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Briefings on How To Use the Federal Register
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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ALBUQUERQUE, NM

WHEN: December 8, at 9:00 am
WHERE: University of New Mexico
Continuing Education Bldg., Room I
1634 University Blvd., NE
Albuquerque, NM
RESERVATIONS: Julie Stone
505-768-3532

WASHINGTON, DC

WHEN: November 30, at 9:00 am
WHERE: Office of the Federal Register
Seventh Floor Conference Room
800 North Capitol Street, NW, Washington, DC
RESERVATIONS: 202-523-4534

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Electronic Bulletin Board
Free Electronic Bulletin Board service for Public Law Numbers and the Federal Register Table of Contents is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
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Monday, November 9, 1992

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 406

Nursery Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date (Acceptance of Applications).

SUMMARY: Effective for the 1993 crop year only, the Federal Crop Insurance Corporation (FCIC) herewith gives notice of its determination with respect to the acceptance of applications and crop reports for nursery crop insurance in counties and parishes having an October 31 sales closing date which were directly affected by Hurricane Andrew. This action is necessary in order to allow those counties adversely affected by Hurricane Andrew the additional time needed to obtain information concerning the crop insurance program. The intended effect of this notice is to extend the date for accepting applications for multi-peril crop insurance for Nursery and to comply with the provisions of the General Crop Insurance Regulations. The sales closing date is extended from October 31 to November 30 for the Broward, Collier, Dade, Lee, and Palm Beach Counties, Florida; and Acadia, Avoyelles, Evangeline, Iberia, Iberville, Lafayette, Point Coupee, Rapides, St. Landry, St. Martin, Vermilion, and West Baton Rouge Parishes, Louisiana.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Mari L. Dunleavy, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 254–8314.

SUPPLEMENTARY INFORMATION: Under its regulations for insuring crops, FCIC requires that applications for crop insurance protection must be filed on or before the sales closing date. FCIC published a notice at 57 FR 44968 on September 30, 1992 which extended the date for accepting applications for multi-peril crop insurance for Nursery from September 30 to October 31. Due to lack of effective communication in the areas affected by Hurricane Andrew, the notice of extension at 57 FR 44968 was not distributed quickly enough for producers in this area to realize that the extension had been allowed.

FCIC has therefore determined to further extend the sales closing date for nursery crops in counties and parishes which were adversely affected by Hurricane Andrew.

Nursery Crop Insurance Regulations require a nursery crop inspection before insurance attaches; therefore FCIC has determined that no adverse selection will result from extending the sales closing date to November 30, 1992.

Under the provisions of the General Crop Insurance Regulations (7 CFR 401.8), the sales closing date for accepting applications may be extended by notice in the **Federal Register** upon determination that no adverse selectivity will result from such extension.

Notice

Accordingly, pursuant to the authority contained in, the Act as amended (7 U.S.C. 1501 *et seq.*) Federal Crop Insurance Corporation herewith gives notice that nursery crop insurance applications for Broward, Collier, Dade, Lee, and Palm Beach Counties, Florida; and Acadia, Avoyelles, Evangeline, Iberia, Iberville, Lafayette, Point Coupee; Rapides, St. Landry, St. Martin, Vermilion, and West Baton Rouge Parishes, Louisiana will be accepted up to the close of business on November 30, 1992 effective for the 1993 crop year only.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on November 2, 1992.

James E. Cason,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 92–27058 Filed 11–6–92; 8:45 am]
BILLING CODE 3410–08–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 333

RIN 3064–AA55

Extension of Corporate Powers

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations on extensions of corporate powers to eliminate existing language which makes certain prohibitions concerning equity investments by savings associations applicable to state banks that are members of the Savings Association Insurance Fund. Such banks would thereafter be subject to the restrictions of new regulations on activities and investments of insured state banks in lieu of the existing regulations. The new regulations, which were recently adopted by the FDIC in final after a 30-day comment period, are published elsewhere in today's **Federal Register**. The effect of the final amendment to existing regulations on extensions of corporate powers is to subject Savings Association Insurance Fund member state banks and Bank Insurance Fund member state banks to the same restrictions insofar as their equity investments are concerned.

DATES: The final amendment is effective December 9, 1992.

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898–6759, Shirley K. Basse, Review Examiner, (202) 898–6815, or Cheryl A. Steffen, Review Examiner, (202) 898–6768, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC., 20429; Pamela E.F. LeCren, Counsel, (202) 898–3730, Counsel, or Grovetta N. Gardineer, (202) 898–3905, Senior Attorney, Legal Division, FDIC, 550 17th Street, NW., Washington, DC., 20429; or David K. Horne, (202) 898–3981, Financial Economist, Division of Research and Statistics, FDIC 550 17th Street, NW., Washington, DC., 20429.

SUPPLEMENTARY INFORMATION: On December 19, 1991, President George Bush signed into law the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, 105 Stat. 2236). Section 303 of FDICIA added section 24 to the Federal

Deposit Insurance Act, "Activities of Insured State Banks" (FDI Act) (12 U.S.C. 1831a). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to the activities and equity investments that are permissible for national banks. While much of section 24 is not effective until December 19, 1992, the portions of section 24 dealing with equity investments were effective upon enactment, December 19, 1991.

Paragraph (c) of section 24 "Equity Investments by Insured State Banks" (12 U.S.C. 1831a(c)), provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type that is not permissible for a national bank. As already indicated, this paragraph became effective December 19, 1991. Several exceptions to the general prohibition to making or retaining equity investments are found in paragraph (c) itself and in subsequent paragraphs of section 24. In addition, paragraph (c) provides a "transition rule" that requires insured state banks to divest prohibited equity investments as quickly as can be prudently done but in no event any later than December 19, 1996. The FDIC is given the authority to establish conditions and restrictions governing the retention of the prohibited investments during the divesture period. Paragraph (c) expressly provides for an exception for the retention or acquisition of equity investments in majority owned subsidiaries and equity investments in qualified low income housing.

Section 24(f), "Common and Preferred Stock Investment" (12 U.S.C. 1831a(f)), which also became effective upon enactment of FDICIA, provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank and which is not otherwise permitted under section 24. Like paragraph (c), paragraph (f) contains several exceptions to the general prohibition.

Paragraph (f)(2) creates a limited exception for investments in common or preferred stock or shares of investment companies. The exception allows insured state banks that (a) are located in a state that as of September 30, 1991 permitted the bank to invest in common or preferred stock listed on a national securities exchange or shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), and (b) which made or maintained investments in listed stock or registered shares during the period from September 30, 1990 to November 26, 1991, to acquire or retain, subject to the FDIC's approval, listed stock or registered shares up to a maximum investment of 100 percent of the bank's capital. A bank must file a written notice with the FDIC of its intent to take advantage of the exception (and must receive the FDIC's approval) before it can lawfully retain or acquire listed stock or registered shares pursuant to the exception provided by paragraph (f)(2). If a bank made investments in listed stock or registered shares during the relevant period that exceed in the aggregate 100 percent of the bank's capital as measured on December 19, 1991, the bank must divest the excess over the three year period beginning on December 19, 1991 at a rate of no less than ⅓ of the excess each year.

Paragraph (d)(2) provides an exception for the retention of an equity interest in a subsidiary that was engaged in a state in insurance activities as principal on November 21, 1991 so long as the subsidiary's activities continue to be confined to offering the same type of insurance to residents of the state, individuals employed in the state and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state.

Paragraph (e) indicates that nothing in section 24 shall be construed as prohibiting an insured state bank in Massachusetts, New York or Connecticut from owning stock in a savings bank life insurance company provided that consumer disclosures are made.

Section 24(g) grants the FDIC the authority to make determinations under section 24 by regulation or order.

The FDIC recently adopted a new Part 362 of its regulations implementing the equity investment restrictions of section 24. That final regulation is published elsewhere in today's **Federal Register.**

On April 30, 1991 the FDIC amended its regulations by adding a new section 333.3 to Part 333, "Extension of Corporate Powers" (12 CFR 333.3). That section, among other things, causes state banks that are members of the Savings Association Insurance Fund (SAIF member state banks) to be subject to the conditions and restrictions regarding equity investments to which state savings associations are subject pursuant to § 303.13 of the FDIC's regulations (12 CFR 303.13). Section 303.13 was adopted by the FDIC on December 12, 1989 (54 FR 53540, December 29, 1989) in order to implement section 28 of the FDI Act (12 U.S.C. 1831e) which placed certain prohibitions on the activities and equity investments of state savings associations. Section 28 was added to the FDI Act as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA, Pub. L. 101-73, 103 Stat. 183 (1989)).

Among other things, section 28 of the FDI Act and § 303.13 of the FDIC's regulations prohibit state chartered savings associations from acquiring or retaining any equity investment of a type or in an amount that is not permissible for a federal savings association. If a state savings association meets its fully phased-in capital requirements and the FDIC determines that there is not a significant risk to the deposit insurance fund, a state savings association may acquire or retain an equity investment in a service corporation that would not be permissible for a federal savings association. Equity investments acquired prior to August 8, 1989 that are prohibited investments must be divested as quickly as prudently possible but in no event later than July 1, 1994. The FDIC may set conditions and restrictions governing the retention of the prohibited equity investments during the divestiture period.

It was the determination of the FDIC's Board of Directors when § 333.3 was adopted that savings associations which convert to state chartered banks and retain their membership in SAIF should continue to be subject to the safeguards enacted by FIRREA. The action was found necessary by the Board of Directors to protect SAIF from harm. At the same time, however, the Board of Directors indicated that it was not its intent to permanently establish two classes of state banks that would be treated differently based upon their membership in a particular deposit insurance fund. The FDIC subsequently undertook a review of the issue of expanded bank powers with the hopes of proposing a regulation applicable to all state banks. Before the FDIC could publish a proposal, however, Congress enacted FDICIA along with the provisions described above concerning equity investments.

It is the FDIC's opinion that § 333.3 was not repealed by implication with the enactment of section 303 of FDICIA. However, in light of the action by Congress, the FDIC's previously expressed intent to adopt uniform treatment for state banks, and the fact that the equity investment provisions of section 24 of the FDI Act are currently

effective, the FDIC proposed to amend § 333.3 of this part to allow state banks to be governed by the equity investment provisions of section 24 of the FDI Act and any regulations adopted by the FDIC pursuant thereto (57 FR 30433, July 9, 1992).

