110(a) (i.e., top-tier rating or equivalent designation or has an overall "A" rating on its general obligation bonds), or (b) has an overall "A" rating but cannot provide the necessary legal opinion of counsel required by the second sentence of 24 CFR 266.105(b)(2), it has established a specifically identified dedicated account (meeting the requirements of 24 CFR 266.110(b) and the administrative requirements of the Commissioner) in _____ (insert name and address of financial institution), a financial institution which has assets of not less than $100,000,000, is organized under the laws of the United States or a State thereof and is regulated and examined by the Comptroller of the Currency, Federal Deposit Insurance Corporation or the Federal Reserve Board, and has a long term bank deposit rating of "A–1" or better by Moody's Investors Service or "A+" by Standard and Poor's. The Commissioner may determine that higher levels of reserves may be necessary.

I. If at any time the HFA loses the designation or rating, as applicable, set forth in 24 CFR 266.110(a), or can no longer provide the statement required by 24 CFR 266.105(b)(2), it shall immediately establish a dedicated account funded in accordance with Paragraph H above. The HFA must calculate the deposits to this dedicated account in accordance with the requirements of 24 CFR 266.110(b) so that the account reflects all loans in the HFA's portfolio insured under section 542(c).

J. Within 90 days following the end of its fiscal year, the HFA shall furnish the Commissioner with a complete annual financial audit based upon an examination of the books and records of the HFA prepared and certified in accordance with the requirements of the State or locality in which the HFA is located.

K. The HFA will at all times comply with the financial requirements of the section 542(c) program and it will notify the Commissioner of any pending or actual changes in its financial status that would adversely affect the HFA's operating or financial status within 5 days after becoming aware of such pending or actual changes.

L. Within 90 days following the end of its fiscal year, the HFA shall furnish the Commissioner, along with a copy of the audit specified in Paragraph J above, a certification signed by an authorized official of the HFA that there have been no changes that would adversely affect the HFA's organization, business activities, financial status and other information submitted with its application to participate in the section

542(c) program and that the HFA has complied with all eligibility requirements for participation in the program during the past year. If there has been a basic change in the HFA's organization, business activities, financial status or other information submitted with its application, the certification will state the nature of the change.

M. The HFA will comply with the Fair Housing Act, as implemented by 24 CFR part 100; titles II and III of the Americans with Disabilities Act of 1990, as implemented by 28 CFR part 35; section 3 of the Housing and Urban Development Act of 1968, (12 U.S.C. 1701u), implemented by 24 CFR part 135, the Equal Credit Opportunity Act, implemented by 12 CFR part 202; Executive Order 11063, as amended, and implemented by 24 CFR part 107; Executive Order 11246, as implemented by 41 CFR part 60; other applicable Federal laws and regulations issued pursuant to these authorities; and applicable State and local fair housing and equal opportunity laws. In addition, a mortgagor which receives Federal financial assistance must also certify to the HFA that, so long as the mortgage is insured under section 542(c), it will comply with title VI of the Civil Rights Act of 1964, as implemented by 24 CFR part 1; the Age Discrimination Act of 1975, as implemented by 24 CFR 146; and section 504 of the Rehabilitation Act of 1973, as implemented by 24 CFR part 8.

N. During the period that the Commissioner is the insurer of any mortgage endorsed under section 542(c), the HFA will remain mortgagee of record and will perform all functions in connection with loans originated under the 542(c) program including loan management, servicing (including workouts) and property disposition functions. The Commissioner shall have no obligation to recognize or deal with anyone other than the HFA in its role as mortgagee of record with respect to the rights and obligations of the HFA under the contract of mortgage insurance and this agreement.

O. The HFA will retain records pertaining to origination and servicing of all mortgages insured under section 542(c) for as long as the mortgage insurance remains in effect. In the event of a default and claim, all records pertaining to the insured mortgage, the mortgage default and claim shall be retained three (3) years after the date of final settlement as final settlement is described in 24 CFR section 266.654.

P. The HFA will maintain a Lender's Fidelity Bond/Surety Bond and Errors and Omissions Insurance in such form and amount as is satisfactory to the Commissioner.

Q. The HFA shall issue Debentures as defined in 24 CFR 266.638 acceptable to the Commissioner as collateral for the full amount of its risk-sharing obligation under this agreement pending final settlement of any insurance claim. The debenture shall be backed by the full faith and credit of the HFA. If the HFA operates as a department or division of the State in which it is located, or as a unit of local government, and the HFA cannot pledge the full faith and credit of the HFA, the HFA must collateralize its obligation through a letter of credit, reinsurance, or other form of credit acceptable to the Commissioner.

R. Any reinsurance obtained by the HFA to cover its portion of the risk shall: (i) Be subordinate to the HUD-insured mortgage; (ii) not affect reimbursement to the Commissioner, notwithstanding the timing of the actual settlement between the HFA and the reinsurer; (iii) not be used to reduce any reserve or fund balance requirements established by the Commissioner; and (iv) not result in the Federal Government incurring any liability as a result of the reinsurance agreement.

S. With respect to any project mortgage endorsed for insurance under section 542(c), the HFA shall furnish to the Commissioner project information in a format specified by the Commissioner. Basic underwriting and closing information shall accompany the initial and final closing dockets submitted for each project. Information relating to project management, servicing and disposition will be submitted to the Commissioner on a periodic basis after endorsement in accordance with administrative requirements of the Commissioner.

T. The HFA shall enforce the Regulatory Agreement between the HFA and mortgagor and take action against the mortgagor for violation of any provision(s) thereof. Such action may include, but not be limited to, a declaration of default and application to a court with jurisdiction for specific performance of the agreement.

U. The HFA shall perform annual physical inspections of all projects insured under section 542(c) and will submit a copy of the inspection report to the Commissioner (i.e., showing or stating that the project is in safe and sanitary condition). If a project is not in safe and sanitary condition, the HFA will provide the Commissioner with a summary of required actions, with target dates, to correct unresolved findings.

V. The HFA shall analyze the project's annual audit and within 30 days of the date of the audit, provide the Commissioner with a copy of the audit, a summary of unresolved findings and a summary of actions planned, with target dates, to correct unresolved findings.

W. The HFA will submit semiannual reports to the Commissioner for all projects insured under section 542(c) setting forth the original mortgage amounts and outstanding principal balances on mortgages the HFA has underwritten, the status of all projects (e.g., whether current, in default, acquired, under workout agreement, in bankruptcy, etc.). For projects where the mortgagor has declared bankruptcy, the HFA will submit information containing the date the bankruptcy was filed and the date the HFA requested the Court to dismiss the bankruptcy proceedings.

X. All appraisal functions will be completed by Certified General Appraisers licensed in the State in which the property is located, and all appraisal functions will be completed in accordance with the Uniform Standards of Professional Appraisal Practice.

Y. In the event of a default on a multifamily mortgage insured under section 542(c) which results in the Commissioner having to pay a claim under a Contract of Insurance to the HFA, the HFA will, upon determination of the loss, assume the percentage of loss specified in an addendum to this Agreement (such addendum being made a part of this Agreement) and in the endorsement panel of the mortgage note, and reimburse the Commissioner, pursuant to administrative instructions of the Commissioner, the amount based on that percentage pursuant to 24 CFR 266.654. (The HFA's percentage of loss specified in the addendum for a particular project must be consistent with the percentage of loss associated with the HFA's approval level specified in paragraph A of article III of this Agreement. For a project involving the refinancing of an HFA-financed loan, if the loan had been in default within 12 months before the application for refinancing, the HFA's percentage of loss specified in the addendum must be at least 50 percent of the risk).

Z. The HFA will require that the mortgagor keep the improvements now existing or hereafter erected on the mortgaged property insured against loss by fire and such other hazards, casualties, and contingencies, as may be stipulated by the Commissioner upon the insurance of the mortgage and other hazards as may be required from time to time by the HFA. All such insurance shall be evidenced by a standard Fire and Extended Coverage Insurance Policy or policies, in amounts not less than necessary to comply with the

applicable coinsurance clause percentage, but in no event shall the amounts of coverage be less than eighty per centum (80%) of the actual cash value of the insurable improvements and equipment of the project, and in default thereof the HFA shall have the right to obtain such insurance in accordance with the mortgage. Such policies shall be endorsed with the standard mortgagee clause with loss payable to the HFA and shall be deposited with the HFA.

AA. The HFA will comply with the affordable housing requirements defined in 24 CFR 266.5.

Article IV—Mortgage Insurance Closing

The Commissioner agrees that absent fraud or material misrepresentation on the part of the HFA, and subject to the Commissioner's right pursuant to 24 CFR 266.417 to adjust the amount of mortgage insurance, the Commissioner will endorse any mortgage presented for mortgage insurance by the HFA pursuant to section 542(c) provided the HFA is in good standing with the Department, has been issued a Firm Approval Letter pursuant to 24 CFR 266.300(c) and/or 266.305(c), and submits with each loan to be endorsed a closing docket in accordance with 24 CFR 266.420(b) and written certifications that:

a. The property covered by the mortgage is free from all liens other than the lien of the FHA insured mortgage, except that the property may be subject to such inferior lien or liens, as approved by the HFA, as long as the insured mortgage has first priority for payment.

b. All contractual obligations in connection with the mortgage transaction, including the purchase of the property and the improvements to the property, are paid. An exception is made for obligations that are approved by the HFA and determined by the HFA to be inferior to the lien of the insured mortgage.[1]

c. The project owner has submitted and the HFA has approved an Affirmative Fair Housing Marketing Plan.

d. Equal employment requirements were followed pursuant to Executive Order 11246 as implemented by 41 CFR part 60.

e. The project owner has executed the regulatory agreement which complies with 24 CFR 266.505.

f. The project has been processed, prudently underwritten (including a determination that a market exists for the project), cost certified (if the loan is being submitted for final endorsement) and closed in full compliance with the HFA's standards and requirements which have been disclosed to the Commissioner and made a part of this Agreement and are in full compliance with HUD standards established in connection with approval of advances for insurance and cost certification. (Note: For mortgages originated under Level II, the certification will state "in full compliance with the underwriting standards and loan terms and conditions as approved by the Commissioner.") Further, the loan shall be managed and serviced in accordance with procedures disclosed and made a part of this Agreement.

g. For periodic advances cases, that each advance made was proportionate to construction progress as evidenced by HFA inspection prior to approval of the advance.

h. The HFA's dedicated account, if required, has been established and has been increased in accordance with 24 CFR 266.110(b).

i. For projects subject to Davis-Bacon Act requirements under 24 CFR 266.225, laborers and mechanics employed in the construction of the project have been paid not less than the wages determined by the Secretary of Labor to be prevailing in accordance with 24 CFR 266.225(a).

Article V—Sanctions

Upon a violation of any of the provisions of this Agreement by the HFA, or upon commission of any violation cited in 24 CFR 266.120, or of the administrative requirements established by the Commissioner for the section 542(c) program, the Commissioner or his designee may impose any of the sanctions set forth at 24 CFR 266.125. The HFA shall be afforded an opportunity for an informal hearing pursuant to 24 CFR 266.125(d) on any sanction imposed. Any sanction involving a suspension or withdrawal of the HFA's participation in the section 542(c) program will not affect any mortgage insurance endorsement in effect on the date of the suspension or withdrawal action.

Article VI—Definitions

As used in this Agreement the term:

a. *Addendum* means that document attached to the Risk-Sharing Agreement which may be unilaterally modified by the Commissioner without the need for the consent of the HFA.

b. *Allocation* means the portion of an HFA's set-aside, including the minimum number of units made available pursuant to 266.10(d), made available to an HFA under section 542(c) which allocation may be increased or decreased from time to time in accordance with the Commissioner's administrative instructions.

c. *Amendment* means a modification of the terms and conditions of the Risk-Sharing Agreement requiring the consent of both the Commissioner and the HFA or a modification by HUD to 24 CFR part 266.

d. *Contract of Insurance* means the agreement evidenced by the endorsement of the Commissioner upon the credit instrument given in connection with an insured mortgage, incorporating by reference the regulations in 24 CFR part 266 and the applicable provisions of section 542(c).

e. *Mortgage* includes such single first lien upon the real estate as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the real estate is situated, together with the credit instruments, if any, secured thereby.

f. *Mortgagee* refers to the original lender under a mortgage and its successors approved by the Commissioner.

g. *Project* includes the mortgaged property and all its other assets of whatsoever nature or wheresoever situated, used in or owned by the business conducted on said mortgaged property, which business is providing housing and other activities as are incidental thereto.

h. *Reservation* means the number of units from an HFA's allocation committed upon issuance of a Firm Approval Letter, or as may be adjusted upon endorsement, for a specific project to be insured under section 542(c).

i. *Set-aside* includes the total number of units established by formula for use by an HFA under section 542(c) (and related insuring authority and credit subsidy), excluding any minimum number of units allocated pursuant to 24 CFR § 266.10(d). The initial set-aside may be increased or decreased from time to time by the Commissioner in accordance with the Commissioner's administrative instructions.

Article VII—Amendments/ Modifications

A. This Agreement cannot be modified or amended without the consent of both parties hereto, except for changes made by the Commissioner to items covered by Article VIII, and amendments or modifications that may be made by HUD as set forth in the attached Addendum to the Risk-Sharing Agreement that: (1) Specify the number

[1] Pursuant to 24 CFR 266.415(b), this certification is made at final closing only.

of units, insuring authority and credit subsidy allocated or set-aside to the HFA, and (2) other changes that conform to statutory or regulatory amendments. Such regulatory amendments will not adversely affect the interest of a lender for any project for which the Commissioner has issued a firm approval letter pursuant to 24 CFR 266.300(c).

B. The HFA hereby agrees that its written consent to an Addendum executed by the Commissioner which modifies this Agreement to list: (1) Changes in its principal staff or individuals with authority to sign loan documents; (2) changes to existing HFA underwriting standards and procedures, loan terms and conditions; and/or (3) a change in the financial institution in which the dedicated account is deposited, will not be necessary if such change(s) was requested by the HFA in writing.

Article VIII—Incorporation of Regulations

The regulations set forth in 24 CFR part 266 are incorporated into this agreement by reference and made a part hereof. The HFA shall, at all times, comply with the applicable regulations and with all other applicable Federal laws, rules and regulations.

Article IX—HFA Warranty

The HFA warrants that it has not, and will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement and the requirements of the regulations set forth at 24 CFR part 266 and any administrative requirements established by the Commissioner are paramount and controlling as to the rights and obligations set forth herein and supersede any other requirements in conflict therewith.

Article X—Disclaimer

The Article Headings noted in this Risk-Sharing Agreement are not intended to be a limitation on what materials are included within each Article.

This instrument shall bind, and the benefits shall inure to, the HFA, its successors, and to the Commissioner and his/her successors and assigns so long as a Contract of Insurance continues in effect.

The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions hereof.

Department of Housing and Urban Development

_____

Authorized Agent

Date _____

Housing Finance Agency

_____

Authorized Agent

Date _____

Warning: U.S. Criminal Code, section 1001, title 18 U.S.C., "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully * * * 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 five years, or both."

Addendum to Risk-Sharing Agreement

No. _____

This addendum modifies the Risk-Sharing Agreement (agreement), and/or any addendum thereto, by and between

_____

(HFA) whose address is

_____

and the Assistant Secretary for Housing-Federal Housing Commissioner (the Commissioner) dated the_____day of_____, 199____.

The purpose of this addendum is to [check one]:

A. ( ) Reserve units, insuring authority and credit subsidy, and to establish the risk-share percentage between the HFA and Commissioner for Project Number_____located at_____.

Units reserved_____

Insuring authority reserved_____

Credit subsidy reserved_____

Risk-share apportionment HUD_____/HFA_____

B. ( ) Modify the present set-aside of units, insuring authority or credit subsidy.

The number of units presently set-aside is_____, which is ( ) increased by_____units, ( ) decreased by_____units to a total of_____units. The insuring authority is ( ) increased by $_____ ( ) decreased by $_____to a total of $_____, and the credit subsidy is ( ) increased by $_____ ( ) decreased by $_____to a total of $_____.