The proposed amendment was published for a 30-day comment period. Two comments were received both of which approved of the FDIC's proposed action. In view thereof, the FDIC is adopting the proposed amendment in final without any changes. As a result of the amendment, state SAIF member banks will no longer be subject to the equity investment restrictions of § 303.13 but will be guided in their equity investments by the provisions of section 24 of the FDI Act and the regulations adopted by the FDIC pursuant thereto.

Regulatory Flexibility Analysis

The Board of Directors has determined that the final amendment, will not have a significant economic impact on a substantial number of small entities. The amendment will not necessitate the development of sophisticated recordkeeping and reporting systems by small institutions nor the expertise of specialized staff accountants, lawyers or managers that small institutions are less likely to have absent hiring additional employees or obtaining these services from outside vendors. On the contrary, the final amendment will relieve what may be perceived as a burden on SAIF member state banks (both large and small) in that they are currently subject to a different set of rules regarding their equity investments than that to which Bank Insurance Fund member state banks are subject. SAIF member state banks are presently required to comply with the most restrictive rule and therefore must determine which rule is in fact the more restrictive. This amendment would relieve that burden and place SAIF member state banks on a par with BIF member state banks.

As the final amendment will not have a disparate economic impact on small institutions, the FDIC was not required to conduct a Regulatory Flexibility Act analysis. (See section 605 of the Regulatory Flexibility Act (5 U.S.C. 605)).

List of Subjects in 12 CFR Part 333

Banks, banking.

In consideration of the foregoing, the FDIC hereby amends chapter III, title 12 of the Code of Federal Regulations by amending part 333 as follows:

PART 333—EXTENSION OF CORPORATE POWERS

1. The authority citation for **Part 333** continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819, 1828(m).

§ 333.3 [Amended]

2. Section 333.3(a) is amended by removing "set forth in § 303.13(a) through § 303.13(f) of this chapter" where it appears in the first sentence and adding in lieu thereof "set forth in § 303.13(a) through § 303.13(c), and § 303.13(f) of this chapter".

By Order of the Board of Directors.

Dated at Washington, DC this 27th day of October, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-26695 Filed 11-6-92; 8:45 am]

BILLING CODE 6714-01-M

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12 CFR Part 362

RIN 3064-AA29

Activities and Investments of Insured State Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is adding a new final rule which implements a portion of new section 24 of the Federal Deposit Insurance Act (FDI Act). This new rule will govern the activities and investments of insured state banks. Under the final rule, insured state banks are prohibited, subject to certain exceptions, from making equity investments of a type, or in an amount, that are not permissible for a national bank. The regulation requires banks to file with the FDIC a plan for the divestiture of any prohibited equity investments; establishes procedures regarding notices to the FDIC pertaining to excepted equity investments in common or preferred stock or shares of registered investment companies; delegates authority to act on applications, notices and divestiture plans from the FDIC's Board of Directors to the Director of the Division of Supervision and to regional directors if redelegated by the Director, and requires that certain information be provided to the FDIC regarding existing insurance underwriting activities that section 24 of the FDI Act allows to be continued.

EFFECTIVE DATE: The final regulation is effective December 9, 1992.

FOR FURTHER INFORMATION CONTACT: Curtis L. Vaughn, Examination Specialist, (202) 898-6759, Shirley K. Basse, Review Examiner, (202) 898-6815, or Cheryl A. Steffen, Review Examiner, (202) 898-6768, Division of Supervision, FDIC, 550 17th Street, NW., Washington, DC 20429; Pamela E.F. LeCren, Counsel, (202) 898-3730, or Grovetta N. Gardineer, Senior Attorney, (202) 898-3905, Legal Division, FDIC, 550 17th Street, NW., Washington, DC 20429; or David K. Horne, Financial Economist, (202) 898-3981, Division of Research and Statistics, FDIC, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final rule has been approved by the Office of Management and Budget under control number 3064-0111 pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Comments on the collection of information should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk officer for the Federal Deposit Insurance Corporation, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, room F-453, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. The collection of information in this regulation is found in § 362.3(b), § 362.3(c), § 362.3(d), and § 362.4 and takes the form of (1) a requirement to submit a divestiture plan covering the disposition of equity investments that may no longer be retained, (2) a requirement to file a notice of intent to retain and acquire common or preferred stock listed on a national securities exchange or shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a), (3) a notice concerning certain insurance activities conducted by well-capitalized insured state banks and/or any of their subsidiaries as of November 21, 1991; (4) a requirement that less than well-capitalized insured state banks must submit an application if they wish to request permission to retain an equity investment in an insurance underwriting department and/or subsidiary; and (5) a requirement that not well-capitalized banks must file an application if they wish to obtain the FDIC's consent to retain an equity investment in an insurance underwriting department or subsidiary. The information will allow the FDIC to properly discharge its responsibilities

under section 24 of the Federal Deposit Insurance Corporation Act as amended by section 303 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, 12 U.S.C. 1831a). The information in the divestiture plans and notices will be used by the FDIC for assuring compliance with the law, as part of the process of determining risk to the applicable insurance fund, and for granting exceptions, if warranted, to the restrictions contained in section 24 of the Federal Deposit Insurance Corporation Act.

The estimated annual reporting burden for the collection of information requirement in the regulation is summarized as follows:

Plan for Divestiture of Prohibited Equity Investments

Number of Respondents: 1,879
Number of Responses Per Respondent: 1
Total Annual Responses: 1,879
Hours Per Response: 16
Total Annual Burden Hours: 30,064

Notice of Intent to Invest in Common or Preferred Stock or Shares of an Investment Company

Number of Respondents: 1,038
Number of Responses Per Respondent: 1
Total Annual Responses: 1,038
Hours Per Response: 8
Total Annual Burden Hours: 8,304

Notice of Insurance Activities

Number of Respondents: 10
Number of Responses Per Respondent: 1
Total Annual Responses: 10
Hours Per Response: 6
Total Annual Burden Hours: 60

Application Regarding Insurance Activities of an Underwriting Department and/or Subsidiary

Number of Respondents: 10
Number of Responses Per Respondent: 1
Total Annual Responses: 10
Hours Per Response: 9
Total Annual Burden Hours: 90

Background

On December 19, 1991, the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. No. 102-242, 105 Stat. 2236) was signed into law. Section 303 of the FDICIA added section 24 to the Federal Deposit Insurance Corporation Act, "Activities of Insured State Banks" (FDI Act, 12 U.S.C. 1831a). With certain exceptions, section 24 of the FDI Act limits the activities and equity investments of state chartered insured banks to activities and equity investments that are permissible for national banks. On July 9, 1992 the FDIC's Board of Directors sought comment for thirty days on a proposed rule that would implement the equity investment restrictions of section 24 (57 FR 30435). A description of the statute, the provisions of the proposed regulation, a summary of the comments, and a discussion of the changes made to the proposal based upon the comments follows.

In addition, insured state banks should note that at the same time the FDIC proposed to amend its regulations by adding new Part 362, the FDIC proposed to amend § 333.3 of the FDIC's regulations, "Savings Association Insurance Fund (SAIF) member state banks formerly savings associations," (12 CFR 333.3). That proposal sought comment on amending § 333.3 so as to relieve SAIF member state banks from the restrictions of section 333.3 in so far as that regulation made SAIF member state banks subject to the equity investment restrictions applicable to savings associations found in § 303.13 of the FDIC's regulations (12 CFR 303.13). By proposing the amendment, the FDIC sought comment on eliminating what is currently a disparate treatment among banks as to their equity investments based upon their deposit insurance fund membership. The FDIC has adopted the proposed amendment to § 333.3 without change. A full discussion of the FDIC's action on that proposal can be found elsewhere in today's **Federal Register.**

Description of Statute

The preamble accompanying the proposed regulation contained a description of section 24. That description is republished below with one or two notable changes based upon the comments. In several instances the description has not changed despite comments that the FDIC's reading of the statute is flawed. Our response to those comments can be found elsewhere in this document. Insured state banks should keep in mind when reading through the final regulation that it focuses solely on equity investments. The remainder of section 24 (notably section 24(a) and 24(d), 12 U.S.C. 1831a(a) and 1831(d)) which deals with "activities" of insured state banks and their subsidiaries will be dealt with by the FDIC in a subsequent proposal. The FDIC anticipates to publish that proposal in the very near future.

While much of section 24 (notably sections 24(a) and 24(d)) does not become effective until December 19, 1992, the provisions of section 24 that deal with equity investments (section 24(c) and section 24(f)) were effective upon the date of enactment of FDICIA, December 19, 1991. Paragraph (c) of section 24 (12 U.S.C. 1831a(c)), "Equity Investments by Insured State Banks", provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type that is not permissible for a national bank. Several exceptions to the general prohibition to making or retaining equity investments are found in paragraph (c) itself and in subsequent paragraphs of section 24. In addition, paragraph (c) provides a "transition rule" that requires insured state banks to divest prohibited equity investments as quickly as can be prudently done but in no event later than December 19, 1996. The FDIC is given the authority to establish conditions and restrictions governing the retention of the prohibited investments during the divestiture period. Paragraph (c) expressly provides for an exception for the retention or acquisition of equity investments in majority owned subsidiaries and equity investments in qualified low income housing.

Section 24(f) (12 U.S.C. 1831a(f)), "Common and Preferred Stock Investment", also effective upon enactment of FDICIA, provides that no insured state bank may directly or indirectly acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank and is not otherwise permitted under section 24. Like paragraph (c), paragraph (f) contains several exceptions to the general prohibition.

Paragaph (f)(2) creates a limited exception for investments in common or preferred stock listed on a national securities exchange or shares of registered investment companies. The exception allows insured state banks that (a) are located in a state that as of September 30, 1991 permitted banks to invest in common or preferred stock listed on a national securities exchange (listed stock) or shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq) (registered shares), and (b) which made or maintained investments in listed stock or registered shares during the period from September 30, 1990 to November 26, 1991, to acquire and retain, subject to the FDIC's approval, listed stock or registered shares up to a maximum of 100 percent of the bank's capital. A bank must file a written notice with the FDIC of its intent to take advantage of the exception and must receive the FDIC's approval before it can lawfully retain or acquire listed stock or registered shares pursuant to the exception. If a bank made investments during the relevant period in listed stock or registered shares that exceed in the aggregate 100 percent of

the bank's capital as measured on December 19, 1991, the bank must divest the excess over the three year period beginning on December 19, 1991 at a rate of no less than ⅓ of the excess each year.

Paragraph (d)(2)(B) provides an exception for the retention by a well-capitalized insured state bank of an equity interest in a subsidiary that was engaged "in a state" in insurance activities "as principal" on November 21, 1991 so long as the subsidiary's activities continue to be confined to offering the same type of insurance to residents of the state, individuals employed in the state and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state.

Paragraph (e) indicates that nothing in section 24 shall be construed as prohibiting an insured state bank in Massachusetts, New York or Connecticut from owning stock in a savings bank life insurance company provided that consumer disclosures are made.

Section 24(g) grants the FDIC the authority to make determinations under section 24 by regulation or order and section 24(i) indicates that nothing in section 24 shall be construed as limiting the authority of the FDIC to impose more stringent restrictions than those set out in section 24.

Comment Summary

The FDIC received 279 comments in response to the proposed regulation. Overall, the comments were critical of the restrictions that would be imposed under the regulation on the ability of state banks to make equity investments. These comments were critical despite the fact that most of those who so commented recognized that the FDIC's discretion in this matter was largely taken away by the statute.

The majority of the comments focused on nine areas, a brief summary of which follows. The remainder of the comments, as well as a more detailed discussion of the comments discussed immediately below, will be addressed where appropriate in the context of the description of the final rule and how it differs from the proposed regulation.

Of the total comments, 151 objected to the manner in which the proposal grandfathered equity investments in what was universally referred to as a "two basket" approach, *i.e.*, treating listed common and preferred stock separately from shares of registered investment companies and limiting banks eligible for the exception under section 24(f) of the FDI Act and § 362.3(b)(4) of the proposal to the highest level of investment they had in each category during the period from September 30, 1990 to November 26, 1991 (the window period, or relevant period). Most if not all of these comments, and a number of additional comments for a total of 180, objected to the proposal limiting banks eligible to make and retain equity investments in listed common or preferred stock and/or shares of registered investment companies to the highest aggregate amount invested during the window period.

Collectively these comments expressed the opinion that the statute allows eligible banks to invest up to 100 percent of their capital in listed common or preferred stock and/or shares of registered investment companies. While many of the comments recognized that the FDIC does have the authority under the statute to limit a bank's investments under the exception, these same comments urged the FDIC not to limit the investments across the board in the fashion proposed. The FDIC was urged rather to tailor the regulation more to the individual circumstances of any given bank. Likewise, the comments which addressed the "two basket" approach pointed out that the proposal could have an adverse affect on safety and soundness as it would prevent banks from diversifying their securities portfolios and would eliminate the flexibility necessary to the proper management of that portfolio.

Sixty-four comments requested that the FDIC simplify the notice required to be filed in order for an eligible bank to take advantage of the exception provided for by section 24(f) and § 362.3(b)(4) of the proposal. These comments argued that it would be burdensome for a bank to put the information together, that the FDIC should already be familiar with a bank's investment policies etc. based upon previous examinations, and that the amount of information requested was not justified in view of the fact that the FDIC has not previously objected to the exercise of these investment powers by banks.

Seventy-five comments objected to the manner in which the proposal defined "change in control" for the purposes of setting out what events will result in the loss of the right to make investments in listed common or preferred stock and/or shares of registered investment companies. The comments universally stated that the proposal was too broad in its definition and that events such as conversion from mutual to stock form, the formation of a one bank holding company, the merger of two eligible banks, and the acquisition of 10 percent of the stock of an eligible bank should not be considered changes in control that result in the loss of the exception under the proposal. Several comments indicated that the intent of the statute was that the grandfather would only be lost if an eligible bank was acquired by an ineligible bank.

On the issue of what the FDIC should consider to be an equity investment "permissible" for a national bank, 48 comments said that the FDIC should treat state banks on a par with national banks and recognize an investment as being "permissible" if a national bank could make the investment regardless of whether a national bank looked to statute, regulation, circular, bulletin, or staff interpretation for authority to do so. Sixty-three comments urged the FDIC to at a minimum recognize OCC Circular 220 which sets out the extent to which a national bank may invest in shares of a mutual fund. Twelve comments expressed concern that it will be extremely difficult for state banks to determine what is and is not a permissible equity investment for a national bank. These comments urged the FDIC to include a list of permissible investments in the regulation or to establish a procedure by which a state bank could go to the Office of the Comptroller of the Currency for a determination. Some banks expressed concern that a national bank has a mechanism to seek approval for an investment that has not theretofore been approved whereas a state bank lacks the same avenue.

The proposal defined the term "equity investment" to include certain interests in real estate. Thirteen of the comments objected to the FDIC's intention to define the phrase "equity investment in real estate" to include real estate acquisition, development or construction arrangements which cause the bank to have "in substance * * * virtually the same risks and potential rewards as an investor in the borrower's real estate". According to the comments, the definition is overly broad and the FDIC is not justified in going beyond the Generally Accepted Accounting Principles (GAAP) in deciding when an acquisition, development or construction loan (ADC loan) is an investment. The comments particularly objected to discussion contained in the preamble accompanying the proposed definition citing a portion of the Federal Financial Institutions Examination Council Call Report Instructions which identifies six direct and indirect investments that will be included as real estate ventures. The

last item is an ADC loan. The preamble then goes on to set out several factors any one of which may cause the FDIC to consider an ADC loan to be an investment if the bank participates in the residual profits of the project. (57 FR 30438–30339). In the view of the comments, the FDIC's approach is ill founded and will deter ADC lending.

Eleven of the comments objected to the definition of "significant risk" contained in the proposal. The definition was found to be overly broad because it focuses on whether there is any likelihood that the fund may suffer a loss regardless of how small. The comments pointed out that any investment has some risk and that by defining the phrase "significant risk" as proposed the FDIC has totally read the word "significant" out of the statute.

Fourteen comments strongly criticized the FDIC for indicating that the exception contained in § 362.3(b)(7) of the proposal (grandfathered investments in insurance subsidiaries) would only apply in the state in which the bank is chartered and the state in which the bank's insurance subsidiary was incorporated and doing business on November 21, 1991. The comments indicated that this construction of the phrase "in a state" as used in section 24(d)(2)(B) of the statute is contrary to the provision's clear language as well as its legislative history and that the regulation would have the practical effect of eliminating the grandfathered insurance activities due to the way in which the insurance business operates. Two comments indicated that the FDIC's proposed construction of the statute was correct. Eight of the comments which addressed the exception for certain insurance subsidiaries commented that the FDIC should broadly construe the phrase "type of insurance" when applying the exception, *i.e.*, to consider different insurance products that fall within the same category of insurance as being the "same type of insurance".

Finally, seventeen comments addressed the proposed definition of the term "well-capitalized". Three comments indicated that the regulation should define the term in the same way that it is defined for the purposes of section 38 of the FDI Act (12 U.S.C. 1831(o)) dealing with prompt corrective action. Two comments indicated that the definition should not be the same. Six comments objected to the proposed definition requiring that a bank must meet the indicated levels of capital *after* deducting its investment in any subsidiary or department of the bank that is engaging in any activity that is not permissible for a national bank. Four comments although not objecting to the capital deduction suggested that the capital deduction be imposed on a case-by-case basis, only be imposed for that portion of any investment attributable to the impermissible activity in the case of a subsidiary or department that conducts permissible as well as impermissible activities, and/or suggested that a bank only be required to be adequately capitalized after the capital deduction in order for the bank to be considered "well-capitalized". One comment suggested that the capital deduction be phased-in.

Description of Final Regulation

The following discussion contains a description of the final regulation and how it differs from the proposed rule that was published for comment.

Definitions

1. Company

The proposed regulation defined the term "company" to mean any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization. The preamble accompanying the proposed regulation indicated that the term was intended to include entities organized to conduct a specific business or businesses but did not include sole proprietorships. The final regulation adopts the definition as proposed without change.

2. Control

The proposed regulation defined the term "control" to have the same meaning as set forth in 303.13(a)(2) of the FDIC's regulations. As defined therein, "control" means the power to directly or indirectly vote 25 percent or more of the voting stock of a bank or company, the ability to control in any manner the election of directors or trustees, or the ability to exercise a controlling influence over the management and policies of a bank or company. The definition of "control" has been adopted in the final regulation as proposed without any change.

3. Convert its Charter

The phrase "convert its charter" was defined in the proposed regulation to refer to any instance in which a bank undergoes any transaction which causes the bank to operate under a different form of charter than that under which it operated as of December 19, 1991. The preamble accompanying the proposed regulation indicated that the definition was intended to encompass any transaction as a result of which a bank will from that point forward conduct business pursuant to a type of charter created by state statute that is new as to the particular bank. For example, if a bank that is operating under a savings bank charter begins to operate under a commercial bank charter, the savings bank will be said to have converted its charter regardless of how the transaction is accomplished.

In response to comments received during the comment period urging the FDIC not to consider a change from mutual to stock form to constitute a charter conversion, the final regulation as adopted provides that a change from mutual to stock form shall not be considered to constitute a charter conversion.

4. Depository Institution

The proposed regulation defined the term "depository institution" to mean any bank or savings association, i.e., the same meaning as set out in section 3(c)(1) of the FDI Act (12 U.S.C. 1813(c)(1)). The definition has been adopted as proposed without change.

5. Equity Interest in Real Estate

The term "equity interest in real estate" is defined under the final regulation to mean any form of direct or indirect ownership of any interest in real property, whether in the form of an equity interest, partnership, joint venture or other form, which is accounted for as an investment in real estate or a real estate joint venture under generally accepted accounting principles or is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council Call Report Instructions. These instructions require that the following be included as direct and indirect investments in real estate ventures:

(1) Any real estate acquired, directly or indirectly, and held for development, resale, or other investment purposes, but does not include real estate acquired in any manner for debts previously contracted.