C. ( ) Modify the present allocation of units, insuring authority or credit subsidy.

The number of units available from the HFA approved allocation is_____which is ( ) increased by _____ units, ( ) decreased by _____ units to a total of _____ units. The insuring authority is ( ) increased by $_____ ( ) decreased by $_____, to a total of $_____, and the credit subsidy is ( ) increased by $_____( ) decreased by $_____to a total of $_____.

D. ( ) New principal staff or individuals with authority to sign loan documents or commit the HFA under the Section 542(c) program are:

E. ( ) New provisions, or changes to existing, HFA underwriting standards and procedures, loan terms and conditions are incorporated by reference into the Risk-Sharing Agreement and are as follows:

F. ( ) The name and address of the new financial institution in which dedicated account is deposited is:

_____

(Name of Financial Institution)

_____

(Address)

G. [Reserved for other purposes.]

Department of Housing and Urban Development

_____

Authorized Agent

Date _____

Attachment "D" Instructions for Completing Request To Transfer Funds by Fedwire

Item 1—Receiver-DFI#: The Treasury Department's ABA number for deposit messages is 021030004. This number should be entered by the sending bank for all deposit messages sent to the Treasury.

Item 2—Type-Subtype-CD: The type and subtype code will be provided by the sending bank.

Item 3—Sender-DFI#: This number will be provided by the sending bank.

Item 4—Sending-REF#: The sixteen character reference number is inserted by the sending bank at its option.

Item 5—Amount: The transfer amount must be punctuated with commas and decimal points; use of the "$" is optional. This item will be provided by the depositor.

Item 6—Sender-DFI-Name: This information is automatically inserted by the Federal Reserve Bank.

Item 7—Receiver-DFI-Name: The Treasury Department's name for deposit messages is "TREAS NYC". This name should be entered by the sending bank.

Item 8—Product Code: A product code of "CTR" for customer transfer should be the first data in the Receiver-Text field. Other values may be entered, if appropriate, using the ABA's options. A slash must be entered after the product code.

Item 9—Agency Location Code: This item is of critical importance. It must appear on the funds transfer deposit message in the precise manner as stated to allow for the automated processing and classification of the funds transfer message to the agency location code of the appropriate agency. The agency's unique code must be specified in the funds transfer message in order for the funds to be correctly classified to the respective agency. The ALC identification sequence includes the beneficiary code field tag, BNF=, and identifier code, "/AC", followed by the appropriate ALC number. This component must be in the following format:

BNF=/AC–86090300

The ALC identification sequence can, if necessary, begin on one line and end on the next line; however, the field tag "BNF=" must be one line and cannot contain any spaces.

Item 10—Third Party Information: This contains the appropriate information to identify the reason for the funds transfer. The Originator to Beneficiary information field tag "OBI=" is used to signify the beginning of the free-form third party text. The field tag "OBI=" must be on the same line and cannot contain any spaces. The field tag is placed following the ALC identification sequence and preceded by a space. An example of this dataline is as follows:

BNF=/AC–86090300 OBI=Housing Finance Agency Risk-Sharing Program for MF Project Loans

(1) 021030004
(2)
(3)
(4)
(5) $10,000.00
(6)
(7) TREAS NYC/
(8) CTR/
(9) BNF=/AC–86090300
(10) OBI=
Housing Finance Agency Risk-Sharing Program for MF
Project Loans

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Friday
December 3, 1993

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

25 CFR Part 3500

Real Estate Settlement Procedures Act (Regulation X) Escrow Accounting Procedures; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 3500

[Docket No. R-93-1688; FR-3255-P-01]

RIN 2502-AF77

Real Estate Settlement Procedures Act (Regulation X) Escrow Accounting Procedures

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

ACTION: Proposed rule.

SUMMARY: The Department is issuing this rule in proposed form because, in addition to covering subjects addressed in earlier rulemakings, it addresses several matters that have not had extensive public comment. HUD proposes to establish new aggregate accounting requirements for new escrow accounts—established under mortgages originated on or after the effective date of this rule—and to establish these same requirements no later than after a three-year phase-in period for existing escrow accounts. These requirements substantially revise positions of the Department regarding permissible accounting procedures under Section 10. The proposed regulations detail how lenders and servicers are to handle shortages, surpluses, and deficiencies in escrow accounts. HUD also proposes to require greater disclosure to consumers in the form of annual escrow account statements, particularly where an account existed prior to the effective date of this rule and is not subject to the same requirements for new accounts under this rule until the end of the phase-in period. Because the rule remains proposed, HUD restates its position in the December 9, 1991, proposed rule that it will not seek penalties as provided in section 10(d) of RESPA regarding escrow account statements before the effective date of the final rule.

DATES: Comment due date: February 1, 1994. The Department expects the proposed rule to become effective 180 days after publication of a final rule.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications 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: William Reid, Research Economist, Office of Policy Development and Research, room 8212, phone (202-708-0421), or for legal questions, Grant E. Mitchell, Senior Attorney for RESPA, room 10252, phone (202-708-1552), or Kenneth A. Markison, Assistant General Counsel for Administrative Law, room 10252, phone (202-708-3137), Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. The TDD number is (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for HUD, Washington, DC 20503.

I. Background

This proposed rule would establish a new § 3500.17 in the Department's regulation implementing the Real Estate Settlement Procedures Act of 1974 (RESPA), 24 CFR part 3500, also known as Regulation X. This new section would establish rules under section 10 of RESPA relating to escrow account statements and escrow accounting procedures.

On May 16, 1988, HUD published a proposed rule regarding most aspects of RESPA, which included a request for comments from the public regarding section 10. On December 9, 1991, HUD also published a proposed rule concerning information in escrow account statements required under section 942 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990). On November 2, 1992, HUD published a final RESPA rule, but because HUD's escrow study was not completed, HUD reserved the section of the regulations implementing RESPA's escrow account provisions. This proposed rule addresses the comments received on the earlier May 16, 1988, proposed rule and the December 9, 1991, proposed rule regarding escrow account statements.

Section 10 (12 U.S.C. 2609) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601-2617) (RESPA) limits the amount of money that lenders and servicers (generically referred to as "servicers" in this proposed rule) can collect from borrowers and hold in escrow accounts maintained in connection with federally related residential mortgage loans. Under these limits a servicer may not require a borrower to pay monthly into the escrow account in excess of one-twelfth (one month's payment) of the total amount of the estimated taxes, insurance premiums, and other charges respecting the property that are reasonably anticipated to be paid during the next 12 months, plus the amount necessary to maintain a "cushion" equal to one-sixth (or two months payments) of the total amount of such taxes, insurance premiums, and other charges for the year. (Section 10 also restricts the amounts that a borrower can be required to deposit initially to set up an escrow account to amounts necessary to pay pending charges plus the one-sixth cushion.)

HUD has never issued final rules regarding Section 10 since it was enacted as part of the original RESPA legislation in 1974 (the cushion was increased from one month to two months by amendment in 1976). In the last several years controversy has developed about the limitations of Section 10. A common practice of lenders (which, according to HUD's Escrow Study discussed below, nearly 90% follow) is to collect and account for

each escrowed item and to provide for a one-sixth cushion for each item separately. Under this method—known as single- or individual item analysis—the account is established by the lender, and payments are required from the borrower so that the amounts coming due for each separate item will be sufficient to pay a bill coming due for that item, regardless of whether other monies are available in the account as a whole to pay the bill.

The effect of the single-item method is almost always to collect more money in the escrow account than would be the case if the account were computed on an aggregate basis—considering what is available in the account as a whole. Attorneys General of a number of States have studied the issue and have claimed that single-item analysis has resulted in substantial overescrowing of consumers' money.

Several State Attorneys General have brought legal actions against two major mortgage servicers, charging each with overescrowing based on RESPA limits. The two companies have recently settled with what the Attorneys General state is a $100–150 million refund obligation. The settlement agreements reflect the comments of the Attorneys General regarding Section 10 of RESPA (below), but provide that if HUD puts forth a regulation contrary to the settlement interpretations, the settlements may be reopened and renegotiated.

In February 1980, an informal HUD opinion took the position that in determining whether escrow accounts were maintained in a manner consistent with RESPA's requirements, lenders could use either single-item or aggregate analysis. This position was consistent with the legal position later taken in February 1991 by the Comptroller General, which held that both the single-item and aggregate analysis methods could be permitted under RESPA. The Comptroller General said that HUD should issue regulations to clarify what method or methods were permissible.

On May 16, 1988 (53 FR 17424), HUD published a proposed rule that sought to implement all aspects of RESPA. That proposed rule contained a limited discussion of Section 10 concerning escrow accounts and requested comments from the public, including specific comments on the desirability of HUD requiring an annual statement setting forth information regarding the escrow account (Proposed Rule Preamble, Section IV). Only one comment was received regarding the escrow account provisions, a collective comment from the Attorneys General of four States. These Attorneys General asked that HUD publish a definitive rule regarding escrow accounting procedures. They also requested HUD to clarify the limits in Section 10 by requiring that the servicer compute a trial running balance for each escrow account each year, so that at one time during the year the account reached the one-sixth cushion on an aggregate basis. Additionally, the Attorneys General commented that where mortgage loan documents do not require an escrow account, or they specify a lesser cushion, the documents should prevail.

In 1990, at congressional hearings on the subject of escrow accounting, HUD's then-General Counsel announced that HUD would undertake a study of escrow accounting practices. HUD divided the study into two phases. The first was to identify all the factors that affected the balance in the escrow account, including accounting techniques, size of cushion, and the frequency of required payments. The second phase was to determine actual industry practices and the prevalence of overescrowing.

In May 1991, HUD issued its Phase I study entitled "Escrow Management for Single-Family Residential Property Phase 1 Report," which concluded—using models developed to simulate the effect of different factors on escrow balances—that there was wide variation in escrow practices and that several factors outside the servicers' control (such as due dates for bills), as well as factors within servicers' control (such as accounting methods), affected the balance in escrow accounts. In December 1992, HUD issued the Phase II study of escrow practices entitled "Escrow Management for Single-Family Residential Property, Phase 2: Report on Servicer Survey", which was based on a large statistical sample of escrow accounts. The study found that 88 percent of escrow accounts are computed using single-item analysis, 2 percent by aggregate analysis, and 10 percent by some hybrid of these two methods.

The study used a standard that permitted either single-item or aggregate analysis and allowed retention of a one-sixth (or two months) cushion plus an additional month for "pre-accrual". "Pre-accrual" is a practice that some servicers have used where funds needed for disbursement from an escrow account are required to be on deposit in the account at a date prior to the disbursement date, and that has resulted in monies in escrow accounts in addition to the one-sixth cushion of a month's payments or more. Using a standard allowing a month of pre-accrual along with the one-sixth cushion, the study concluded that 90% of accounts were within the limits and 10% were overescrowed. Using a standard not permitting pre-accrual but still permitting a one-sixth cushion under either aggregate or single-item analysis, the data indicated that 82% of escrow accounts were within the limits and 18% were over-escrowed. Finally, if there had been a standard requiring aggregate accounting or that accounts reach the one-sixth cushion on an aggregate basis, the data would have shown that approximately 33 percent of escrow accounts exceeded the limits.

Using the standard of a one-sixth cushion, permitting single-item analysis, plus a month of pre-accrual, the Phase II report found that a total of approximately $700 million of borrowers' funds were overescrowed under residential mortgages. Assuming a 5 percent interest rate, this amount would result in approximately $35 million in foregone interest that borrowers could have earned on these funds if they had the use of them. Thirty-five million dollars in foregone interest represents approximately $10–11 interest foregone for each over-escrowed account. Using a one-sixth cushion standard with aggregate analysis and without additional pre-accrual, the hypothetical amount of overescrowed funds would be $1.6 billion or $80 million in foregone interest. This results in approximately $25 of foregone interest for every over-escrowed account, and, of course, the consumer is also deprived of the use of the funds. These survey estimates applied to an estimated 31 million mortgages with escrow accounts.

When the final rule for RESPA was ready for publication, neither the Phase II study nor the escrow provisions were finished. Accordingly, the November 2, 1992 (57 FR 49600), RESPA Final Rule did not include escrow provisions, but reserved a section for future rules regarding escrow accounting procedures and escrow account statement requirements added by section 942 of the National Affordable Housing Act (12 U.S.C. 2605). At the same time, the November 2, 1992, rule withdrew all formal and informal opinions issued before the rule, including the 1980 opinion concerning escrow accounting.

On January 21, 1993, HUD published an Interpretive Rule that restated the earlier HUD position that either single-item or aggregate analysis was permissible under RESPA. The rule included an appendix illustrating computations which, unlike the Phase II study, did not include a "pre-accrual" period. This interpretive rule will be

superseded by the final rule resulting from this rulemaking.

Based on the HUD escrow study, it is clear that too many accounts are overescrowed and too much of consumers' funds is being held by mortgage servicers. Therefore, it is the view of the Secretary that stricter adherence to RESPA's escrow account limits must be achieved. To that end, the Secretary has concluded that use of aggregate accounting by servicers in analyzing escrow accounts is the best and simplest means to stop overescrowing of consumers' accounts and to implement fully and fairly the RESPA Section 10's limits on accounts. This rule, therefore, would require that servicers analyze all new escrow accounts under mortgages originated on or after the effective date of this rule on an aggregate basis and that no later than three years after the effective date of this rule, servicers use aggregate accounting for all accounts.

In this proposed rule existing escrow accounts are identified as "pre-rule" accounts; escrow accounts established on or after the effective date of the rule are called "post-rule" accounts. Under the rule, during a three-year phase-in period, servicers may continue to use single-item or aggregate analysis or acceptable hybrids of the two for pre-rule accounts. During the phase-in period, the rule would impose strict requirements for servicers to determine the one-sixth cushion, regardless of which accounting method is employed; where single-item accounting is employed, the cushions for each single-item may not exceed the one-sixth limit. Also, for pre-rule accounts, servicers may continue to employ pre-accrual requirements as long as such requirements do not result in accounts exceeding the two-month limit. There is no authority under RESPA for servicers to require "pre-accrual" of funds to exceed the one-sixth limits under Section 10. The practice of "pre-accrual" and use of that term is prohibited for post rule accounts; the term is confusing to consumers.

For post-rule accounts, the proposed rule would require servicers to use aggregate analysis for each account, so that the actual account balance will be less than or equal to the allowable cushion (of one-sixth of annual estimated disbursements from the account) at least once during the computation year. There are several important reasons for allowing a phase-in period prior to implementing these new requirements. First, the mortgage servicing industry currently widely uses the single-item accounting method for escrow accounts. Second, this proposed requirement represents a significant change in applying the escrow limits from past informal HUD policy. Third, servicing rights to existing mortgages have been bought and sold in reliance on past statements by HUD and the General Accounting Office (GAO) permitting single-item analysis. Immediate application of this new requirement to existing accounts would have a substantial negative effect on the value of mortgage servicing.

Moreover, the Secretary recognizes the need for achieving uniformity in the mortgage servicing industry and in the software and forms industry which services it. He also recognizes the inherent unworkability of having two classes of accounts, those established before the rule and those after it, which could have created a dual system for as long as thirty years. Therefore, the Secretary believes that the cost and inconvenience to the mortgage servicing industry would be offset by the advantage of uniform standards throughout the industry and the reduction of litigation regarding controversial elements of servicers' procedures. The Secretary recognizes the effect on servicing of the current rapid rate of refinancings and other discharges of mortgage debt. He believes that this turnover, coupled with a three year phase-in period for the rule, would allow the servicing market to adjust its pricing rapidly to comport to the new rulemaking without undue loss.