(2) Any equity investments by the bank in subsidiaries that have not been consolidated, associated companies, corporate joint ventures, unincorporated joint ventures, and general and limited partnerships that are primarily engaged in the holding of real estate for development, resale, or other investment purposes and any extensions of credit to these entities.

(3) Real estate acquisition, development or construction arrangements which are accounted for as direct investments in real estate or as

real estate joint ventures in accordance with guidance prepared by the American Institute of Certified Public Accountants in Notices to Practitioners issued in November 1983, November 1984, and February 1986.

(4) Real estate acquired and held for investment that has been sold under contract and accounted for under the deposit method of accounting in accordance with FASB Statement No. 66, "Accounting for Sales of Real Estate".

(5) Receivables resulting from sales of real estate acquired and held for investment accounted for under the installment, cost recovery, reduced profit, or percentage-of-completion method of accounting in accordance with FASB Statement No. 66, "Accounting for Sales of Real Estate" when the buyer's initial investment is less than 10 percent of the sales value of the real estate sold.

(6) Any other loans secured by real estate and advanced for real estate acquisition, development, or investment purposes if the insured depository institution has virtually the same risks and potential rewards as an investor in the borrower's real estate venture.

Characterization as an investment under item 6 above might include instances in which the insured depository institution has accounted for a real estate acquisition, development or construction arrangement as a loan but the FDIC, based on the facts and circumstances surrounding the arrangement, has determined that the arrangement should be accounted for as a direct investment in real estate or as a real estate joint venture under generally accepted accounting principles.

As discussed previously, thirteen comments were received which objected to the FDIC's proposed definition of equity investment in real estate as being overly broad in relation to acquisition, development and construction loans primarily because of the language in the proposal indicating that an ADC loan could be reclassified if the bank had in substance virtually the same risks and potential rewards as an investor. This language has been dropped from the final regulation. In general, the FDIC intends to treat an acquisition, development or construction loan as an equity interest in real estate on the basis of item 6 when the depository institution is expected to participate in a majority of the expected residual profit from the project or when the depository institution participates in less than a majority of the expected residual profit from the project and none of the following characteristics of a loan is present: (a) The borrower has an equity investment which is substantial in relation to the project and which is not funded by the depository institution, (b) the depository institution has recourse to substantial tangible saleable assets of the borrower that have determinable sales value other than the project itself that are not pledged as collateral for other loans, (c) the borrower has provided the depository institution with an irrevocable letter of credit from a creditworthy, independent third party for a substantial amount of the loan over the entire term of the loan, (d) a take-out commitment for the full amount of the loan has been obtained from a creditworthy, independent third party and the conditions for the take-out are reasonable and their attainment possible, (e) noncancelable sales contracts or lease commitments from creditworthy, independent third parties are in effect that will provide sufficient net cash flow on completion of the project to service normal loan amortization and the conditions for the sales or leases are probable of attainment, or (f) a personal guarantee for a substantial amount of the loan has been provided to the depository institution by the borrower and/or a third party and the substance of the guarantee and the guarantor's ability to perform can be reliably measured.

As bank lending standards have evolved over the past several years, in many cases bank assets which are carried as loans on the bank's books have taken on more characteristics associated with investments rather than loans. Accounting for income from real estate loans and for real estate investment is substantially different and the improper classification of these assets can distort an institution's earnings picture. Accounting convention recognizes that, depending upon the circumstances, there is little substantive difference between certain loans and direct investments in real estate and that in those instances the loans should in fact be accounted for as direct real estate investments. The FDIC rejects the concept that its approach will deter lending since the definition is intended to cover only those transactions which would be considered an equity investment in real estate under generally accepted accounting rules. The discussion above is intended to clarify those situations by specifying the characteristics of a loan which, if absent, would cause the transaction to be classified as an equity investment in real estate rather than a loan.

One comment asked if reverse annuity mortgages and shared appreciation mortgages would be classified as equity investments in real estate. The treatment of each of these transactions depends upon the terms of the contract. The FDIC would have to look at the specific facts and circumstances of a situation before making a determination of the proper classification of these assets.

The final regulation contains three exclusions from the definition of "equity interest in real estate": (1) Real property used, or intended to be used, as offices or related facilities for the conduct of the bank's or its subsidiaries' business, (2) an interest in real estate that arises out of a debt previously contracted provided that the real estate is not held any longer than the shorter of the period allowed for holding such real estate under state law or the time period national banks may hold such property, and (3) interests that are primarily in the nature of charitable contributions to community development corporations provided contributions to any one community development corporation do not exceed 2 percent of the bank's tier one capital and total contributions to all such corporations do not exceed 10 percent of the bank's tier one capital (provided the bank's appropriate Federal banking agency has determined that an investment up to 10 percent of tier one capital does not pose a significant risk to the deposit insurance fund). These exclusions parallel §§ 7.3005, 7.3020, 7.3025 and 7.7480 of the Office of the Comptroller of the Currency's regulations (12 CFR 7.3005, 7.3020, 7.3025, 7.7480), new paragraph Eleventh of 12 U.S.C. 24, and recent amendments to section 9 of the Federal Reserve Act (12 U.S.C. 321–338) both of which were enacted into law as part of H.R. 6050 which the President signed into law on October 23, 1992.

The exceptions are the same as were contained in the proposal except that the community development corporation exception has been amended to conform with the statutory changes to 12 U.S.C. 24 (Eleventh) and the Federal Reserve Act which allow national banks and state member banks to make investments designed primarily to promote the public welfare up to an aggregate of 5 percent of unimpaired capital and surplus. Under those changes, a national bank and a state member bank may make aggregate investments not to exceed 10 percent of unimpaired capital and surplus if the Comptroller of the Currency (in the case of a national bank) or the Board of Governors of the Federal Reserve System (in the case of a state member bank) determines that the additional investment will not pose a significant risk to the deposit insurance fund. The

final regulation provides that in the case of an insured state nonmember bank the FDIC's Board of Directors has determined that it will not pose a significant risk to the fund for a bank to make community development corporation investments up to an aggregate of 10 percent of the bank's tier one capital. Under the final regulation, if the Board of Governors of the Federal Reserve System determines that it does not present a significant risk to the fund for a state member bank to make such investments up to an aggregate of 10 percent of the bank's tier one capital, such investments will not be considered equity investments in real estate.

No comments were received concerning the exception for premises used to conduct the bank's business. One comment was received concerning the community development corporation exception as proposed which questioned limiting the exclusion of investments in these corporations. The limitation is based on a similar limitation for national banks. The noted exclusion merely provides that insured state banks can hold equity in such corporations on its books to the same extent that a national bank may do so provided of course that state law so permits. If the "investment" is completely charged off as a charitable contribution, the interest does not appear on the bank's books and is not considered an equity investment.

Ten comments were received concerning the exclusion for real estate held for debts previously contracted. Some of the comments objected to the time frames for holding DPC property citing state laws which are substantially different from national bank law, i.e., in some cases provide for a longer holding period. Limiting the holding period for this real estate to the *shorter* of the period allowed for holding such real estate under state law or the time period national banks may hold such property, may put state banks at a disadvantage. A number of comments indicated that national banks may request a five year extension of time for holding DPC property beyond the five years otherwise applicable and that state banks should likewise be able to obtain an additional five year extension.

The FDIC is of the opinion that as a matter of law a state bank is limited to the shorter of the state or federal period allotted for holding DPC property. Since a national bank cannot hold equity in real estate except in very limited circumstances, section 24 only allows a state bank to hold an interest in real estate if a national bank could do so. For the purposes of the final regulation, however, the FDIC construes the applicable limit on holding of DPC property to be a maximum of ten years. Thus, if the period for holding DPC property under state law is longer than the basic five-year period allowed for national banks and an extension of time is needed to dispose of the property, the FDIC will recognize any such extension granted by the insured state bank's chartering authority provided that such extension does not purport to allow a state bank to hold the DPC property in excess of ten years.

Several comments urged the FDIC to allow a state bank that had acquired DPC property before December 19, 1991 to follow and state holding period. As indicated above, the FDIC is of the opinion that the shorter period must apply. Section 24 clearly not only affected the future acquisitions of equity investments but also affected current holdings in that banks were specifically directed to divest any impermissible equity investments acquired before December 19, 1991. If, for example, on December 19, 1991 a state bank held a piece of DPC property and had held such property for three years and state law allows the bank to hold that property for a total of fifteen years, the bank may hold the property for ten years from December 19, 1991 without that property being considered an equity investment. If the property is not disposed of prior to that time, continued holding of the property may be cited as in violation of the regulation.

6. Equity Investment

The proposed regulation defined the term "equity investment" to mean any equity security, partnership interest, any equity interest in real estate and any transaction which in substance falls within any of these categories, even though it may be structured as some other form of business transaction. The definition of equity investment as proposed is the same as that which is used under § 303.13 of the FDIC's regulations governing a prohibition for savings associations found under section 28 of the FDI Act that is similar to section 24.

The definition is being adopted as proposed with one change. One comment noted that the term "equity investment" did not contain an exception for investments taken dpc whereas the terms "equity investment in real estate" and "equity security" had such an exclusion. The result of the omission is that a partnership interest taken for a debt previously contracted ("dpc") is considered an equity investment. In response to this comment, a dpc exclusion has been added to the definition of equity investment.

Another comment expressed a concern with the possibility that the definition of equity investment which includes "any transaction which in substance falls within these categories even though it may be structured as some other form of business transaction" may be read to include loans to companies which by their nature are highly leveraged and "start-up" loans to small businesses. The FDIC does not intend for the definition to be interpreted in that manner. The intention of the FDIC is to cover only those "in substance" transactions in which there is a legal or accounting basis to consider the transaction to be an equity investment.

7. Equity Security

"Equity security" was defined under the proposed regulation to mean any stock, certificate of interest or participation in any profit-sharing agreement, collateral trust certificate, pre-organization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing unless it is acquired through foreclosure or settlement in lieu of foreclosure. The definition is the same as that used in § 303.13(a) of the FDIC's regulations.

The FDIC received 15 comments addressing the issue of whether the regulation should exclude from the definition of equity security investment grade preferred stock and other preferred stock issues that are very debt like. The comments focused on two categories of preferred stock, money market preferred stock and adjustable rate preferred stock. Adjustable rate preferred stock refers to shares for which dividends are established contractually by a formula in relation to Treasury rates or other readily available interest rate levels. Money market preferred stock refers to those issues in which dividends are established through a periodic auction process that establishes yields in relation to short term rates paid on commercial paper issued by the same or a similar company. Dividends are not declared by the issuer's board and the credit quality of the issuer determines the value of the

stock. Money market preferred shares are sold at auction rather than on a national securities exchange.

The FDIC agrees after reviewing the comments that money market (auction rate) preferred stock and adjustable preferred stock are essentially substitutes for money market investments such as commercial paper and are closer in their characteristics to debt than to equity. The final regulation therefore has been amended to specifically exclude money market preferred stock and adjustable preferred stock from the definition of equity investment. As a result, such investments are not subject to the provisions of § 362.3(a) of the final regulation. Investing in such instruments will be an "activity" for the purposes of section 24. Whether or not a state bank may continue to make such investments after December 19, 1992 will depend, among other things, on whether a national bank could make a similar investment.

The FDIC received one comment urging that the definition be amended so as to not encompass any debt security that carries with it a warrant to purchase equity. The FDIC has rejected this suggestion. If the warrant is for an equity security in which a national bank could not invest (and the equity security cannot be acquired pursuant to an exception under the regulation), the bank would be prohibited from exercising the warrant in any event.

8. Equity Investment Permissible for a National Bank

The proposed regulation defined the phrase "equity investment permissible for a national bank" to mean any equity investment expressly authorized for national banks under the National Bank Act or any other federal statute, regulations issued by the Office of the Comptroller of the Currency, or any order or formal interpretation issued by the Office of the Comptroller of the Currency.

The FDIC requested comment on the propriety of including equity investments authorized by an order or formal interpretation of the Office of the Comptroller of the Currency as "permissible" for the purposes of the proposal and further sought comment on what the FDIC should consider to constitute a formal interpretation if it is in fact deemed appropriate to recognize formal interpretations. Insured state banks were also advised that regardless of how the FDIC defines "permissible for a national bank", they should be prepared to document to the FDIC's satisfaction that their equity investments are permissible for a national bank.

The FDIC received forty-eight comments which indicated that the definition of permissible for a national bank as proposed was too narrowly drawn. It was suggested that in order to avoid creating a competitive disadvantage for state banks, the regulation should recognize all directives and staff opinions of the Office of the Comptroller of the Currency. In short, if a national bank can rely upon an issuance of the Office of the Comptroller of the Currency then a state bank should have the same advantage regardless of how informal the issuance may be.

In response to the comments, the final regulation modifies the proposed regulation and defines a permissible equity investment by reference to the underlying statutory authorities. It provides further that any equity investment expressly authorized by statute or recognized as permissible in official bulletins or circulars issued by the OCC or in any interpretation issued in writing by the OCC will be accepted as permissible for state banks under section 24. Written staff opinions will be considered to evidence the position of the Office of the Comptroller of the Currency so long as the opinion is considered to be valid by the Office of the Comptroller of the Currency. Thus, an opinion will not be recognized if it is not the current opinion of the Comptroller's Office, *i.e.*, it is no longer considered valid, the opinion is overruled by the Office of the Comptroller of the Currency, or the opinion is found by a court of law to be incorrect. Even though staff opinions are not necessarily binding on the Comptroller of the Currency, the FDIC is satisfied that they embody the current opinion of the Office of Comptroller of the Currency and that to not recognize them would in fact unnecessarily put state banks at a disadvantage. State banks should note that the FDIC will generally expect any conditions or restrictions set out in the Comptroller of the Currency's regulations, bulletins, circulars, and staff opinions to be met if the equity investment is to be considered permissible under part 362 when made by a state bank.

In expanding the definition the FDIC also addressed the 63 comments which stated that the regulation should recognize Banking Circular 220 issued by the Comptroller of the Currency on November 21, 1986 relating to national bank investment in investment companies composed wholly of bank eligible investments. This Circular offers the opinion that it is permissible for a national bank to purchase for its own account shares of investment companies as long as the portfolios of such companies consist solely of obligations which are eligible for purchase by national banks for their own account. By recognizing this circular and similar bulletins or circulars, the FDIC is excluding from the coverage of this regulation such investments, i.e., any investments consistent with the Circular 220 would be considered an equity investment permissible for a national bank.

Sixteen comments expressed concern that state banks do not have access to the Office of the Comptroller of the Currency for interpretive opinions and that these banks cannot make a determination if an investment is allowed for a national bank. Several comments suggested the establishment of a procedure in which state banks would have direct access to the Office of the Comptroller of the Currency to obtain interpretive opinions. The FDIC does not have authority to establish such a procedure and the implementing statute does not require such a response from the Office of the Comptroller of the Currency. Information on what investments are permissible for national banks is publicly available in a variety of sources, including various banking law reporters, publications of the OCC Communications Division ("Interpretations and Actions" and the Quarterly Journal), and a database on LEXIS. Recognizing that investments in addition to those addressed to date in written interpretations of the OCC may be permissible for national banks, the FDIC and the OCC are working together to develop inter-agency procedures for resolving those questions as they arise. In addition, to address the many questions about permissible national bank powers that the FDIC has received since FDICIA was enacted, the FDIC is working in conjunction with the OCC to develop basic guidance to state banks on investments and powers of national banks. It is intended that a financial institution letter containing the guidance will be sent out to state banks.

9. Lower Income

One of the exceptions to the general prohibition on acquiring equity investments not permissible for a national bank allows insured state banks to become limited partners in partnerships that develop housing projects designed to primarily benefit "lower income" persons. The proposed regulation defined "lower income" to mean an income that is less than or

equal to the median income (as determined by state or federal statistics) for the area in which the housing project is located. Under the proposed definition the "area" in which a housing project is located referred to the relevant Metropolitan Statistical Area (MSA) if the project is located within an MSA. If the project is not located in an MSA, the median income of the "area" referred to the median income of the state or territory as a whole exclusive of the designated MSA's.

The FDIC invited comment generally on the issue of what state or federal statistics the FDIC should recognize for the purposes of applying this definition; how the term "area" should be construed for the purposes of applying the definition; and what federal and state statistics are readily available to insured state banks. Two comments were received, both of which expressed concern relating to the definition of "area" in rural parts of a state. These comments felt that by using statewide statistics certain depressed rural areas may be overlooked. In response to these concerns the definition as adopted in the final regulations has been amended so that statistics for the state or territory (exclusive of designated MSA's in the state) would be used for a project not located in a MSA only when no statistics for a local area are available.

10. National Securities Exchange

The term "national securities exchange" was defined under the proposal to mean an exchange that is registered as a national securities exchange by the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) and the National Market System. "National Market System" referred to the top tier of the three tiers of the over-the-counter securities traded through the National Association of Securities Dealers Automated Quotation system (NASDAQ). It was the stated opinion of the FDIC when the proposal was published for comment that if a security is listed on a registered exchange or is traded in the National Market System the security will be more liquid due to a wide market, sufficient information will be available about the security and the issuer to enable the market to make informed pricing decisions about the security, and the opportunities for fraud and manipulation of the security are minimized.

Nine comments addressed this definition. Of the nine, seven requested that the regulation give the same treatment to common or preferred stock listed on a foreign exchange that is accorded stock listed on a national exchange. One comment approved of defining "national securities exchange" to take in the National Market System and one comment indicated that any security traded on NASDAQ should be considered to be listed on a national securities exchange.

The final regulation adopts the definition as proposed. Although securities listed on foreign exchanges may have the same liquidity characteristics of securities listed on a national securities exchange as defined herein, the statute does not leave the FDIC the discretion to extend the exception in § 362.3(b)(4) of the final regulation to foreign exchanges. Lastly, the FDIC continues to believe that securities traded on the bottom two tiers of NASDAQ do not have the same assurance of liquidity and are more volatile. Thus, the FDIC has rejected the comment to include all of NASDAQ.

11. Significant Risk to the Deposit Insurance Fund

The proposed regulation defined the phrase "significant risk to the deposit insurance fund" so as to indicate that a significant risk is to be understood to be present whenever it is likely that any insurance fund administered by the FDIC may suffer any loss whatever. Eleven comments objected to the proposed definition saying that it did not take into account the plain meaning of the word significant. Furthermore, as any investment by a bank can be said to pose the possibility of some loss, and the definition can essentially be said to create a standard of risklessness, no equity investment or activity would ever pass the standard. Several of the comments objected to the discussion in the preamble accompanying the proposed regulation which indicated that, in the FDIC's opinion, it is not necessary that making the equity investment will result in the failure of threatened failure of a bank before a significant risk of loss to the fund is considered to be present.

In response to the comments, the definition has been reworded slightly as follows: "significant risk to the deposit insurance fund shall be understood to be present whenever there is a high probability that any insurance fund administered by the FDIC may suffer a loss". The rewording has been done in an attempt to remove the implication that because an investment or activity cannot be said to be "riskless" under all circumstances the FDIC will determine that the investment or activity will pose a significant risk of loss to the fund. The emphasis is properly whether there is a high degree of likelihood, under all of the circumstances, that an investment or activity by a particular bank, or by banks in general in a given market or region, may ultimately produce a loss to either of the funds. The relative or absolute size of the loss that is projected in comparison to the fund will not be determinative of the issue.

The definition as adopted in final is consistent with passages of the legislative history of section 24. (See, S. Rep. No. 102–167, 102d Cong., 1st Sess. 54 (1991)). Additionally this definition (actually the definition precisely as set out in the proposal) has been applied to other provisions of the FDIC's regulations for some time now. (See, § 303.13, 12 CFR 303.13). What is more, given the recent strains on the resources of the deposit insurance funds, it is the agency's position that it is appropriate to approach this issue conservatively. For much the same reasons the FDIC is rejecting the comment that the FDIC is being overly broad when it has announced its intention not to require that an equity investment or activity be expected to result in the imminent failure of a bank before the equity investment or activity can be said to present a significant risk to the fund.