During the phase-in period the proposed rule would require an expanded disclosure to borrowers concerning amounts held in their escrow accounts if any method other than aggregate accounting is employed. This is because accounting methods other than aggregate accounting are more difficult to understand. Also, through greater disclosure, accounts are more likely to conform to the limits required by Section 10 and these regulations. Moreover, the Department anticipates that in the interest of consistency, many servicers would move as quickly as possible to implement the new requirements under this rule for all accounts. When mortgage servicing is sold during the phase-in period, the new requirements would not apply as long as the original mortgage is in force. When a mortgage is refinanced and a new obligation replaces an existing obligation, the new escrow accounting requirements would apply.

This proposed rule, therefore, would provide: Limits under Section 10 on deposits in escrow accounts; permissible accounting procedures in applying these limitations; requirements for initial and annual escrow account statements; and uniform definitions regarding Section 10. The rule makes clear that both single-item analysis and aggregate analysis are acceptable accounting procedures for carrying out Section 10's requirements for existing escrow accounts only until the end of a three-year phase-in period for aggregate accounting, and that aggregate accounting is required for new accounts under new mortgages on or after the effective date of the rule.

The rule would restrict servicers from retaining in an escrow account a "cushion" of more than one-sixth of a year's projected disbursements for new accounts and, under single-item analysis for existing accounts, one-sixth of the year's projected disbursements for each item. It also would set out rules for shortages, surpluses, and deficiencies (§ 3500.17(f)).

This proposed rule would provide that the limits established are the maximums that may be collected by the servicer under the mortgage loan documents or if the documents are silent; the mortgage loan documents prevail if lower amounts are specified. The rule would not provide that an escrow account is prohibited if the mortgage loan documents are silent. Such a prohibition would exceed HUD's authority under RESPA.

Review of Public Comments

Section 942 of NAHA amended Section 10 of RESPA to require that an initial escrow account statement be delivered to borrowers at the settlement of the loan and that an annual statement be provided to borrowers showing the previous year's activities in the escrow account. On December 9, 1991, HUD published a proposed rule (56 FR 64446) and requested comments on the codification of these requirements. Fifty-one comments were received as discussed here.

Nine comments requested a delay in implementation of a final rule because of a need to retrain staff, use up previous forms, change software, and address other administrative burdens. The Department proposes to establish a 180-day period after the publication of a final rule for full implementation of most of the rule provisions (the exception is a three year phase-in of the aggregate accounting requirements).

Eight comments raised questions regarding voluntarily established escrow accounts. The rule has been clarified to indicate that accounts under the totally independent control of borrowers would not be covered. However, accounts under the control of servicers are covered, including accounts established

voluntarily or accounts in which some items, such as credit life or mortgage life insurance, are contributed voluntarily.

Sixteen comments were received regarding the time of delivery of the initial escrow account statement. Many questioned the requirement that the document be delivered at settlement, and were concerned that failure to do so might affect the marketability of the loan. Section 17 of RESPA (Contract and Liens; Validity) (12 U.S.C. 2615) provides that RESPA will not affect the validity of any lien or contract. After review of the statute and its legislative history, HUD has concluded that the intent of the statute was to require the delivery of the statement at settlement, and the proposed rule so provides. Other commenters were concerned that the settlement agent was given an additional burden for the information provided in the initial escrow account statement. However, the legislative language assigns responsibility to the "servicer." In any event, the information provided in the initial statement is clearly delineated as "estimates," and is subject to change during the escrow account computation year. If an escrow account is not a requirement for closing the loan, or is not established voluntarily at settlement, but is established at some point after settlement, then the servicer has 45 days after the account is established to submit the initial escrow account statement.

Twenty-six comments were received on the format of the initial escrow account statement. Some of these comments are adopted in this proposed rule, including clarifying that the format is a required base document, but that additional material may be added and certain modifications (as specified in the related instructions) may be made, as long as the intent of the disclosure is not impaired.

Five commenters were concerned that a signed acknowledgment is required when delivery of an escrow account statement is made in person. HUD's view continues to be that this provision is not onerous and is likely to be accomplished in face-to-face applications or settlements, as needed, or by mail, in the same way that other exchanges of documents or settlement materials are handled in various jurisdictions. In the case of multiple borrowers, the borrowers should designate one borrower for delivery of documents.

Several commenters questioned HUD's need to specify the type of information and the manner of retention needed for recordkeeping purposes. In this proposed rule, HUD has deleted these specific details. However, HUD reiterates in this proposed rule that servicers must maintain a recordkeeping system to reflect compliance with the Act, and that the failure to maintain such records may be considered failure to comply with the Act and these regulations. HUD proposes retaining five year record retention requirements, from the date of the servicer's last act of servicing, in order to enforce this provision.

Several of the twenty-one comments received on the annual escrow account statement requirements indicated that servicers believed they were providing all of the information required, at least at some point during a year. HUD has concluded that the statute requires a yearly statement to be provided, so that at one point during the year borrowers will have occasion to focus on their escrow accounts. A one-time statement is required each year, even if the servicer provides cumulative data regarding the escrow account during the year. In this proposed rule, HUD sets forth a format for an annual statement that meets the statutory requirements and that will help borrowers to understand more easily the transactions in their escrow accounts. Within the format are different pre-rule and post-rule annual escrow account statement disclosure requirements.

This rule proposes including "short year" provisions so that servicers may restructure their computation years, if desired. The statute does not mandate calendar year statements, but because of the requirements of the Internal Revenue Service (IRS) for some of the same information, the Department believes that many servicers would want to make this change. The format language may be combined with other documents, such as the Substitute 1098 submitted to the IRS. One commenter asked if late charges could be included. This is at the servicer's option; neither the statute nor the rule address this matter.

One commenter noted that fees could not be charged for escrow statements and wanted to know if fees could be charged for escrow account management services. There is no statutory basis to allow or disallow servicers charging operating fees for the management of escrow accounts.

Nineteen commenters were concerned with the requirement that mandated a servicer to make timely payments even though there are insufficient monies in the escrow account. This provision was based on section 6(g) of RESPA (Servicing of Mortgage Loans and Administration of Escrow Accounts). However, the proposed rule makes clear that this requirement only applies where the borrower has made the payments in a timely manner to the escrow account.

Miscellaneous Matters

The proposed rule would cover all escrow accounts for all federally related mortgage loans, whether opened before or after the effective date of RESPA (December 22, 1974). The rule proposes different requirements for accounts established under mortgages originated prior to the effective date of this rule than for accounts that are established under mortgages originated after the effective date. Because escrow account practices involve a substantial number of definitions not otherwise relevant under other parts of RESPA, a separate definition section for terms specific to escrow accounts is included in this rule.

The Department recognizes that currently outstanding instructions for escrow accounts for FHA-insured mortgages (24 CFR 203.550) are not entirely consonant with this proposed rule. In the event that a final rule is adopted that also differs from these FHA requirements, the RESPA rule will govern, and the Department will concurrently amend its FHA-insured mortgage instructions and forms.

Finally, the Department requests comments regarding any other matters it might cover in this escrow account rule, for example, whether the Department should take a position regarding escrowing in those States that give "super-liens" to condominium associations. Also, the current proposed rule does not discuss accounting methodology in collecting for escrow account items that are paid less frequently than yearly, such as certain flood insurance premiums. The Department welcomes comments regarding treatment of such escrow account items, as well as any other comments on this proposed rule.

Mortgage Servicing Transfer Provisions (Section 6 of RESPA)

On April 26, 1991, the Department issued an Interim Rule for effect implementing the provisions of Section 6 of RESPA. This interim rule was codified in the 1992 Code of Federal Regulations (CFR) at 24 CFR 3500.21, but does not appear in the 1993 codification. Nonetheless, this Interim Rule remains in effect and must be followed by all covered persons. The Department anticipates subsequent rulemaking to change the status of the mortgage servicing transfer provisions from Interim to Final, but reiterates that the current Interim Rule continues in effect.

Other Matters

Public Reporting Burden

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The following provisions of the proposed rule have been determined by the Department to contain collection of information requirements:

Reference in rule	Number of respondents	Number of responses per respondent	Total annual responses (million)	Hours per response	Total hours
Initial statement	2,000	1,950	3.9	.0875	341,250
Annual statement	2,000	17,825	36.65	.120833	4,307,696
Total annual burden					4,648,946

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20 of the HUD regulations, the policies and procedures contained in this proposed rule do not affect a physical structure or property and relate only to statutorily required accounting and reporting procedures, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12866

This proposed rule constitutes a "significant regulatory action" as that term is defined in section 3(f) of Executive Order 12866 on Regulatory Planning and Review issued by the President on September 30, 1993. A preliminary review of the proposed rule indicated that it might, as defined in that Order, have an annual effect on the economy of $100 million or more. Accordingly, a preliminary regulatory impact analysis has been prepared and is available for review and inspection in room 10276, Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The requirements of the proposed rule are directed toward the accounting procedures used in the mortgage servicing industry and the disclosure to consumers of related information.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the Order. The requirements of the proposed rule are directed toward the accounting procedures used in the mortgage servicing industry and the disclosure to consumers of related information.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have the potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this proposed rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This proposed rule was listed as sequence 1522 in the Department's Semiannual Agenda of Regulations published on October 25, 1993, (58 FR 56402, 56426) under Executive Order 12866 and the Regulatory Flexibility Act, and was requested by and submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

List of Subjects in 24 CFR Part 3500

Consumer protection, Housing, Mortgages, Real property acquisition, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 24 CFR part 3500 is proposed to be amended as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

1. The authority citation for part 3500 would continue to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*

2. A new § 3500.17 would be added, to read as follows:

§ 3500.17 Escrow accounts.

(a) *General.* The requirements in this section are stated in terms of escrow accounts where payments are made and accounts computed on a monthly basis. If escrow account payments are made bi-weekly or for other calendar periods, the requirements in this section should be applied appropriately for such other periods, and escrow account statements and analysis modified accordingly.

(b) *Definitions.* As used in this section:

Acceptable accounting method means an accounting method used by a servicer to conduct an escrow analysis for an escrow account and which is permitted under § 3500.17(c) of this regulation.[1]

Aggregate (or) composite analysis, hereafter called *aggregate analysis,* is an accounting method used in making an escrow account analysis to compute required balances for and payments to an escrow account in which the sufficiency of funds for such balances and payments is determined by analyzing the account as a whole. For

[1] Until the conversion date for pre-rule accounts, both single-item (individual-item) analysis and aggregate analysis methods are acceptable accounting methods, as are accounting methods that combine characteristics of both the foregoing methods (sometimes termed "hybrid accounting methods"), as long as use of any such method does not result in payments or cushions in excess of those that result from escrow account analysis using the single-item analysis method. For post-rule accounts, aggregate analysis is the only acceptable accounting method to conduct escrow account analysis to ensure compliance with the limits imposed by this regulation.

purposes of this section, permissible calculations under this method are set forth in Appendix F of this part.

Annual Escrow Account Statement means a statement containing all of the information set forth in paragraph (i) of this section, and that must be submitted to the borrower not more than 30 calendar days after the conclusion of the annual escrow account analysis required by this section.

Composite analysis means the same as "aggregate analysis".

Conversion date means the date three years from the effective date of this section (i.e., [*insert date three years after effective date as published in the* **Federal Register**]), by which date all servicers are required to use aggregate analysis in conducting escrow account analyses for escrow accounts in accordance with this section.

Cushion or *reserve* (hereafter cushion) means funds allowed to be required by a servicer under paragraph (c) of this section to be paid by a borrower into an escrow account to cover unanticipated disbursements or to cover disbursements made before the borrower's payments are available in the account.

Date of establishment of an escrow account means the date the servicer establishes the escrow account.

Deficiency is the amount in excess of the balance of an escrow account that a servicer actually advances from its own funds to pay a disbursement from the account on the date such disbursement is due.

Delivery means the placing of a document in the United States mail, first-class postage paid, addressed to the last known address of the recipient. Hand delivery also constitutes delivery.

Disbursement date means the date on which the servicer actually pays each escrow item or items from the escrow account. A disbursement date must occur on or before either the last date on which the item can be paid without penalty or the last date on which the item can be paid without losing an available discount.

Escrow account means any account that is established by or under the control of a servicer on behalf of a borrower for the purpose of making payments of taxes, insurance premiums, or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this described purpose, although it may be called a "trust account", "reserve account", "impound account", or other term in different localities. An "escrow account" includes any arrangement where a portion of borrower's payments are added to principal and subsequently deducted from principal when charges for taxes, insurance premiums, or other charges are paid by the servicer. For purposes of this section, the term does not include an escrow account used to pay mortgage related charges when the account is under the totally independent control of the borrower rather than the servicer.

Escrow account analysis means the practice where a servicer conducts a trial running balance for an escrow account to:

(1) Determine the amount of required balances for the account and the cushion, if any;

(2) Compute the required monthly payment into the account for the succeeding escrow account computation year and required deposits at the establishment of the account, where applicable; and

(3) Prepare initial and annual escrow account statements.

Escrow account computation year is a 12-month period established by the servicer beginning with an initial payment date. The term includes each 12-month period thereafter, unless a change that starts a new account computation year occurs as set forth in paragraph (i) of this section.

Escrow account item or *separate item* means any separate expenditure category, such as taxes or insurance, for which funds are collected in the escrow account for disbursement.

Federally related mortgage loan has the meaning set forth in § 3500.2.

Individual-item analysis means the same as "single-item analysis".

Initial escrow account statement means a statement concerning an escrow account that is provided to the borrower in accordance with paragraph (g) of this section and that is in substantially the format set forth in paragraph (h) of this section.

Installment payment means one of two or more payments due on an annual disbursement from an escrow account; *e.g.*, when a jurisdiction requires quarterly or semiannual installment payments of taxes.

Mortgage loan means a federally related mortgage loan as that term is defined in § 3500.2.

Payment date means the date each month when the monthly payment to an escrow account is due to the servicer from the borrower. *Initial payment date* means the date the first payment to an escrow account is due from a borrower.

Phase-in period means the period beginning on the effective date of this section and ending on the conversion date, i.e., [*insert date three years after effective date as published in the* **Federal Register**], by which date all servicers are required to use the same aggregate accounting method in conducting escrow account analyses.

Post-rule account means an escrow account established under a mortgage loan whose settlement date is on or after the effective date of this section.

Pre-accrual is a practice employed by some servicers under which funds needed for disbursement from an escrow account are required to be on deposit in the account at a date prior to the disbursement date. Pre-accrual is subject to the limitations of paragraph (c) of this section.

Pre-rule account is an escrow account established under a mortgage loan when the settlement date is before the effective date of this rule.

Reserve means the same as "cushion".

Separate item means the same as "escrow account item".

Servicer means the person responsible for servicing a loan. A lender is a servicer if the lender performs servicing functions.

Servicing means receiving any scheduled periodic payments from a borrower under a mortgage loan, including payments of principal and interest and payments to an escrow account, and making disbursements of principal and interest and other amounts received from the borrower that are paid to the escrow account, including such items as taxes and insurance. The disbursements may be required pursuant to the terms of the loan or voluntarily agreed to be paid by the borrower.

Settlement has the same meaning set forth in § 3500.2.

Shortage means an amount, determined at the time of escrow analysis, by which an escrow account contains less than the target balance for the account.

Single-item analysis means an accounting method for conducting escrow account analysis where required escrow balances and payments are computed considering each escrow item separately. Permissible calculations for pre-rule accounts under this method are set forth in Appendix F of this part.

Submission (of an escrow account statement) means the delivery of the statement by the servicer to the borrower.

Surplus means an amount, determined at the time of escrow analysis, by which an escrow account exceeds the target balance for the account.

System of recordkeeping means that method of keeping information that is employed by the servicer that reflects the facts relating to that servicer's handling of the borrower's escrow account, including, but not limited to, the payment of amounts from the escrow account and the submission of initial and annual escrow account statements to the borrowers.

Target balance means the estimated balance in an escrow account that is just sufficient to pay necessary disbursements from the escrow account plus the amount of any chosen cushion permitted under Section 10 of RESPA and this section.