12. Subsidiary

The term "subsidiary" is defined under the final regulation to mean any company directly or indirectly controlled by an insured state bank. This term has the same meaning as found in § 337.4 of the FDIC's regulations (12 CFR 337.4) and is the same meaning that was contained in the proposed regulation. The FDIC received one comment that the definition of subsidiary should be expanded to state, "For the purposes of Section 362.4, subsidiary means any company directly or indirectly controlled by more than one insured state bank operating as a subsidiary consistent with state law." The FDIC has not amended the definition as requested. It is the FDIC's reading of section 24 that only a majority owned subsidiary is granted an exception under paragraph (c) and that, furthermore, after December 19, 1992 the activities of such a subsidiary as principal must conform to the activities permissible for a subsidiary of a national bank unless the FDIC gives its approval. Activities in subsidiaries that are less than majority-owned, even if control is present, must be consistent with activities that are permissible for a national bank.

One comment inquired as to how a partnership that is controlled by a state bank is to be treated under the regulation. Is the partnership interest an

equity investment or is the partnership treated as a subsidiary since a subsidiary is defined to include among other things a partnership controlled by a bank? If the bank holds the majority interest in the partnership, it will be treated as a majority owned subsidiary that falls within the exception contained in § 362.3(b)(1) of the final regulation. If the bank controls the partnership but is not the majority interest holder, the partnership interest is subject to divestiture if the partnership conducts an activity that is not permissible for a national bank unless one of the exceptions in the regulation is applicable.

13. Tier One Capital

Under the final regulation, "tier one capital" has the same meaning as found in part 325 of the FDIC's regulations when that term is used with reference to an insured state nonmember bank. The term shall be understood to refer to "tier one capital" as defined by the Board of Governors of the Federal Reserve System when the term is used with reference to an insured state member bank. At this time Part 325 defines "tier one capital" as common stockholders' equity, noncumulative perpetual preferred stock and minority interests in consolidated subsidiaries, minus all intangible assets other than mortgage servicing rights eligible for inclusion in core capital and supervisory goodwill eligible for inclusion in core capital. The Board of Governors of the Federal Reserve System defines tier one capital in appendix A to 12 CFR part 208. As defined therein tier one capital generally means common stockholders' equity, qualifying noncumulative perpetual preferred stock (including related surplus) plus minority interests in the equity accounts of consolidated subsidiaries minus goodwill. Only those capital elements that technically meet the definition of tier one capital can be included as tier one capital for the purposes of this proposal. No comments were received pertaining to the definition of Tier 1 capital, and the definition stands as proposed.

14. Well-Capitalized

The final regulation defines the term "well-capitalized" by cross referencing § 325.103 of the FDIC's regulations which implements the prompt corrective active provisions of the FDI Act. That definition is as follows: A "well-capitalized" insured state bank means an insured state bank that has a ratio of total capital to risk-weighted assets of not less than 10.0 percent; a ratio of Tier 1 capital to risk-weighted assets of not less than 6.0 percent; a ratio of Tier 1 capital to total book assets of not less than 5.0 percent; and which is not subject to any order or final directive issued by its appropriate Federal banking agency requiring that it meet and maintain a specific capital level for any capital measure. In order to be considered well-capitalized for the purposes of § 362.3(b)(7) of the final regulation, an insured state bank must meet the above requirements before excluding the bank's investment in its insurance underwriting subsidiary of the bank and the following capital levels must be met after such investment is excluded. The bank's total risk-based capital must equal or exceed 8.0 percent and the bank's tier one risk-based capital must equal or exceed 4.0 percent and the bank's leverage ratio must equal or exceed 4.0 percent; or 3.0 percent or greater if the bank is rated composite 1 under the CAMEL rating system and the bank is not experiencing or anticipating significant growth. These requirements are the same as that which are necessary under the FDIC's prompt corrective actions regulations for a bank to be considered to be adequately capitalized. The bank's "investment" in its subsidiary will be considered to equal the amount invested in the subsidiary's equity securities plus any debt issued by the subsidiary that is held by the bank. The bank's investment in a department will be considered to equal the total of any funds transferred to the department which is represented on the department's accounts and records as an accounts payable, a liability, or equity of the department except that transfers of funds to the department in payment of services rendered by the department will not be considered an investment in the department.

Although a number of changes have been made to the definition from that which was contained in the proposed regulation, in many ways the definition has been adopted essentially as proposed. The requirement that a bank not be in a "troubled condition" in order to be considered "well-capitalized" has been deleted in the final regulation so that the definition as contained in Part 362 will be consistent with § 325.103 of the FDIC's regulations. (Three comments were received supporting using the same definition of "well-capitalized" as used for the implementation of section 38 of the FDI Act and two comments opposed using the same definition. The FDIC has decided to cross reference the prompt corrective action regulations in order to ensure consistency.) In addition, in response to comments that it was overly restrictive to require that a bank be "well-capitalized" after deducting the bank's investment in an insurance subsidiary, the regulation has been amended to indicate that a bank need only be adequately capitalized after making the capital deduction. It had been suggested that the FDIC make this change since the FDIC should only be concerned with whether a bank could sustain a total loss of its investment and still have sufficient capital to safely conduct its operations. Several comments objected to defining "well-capitalized" so as to require a capital deduction for a bank's investment in any subsidiary or department that engages in activities that are not permissible for a national bank. These comments were concerned with the implication that the FDIC may, for the purposes of section 24(d), require that a bank be "well-capitalized" before the FDIC will grant approval for any of its subsidiaries to conduct any activity as principal that a national bank subsidiary could not conduct. The final regulation makes clear that the capital deduction is only relevant for the purposes of whether a bank is eligible for the exception contained in § 362.3(b)(7), "Interests in insurance subsidiaries". The FDIC will consider the issue of whether a capital deduction is appropriate whenever a subsidiary engages in any activity as principal that is not permissible for a national bank when the agency considers regulations implementing section 24(d)(1) of the FDI Act which pertains to "activities" of insured state banks and their majority owned subsidiaries.

Eleven comments addressed excluding the bank's investment in an insurance underwriting subsidiary from the bank's capital. Six of the comments objected to the deduction. One comment suggested a phase-in of the requirement. The FDIC continues to be of the belief that it is appropriate for the regulation to contain the capital deduction. Taking the deduction will provide assurance that the bank could lose its entire investment in the subsidiary and still have enough capital left to absorb other losses, should they arise, from more "traditional" banking functions. Any bank which has an investment subject to the capital deduction requirement will not be required to consolidate the subsidiary for the regulatory capital requirements. These entities would be consolidated, however, for the purposes of preparing the bank's Report of Condition and Report of Income. The final regulation does, however, provide for a phase-in of the capital deduction on a case-by-case basis (see § 362.3(b)(7)(ii) of the final regulation).

Those banks which hold stock in an insurance underwriting subsidiary or have an insurance underwriting department and which would not be adequately capitalized if they were to take the entire capital deduction at once may apply to the FDIC for permission to retain their investment in the subsidiary and/or continue to operate their insurance department. The application cannot be granted unless the bank is expected to meet the definition of "well-capitalized" no later than three years from the effective date of the final regulation and the FDIC determines that the retention of the subsidiary, or continued operation of the department, in the interim will not pose a significant risk to the insurance fund. The bank would in effect be asking for permission to stagger the capital deduction over a period of time not to exceed three years at the end of which the bank could absorb the entire capital hit and be adequately capitalized. The application may be in letter form and should set out the bank's plan to become well-capitalized taking into consideration the gradual deduction of the bank's investment.

One comment suggested that a bank not be required to deduct its entire investment if the subsidiary engages in permissible activities in addition to impermissible activities. As the final regulation clearly provides that the capital deduction only comes into play with respect to insurance underwriting subsidiaries and departments (and then only if the underwriting activities are ones that are not permissible for a national bank) the FDIC does not anticipate that the concern raised by the comment should be a problem.

15. Insured State Bank

The proposed regulation defines the term "insured state bank" to mean any state bank, whether or not a member of the Federal Reserve System, that is insured by the FDIC including any insured branch of a foreign bank that is not a federal branch. The FDIC received one comment which urged that the final regulation delete the reference to foreign branches. The comment noted that subsection 7(h) of the International Banking Act as amended by section 202 of FDICIA (12 U.S.C. 3105(h)) establishes a regulatory scheme governing the activities of state branches of foreign banks that, while similar to section 24 of the FDI Act, is somewhat different. It would not be appropriate, according to the comment, to bring foreign branches within the ambit of section 24 because a separate regulatory system was contemplated by the Congress. In response to this comment the final regulation has been amended so as to delete the reference to insured branches of foreign banks.

General Prohibition on Acquiring or Retaining Equity Investments That Are Not Permissible for a National Bank

Section 362.3(a) of the proposed regulation contained a restatement of the overall prohibition on making or retaining equity investments of a type or in an amount that is not permissible for a national bank. The FDIC received twelve comments which objected to restricting state bank equity investments. Some of the comments objected to restricting such investments at all (such investments were described as beneficial for banks) and some of the comments specifically objected to restricting state banks to investments that are permissible for a national bank. Two comments expressed the opinion that the FDIC had misread the statute insofar as it was the FDIC's expressed opinion that section 24(c) of the FDI Act was immediately effective upon enactment. The comments indicated that section 24(c) should be read as not being effective until December 19, 1992 as section 24(a) which governs "activities" is not effective until that time and the statute defines "activity" to include making any investment. According to the comments, since an "equity investment" is an "investment", the FDIC is able to approve or deny a state bank making an otherwise impermissible equity investment if the bank meets its capital requirements and the FDIC determines that the equity investment does not pose a significant risk to the fund. The comments also stated that the FDIC was misguided in relying in part for its opinion on how section 24 operates on section 28 of the FDI Act as added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA, 12 U.S.C. 1831(e)). Five comments urged the FDIC not to adopt its announced position on commitments to acquire equity investments. The preamble accompanying the proposed regulation had indicated that any state bank that had entered into a commitment prior to December 19, 1991 to acquire what is now an impermissible equity investment may not proceed with the acquisition. (57 FR 30436, July 9, 1992, column 3). Two comments urged the FDIC to distinguish between commitments, capital calls and what was referred to as phased construction.