Trial running balance means a projection of payments and disbursements from an escrow account for its computation year, utilizing an acceptable accounting method. All of the following items (1)–(4) of this definition will be used to determine the required monthly payment into the account for the succeeding escrow account computation year and required deposits at the establishment of the account, when applicable:

(1) The initial or current balance;

(2) The estimated annual total amount of disbursements from the account;

(3) The target balances for each month; and

(4) The cushion, if any, permitted under Section 10 of RESPA and this section.

(c) *Limits on payments to escrow accounts; acceptable accounting methods to determine limits.* (1) A lender, in connection with a federally related mortgage loan, may not require the borrower or prospective borrower:

(i) To deposit in any escrow account that may be established in connection with such loan for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property, in connection with the settlement, an aggregate sum (for such purpose) in excess of a sum that will be sufficient to pay such taxes, insurance premiums, and other charges attributable to the period beginning on the last date on which each such charge would have been paid under the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, and ending on the due date of its first full installment payment under the mortgage, plus one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing 12-month period; or

(ii) To deposit in any such escrow account in any month beginning with the first full installment payment under the mortgage a sum (for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property) in excess of the sum of:

(A) One-twelfth of the total amount of the estimated taxes, insurance premiums, and other charges that are reasonably anticipated to be paid on dates during the ensuing 12 months, which dates are in accordance with the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, *plus*

(B) Such amount as is necessary to maintain an additional balance in the escrow account not to exceed one-sixth of the estimated total amount of these taxes, insurance premiums, and other charges to be paid on dates, as provided above, during the ensuing 12-month period. However, in the event the lender determines there will be or is a deficiency, the lender shall not be prohibited from requiring additional monthly deposits in such escrow accounts to avoid or eliminate the deficiency.

(2) The following prescribes acceptable accounting methods that may be used by servicers to conduct an escrow account analysis under an acceptable accounting method, as specified in paragraph (d) of this section, to determine, based on estimates of disbursements to be made from the account, the amount of the cushion and required balances in the account to assure that there are sufficient funds to pay charges with respect to the property; to calculate the amounts of payments to be required from the borrower; to assure that the cushion and payments are not in excess of the limits imposed by this section in accordance with Section 10; and to prepare initial and annual escrow account statements for borrowers.

(i) *Pre-rule accounts.* During the phase-in period, for escrow accounts in existence before the effective date of this section, both single-item analysis and aggregate-analysis are acceptable accounting methods that may be used by servicers to conduct an escrow account analysis. For existing escrow accounts, "hybrid accounting methods", combining characteristics of both of these methods, are also acceptable accounting methods during the phase-in period as long as the amounts of borrower payments and the amounts retained in such accounts are not in excess of the amounts that would result from use of single-item analysis method in accordance with paragraph (d) of this section. As of the conversion date, all existing accounts shall follow the requirements for post-rule accounts in paragraph (c)(2)(ii) of this section.

(ii) *Post-rule accounts.* For escrow accounts established on or after the effective date of this section ([insert effective date as calculated by the **Federal Register**]), aggregate accounting is the only accounting method that may be used by servicers to conduct an escrow account analysis in accordance with the requirements of paragraph (d) of this section.

(iii) *Refinancing of existing loans; transfer of servicing.* The transfer of servicing of a pre-rule escrow account does not affect the status of the account for purposes of the coverage of this section. However, an escrow account established in connection with the refinancing of a mortgage loan that involves replacement of an existing obligation with a new obligation is a post-rule account.

(3) Prior to the establishment of an escrow account under a mortgage loan, the servicer shall conduct an escrow account analysis for the purpose of determining the amount the borrower will be required to deposit to establish an escrow account to pay escrow account items respecting the mortgaged property. The amount required to be deposited may include no more than:

(i) The aggregate sum necessary to pay charges for escrow account items due from the account from the date on which each such charge would have been paid under normal lending practice and local custom until the date of the first full payment under the mortgage that includes the first payment to the escrow account, *plus*

(ii) An amount necessary to establish a cushion. The cushion shall be no greater than one-sixth of the estimated total amount of disbursements from the account for escrow items during the course of the year following the date of establishment of the escrow account, using an acceptable accounting method in accordance with this section.

(4) The servicer shall conduct an escrow account analysis to determine the monthly payment to the escrow account that the servicer may require in any month following settlement, beginning with the initial payment. In accordance with such analysis, the servicer may require the borrower to pay to the escrow account an amount not in excess of one-twelfth (1/12) of the estimated total disbursements from the account for escrow account items that are reasonably anticipated to be paid during the escrow account computation year. The servicer may also require the borrower to pay such amount as is necessary to maintain a cushion in the

account not in excess of one-sixth of such estimated total annual disbursements from the account for the escrow computation year.

(5) *Cushion.* Under the aggregate analysis method, the cushion may not exceed one-sixth of the estimated disbursements from the account computed on an aggregate basis. Where single-item accounting methods or hybridized methods are permitted under paragraph (c)(2) of this section, the cushion may not exceed the total of one-sixth of the estimated annual disbursements for each such item that would be computed if single-item accounting were used in accordance with the requirements of paragraph (d) of this section. In using single-item analysis, separate accounts may be established for each escrow item, but such accounts may not be further divided into subaccounts, even if the payee requires installment payments.

(6) *Restrictions on pre-accrual.* For pre-rule accounts, a servicer may not require any pre-accrual that results in the payment, cushion, and account balances of an escrow account in any manner exceeding the limits set forth in paragraph (c)(4) of this section. For post-rule accounts, a servicer may not require pre-accrual, and the term may not be used to describe any portion of the cushion permitted under paragraph (c)(4) of this section.

(7) Under all methods of escrow analysis the servicer estimates the amounts of items to be disbursed. Accordingly, in performing the initial escrow account computation for the first escrow account computation year, and for subsequent analyses for computation years thereafter, when increases or decreases in escrow items are known or should be known, the servicer shall base its estimates for escrow items on the amount of the items plus any known increases for those items. When information on increases or decreases in escrow items is not reasonably available to the servicer, the servicer may base its estimates for the items on the previous year's payment or the previous year's payment modified by the percentage change under the Consumer Price Index (CPI) for the 12-month period most recently available at the time of the escrow analysis.

(8) *Provisions in mortgage documents.* This paragraph sets forth limits on amounts that may be collected by servicers under mortgage loan documents or if the documents are silent. Any mortgage loan document that authorizes accumulation of amounts in escrow accounts in excess of the limits in Section 10 of RESPA violates this Federal law. Neither Section 10 nor this section take a position as to whether an escrow account may be established when the documents are silent. The mortgage loan documents prevail if the documents prescribe limits lower than those prescribed under this section.

(d) *Methods of escrow account analysis.* Paragraph (c) of this section prescribes acceptable accounting methods. The following sets forth the arithmetical steps to arrive at escrow payments from borrowers under each method.

(1) *Aggregate analysis.* (i) When aggregate analysis is used in escrow account analysis, the trial monthly balances computed by the servicer may not exceed the trial monthly balances computed according to the following set of arithmetic operations:

(A) The servicer first projects a trial balance for the account as a whole over the next 12 months (a trial running balance), assuming each estimated disbursement is made in the month it is due on its disbursement date and assuming payments from the borrower equal to one-twelfth of the estimated total annual escrow account disbursements are received each month.

(B) The servicer then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero, and adjusts all subsequent monthly balances accordingly.

(C) The servicer then may add to the monthly balances the permissible cushion, if any, up to one-sixth of the estimated total annual escrow account disbursements from the account. This amount represents up to two months of escrow payments to the servicer (net of any increases or decreases because of prior year shortages or surpluses, respectively).

(ii) Under this method of analysis, the lowest monthly balance for the account must be less than or equal to one-sixth of the estimated total annual escrow account disbursements. The trial monthly balances that the servicer would derive by using these arithmetic operations applied to the particular disbursements and deposits of each account yield the maximum limit for each escrow account under this accounting method. Appendix F to this part illustrates these steps for aggregate analysis permissible under this paragraph.

(2) *Single-item or other non-aggregate analysis method.* (i) If single-item analysis or any hybrid accounting method is used by the servicer in escrow account analysis as permitted under paragraph (c)(2) of this section, the trial monthly balances computed by the servicer may not exceed the trial monthly balances computed according to the following set of arithmetic operations:

(A) The servicer first projects a separate trial balance for each item over the next 12 months (a trial running balance), assuming each estimated disbursement is made in the month it is due on its disbursement date and assuming payments from the borrower equal to one-twelfth of the estimated total annual escrow account disbursements for each item are received each month.

(B) The servicer then examines the monthly trial balance for each item and adds to the first monthly balance for each item an amount just sufficient to bring the lowest monthly trial balance for that item to zero, and then adjusts all subsequent monthly balances accordingly.

(C) The servicer then may add the permissible cushion for each item, if any, up to one-sixth of estimated annual disbursements for that escrow item, to the monthly balance for the item. This amount represents up to two months of escrow payments for each item to the servicer (net of any increases or decreases because of prior year shortages or surpluses, respectively).

(D) The balances for each item should then be examined to make certain that the lowest monthly balance for that item is less than or equal to one-sixth of the estimated total annual escrow account disbursements for that item.

(ii) In performing an escrow account analysis using single-item analysis, servicers may account for each escrow account item separately, but servicers shall not further divide accounts into subaccounts, even if the payee of a disbursement requires installment payments. Appendix F to this part illustrates these steps for single-item analysis permissible under this subsection. The trial monthly balances that the servicer would derive by using these arithmetic operations applied to the particular disbursements and deposits into the account yields the maximum limit for each account, regardless of the accounting method used.

(e) *Transfer of servicing.* In the event of transfer of servicing as set forth in § 3500.21, the new servicer shall inform the borrower of its method of escrow account analysis with the notice of servicing transfer as provided in § 3500.21(e) for any pre-rule account. No change in the borrower's required escrow deposits may be effectuated by the transferee servicer until it has performed an escrow analysis as

provided in paragraph (g) of this section. Shortages, surpluses, and deficiencies determined upon transfer of servicing shall be resolved in accordance with the principles set forth in paragraph (f) of this section. When the transferee servicer continues an escrow account under a mortgage originated prior to the effective date of this section, it shall not be treated as a post-rule account.

(f) *Shortages, surpluses, and deficiencies requirements for escrow analysis.* (1) At least once during each escrow account computation year after the completion of the first escrow account computation year, the servicer shall perform an escrow analysis.

(i) If any analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower, unless the borrower gives timely notice to the servicer, by the date set forth in the escrow statement, that the borrower wants the surplus credited to the escrow account and the borrower's periodic payments are lowered accordingly.

(ii) If any analysis discloses a shortage in the escrow account and if the shortage is less than one month's required escrow account payment, then the servicer may require that the borrower pay into the account the amount of the shortage within 30 days or allow the borrower to repay the shortage in equal payments over a period not to exceed 12 months. If the shortage is in excess of one month's required escrow account payment, the servicer shall allow the borrower to repay the shortage in equal payments over a period of not less than 12 months.

(2) Whenever the servicer determines that there is a deficiency in the escrow account, the servicer may require additional monthly deposits to the account to eliminate such deficiency and raise the account to an amount not to exceed the permissible limits under this section. If the deficiency is less than one month's required escrow account payment, then the servicer may require that the borrower pay into the account the amount of the deficiency within 30 days or allow the borrower to repay the deficiency in equal payments over a period of up to 12 months. If the deficiency is in excess of one month's required escrow account payment, the servicer shall allow the borrower to repay the deficiency in equal payments over a period of not less than 12 months.

(g) *Initial Escrow Account Statement.* (1) *Submission at settlement.* Any servicer who has required, or who has at the borrower's request established, an escrow account in connection with a federally related mortgage loan, after calculating such account in accordance with this section, shall submit, either directly or through its agent, to the borrower at settlement an initial escrow account statement that itemizes the estimated taxes, insurance premiums, and other charges that are reasonably anticipated to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges. The statement shall itemize the amount required from the borrower to establish the account as listed on the Form HUD–1. The statement shall include a running trial balance for the account. The statement may be incorporated into the Form HUD–1 as set forth in paragraph (i) of this section, or may be delivered to the borrower as a separate document.

(2) *Time of submission of initial escrow account statement, if not delivered at settlement.* If a servicer establishes an escrow account after settlement and the escrow account is not a requirement or condition for settlement, the initial statement shall be submitted to the borrower within 45 calendar days after the establishment of the escrow account, using the format prescribed in paragraph (h) of this section.

(h) *Format for initial escrow account statement.* (1) The following format shall be used for the initial escrow account statement:

(Servicer's Name, Address, and "800" or toll-free number)

Initial Escrow Account Statement

An escrow account is being established to assure that certain obligations relating to your property, such as taxes, insurance premiums, and other charges, are paid. The servicer may also maintain a cushion (up to one-sixth of the estimated obligations for the property for the year) to protect itself from unforeseen happenings, such as late payments and increased charges. The escrow account may include additional expenditures that you have agreed voluntarily to have collected. Your escrow account may continue as long as your loan is outstanding. This is our initial estimate of activities for your account in the next year; other statements may be provided during the year if circumstances involving your account change.

1. Initial Payment to establish account (from HUD–1) $_____
2. Date first payment due: _____
3. Estimated Charges Due from the Account—

Payee	Date due	Estimated amount
.....	.....	$____
.....	.....	.....
.....	.....	.....
.....	.....	.....
Total estimated annual charges from account ...	.....	$____
Cushion (not to exceed one-sixth of payments) .	.....	$____
Total for Initial Escrow Account Year	.....	$____

4. Total monthly escrow payment $_____

This amount will be included in your monthly mortgage payment.

5. Within 30 days after the end of the escrow account computation year, you will receive an annual statement showing actual receipts and disbursements in your escrow account for the preceding year.

(2) The format in paragraph (h)(1) of this section is a permissible addition to the Form HUD–1 under § 3500.9 of this part. The statement may either be attached as an additional page to the Form HUD–1 or included in the basic text of the Form HUD–1 when computer printouts or other permissible variations under § 3500.9 are used. The Initial Escrow Account Statement may also be delivered separately. The "Date First Payment Due" is the initial payment date. The terms "trust account," "reserve account," "impound account" or other term typically used in the locality to identify such an account may be substituted for "escrow account".

(3) A specific "payee" need not be identified by name if sufficient information is given to identify the use of the funds, *i.e.* county taxes, hazard insurance, etc. If a particular payee, such as a taxing body, receives more than one payment during the escrow account computation year, each payment and date due should be identified (e.g., County Taxes—3/1, 6/1, 9/1, 12/1). If there is more than one taxing body that is a payee, each taxing body should be identified (e.g., "City Taxes", "School Taxes", etc.). "Anticipated date due" means the disbursement date when the obligation is normally paid in the ordinary servicing of mortgage loans in the locality.

(4) These instructions need not appear on the filled-out estimate. The format may be otherwise altered for convenience of spacing, adding additional lines, and conformity with other documents, including making the format a part of another document, as long as all of the text of the format is utilized and clearly identified as the initial escrow account statement.

(i) *Annual Escrow Account Statements.* For every federally related

mortgage loan for which there is an outstanding escrow account, a statement must be submitted to the borrower not less than annually.

(1) *For post-rule accounts*, within 30 days after the conclusion of each computation year, the lender or servicer shall deliver to the borrower an escrow account statement that shall, at a minimum, specify the amount of the borrower's current monthly mortgage payment and the portion of the monthly payment that will go to the escrow account during the next 12 months; the amount of the past year's monthly payment to the escrow account; the total amount paid into the escrow account during the past 12 months (escrow computation year); the total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges; the amount of cushion; and the balance in the escrow account at the end of the period, explaining whether there are any shortages or surpluses in the account, and explaining how the surplus is being repaid by the servicer and how the shortage is to be paid by the borrower. Such accounts shall use the applicable portions of the format set forth in paragraph (i)(3) of this section.