Section 362.3(a) of the final regulation has been adopted as proposed without any change. The statute leaves the FDIC no discretion on the matter of whether equity investments of state banks should be restricted and whether the restriction should be tied into the powers of a national bank. The FDIC has rejected the construction of section 24(c) as urged by the above described comment. Unlike paragraph (a) of section 24, paragraph (c) does not contain any language delaying its effectiveness until December 19, 1992. We do not feel that this omission was by oversight nor is it appropriate as a matter of law in the agency's opinion to import the December 19, 1992 date from paragraph (a) into paragraph (c). Paragraphs (a) and (c) draw a clear distinction between investments that are equity investments and other types of investments. It is a maximum of statutory construction that the specific governs the general thus it would be inconsistent with that tenet to ignore the treatment accorded equity investments in paragraph (c) and paragraph (f). What is more, the reading of section 24 urged on the FDIC by the comment would make paragraphs (c) and (f) superfluous. If paragraph (a) were intended to govern all investments, there would be no need for paragraph (c) or paragraph (f). Congress could simply have stopped after drafting paragraph (a) but it did not. Lastly, the FDIC's reading of section 24 is consistent with the reading congress stated should be given to section 28 of the FDI Act.[1] The FDIC is justified in looking to section 28 for guidance in construing section 24 even though section 28 dealt with savings associations and may have been prompted by a set of circumstances not entirely replicated in the banking industry. The two statutes are structurally very similar. In many respects the language is similar if not identical and the stated intent of both provisions is to ensure that the activities and equity investments of federally insured depository institutions do not present a risk to the deposit insurance funds. In fact, the legislative history of section 24 references the losses experienced by thrifts and Congress's legislative response to those losses (section 28 of the FDI Act) and describes

[1] Section 28(a) of the FDI Act (enacted on August 8, 1989) prohibits state savings associations from engaging in certain activities after January 1, 1990. The provision thus contained a specific delayed effective date. Section 28(c) prohibits state savings associations from making certain equity investments. Section 28(c) has no such delayed effective date reference. Like section 24, section 28 defines "activity" to include acquiring or retaining any investment. The legislative history for section 28 clearly indicates that paragraph (c) was immediately effective upon enactment. Thus, it is clear that making an equity investment is not an "activity" for purposes of paragraph (a). (135 Cong Rec. S10203 (daily ed. August 4, 1989)).

section 24 as being similar to the rules previously adopted for thrifts in FIRREA. (S. Rep. 102–167 accompanying S. 543, October 1, 1991, p. 5).

As to commitments, the FDIC has again reviewed the case law and continues to be of the opinion that a state bank may not proceed under a pre-existing commitment to acquire an equity investment that a national bank could not acquire. We are confident that such an institution will have a defense to a breach of contract claim on the basis of impossibility of performance. The agency does not consider this position to be tantamount to retroactive rulemaking. Congress has the authority to nullify outstanding contracts by subsequent legislation and did so by enacting section 24. The statute clearly prohibits acquisitions after December 19, 1991 and just as clearly requires divestiture of existing investments that, although lawful when made, are no longer lawful.

The FDIC is willing to take a case-by-case approach in applying the final regulation to phased construction arrangements and capital calls. As was indicated in the preamble accompanying the proposal, partially performed contracts will need to be reviewed on the facts in order to determine whether it can be said that an equity investment was "acquired" before December 19, 1991 and that such investment is eligible to be retained over the divestiture period set out in the final regulation. The issue with respect to capital calls and phased construction is whether a capital infusion, or construction done in stages, gives rise under the facts to an additional equity investment.

A number of state banks expressed concern about equity investments that may have been made after December 19, 1991 under the mistaken understanding that the equity investment restrictions of section 24 would not take effect until December 19, 1992. The FDIC recognizes that many state banks may have not been aware of the equity investment restrictions until only recently and that many banks may have been operating under the assumption that the restrictions were not yet effective. It is not the FDIC's intent to take enforcement action against these banks for a violation of section 24, however, banks that did acquire impermissible investments after December 19, 1991 must divest those assets. Such banks should file a divestiture plan as provided by § 362.3(c)(2) of the final regulation. Although the agency could conclude that the investments are not eligible to be divested over the five year period as the assets were not held by the bank on December 19, 1991, the FDIC has determined that it is more prudent to handle the timing of divestiture on a case-by-case basis under the regulation rather than to force immediate divestiture which could have an adverse impact on the affected banks.

Exceptions to General Prohibition on Acquiring or Retaining Prohibited Equity Investments

The statute contains several exceptions to the general prohibition on acquiring or retaining equity investments that are not permissible for a national bank. Those exceptions are set out in the final regulation in § 362.3(b). A description of the exceptions and a discussion of the comments which addressed those exceptions follows.

1. Majority Owned Subsidiary

Section 362.3(b)(1) of the proposal provided that an insured state bank is not prohibited from acquiring or retaining a majority stock interest in a subsidiary even if the stock investment in that subsidiary is one which would not be permissible for a national bank. If an insured state bank holds less than a majority interest in the subsidiary, and that equity investment is of a type that would be prohibited to a national bank, the exception does not apply and the investment is subject to divestiture.[2] Majority ownership for the exception is understood to mean ownership of greater than 50% of the outstanding voting stock of the subsidiary.

The proposal also indicated that an insured state bank that is a member of SAIF will not be permitted to retain its majority interest in a subsidiary pursuant to the exception if the bank was required under § 333.3 of the FDIC's regulations to request the FDIC's permission to retain the investment and the application was denied. In such case, the SAIF member state bank must divest the interest in the subsidiary in accordance with whatever conditions were previously established by the FDIC.

Section 333.3 applies to state banks that are members of SAIF. Under § 333.3 a SAIF member state bank may not acquire or retain an equity investment that is not permissible for a federal savings association. An association that meets its capital requirements may apply for permission to retain an interest in a subsidiary that would otherwise be prohibited. In order for the application to be approved the FDIC must determine that retaining the equity investment in the subsidiary will not pose a significant risk to SAIF. The preamble accompanying the proposed regulation indicated that, although FDIC proposed to delete the above described portion of § 333.3, (see 57 FR 30433) it is the FDIC's belief that any denial previously made by the FDIC pursuant to § 333.3 would operate to limit the exception because the FDIC had already determined that retaining the investment will pose a significant risk to SAIF. It was the expressed opinion of the FDIC that it would jeopardize SAIF to hold otherwise as to do so would in effect allow the bank to retain an investment expected to adversely affect the fund only to require the bank to seek the FDIC's permission to retain the investment pursuant to whatever procedures the FDIC adopts to implement the portion of section 24 dealing with activities of subsidiaries.

Approximately twelve comments addressed § 362.3(b)(1) of the proposal. The comments did not raise any objections to the provision as drafted. The comments almost exclusively raised questions regarding what activities the FDIC will determine that a majority owned subsidiary may engage in without posing a significant risk to the fund. Those issues will be addressed by the FDIC in another rulemaking in the near future. As no objections to the exception were received, § 362.3(b)(1) is being adopted in final as proposed.

Insured state banks are reminded that the exception for majority owned subsidiaries is itself limited. Section 24(d) provides that no subsidiary of an insured state bank may engage *as principal*, after December 19, 1992, in any activity that is prohibited to a subsidiary of a national bank unless the bank meets its applicable capital requirements and the FDIC determines that the conduct of the activity in question will not pose a significant risk to the deposit insurance fund. As already stated, the FDIC will consider further proposed rulemaking to implement the requirement that activities by majority owned subsidiaries be approved by the FDIC. That rulemaking will consider such things as whether certain activities should be prohibited by regulation, whether certain activities should be listed as having been found not to

[2] It is our understanding that national banks may own a minority interest in certain types of subsidiaries, i.e., a subsidiary of a national bank is not required in all instances to be at least 80% owned. Therefore, an insured state bank may hold a minority interest in a subsidiary if a national bank could do so. Thus the statute and the regulation do not necessarily require a state bank to hold at least 80% of the stock of a company in order for the equity investment in the company to be permissible under the regulation.

present a significant risk to the fund, and whether the FDIC should establish parameters for operations of majority owned subsidiaries, e.g., structural and/or operational restrictions to ensure that the conduct of the activity in question will not present a significant risk to the insurance fund.

2. Qualified Housing Projects

Section 362.3(b)(2) of the proposed regulation set out an exception for qualified housing projects. Under the exception, an insured state bank is not prohibited from investing as a limited partner in a partnership, the sole purpose of which is direct or indirect investment in the acquisition, rehabilitation, or new construction of a residential housing project intended to primarily benefit lower income persons throughout the period of the bank's investment. The bank's investments, when aggregated with any existing investment in such a partnership or partnerships, may not exceed 2% of the bank's total assets. The proposed regulation indicated that banks are to take as the measure of their total assets the figure reported on the bank's most recent consolidated report of condition. The FDIC chose the most recent report of condition as the comparison point in an attempt to provide a more stable asset base against which the bank's investments can be measured. If an investment in a qualified housing project does not exceed the limit at the time the investment was made, the investment shall be considered to be a legal investment even if the bank's total assets subsequently decline. In that event, however, no further investments in qualified housing projects would be permissible until the bank's total assets increase.

Comment was requested on how the FDIC should construe the terms "primarily" and "residential" as used in this exception (i.e., how much commercial activity can go on in a building before it is no longer residential or no longer is intended to primarily benefit lower income persons); whether or not the FDIC should include unfunded commitments as part of the bank's investment in partnerships under this exception; and what problems, if any, the exception as written poses for bank's meeting their Community Reinvestment Act obligations.

The preamble accompanying the proposed regulation also reminded state banks that as the proposed definition of equity investment did not include an interest in community development corporations up to an aggregate of 5% of a bank's tier 1 capital (see discussion of "equity investment in real estate" definition) insured state banks may invest in qualified housing projects excepted by § 362.3(b)(2) up to 2% of their total assets in addition to investing in community development corporations up to an aggregate maximum of 5% of tier 1 capital. With the exception of the changes discussed below, § 362.3(b)(2) is being adopted in final as proposed.