(2) *For pre-rule accounts*, where the servicer does not analyze the account on an aggregate accounting basis, the servicer shall provide within 30 days after the end of the escrow account computation year a clear record of the activity in the escrow account during the past year, showing actual receipts and disbursements for the preceding year. The annual statement must specify the amount of the borrower's current monthly mortgage payment and the portion of the monthly payment that will go to the escrow account during the next 12 months; the amount of the past year's monthly payment; the reason for any increase or decrease in the current year's payment; the total amount paid into the escrow account during the past 12 months (escrow computation year); the total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges; the amount of the cushion, if any; the accounting method employed; and the balance in the escrow account at the end of the period, explaining whether there are any shortages or surpluses in the account, and explaining how the surplus is being repaid by the servicer and how the shortage is to be paid by the borrower. In addition, the servicer shall provide a comparison of the initial trial running balance and the actual payment experience history, and shall identify the difference between projected balances and actual experiences.

(3) The following is the format for the annual escrow account statement:

[Servicer's Name, Address, and 800 or toll-free number]

Annual Escrow Account Statement

Calendar Year 19____or Beginning and Ending Dates

Federal law [1] requires whoever collects your principal, interest, and escrow account payments (the "servicer") to send you this annual statement setting out activities in your escrow account during the past year. The same law limits the amounts that can be held in an escrow account under mortgage loans. The servicer may not require monthly payments into your account in excess of one-twelfth of the anticipated payments from your account for the year plus an additional amount for a "cushion" as explained below.

[If account is computed on aggregate basis, insert payment history here.]

[If account is computed on single-item analysis basis, insert payment history for each item.]

[If account is analyzed on some other basis, or hybrid of single and aggregate analysis, insert payment history for each item.]

Allowable Cushion. Federal law allows the servicer of your loan to maintain a cushion to protect itself from unforeseen happenings, such as late payments and increased charges. Your loan documents also may determine your allowable cushion. Your cushion amount last year was $_____.

[Choose one of the Alternatives below.]

[Alternative 1] [Accounts using aggregate analysis]

At some time during the escrow account computation year, your account is expected to have no more money in it than the cushion amount. If it did not, the difference is explained below.

[If account did not reach cushion amount during the year, explain why.]

[Alternative 2] [Pre-rule accounts not using aggregate analysis]

You account was opened before [insert effective date of section as published in the **Federal Register**], when servicers used a variety of accounting methods. To determine if your account was properly handled, see if each escrow account item shown reached one-sixth of the total of that amount at some time during the year.

As required by Federal regulation, we are phasing out your accounting method and we anticipate using aggregate accounting (a method in which your account is computed as a whole) by _____.

[Statement of accounting analysis used by servicer, cushions for each item, and projection of when cushions were to be reached, with a comparison of initial trial running balance and actual payment history and an annotated explanation of differences.]

Next Year's Payments

Your new monthly mortgage payment for the upcoming year is $_____, of which $_____is principal and interest and $_____is the payment to your escrow account.

[Your escrow payment is [higher/lower] for next year for the following reason(s):]

[Your payment for next year is the same.]

[Actual/estimated] costs for the following items changed:

_____

_____

_____

[There was a [surplus/shortage] of $_____ in your account.]

[We are sending you a separate bill requesting that amount.]

[The shortage exceeded one-month's escrow payment and we have spread out the repayment in the amount of $_____ per month over the next _____ months.

[The surplus will be returned to you by separate check, unless by returning by _____a signed copy of this form you indicate that you want the surplus applied evenly to reduce the monthly payments to your escrow account.]

[Apply surplus to my escrow account.

Signature _____

Dated: _____

Account No. _____

INSTRUCTIONS TO PREPARER: Material in square brackets [ ] should be deleted if unnecessary or the relevant optional material substituted. Either alternative 1 or alternative 2 concerning cushions must be selected. It is anticipated that the "disposition of surplus" provisions of the final section will be printed in such a manner that the borrower can remove and return a signed copy to the servicer.

(4) The annual statement information may be delivered, or combined, with any other statement submitted to the borrower, such as the Substitute 1098, which is provided for Federal income tax purposes, as long as the outline and the text of the format is utilized.

(5) For purposes of changing from one annual escrow account computation year to another escrow account computation year, a servicer may issue a "short year" annual escrow account statement and immediately thereafter establish a new effective date as the beginning of the escrow account computation year. The "short year" statement shall be delivered within 30 days from the effective date of the end of the "short year." The purpose of "short year" statement is to provide a servicer flexibility in adjusting its production schedules or altering its computation years. If servicing is transferred within the annual escrow account computation year, the annual statement requirement shall be satisfied by the transferor servicer submitting

[1] Section 10 of the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) (RESPA).

within 30 days of the effective date of transfer a "short year" statement, using the format set out in this paragraph, through the effective date of the transfer of servicing (as defined in § 3500.21(a)(2)). The effective date of the transfer of servicing shall be used by the transferee servicer for establishing the new escrow account computation year. If a mortgage loan is paid off during the escrow account computation year, a "short year" annual statement shall be submitted to the borrower within 60 days after the servicer's receipt of pay-off funds.

(j) *Notification of Shortage in Escrow Account.* If a lender either requires an escrow account to be established or voluntarily establishes an escrow account at the borrower's request for the purposes of assuring payment of taxes, insurance premiums, or other charges with respect to the mortgaged property, the servicer shall notify the borrower at least once during the escrow account computation year in the event that there is any shortage in the escrow account. This notification may be part of the statement required by paragraph (i) of this section or may be delivered separately to the borrower. Requirements for remedying shortages are set forth in paragraph (f) of this section.

(k) *Timely payments.* If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer shall make payments for disbursements in a timely manner (by the disbursement date) as such payments become due, as long as the borrower is current in its principal, interest, and escrow account payments, even though the escrow account does not contain sufficient funds for such payment. However, nothing in this section shall be construed as requiring servicers to make escrow account payments on accounts that are delinquent for more than one month according to the terms of the mortgage loan documents.

(l) *Recordkeeping.* (1) Each servicer shall maintain a system of recordkeeping reflecting the servicer's handling of each borrower's escrow account, including, but not limited to, the payment of amounts into and from the escrow account and the submission of initial and annual escrow account statements to the borrower.

(2) The servicer responsible for servicing the borrower's escrow account shall maintain the system of recordkeeping for that account for a period of at least five years after the servicer last serviced the escrow account.

(3) A servicer shall provide the Secretary with information contained in the servicer's system of recordkeeping for a specific escrow account, or for a number or class of escrow accounts, within 30 days of the Secretary's written request for the information.

(i) To aid in investigations, the Secretary may also issue an administrative subpoena for the production of documents, and for the testimony of such witnesses as the Secretary deems advisable.

(ii) If the subpoenaed party refuses to obey the Secretary's administrative subpoena, the Secretary is authorized to seek a court order requiring compliance with the subpoena from any United States district court. Failure to obey such an order of the court may be punished as contempt of court.

(4) Borrowers may seek information contained in the servicer's system of recordkeeping by complying with the provisions set forth in 12 U.S.C. 2605(e) and in § 3500.21(d).

(5) After receiving a request (by letter or subpoena) from the Department for information relating to whether a servicer submitted an escrow account statement to the borrower, if the servicer is unable to provide the Department with such information, the Secretary shall deem that lack of information to be evidence of the servicer's failure to submit the statement to the borrower.

(m) *Penalties.* (1) Failure to submit an initial or annual escrow account statement to a borrower shall constitute a violation of the RESPA and the requirements of this section. For each such violation, the Secretary shall assess a civil penalty of $50, except that the total of the assessed penalties shall not exceed $100,000 for any one lender or servicer for violations that occur during any consecutive 12-month period.

(2) Violations described in paragraph (m)(1) of this section shall be determined under a strict liability standard. Violations do not require any proof of intent. If, however, a lender or servicer is shown to have intentionally disregarded the requirements that it submit the escrow account statement to the borrower, then the Secretary shall assess a civil penalty of $100 for each violation with no limit on the total amount of the penalty.

(n) *Civil penalties procedures.* The following procedures shall apply whenever the Department seeks to impose a civil money penalty for violation of 12 U.S.C. 2609(c) (section 10(c) of RESPA):

(1) *Purpose and scope.* This paragraph explains the procedures by which the Secretary may impose penalties under 12 U.S.C. 2609(d). These procedures include administrative hearings, judicial review, and collection of penalties. This paragraph governs penalties imposed under 12 U.S.C. 2609(d) and, where noted, adopts those portions of 24 CFR part 30, subpart E, that apply to all other civil penalty proceedings initiated by the Secretary.

(2) *Authority.* The Secretary has the authority to impose civil penalties under 12 U.S.C. 2609(d) (section 10(d) of RESPA).

(3) *Notice of intent to impose civil money penalties.* Whenever the Secretary intends to impose a civil money penalty for violations of 12 U.S.C. 2609(c) (section 10(c) of RESPA), the responsible program official, or his or her designee, shall serve a written Notice of Intent to Impose Civil Money Penalties (Notice of Intent) upon any servicer on which the Secretary intends to impose the penalty. A copy of the Notice of Intent must be filed with the Chief Docket Clerk, Office of Administrative Law Judges. The Notice of Intent will provide:

(i) A short, plain statement of the facts upon which the Secretary has determined that a civil money penalty should be imposed, including a brief description of the specific violations under 12 U.S.C. 2609(c) with which the servicer is charged and whether such violations are believed to be intentional or nonintentional in nature, or a combination thereof;

(ii) The amount of the civil money penalty that the Secretary intends to impose and whether the limitations in 12 U.S.C. 2609(d)(1), apply;

(iii) The right of the servicer to a hearing on the record to appeal the Secretary's preliminary determination to impose a civil penalty;

(iv) The procedures to appeal the penalty;

(v) The consequences of failure to appeal the penalty; and

(vi) The name, address, and telephone number of the representative of the Department, and the address of the Chief Docket Clerk, Office of Administrative Law Judges, should the servicer decide to appeal the penalty.

(4) *Appeal procedures.* (i) *Answer.* To appeal the imposition of a penalty, a servicer shall, within 20 days after receiving service of the Notice of Intent, file a written Answer with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address provided in the Notice of Intent. The Answer shall include a statement that the servicer admits, denies, or does not have (and is unable to obtain) sufficient information to admit or deny each allegation made in the Notice of Intent.

A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed admitted. Failure to submit an Answer within the required period of time will result in a decision by the Administrative Law Judge based upon the Department's submission of evidence in the Notice of Intent.

(ii) *Submission of evidence.* A servicer that receives the Notice of Intent has a right to present evidence. Evidence must be submitted within 45 calendar days from the date of service of the Notice of Intent, or by such other time as may be established by the Administrative Law Judge (ALJ). The servicer's failure to submit evidence within the required period of time will result in a decision by the Administrative Law Judge based upon the Department's submission of evidence in the Notice of Intent. The servicer may present evidence of the following:

(A) The servicer did submit the required escrow account statement(s) to the borrower(s); or

(B) Even if the servicer did not submit the required statement(s), that the failure was not the result of an intentional disregard of the requirements of the RESPA (for purposes of determining the penalty).

(iii) *Review of the record.* The Administrative Law Judge will review the evidence submitted by the servicer, if any, and that submitted by the Department. The Administrative Law Judge shall make a determination based upon a review of the written record, except that the Administrative Law Judge may order an oral hearing if he or she finds that the determination turns on the credibility or veracity of a witness, or that the matter cannot be resolved by review of the documentary evidence. If the Administrative Law Judge decides that an oral hearing is appropriate, then the procedural rules set forth at 24 CFR part 30, subpart E, shall apply, to the extent that they are not inconsistent with this section.

(iv) *Burden of Proof.* The burden of proof or the burden of going forward with the evidence shall be upon the proponent of an action. The Department's submission of evidence that the servicer's system of recordkeeping lacks information that the servicer submitted the escrow account statement(s) to the borrower(s) shall satisfy the Department's burden. Upon the Department's presentation of evidence of this lack of information in the servicer's system of recordkeeping, the burden of proof shifts from the Secretary to the servicer to provide evidence that it submitted the statement(s) to the borrower.

(v) *Standard of Proof.* The standard of proof shall be the preponderance of the evidence.

(5) *Determination of the Administrative Law Judge.* (i) Following the hearing or the review of the written record, the Administrative Law Judge shall issue a decision that shall contain findings of fact, conclusions of law, and the amount of any penalties imposed. The decision shall include a determination of whether the servicer has failed to submit any required statements and, if so, whether the servicer's failure was the result of an intentional disregard for the law's requirements.

(ii) The Administrative Law Judge shall issue the decision to all parties within 30 days of the submission of the evidence or the post-hearing briefs, whichever is the last to occur.

(iii) The decision of the Administrative Law Judge shall constitute the final decision of the Department and shall be final and binding on the parties.

(6) *Judicial review.* (i) A person against whom the Department has imposed a civil money penalty under this part may obtain a review of the Department's final decision by filing a written petition for a review of the record with the appropriate United States district court.

(ii) The petition must be filed within 20 days after the decision is filed with the Chief Docket Clerk, Office of Administrative Law Judges.

(7) *Collection of penalties.* (i) If any person fails to comply with the Department's final decision imposing a civil money penalty, the Secretary, if the time for judicial review of the decision has expired, may request the Attorney General to bring an action in an appropriate United States district court to obtain a judgment against the person that has failed to comply with the Department's final decision.

(ii) The validity and appropriateness of the Department's final decision imposing the civil penalty shall not be subject to review in the district court.

(iii) The Secretary may obtain such other relief as may be available, including attorney fees and other expenses in connection with the action.

(iv) Interest on and other charges for any unpaid penalty may be assessed in accordance with 31 U.S.C. 3717.

(8) *Offset.* In addition to any other rights as a creditor, the Secretary may seek to collect a civil money penalty through administrative offset.

(9) At any time before the decision of the Administrative Law Judge, the Secretary and the servicer may enter into an administrative settlement. The settlement may include provisions for interest, attorney's fees, and costs related to the proceeding. Such settlement will terminate the appearance before the Administrative Law Judge.

3. Appendix F to part 3500 would be added to read as follows:

Appendix F to Part 3500—Examples Illustrating Escrow Analysis

Example Illustrating Aggregate Analysis

ASSUMPTIONS:

Disbursements:

$360 for school taxes disbursed on September 20

$1,200 for county property taxes:

$500 disbursed on July 25

$700 disbursed on December 10

Cushion: One-sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

STEP 1—INITIAL TRIAL BALANCE

	Aggregate		
	pmt	disb	bal
June	0	0	0
July	130	500	−370
August	130	0	−240
September	130	360	−470
October	130	0	−340
November	130	0	−210
December	130	700	−780
January	130	0	−650
Febuary	130	0	−520
March	130	0	−390
April	130	0	−260
May	130	0	−130
June	130	0	0

STEP 2.—ADJUSTED TRIAL BALANCE

[Increase monthly balances to eliminate negative balances]

	Aggregate		
	pmt	disb	bal
June	0	0	780
July	130	500	410
August	130	0	540
September	130	360	310
October	130	0	440
November	130	0	570
December	130	700	0
January	130	0	130
February	130	0	260
March	130	0	390
April	130	0	520
May	130	0	650
June	130	0	780

STEP 3—TRIAL BALANCE WITH CUSHION

	Aggregate		
	pmt	disb	bal
June	0	0	1040
July	130	500	670
August	130	0	800
September	130	360	570
October	130	0	700
November	130	0	830
December	130	700	260

STEP 3—TRIAL BALANCE WITH CUSHION—Continued

	Aggregate		
	pmt	disb	bal
January	130	0	390
February	130	0	520
March	130	0	650
April	130	0	780
May	130	0	910
July	130	0	1040

Example Illustrating Single-Item Analysis (Existing Accounts)

ASSUMPTIONS:

Disbursements:

$360 for school taxes disbursed on September 20

$1,200 for county property taxes:

$500 disbursed on July 25

$700 disbursed on December 10

Cushion: One-sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

STEP 1—INITIAL TRIAL BALANCE

	Single-Item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
June	0	0	0	0	0	0
July	100	500	−400	30	0	30
August	100	0	−300	30	0	60
September	100	0	−200	30	360	−270
October	100	0	−100	30	0	−240
November	100	0	0	30	0	−210
December	100	700	−600	30	0	−180
January	100	0	−500	30	0	−150
February	100	0	−400	30	0	−120
March	100	0	−300	30	0	−90
April	100	0	−200	30	0	−60
May	100	0	−100	30	0	−30
June	100	0	0	30	0	0

STEP 2—ADJUSTED TRIAL BALANCE

[Increase monthly balances to eliminate negative balances]

	Single-Item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
June	0	0	600	0	0	270
July	100	500	200	30	0	300
August	100	0	300	30	0	330
September	100	0	400	30	360	0
October	100	0	500	30	0	30
November	100	0	600	30	0	60
December	100	700	0	30	0	90
January	100	0	100	30	0	120
February	100	0	200	30	0	150
March	100	0	300	30	0	180
April	100	0	400	30	0	210
May	100	0	500	30	0	240
June	100	0	600	30	0	270

STEP 3—TRIAL BALANCE WITH CUSHION

	Single-Item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
June	0	0	800	0	0	330
July	100	500	400	30	0	360
August	100	0	500	30	0	390
September	100	0	600	30	360	60
October	100	0	700	30	0	90
November	100	0	800	30	0	120
December	100	700	200	30	0	150
January	100	0	300	30	0	180

STEP 3—TRIAL BALANCE WITH CUSHION—Continued

	Single-Item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
February	100	0	400	30	0	210
March	100	0	500	30	0	240
April	100	0	600	30	0	270
May	100	0	700	30	0	300
June	100	0	800	30	0	330

Dated: November 29, 1993.

Nicholas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93–29551 Filed 12–2–93; 8:45 am]

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federal register

Friday
December 3, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Gaming Compact Between the Cheyenne River Sioux Tribe and the State of South Dakota, which was executed on September 27, 1993.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 19, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–29567 Filed 12–2–93; 8:45 am]

BILLING CODE 4310–02–M

federal register

Friday
December 3, 1993

Part V

Department of Education

Intent To Repay to the Washington State Department of Education Funds Recovered as a Result of a Final Audit Determination; Notice

DEPARTMENT OF EDUCATION

Intent To Repay to the Washington State Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Notice is given that, under section 456 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234e (1982), the U.S. Secretary of Education (Secretary) intends to repay to the Washington Department of Public Instruction, the State educational agency (SEA), an amount equal to 75 percent of the principal amount of funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All comments must be received on or before January 3, 1994.

ADDRESSES: Comments concerning the grantback should be addressed to William D. Tyrrell, Sr., U.S. Department of Education, 400 Maryland Avenue SW., Switzer Building, room 3609, Washington, DC 20202–6132.

FOR FURTHER INFORMATION CONTACT: William D. Tyrrell, Sr., U.S. Department of Education, 400 Maryland Avenue SW., room 3609, Switzer Building, Washington, DC 20202–6132, telephone: (202) 205–8825. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

A. Background

This notice is based on the Department's recovery of funds following an audit of Washington's administration of its Part B of the Education of the Handicapped Act [1] (Part B) grant award for fiscal year 1982, conducted by this agency's Office of Inspector General (OIG). (See 20 U.S.C. 1401, 1411–1420 (1982)). Office of Inspector General, Office of Audit, Audit of Selected Aspects of Handicapped Education Programs Under Public Laws 94–142 and 89–313, Administered by the Superintendent of Public Instruction, State of Washington, Audit Control No. 10–30023 (August 8, 1985). Among the objectives of the audit was to determine whether local educational agencies (LEAs) in Washington complied with part B's nonsupplanting requirement. Under that requirement, an LEA receiving part B funds must, in any particular fiscal year, spend as much State and local funds on special education and related services, on either an aggregate or per capita basis, as it did in the prior fiscal year. (See 20 U.S.C. 1414(a)(2)(B)(ii) and (f) (1982) and 34 CFR 300.230 (1982).)

On August 8, 1985, OIG issued a final Audit Report that concluded that 19 LEAs in Washington State, including the Spokane School District (Spokane), had violated Part B's non-supplanting requirement by reducing State and local expenditures on special education during fiscal year 1982. On May 6, 1986, the Assistant Secretary for Special Education and Rehabilitative Services issued a final letter of determination (FLD) to Washington State that adopted this finding of the Audit Report and disallowed $1,500,200 of fiscal year 1982 part B funds expended by 19 LEAs in violation of the non-supplanting requirement.[2]

On June 6, 1986, Washington State appealed this FLD to the Education Appeal Board, pursuant to 20 U.S.C. 1234 and 1234a (1982). At this time, the EAB was an independent adjudicative forum within the Department that conducted audit appeals challenging FLDs issued by program officials.[3] The EAB accepted Washington State's appeal on June 20, 1986 and, thereafter, allowed Spokane and other school districts, that were found by the Assistant Secretary to have violated the Part B non- supplanting requirement, an opportunity to intervene pursuant to 34 CFR 78.34. The Assistant Secretary, in a brief filed with the EAB on January 30, 1987, reduced the claim for supplanted funds to $904,459.

On January 28, 1988, the EAB issued an Initial Decision holding that 18 school districts in Washington State had supplanted $832,465 of fiscal year 1982 part B funds. Initial Decision in the Appeal of the State of Washington, Docket No. 13(213)86 (January 28, 1988). Spokane was found to have supplanted $407,884 of fiscal year 1982 part B funds. The EAB concluded that the Assistant Secretary, even after withdrawing part of the FLD's claim, had overstated the supplanting violation for three of the LEAs. Spokane, however, was not one of these. The Secretary, after reviewing the initial and responsive comments submitted by the parties, allowed the Initial Decision to become the final decision of the Department. Washington State and Spokane appealed the portion of the agency's decision holding that Spokane had supplanted $407,884 of fiscal year 1982 part B funds to the United States Court of Appeals for the Ninth Circuit. None of the other 17 Washington LEAs that were found by the Department to be in violation of the part B nonsupplanting requirement joined in this appeal, and the $424,581 of funds repaid by these 17 LEAs are not involved in this grantback request.

On June 5, 1990, the Ninth Circuit affirmed the Department's decision with respect to Spokane's supplanting on all but one issue. *State of Washington, et al.* v. *U.S. Department of Education*, 905 F.2d 274 (9th Cir. 1990). According to the Court, the Department's decision failed to explain why Spokane was not entitled to an allowance, under 34 CFR 300.230(b)(1)(ii)), for what that LEA characterized as an unusually large special education expenditure of $250,000 during fiscal year 1981.[4] Consequently, the Court remanded the case to the Department with instructions "to make 'new or modified findings of fact' on this issue." 905 F.2d at 279.

On October 31, 1990, the EAB issued a Decision on Remand in this case which held that further analysis of Spokane's entitlement to an exemption for the $250,000 expenditure was unnecessary. The Secretary, on January 3, 1991, issued a decision which held that the EAB's Decision on Remand did not comply with the Ninth's Circuit's instructions to explain its conclusions with respect to the question of whether

[1] In 1990, the name of this Act was changed by Congress to Part B of the Individuals with Disabilities Education Act. See Public Law 101–476.

[2] Under Part B, the SEA is responsible for assuring that the funds it receives and awards to its school districts will be spent in accordance with, *inter alia*, the Act's nonsupplanting requirement. (See 20 U.S.C. 1413(a)(1) (1982). See also 20 U.S.C. 1412(6) (1982).) Thus, although the LEAs violated the nonsupplanting requirement, the Department sought recovery of the misexpended funds from Washington.

[3] The procedures for appealing final audit determinations issued by officials of the Department were changed by Public Law 100–297, 102 Stat. 130 (April 28, 1988). 20 U.S.C. 1234 and 1234a (1988). The Department's Office of Administrative Law Judges now performs the duties related to the adjudication of appeals of disallowance decisions that were previously assigned to the EAB.

[4] 34 CFR 300.230(b)(1)(ii) provides an allowance for "[u]nusually large amounts of funds expended for long-term purposes." Under this provision, an unusually large expenditure for a long-term purpose, made in fiscal year 1981, would not be included in the calculation of the amount of State and local expenditures that Spokane would have to make in fiscal year 1982 in order to comply with the Part B nonsupplanting requirement.

Spokane was entitled to an exemption under 34 CFR 300.230(b)(1)(ii) for the $250,000 expenditure. However, prior to the Secretary's decision, the parties reached a tentative agreement to settle this matter. That settlement agreement was formally executed on May 30, 1991. Under the terms of that agreement, the Department recovered a total of $309,504 from Washington and Spokane. The SEA and Spokane, in turn, agreed to join the Assistant Secretary in a Joint Motion to the EAB to dismiss the appeal with prejudice. All terms of the settlement agreement, including the agreement by Washington and Spokane to pay the Department $309,504, have been satisfied.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a) (1982), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by the determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(a) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(b) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(c) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback totaling $232,128, which is 75 percent of the principal amount of the recovered funds, and has submitted a plan for use of the grantback funds to meet the special education needs of the children with disabilities. Under Section 456(c) of GEPA, 20 U.S.C. 1234e(c), these funds are available for expenditure until September 30, 1994. Spokane's plan, that has been submitted by the SEA, is to expand a program that is already on-going in that LEA, the Special-Education Training Resources in Vocational Exploration (STRIVE) program. Under this program, students with disabilities, between the ages of 16 and 21, are provided with special education and related services that address the school-to-work transition. The grantback proposal provides for the expansion of the STRIVE program by hiring additional specialists, and purchasing computer hardware that will be used to track caseloads and develop student, personnel, and budget databases. Other expenditures will include technical assistance for teachers, occupational and physical therapists, and speech pathologists for infusing technology into the instructional program for students with severe behavior disturbance. An additional rented classroom on or near the community college campus will also be secured which will again expand the capability of this program to serve more students with disabilities.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 456 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Washington SEA under a grantback arrangement. The grantback award would be in the amount of $232,128, which is 75 percent—the maximum percentage authorized by statute—of the principal amount recovered as a result of the audit.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(a) The funds awarded under the grantback must be spent in accordance with—

(1) All applicable statutory and regulatory requirements;

(2) The plan that the SEA submitted and any amendments to the plan that are approved in advance by the Secretary; and

(3) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(b) All funds received under the grantback arrangement must be obligated by September 30, 1994, in accordance with section 456(c) of GEPA.

(c) The SEA will, not later than January 1, 1995, submit a report to the Secretary that—

(1) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved; and

(2) Describes the results and effectiveness of the project for which the funds were spent.

(d) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(e) Before funds will be repaid pursuant to this notice, the SEA must repay to the Department any debts that become overdue, or enter into a repayment agreement for those debts.

(Catalog of Federal Domestic Assistance Number 84.027, Handicapped State Grants)

Dated: November 29, 1993.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93-29628 Filed 12-2-93; 8:45 am]

BILLING CODE 4000-01-P

federal register

Friday
December 3, 1993

Part VI

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 946
National Weather Service Modernization; Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 946

[Docket No. 920383–3283]

RIN 0648–AE73

National Weather Service Modernization

AGENCY: National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: NOAA is publishing final rules setting forth its internal process for certifying that there will be no degradation of weather services as a result of consolidating, automating, or relocating a field office during the first stage of the modernization of the National Weather Service. These rules incorporate the provisions of the Weather Service Modernization Act (Act), 15 U.S.C. 313 note, Pub. L. 102–567, which define the actions which are subject to certification; add certain requirements for such certifications; provide for the review of the criteria on which certifications will be based; provide for participation by the Modernization Transition Committee (Committee) established by the Act; and provide for a liaison officer in the affected service area.

EFFECTIVE DATE: This rule is effective December 3, 1993.

FOR FURTHER INFORMATION CONTACT: Senator Raygor NOAA/TPO, SSMC2, room 9332, 1325 East-West Highway, Silver Spring, Maryland 20910 or (301) 713–0391.

SUPPLEMENTARY INFORMATION: On September 8, 1992, the NWS published proposed regulations setting forth procedures for certifying that there would be no degradation of services as a result of consolidating, automating, or relocating a field office during stage one of modernization (57 FR 40877). These proposed regulations were based on the certification requirements in title IV of Public Law 100–685.

On October 29, 1992, title VII of Public Law 102–567, the Weather Service Modernization Act, was enacted to replace the certification provision of title IV of Public Law 100–685. The Act incorporated the process proposed by the September 8, notice, with certain modifications and clarifications. In particular, it specifically identified as "changes in operations at a field office" a number of actions associated with modernization which do not require certification: Transferring service responsibility, commissioning weather observation systems, decommissioning a NWS radar, changing staffing levels significantly, or moving a field office to a new location inside the local commuting and service area. It also defined more clearly two of the four actions that do require certification (automating and relocating).

On April 8, 1993, the NWS issued a notice of proposed rule making to implement the Act (58 FR 18316). The September 8, proposal was withdrawn.

Nine comments were received. Four of these (from the Minnesota Cold Weather Resource Center, a Minnesota State Representative, the Association of Central California Weather Observers, and a professor of meteorology at San Francisco State, Mr. Monteverdi) were related primarily to the modernization of particular field offices and expressed concerns about whether service to the areas where these offices are located would be degraded. These comments are more appropriately addressed during the certification process for actions involving these offices.

One commentor, the Aircraft Owners and Pilots Association (AOPA) stated its support for the NWS modernization efforts, including specifically field office restructuring, while expressing a number of general concerns not directly related to the regulations. These included:

Providing an education program for aviation users; maintaining full coordination with the FAA; and ensuring adequate Automated Surface Observing System (ASOS) augmentation. The NWS appreciates the need for close involvement by the aviation community in all phases of the modernization and is already implementing a number of the suggestions, e.g., implementation of an education program. The NWS will address the issue of ASOS augmentation during each automation certification to ensure that the units are meeting user needs and will not replace human observers until all requirements and procedures set forth in the ASOS Surface Observation Modernization Report have been satisfied.

Four commentors, the National Weather Service Employees Organization (NWSEO), two of its members, and one additional individual, raised issues primarily relating to whether certain modernization actions require certification and whether the certification process should be expanded to include additional elements. The major issues and comments are as follows:

1. Comments Relating to Those Provisions in the Regulations That Determine Which Actions Are Subject to Certification

a. Definition of "Local Commuting Area"

Comment: The NWSEO objected to using Office of Management and Budget's (OMB) Metropolitan Statistical Areas to define a "local commuting area" because, it contends, OMB's Statistical Areas do not take into account such detailed aspects of commuting patterns as the part of certain counties in which the majority of commuters reside, the direction of their commute, and the actual distances that employees will commute to a new office as compared to the distance they commute to the old. The NWSEO suggested that the purpose of including this definition in the Act was "to mitigate employee displacement."

Response: The use of "local commuting area" in the Act and its definition in these regulations serves one purpose: To provide one of the geographical parameters of importance in determining when the move of an entire field office constitutes a certifiable "relocation" and when it is merely a "move" that needs not be certified. The reason for requiring certification of any action is to promote confidence that public safety will not be compromised, i.e., that services will not be degraded. The certification does not address in any way the effect of the action on the employees. The final regulations have been further modified to make it clear that the issues of public safety and employee benefits should be kept separate (see § 946.1(b)). The definition of "local commuting area" in the proposed regulations provides a basis for determining whether a proposed action might have an effect on public safety and is not intended to provide a basis for determining whether some action might inconvenience some NWS employees. Therefore, the definition has not been changed as suggested by NWSEO in the final regulations.

The effect of various modernization actions on employee benefits is addressed separately in a number of regulations including those cited by the commentor. If the NWS were to accept the premise of the NWSEO, that the local commuting area is dependent upon the commuting pattern of individual offices, it would be in the anomalous position of basing decisions concerning the need for public safety

certifications on whether employees live on one side or the other of the existing office.

b. Change in Operations (§ 946.6)

Comment: The NWSEO objected to the provisions of this section because it believes that "any time the bulk of the services, staff and equipment of a field office is moved outside the local commuting or service area, such transfer constitutes a certifiable relocation and is not a change of operations."

Response: This comment reflects the commentor's apparent underlying belief that the Act is intended to delay modernization. On the contrary, the basic statutory scheme is intended to ensure that the modernization schedule is maintained and is designed to encourage NWS to take those actions necessary to make prompt and effective use of the new technology such as NEXRAD and ASOS.

NWS may transfer the necessary service responsibilities and personnel in order to ensure that the new NEXRADS can be operated and commissioned in a timely manner. The NWS interprets these actions to be "changes in operations" which can proceed subject only to appropriate notification. Once the NWS has taken these actions and is in a position to take advantage of this technology, it must certify that there will be no degradation of services prior to abandoning the old systems and fully committing to the new. Thus, the NWS cannot replace the existing surface observations or the existing radar observations or finally close an old office until it has certified that there will be no degradation of service.

Section 946.6 of the final regulations implements this statutory scheme by clarifying that a field office may transfer staff to a new site incident to the introduction of new technology (§ 946.6(a)(4)) but may not replace its existing observational responsibilities without first certifying (§ 946.6(b)). This section focuses on the nature of the services and staff that remain in place at various stages of the transition rather than simply on the number of staff or the amount of equipment involved in a particular transfer.

2. Comments Relating to the Certification Requirements

a. The Definition of "Degradation of Services"

Comment: The NWSEO and two members of the NWSEO objected to the definition of "degradation of service." They interpreted the definition as intended to exclude consideration of the quality of service when certifying that no degradation will result from a restructuring action. (A comment of Professor Monteverdi, although specifically addressing the proposed relocation of the Redwood City office, was also considered as raising this more generic issue). Some of these commentors believed that quality of services provided by a field office must be measured in statistical terms.

Response: The NWS agrees that certification must address the quality of the services provided and intended this definition to be read in connection with the certification procedures set forth in § 946.7 of the regulations to address the quality of services. The NWS has deleted this definition and rewritten § 946.7 to clarify that the determination of whether a degradation of service has occurred will be based strictly on the final modernization criteria required by § 704 of the Act which will incorporate all the appropriate indices to ensure that the quality of services will be maintained. The criteria that the NWS proposes to employ have been recently reviewed by the National Research Council (NRC) in accordance with sec. 704 of the Act and will be published for public comment shortly. They include many of those suggested by the commentors (see comment below) on this rule and specific when statistical verification is appropriate.

b. The Responsible Meteorologist as the Official Responsible for Initiating Certification

Comment: The NWSEO and both members asserted that the Responsible Meteorologist should not be given the initial responsibility for recommending certification. (Two additional site specific comments, those of the Association of Central California Weather Observers and Professor Monteverdi, also raised this issue). These commentors believed that the interest of this official in completing the restructuring could be so strong that it might preclude objectivity in the process. One commentor believed that the merit pay bonuses of these responsible meteorologists will depend on successful completion of the relevant actions. Several of the commentors suggested substituting a local modernization transition committee.

Response: The NWS recognizes the importance of disclosing innate biases when advocating actions affecting the modernization. The NWS recognizes that it is important to the responsible meteorologist to organize restructuring and other modernization actions as efficiently as possible but disagrees with any suggestion that this interest would impair his or her judgement in recommending a certification. The responsible meteorologist's basic responsibility is for the delivery of services to his or her service area. Each individual is fully aware of that responsibility to the community served. Those who suggest that such a person would jeopardize this basic responsibility by "sweeping under the rug" some inconvenient evidence concerning a restructuring simply do not appreciate the responsibility of that position.

Using a local modernization transition committee that is not responsible for providing services to the affected area would not only be inefficient, but would also substitute the judgement of a less knowledgeable body for the on-scene expert. The committee established by the Act provides national-level oversight.

c. Certification Requirements

Comment: The NWSEO suggested adding several evidentiary requirements to § 946.7(b) with regards to the preparation of certifications for restructuring. It requested additional evidence including evidence that the quality, reliability and accuracy of the data would be maintained at the same level; that the timeliness will remain at the same level; that timeliness and quality would remain at the same level for emergency maintenance of NWS equipment; that the Warning Coordination Meteorologist's ability to perform will be maintained at or with the same level of reliability with emergency managers and news media; that NWS would maintain the same level of interaction with graduate and undergraduate meteorology programs; and that NWS would maintain the same level of interaction with other Federal and state agencies.

Response: These items are already incorporated in the criteria described in new § 946.7(a).

Comment: The NWSEO suggests placing paragraph (g) of § 946.7 before paragraph (f) to make clear that the establishment of the criteria must precede the proposed certification process.

Response: The NWS agrees and has modified this section as requested.

Comment: The NWSEO suggested that the evidence to be considered in connection with a relocation as specified in § 946.7(f) of the proposed regulations is inadequate and should include regional, geographic, and climatological factors.

Response: Section 946.7(b)(1) of the final regulations requires that all certifications include a description of local weather characteristics that affect

weather services and these will include applicable regional, geographic, and climatological factors.

Comment: NWSEO commented that subsection 946.9(a) should be changed to clarify that the review of certification proposals is at the option of the Committee, not the Secretary of Commerce. Also, § 946.9(b) should add a requirement that no field office may be restructured prior to a 30-day notice in the FR in accordance with 5 U.S.C. 553(d).

Response: The NWS has modified § 946.8 to respond to the request for review of proposed certifications by the Committee at its option. Further procedures addressing this concern will be issued at a later date. The NWS does not agree that there should be a 30-day waiting period after publication of the final certification. The Act provides a rigorous public process leading up to certification, including a 60-day comment period, and it is difficult to discern any benefits that might result from waiting an additional 30 days after certification is complete. The NWS does not believe that 5 U.S.C. 553(d) applies to a certification.

3. Additional Comments

a. Category 1 Radars

Comment: The NWSEO objected to the provision in the proposed regulations that would allow the NWS to dismantle some existing radars, designated as Category 1 radars, prior to issuing the commissioning and decommissioning reports specified by sec. 705(b) of the Act. The NWSEO believes that this section requires the NWS to find alternative sites for the NEXRADs that will replace Category 1 radars and that if the NWS finds this requirement burdensome, it should seek legislative changes to the Act.

Response: The proposed regulations define a "Category 1 radar" as an existing NWS radar which is to be replaced by a NEXRAD on the same physical site as the existing radar or on an adjacent site that is sufficiently close that the two radars cannot operate concurrently. The latter situation can arise because (1) the existing radar tower physically blocks the NEXRAD signal to an unacceptable degree; or (2) the existing radar's transmitter causes substantial electromagnetic interference with the NEXRAD.

Where the existing radar occupies the same physical site as the replacement NEXRAD, the old tower must be dismantled before installation of the NEXRAD can begin. Where the existing tower on an adjacent site physically blocks the replacement NEXRAD, it can create a gap in coverage that is operationally significant, especially if it occurs in the direction in which most severe weather approaches. In this situation the old tower must be dismantled before operational testing and commissioning of the NEXRAD can occur. If the existing radar on an adjacent site causes significant electromagnetic interference with the replacement radar, it will not be dismantled but must be turned off in order to allow operational testing and commissioning of the NEXRAD.

As the NWSEO points out, sec. 706(b) of the Act anticipates that, in the normal sequence followed by the NWS in introducing a new radar, commissioning of the new will precede the decommissioning and removal of the old. Since it is impossible to follow this sequence with respect to Category 1 radars, NWS interprets this section of the Act to allow the sequence set forth in § 946.5(c) in which the radar observing responsibility is transferred to existing backup radar sites (an event that does not involve decommissioning) until such time as the replacement NEXRAD can be commissioned. Once it has been commissioned, the NWS can then follow the normal sequence, issuing the commissioning and decommissioning reports required by sec. 705(b).

Resiting these NEXRADs, as the commenters suggest, is not viable because: (a) Both local area and network coverage would be compromised by moving the NEXRAD to a site other than the best technical site; (b) an alternate site in close proximity is not available (as determined during the NEXRAD site survey process); and/or (c) substantial additional costs and delays in bringing this enhanced capability into service would be incurred. The NWS believes that it would be irresponsible to delay utilizing the enhanced capabilities of the NEXRAD at these sites while it considers less favorable sites or pursues legislative action. Such a course of action would deny clearly improved weather services to the public in these areas leaving it dependent on the obsolete radars.

Consequently, the final regulation uses the same definition as the proposed regulation, except that the 400 foot limitation has been deleted. The 400 foot limitation was based on a preliminary engineering analysis made several years ago. Actual experience in several locations where the NEXRAD has been installed near an existing radar shows that, in some cases, interference can occur when the distance between radars is substantially more than 400 feet.

b. Other Issues

Comment: Concern was expressed that the Liaison Officer should report directly to the Regional Director to avoid intimidation from the Area Manager.

Response: The NWS disagrees. The Liaison Officer contributes to the effectiveness of weather services in a service area. The Liaison Officer must report to the Responsible Meteorologist, who is the individual directly responsible for provision of weather services within the service area.

Comment: A comment was received by NWSEO stating that the Committee must review all notifications of changes in operation prior to submission to Congress. The commentor also believes that the Secretary can not change operations at a field office until September 30, 1993, without Congressional notification.

Response: Section 705(a) of the Act states that the Secretary shall not change operations at a field office pursuant to implementation of the Strategic Plan unless the Secretary provides notification required by sec. 703. That required notification applies only to changes of operations that will occur in FY94 and beyond and has been provided in the NIP for FY94. This section states that the Secretary shall, when appropriate, consult with the Committee in developing the NIP. The NWS will provide an opportunity for the Committee, once operational, to review the NIP prior to the Secretary's submission to Congress.

The NWS disagrees with the commentor's statement that the Secretary is prohibited from changing operations at a field office, from the date the Act was signed. The proposed regulations accurately reflect the law. Sec. 703 clearly states that the Secretary shall submit a NIP to Congress for each fiscal year following FY 1993 (which ends September 30, 1993) until the modernization is completed. NWS interprets this as a requirement to provide a NIP for FY 94 and subsequent years.

A. Regulatory Flexibility Act Analysis

The regulations set forth procedures certifying "no degradation" of weather services to areas affected by the closure, consolidation, automation or relocation of a field office in the course of modernizing NWS. These regulations relate to the internal management of the National Weather Service. These rules do not directly affect "small government jurisdictions" as defined by Pub. L. 96–354, the Regulatory Flexibility Act.

B. Paperwork Reduction Act of 1980

These regulations will impose no information collection requirements of the type covered by Pub. L. 96–511, the Paperwork Reduction Act of 1980.

C. E.O. 12612

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

D. National Environmental Policy Act

NOAA concluded that publication of the proposed rules did not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, preparation of an environmental impact statement was not required. A Programmatic Environmental Impact Statement (PEIS) regarding NEXRAD was prepared in November 1984, and a Supplemental Environmental Assessment to update the portion of the PEIS dealing with the bioeffects of NEXRAD nonionizing radiation was completed in June 1993, with a Finding of No Significant Impact. A notice was published in the **Federal Register** on July 15, 1993 (58 FR 38117).

List of Subjects in 15 CFR Part 946

Administrative practice and procedure, Weather service modernization.

Dated: November 26, 1993.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Services.

Accordingly, for the reasons set forth above, title 15 of the CFR is amended by adding a new subchapter consisting of part 946 as follows:

SUBCHAPTER C—REGULATIONS OF THE NATIONAL WEATHER SERVICE

PART 946—MODERNIZATION OF THE NATIONAL WEATHER SERVICE

Sec.
946.1 Purpose.
946.2 Definitions.
946.3 Notification of change of operations and restructuring.
946.4 Menu of services.
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Authority: Title VII of Pub. L. 102–567, 106 Stat. 4303 15 U.S.C. 313 note

§ 946.1 Purpose.

(a) This part sets forth the procedures for certification by the Secretary of Commerce that the closure, consolidation, automation or relocation of any field office of the National Weather Service (NWS) pursuant to the implementation of the Strategic Plan for the Modernization of the NWS will not result in any degradation of weather services. Section 706 of Pub. L. 102–567 requires that no such field office be closed, consolidated, automated, or relocated until such certification is made. This part distinguishes these modernization activities which require certification from those changes in operations at a field office which do not require certification.

(b) This part, including specifically these sections which specify when certifications are required, is intended to promote confidence that public safety is being adequately considered during the modernization process. While some of the terms used in these regulations may be identical to those used by the Office of Personnel Management, the General Services Administration, or by NOAA in personnel regulations, this part does not affect or supersede those regulations. In particular, a determination that the move of a field office is not a "relocation" for purposes of these regulations does not affect an employee's rights to relocation assistance, discontinued service retirement, severance pay, or grade and pay retention.

§ 946.2 Definitions.

Automate (or automation) means to replace employees performing surface observations at a field office with automated weather service observation equipment. For the purposes of this definition, an employee performance surface observations at a field office is replaced when that office, after installing such equipment, reduces or eliminates its responsibility for taking surface observations and he or she is:

(1) Removed from that field office, or

(2) Formally requested to cease performing all observational responsibilities at that office.

Category 1 radar means an existing NWS radar which is to be replaced by a NEXRAD on the same site or on an adjacent site from which the two radars cannot operate concurrently. A Category 1 radar must be dismantled when the existing tower prevents building a replacement NEXRAD on the same site or operationally demonstrating and commissioning a replacement NEXRAD on an adjacent site by physically blocking its beam. A Category 1 radar must be turned off when it prevents operationally demonstrating and commissioning a replacement NEXRAD on an adjacent site by creating substantial electromagnetic interference.

Change operations at a field office means to transfer service responsibility, commission weather observation systems, decommission a NWS radar, mover an entire field office to a new location inside the local commuting and service area, or significantly change the staffing level of a field office except where the staffing change constitutes a consolidation or automation.

Close (or closure) means to remove all weather services, equipment, and personnel from a filed office. It does not include a consolidation, automation, or relocation or a move of a field office to another location within the current local commuting and service area.

Commission means to officially charge a new observational technology (e.g, NEXRAD and ASOS) with responsibility for providing weather data within a defined service area or to charge a new weather office support system (e.g, AWIPS) with responsibility for supporting office operations.

Committee means the Modernization Transition Committee established by sec. 707 of Pub. L. 102–567.

Consolidate (or consolidation) means to remove some positions from a field office (without closing that office) after those responsibilities have been reduced or eliminated by the commissioning of one or more NEXRADs, the decommissioning of the radar operated by that office, if any, and the combination of that office's responsibilities with those of another field office.

Decommission (or permanently decommission) means to permanently withdraw existing official responsibility for providing weather data or weather office support from an existing technology which includes turning off the technology. It does not include temporarily withdrawing responsibility for providing radar data where this action results from:

(1) System failure;

(2) The need to dismantle a Category 1 radar to allow the construction of or the operational demonstration and commissioning of a replacement NEXRAD; or

(3) The need to turn off a Category 1 radar to allow the operational demonstration and commissioning of a replacement NEXRAD.

Field office means a National Weather Service Office (WSO) or a National Weather Service Forecast Office (WSFO).

Inventory of services means all of those weather services from those listed

on the menu of services that are provided to the public by a field office in its service area prior to a transition action.

Local Commuting Area means the population center (or two or more neighboring ones) served by an existing field office and includes those surrounding localities that can reasonably be considered part of this single area for transportation purposes. The Local Commuting Area for any field office located in a Metropolitan Area defined by the Office of Management and Budget for statistical purposes shall be the Metropolitan Statistical Area or Primary Metropolitan Statistical Area.

Menu of services means the basic weather services provided by NWS field offices as listed in § 946.4.

National Implementation Plan means the plan submitted to Congress as part of the budget justification documents for Fiscal Year 1994 and for each subsequent fiscal year until the modernization is complete.

Regional Director means the Director of one of the six geographical regions of the NWS.

Relocate (or relocation) means to move an entire field office, including all personnel positions, equipment and service responsibility to a location outside the current local commuting or service area of that field office.

Responsible Meteorologist means an employee of the NWS in charge of the office that will be responsible for providing weather services to the area affected by a closure, consolidation, automation, or relocation of a field office.

Restructure means to close, consolidate, automate, or relocate a field office.

Secretary means the Secretary of Commerce or his or her delegate.

Service area means the geographical area for which an existing field office provides weather services or conducts observations.

Strategic Plan means the 10 year strategic plan for the modernization of NWS which was submitted to the Congress by the Secretary on March 10, 1989.

Weather service means a service or product provided to a service area by a field office.

§ 946.3 Notification of changes in operations and restructuring.

(a) Beginning with the Fiscal Year 1994 budget submission to Congress and until the modernization is complete, the NWS will submit to Congress annually a National Implementation Plan. The NWS may amend a Plan prior to the submission of the next Plan to include modifications provided that notification of any additional proposed changes in operations or identification of any additional proposed restructuring actions shall be provided to Congress at least 90 days prior to the date of the action.

(b) The NWS will neither change operations at, nor restructure, any field office after September 30, 1993, pursuant to the implementation of the Strategic Plan unless it has provided notification of the relevant action in the most current edition of the National Implementation Plan, or an amendment thereof, and has complied with all requirements of these regulations.

§ 946.4 Menu of services.

The following are the basic weather services provided by NWS field offices:

(a) Surface Observations
(b) Upper Air Observations
(c) Radar Observations
(d) Public Forecasts, Statements, and Warnings
(e) Aviation Forecasts, Statements, and Warnings
(f) Marine Forecasts, Statements, and Warnings
(g) Hydrologic Forecasts and Warnings
(h) Fire Weather Forecasts and Warnings
(i) Agricultural Forecasts and Advisories
(j) NOAA Weather Radio Broadcasts
(k) Climatological Services
(l) Emergency Management Support
(m) Special Products and Service Programs

§ 946.5 Change in operations—commissioning and decommissioning.

(a) Before commissioning any new NEXRAD or ASOS weather observation system, the NWS shall prepare a Commissioning Report documenting that the system involved will perform to the Government's specifications; the system has been tested on site and performs reliably; satisfactory maintenance support is in place; sufficient staff with adequate training are available to operate the system; technical coordination with weather service users has been completed; and the system satisfactorily supports field office operations.

(b) The Report required by paragraph (a) of this section shall be based on the scientific and technical criteria set forth in the NWS' NEXRAD and ASOS Commissioning Plans, as appropriate, which criteria shall be published in the **Federal Register** as the final commissioning criteria in accordance with sec. 704(b)(1) of the Act. In the case of an ASOS commissioning, the Report shall also document that the NWS has consulted with the Federal Aviation Administration (FAA) and has determined that the weather services provided after commissioning will continue to be in full compliance with the applicable FAA flight aviation rules.

(c) Before decommissioning any NWS radar, the NWS shall prepare a Decommissioning Report documenting that all replacement radars needed to provide equal coverage have been commissioned; confirmation of services with users has been completed; and that the radar being decommissioned is no longer needed to support field office operations. The Decommissioning Report shall be based on the scientific and technical criteria contained in the NWS' Radar Decommissioning Plan, which criteria shall be published in the **Federal Register** as the final decommissioning criteria in accordance with the requirements of sec. 704(b)(1) of the Act.

(d) If the final commissioning criteria significantly modify the criteria upon which the previous commissioning of a NEXRAD and/or ASOS were based, the NWS shall confirm that the relevant system conforms with the final criteria adopted. The NWS shall not decommission any NWS radar until the final criteria have been adopted.

§ 946.6 Change in operations—transferring responsibility and moving field offices.

(a) After providing any notification required by § 946.3(b), NWS may change operations at a field office to implement the Strategic Plan, including:

(1) Transferring official responsibility for taking radar observations to a NEXRAD Weather Service Forecast Office (NWSFO) or a NEXRAD Weather Service Office (NWSO) that is being established as a future Weather Forecast Office following commissioning of the NEXRAD at the new office;

(2) Transferring official responsibility for taking observations from a Category 1 radar to a backup radar or radars prior to constructing and/or operating a replacement NEXRAD. Before transferring responsibility, the Responsible Meteorologist shall document that technical coordination with users has been completed and that the transition to the replacement NEXRAD can be completed expeditiously;

(3) Transferring its service responsibility for issuing watches, warnings, forecasts and other products to a NWSFO or NWSO;

(4) Significantly reducing its staffing level by transferring or reassigning personnel to support the service responsibilities transferred under paragraph (a)(3) of this section provided

that the field office continues to assign the appropriate number of positions established by the NWS Operations Manual to carry out its observation responsibilities; and

(5) Moving an entire field office to a location within the local commuting and service area of that office.

(b) A field office may not significantly reduce its staffing level assigned to support any observation responsibility, including those responsibilities transferred under paragraph (a)(2) of this section and those retained under paragraph (a)(4) of this section, until the Secretary has certified that the automation and/or consolidation will not degrade service in accordance with § 946.7.

§ 946.7 Preparation of proposed certification for restructuring.

(a) Whenever it becomes appropriate to restructure a field office identified in the National Implementation Plan, but prior to taking such action, the Responsible Meteorologist shall make a determination that there will be no degradation of service based on the final criteria published in the **Federal Register** in accordance with sec. 704 of the Act and recommend a proposed certification. The proposed certification may address all related restructuring actions that occur as part of a coordinated step described in the National Implementation Plan.

(b) The proposed certification shall include:

(1) A description of local weather characteristics and weather-related concerns which affect the weather services provided within the service area;

(2) A detailed comparison of the inventory of services provided within the service area prior to such action and the services to be provided after such action;

(3) Any recent or expected modernization of NWS operations which will enhance services to the affected area;

(4) An identification of any area within any state which will not receive NEXRAD coverage at an elevation of 10,000 feet;

(5) Evidence based upon operational demonstration of modernized NWS operations which support a determination that no degradation in service will result;

(6) Any report of the Committee issued under sec. 707(c) of the Act; and

(7) The Responsible Meteorologist's determination that there will be no degradation of service.

(c) If the restructuring proposed to be certified involves the commissioning of a NEXRAD, the Responsible Meteorologist shall also consider the following evidence from operational demonstration of modernized operations in reaching the conclusion that no degradation of service will result:

(1) The Commissioning Report containing the elements described in § 946.5(a);

(2) The Decommissioning Report containing the elements described in § 946.5(c); and

(3) The Confirmation of Services Report prepared by the NWS in accordance with paragraph (e) of this section.

(d) If the restructuring proposed to be certified involves the commissioning of an ASOS unit, the Responsible Meteorologist shall also consider the following evidence from operational demonstration of modernized operations in reaching the conclusion that no degradation of service will result:

(1) The Commissioning Report containing the elements described in § 946.5(a);

(2) The NWS Surface Observation Modernization Report documenting that manual observations being discontinued are no longer needed to provide mission field services; based on the final scientific and technical criteria (including all requirements and procedures) published in the **Federal Register** in accordance with section 704(b)(2) of the act; and

(3) The Confirmation of Services Report prepared by the NWS in accordance with paragraph (e) of this section.

(e) The Confirmation of Services Report required by paragraphs (c) and (d) of this section shall include a list of those users who have been contacted during the confirmation process, to document that services have not been degraded. These users shall include the appropriate media and emergency managers in the service area and the appropriate federal and state agencies including specifically the FAA if the restructuring involves a field office located at an airport and consultation with the FAA has not been conducted in accordance with § 946.5(b). This Report shall be based on the scientific and technical criteria set forth in the Internal and External Communication and Coordination Plan for the Modernization and Associated Restructuring of the National Weather Service, which criteria shall be included in the final certification criteria published in the **Federal Register** in accordance with sec. 704(b)(2) of the Act.

(f) If the restructuring proposed to be certified involves the relocation of a field office, the Responsible Meteorologist shall also consider the following evidence in reaching the conclusion that no degradation of service will result:

(1) Evidence based upon operational demonstration during earlier modernization actions in which an entire field office was moved from one location to another including specifically the impact of such moves on services;

(2) A checklist of all operational tests and inspections that will be performed at the new location to ensure that the relocated equipment is fully operational;

(3) A list of all users notified prior to the relocation, and a list of the contacts that will be made with the relevant users to confirm operational status after the relocation; and

(4) Comments received from notified users and those received during the public comment period.

§ 946.8 Review of proposed certification for restructuring.

The Responsible Meteorologist shall transmit the proposed certification and the accompanying documentation to the Regional Director for review. The Regional Director may amend or supplement the documentation provided subsequent readers can easily identify his or her amendments or supplements. If the Regional Director agrees with the proposed certification, he or she shall endorse the proposed certification, and transmit it along with all the accompanying documentation to the Secretary. A copy of any proposed certification shall be provided to the Committee upon request of the Committee.

§ 946.9 Certification of restructuring.

(a) The Secretary shall publish each proposed certification in the **Federal Register** at least 60 days prior to certification. If, after consideration of the public comments received, the Secretary agrees that the proposed restructuring will not result in any degradation of service to the service area, he or she shall so certify by submitting a certification report to Congress. Upon transmittal of the certification by the secretary, NWS shall promptly publish the certification in the **Federal Register** stating where copies of the certification and the accompanying documents may be obtained.

(b) The Responsible Meteorologist may restructure only after the certification has been submitted to Congress.

(c) Any field office for which restructuring has been certified under this section shall also be subject to additional certification if that office is closed during stage 2 of the modernization. No field office will close before January 1, 1996.

§ 946.10 Liaison officer.

Prior to restructuring a field office, the Responsible Meteorologist shall designate at least one person in the affected service area to act as a liaison officer for at least a 2-year period whose duties shall be:

(a) Provide timely information regarding the activities of the NWS which may affect service to the community including specifically modernization and restructuring activities; and

(b) Work with area users, including persons associated with general aviation, civil defense, emergency preparedness, and the news media, with respect to the provision of timely weather warnings and forecasts.

[FR Doc. 93–29408 Filed 12–2–93; 8:45 am]

BILLING CODE 3510–12–M

federal register

Friday
December 3, 1993

Part VII

The President

Memorandum of December 1—Locality-Based Comparability Payments

Executive Order 12884—Delegation of Functions Under the Freedom Support Act and Related Provisions of the Foreign Operations, Export Financing and Related Programs Appropriations Act

Federal Register
Vol. 58, No. 231
Friday, December 3, 1993

Presidential Documents

Title 3—

The President

Memorandum of December 1, 1993

Locality-Based Comparability Payments

Memorandum for the President's Pay Agent

I have reviewed your report concerning recommended locality-based comparability payments for General Schedule employees, submitted in accordance with section 5304 of title 5, United States Code. I approve the recommended payments as set forth in Table 3 of the report, and I direct you to implement those payments, effective as of the beginning of the first applicable pay period commencing on or after January 1, 1994. I authorize and direct you to ensure that this memorandum and a schedule of the comparability payment rates and localities be published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, December 1, 1993.

[FR Doc. 93–29803
Filed 12–2–93; 10:46 am]
Billing code 3195–01–M

Locality-Based Comparability Payments
Effective January 1994

Pay Locality	Comparability Payment
Atlanta MSA	3.86%
Boston CMSA	5.47%
Chicago CMSA	5.34%
Cincinnati CMSA	4.22%
Cleveland CMSA	3.34%
Dallas CMSA	4.21%
Dayton MSA	3.77%
Denver CMSA	4.54%
Detroit CMSA	4.84%
Houston CMSA	6.52%
Huntsville MSA	4.10%
Indianapolis MSA	3.68%
Kansas City MSA	3.30%
Los Angeles CMSA[1]	5.69%
Memphis MSA	3.09%
New York CMSA	5.77%
Norfolk MSA	3.28%
Oklahoma City MSA	3.34%
Philadelphia CMSA	4.96%
Sacramento CMSA	3.69%
St. Louis MSA	3.09%
Salt Lake City MSA	3.09%
San Antonio MSA	3.09%
San Diego MSA	3.88%
San Francisco CMSA	6.18%
Seattle CMSA	3.92%
Washington CMSA[2]	4.23%
Rest of United States[3]	3.09%

NOTE: MSA means Metropolitan Statistical Area and CMSA means Consolidated Metropolitan Statistical Area, both as defined by the Office of Management and Budget (OMB) in OMB Bulletin Number 93-17, June 30, 1993.

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[1]Pay locality also includes Santa Barbara County and Edwards Air Force Base.

[2]Pay locality also includes St. Mary's County, Maryland.

[3]Does not include Alaska, Hawaii, or U.S. territories or possessions.

Billing code 3195-01-C

Presidential Documents

Executive Order 12884 of December 1, 1993

Delegation of Functions Under the Freedom Support Act and Related Provisions of the Foreign Operations, Export Financing and Related Programs Appropriations Act

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the FREEDOM Support Act (Public Law 102–511) (the "Act"), the Foreign Assistance Act of 1961, as amended (the "Foreign Assistance Act"), the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1993 (Public Law 102–391), and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Secretary of State.* (a) There are delegated to the Secretary of State the functions conferred upon the President by:

(1) section 907 of the Act;

(2) paragraphs (1), (2), and (3) of section 498A(b) of the Foreign Assistance Act;

(3) paragraph (1) of section 498A(C) of the Foreign Assistance Act and the requirement to make reports under that section regarding determinations under that paragraph; and

(4) section 599B of Public Law 102–391.

(b) The Secretary of State may at any time exercise any function delegated to the Coordinator under this order or otherwise assigned to the Coordinator.

Sec. 2. *Coordinator.* There are delegated to the Coordinator designated in accordance with section 102 of the Act the functions conferred upon the President by:

(a) section 104 of the Act, and the Coordinator is authorized to assign responsibility for particular aspects of the reports described in that section to the heads of appropriate agencies;

(b) section 301 of the Act, insofar as it relates to determinations and directives;

(c) section 498A(a), section 498B(c), and section 498B(g) of the Foreign Assistance Act; and

(d) paragraph (2) of section 498A(c) of the Foreign Assistance Act and the requirement to make reports under that section regarding determinations under that paragraph.

Sec. 3. *International Development Cooperation Agency.* There are delegated to the United States International Development Cooperation Agency the functions conferred upon the President by:

(a) sections 301(a) and 307 of the Act, except insofar as provided otherwise in section 2(b) of this order;

(b) section 498 and section 498C(b)(2) of the Foreign Assistance Act;

(c) paragraph (3) of section 498A(c) of the Foreign Assistance Act and the requirement to make reports under that section regarding determinations under that paragraph;

(d) subsection (d) under the heading "Assistance for the New Independent States of the Former Soviet Union" contained in Title II of Public Law 102–391; and

(e) section 592 of Public Law 102–391, except to the extent otherwise provided in section 5(b) of this order.

Sec. 4. *Secretary of Agriculture.* There are delegated to the Secretary of Agriculture the functions conferred upon the President by section 807(d) of the Act.

Sec. 5. *Other Agencies.* The functions conferred upon the President by:

(a) sections 498B(h) and 498B(i) of the Foreign Assistance Act are delegated to the head of the agency that is responsible for administering the particular program or activity with respect to which the authority is to be exercised; and

(b) the third proviso in section 592 of Public Law 102–391 are delegated to the head of each agency that is responsible for administering relevant programs or activities.

Sec. 6. *General.* (a) the functions described in sections 3, 4, and 5 of this order shall be exercised subject to the authority of the Coordinator under section 102(a) of the Act or otherwise.

(b) As used in this order, the word "function" includes any duty, obligations, power, authority, responsibility, right, privilege, discretion, or activity.

(c) Functions delegated under this order shall be construed as excluded from the functions delegated under section 1–102(a) of Executive Order No. 12163, as amended.

(d) Any officer to whom functions are delegated or otherwise assigned under this order may, to the extent consistent with law, redelegate such functions and authorize their successive redelegation.

William J. Clinton

THE WHITE HOUSE,
December 1, 1993.

[FR Doc. 93–29615
Filed 12–2–93; 11:30 am]
Billing code 3195–01–M

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