In response to comments, the final regulation indicates that a qualified housing project includes, but is not necessarily limited to, projects eligible for federal low income housing tax credits under section 42 of the Internal Revenue Code (26 U.S.C. 42). Inclusion of such projects was suggested by three of the comments. A review of the information available regarding projects which qualify for such tax credit indicates that they should be available for the exemption. Under the Internal Revenue Code, to be a "qualified low-income housing project" the project must meet one or the other of the following two tests; 20 percent or more of the residential units are rent restricted and are occupied by individuals whose income is 50 percent or less of the area median gross income, or 40 percent or more of the residential units are rent restricted and occupied by individuals whose income is 60 percent or less of the area median gross income. Part of the building in which the qualified low-income housing project is located may be used for purposes other than residential rental purposes without the project loosing its eligibility for the tax credit.

Specific comment was requested regarding the meaning to be given "primarily" and "residential" as used in the final regulation. Four comments addressed this area. In each case, the comment indicated the opinion that projects should not be disqualified from the exception if they are not 100% residential properties. Two of the comments indicated that if a project does not qualify for the low income housing tax credit under federal law the project should be considered a qualified low income housing project if at least 50% of the available residential properties are available to lower income individuals and that such projects should still qualify provided no more than 20% of the total square footage of such projects is available for commercial usage. The remaining comment indicated that 51% of the project should be required to be residential and any commercial development should be found to be incidental to the qualified housing. If the commercial development is wholly unrelated to qualified housing, then 71% of the available space should be residential.

The FDIC agrees that some commercial development may be both incidental and beneficial to a housing development. Therefore, the final regulation provides that a residential real estate project which does not qualify for tax credits under section 42 of the Internal Revenue Code may be considered primarily for the benefit of lower income persons if 50% or more of the housing units are to be occupied by lower income persons. Additionally, a project will be considered primarily residential despite the fact that some portion of the total square footage is utilized for commercial purposes provided such commercial use is not the primary purpose of the project. Therefore, any project with less than 50% of the total available square footage dedicated to housing would not qualify for the exemption.

The two comments addressed counting unfunded commitments as part of the bank's investment in partnerships under the exception had opposing viewpoints. One comment indicated that, by analogy to a national bank's lending limit, it would be appropriate to exclude unfunded commitments to encourage qualified housing investment. The other comment felt including legally binding, unfunded commitments as part of the bank's investment in a partnership is appropriate. Another comment indicated that investments in qualified housing projects should be based on capital and not asset size.

The final rule adopts the position that legally binding commitments are to be included as part of the bank's investment under the exception in § 362.3(b)(2). Such investments are not analogous to lending relationships (any excess investment cannot be sold as easily as a loan can be participated out if the bank's asset base does not grow in an amount which offsets the additional funding of the commitment).

3. Savings Bank Life Insurance

Section 362.3(b)(3) of the proposed regulation provided that an insured state bank located in Massachusetts, New York, or Connecticut may own stock in a savings bank life insurance company provided that the insurance company prominently disclosed to purchasers of life insurance policies, annuities, and other insurance products that the policies, annuities and other products offered to the public are not insured by the FDIC, are not obligations of, and are not guaranteed by, any insured state bank. The proposal indicated that the following or a similar statement will

satisfy the disclosure requirement: "This [policy, annuity, insurance product] is not a federally insured deposit and is not an obligation of, nor is it guaranteed by, any federally insured bank."

The agency received eleven comments on this section of the proposal. Several of the comments argued that the FDIC is attempting to require disclosure provisions in the absence of any statutory authority. According to these comments, while section 24(e)(1)(B) of the FDI Act provides that, in order for the savings bank life exception to be available, the consumer disclosure provisions of section 18(k) of the FDI Act (12 U.S.C. 1828(k)) must be met, since section 18(k) of the FDI Act does not contain any consumer disclosure provisions Congress clearly did not intend that disclosure be required. The comments also argued that to require disclosure is unnecessary as the relevant state laws already require that a similar type of disclosure appear on the face of the instruments that are sold. The comments further pointed out that since the inception of savings bank life insurance there have been no reports of consumers confusing savings bank life insurance with an insured deposit. These comments suggested delaying the effectiveness of the disclosure requirement for a waiting period ranging from six months to a year (if disclosure is in fact imposed) in order to allow the banks an opportunity to produce the documentation necessary. Some of the comments indicated that they were not opposed to the inclusion of a disclosure statement on the face of an instrument sold by a savings bank life insurance company, as many already include a similar type of disclosure on the instrument, or in their promotional materials.

The FDIC also sought comment on the timing of any disclosure and whether the regulation should require that any disclosure be signed. The comments which addressed these areas all indicated that to require the consumer to acknowledge receipt of the disclosure, either at the time of the application or at some later date, would be extremely burdensome to banks and that it would lead to potentially higher costs in production and postage. Those higher costs would be passed on to the customers.

The final regulation retains the requirement for disclosure. The FDIC continues to believe that Congress intended some type of disclosure and that the absence of a consumer disclosure provision in section 18(k) of the FDI Act does not negate the intent of Congress that disclosure be made. The regulation does not require that the disclosure appear on the face of an instrument sold through a savings bank life insurance company nor does it require a signature acknowledgement by a consumer. Under the final regulation the disclosure must appear, however, in a separate document that is clearly labeled "consumer disclosure" if the disclosure does not appear on the face of the instrument. The disclosure must be prominent, made prior to the time the purchase of any savings bank life insurance policy or other product is made, and must read substantially as follows: "This [policy, annuity, insurance product] is not a federally insured deposit and is not an obligation of, nor is it guaranteed by, any federally insured bank." If state law or regulation provides for substantially similar disclosure (including the timing of disclosure), compliance with the state imposed disclosure requirements will satisfy the requirements of the final regulation. Allowing a bank to follow state law should in many, if not all cases, remove the concern that the regulation will create additional costs.

4. Director and Officer Liability Insurance

The proposed exception for owning stock of a company that provides director and officer liability insurance (proposed § 362.3(b)(5)) is being adopted in final without any modification. Under the final regulation, an insured state bank is not prohibited from acquiring up to 10% of the voting stock of a company that solely provides or reinsures directors', trustees', and officers' liability insurance coverage or bankers' blanket bond group insurance coverage for insured depository institutions. Any shares in excess of this limit that were purchased before December 19, 1991 must be divested as quickly as prudently possible but in no event later than December 19, 1996 unless another exception applies.

The term "provides" shall be understood to mean underwriting or assuming the insurance risk rather than acting in the capacity of an agent. As the proposal to amend § 333.3 was adopted in final without any amendments (see final amendment to Part 333 contained elsewhere in today's **Federal Register**), insured state banks that are members of SAIF and which were not permitted to acquire or retain voting stock in a directors and officers liability insurance company unless that company insured the bank's officers and directors are no longer under those constraints.

One comment requested clarification as to whether a state bank could own stock in a directors and officers (D&O) liability insurer which engages in other activities. The exception does not extend to such situations as section 24(f)(3) of the FDI Act specifically limits the exception to companies that "only" provide D&O insurance or reinsure such risks. Ownership of such stock may be permitted, however, under § 362.3(b)(4) of the regulation if the bank is eligible for use of that exception and the voting stock of the company is listed on a national securities exchange. Another comment requested clarification as to whether an insurance underwriter may write bonds that benefit securities firms (i.e., bonds guaranteeing the authenticity of a customer's signature) and still qualify for the exception in § 362.3(b)(5). Again, the answer is no.

5. Shares of Depository Institutions

Section 362.3(b)(6) of the proposal provided that an insured state bank is not prohibited from acquiring or retaining the voting shares of a depository institution if the institution engages only in activities permissible for national banks; the institution is subject to examination and regulation by a state bank supervisor; 20 or more depository institutions own voting shares of the institution but no one institution owns more than 15% of the voting shares; and the voting shares are only held by depository institutions (other than directors' qualifying shares or shares held under or acquired through a plan established for the benefit of the officers and employees). The section is being adopted in final without any changes.

Two comments were received in response to this section of the proposal. Both requested clarification on whether a bank may invest in a "banker's bank". Such investment is allowable if the above criteria are met, some other exception in the regulation is available, or the investment is permissible for a national bank.

6. Interests in Insurance Subsidiaries

Section 362.3(b)(7) of the proposed regulation set out an exception for a well-capitalized bank to retain an equity investment in a majority owned subsidiary that was lawfully providing insurance as principal on November 21, 1991 provided that the activities of the subsidiary continue to be limited to underwriting insurance of the same type as provided by the subsidiary as of November 21, 1991 to residents of the state, individuals employed in the state, and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state. The preamble accompanying

the proposal indicated that "principal" would be understood to mean underwriting or assuming the risk of insurance rather than acting in the capacity of an agent; "in a state" would be construed to except insurance underwriting activities by an insured state bank only in the state in which the bank was chartered as of November 21, 1991 and by a subsidiary of an insured state bank only in the state in which the subsidiary was incorporated and doing business as of November 21, 1991; "lawfully providing insurance as principal" as of November 21, 1991 would be construed as requiring that the bank and/or subsidiary must have actually underwritten policies and/or other insurance products that were outstanding as of November 21, 1991; and that "type" of insurance should be understood to encompass whatever type of insurance policies and/or products that the bank and/or its subsidiary were authorized by state law to issue as of November 21, 1991 and were in fact providing to the public.

Fourteen comments, several of which were from members of Congress, criticized the proposed rule because of the interpretation of the phrase "in a state" which excepted insurance underwriting activities by an insured state bank only in the state in which the bank was chartered as of November 21, 1991 and the insurance underwriting activities of a subsidiary of the bank only in the state in which the subsidiary was incorporated and doing business as of November 21, 1991. These comments urged the FDIC to be guided by the clear, unambiguous language of section 24(d)(2)(B) which did not limit the exception as the FDIC had indicated. In short, "a state" did not mean "in the home state". The comments pointed out that if the FDIC felt compelled to review the legislative history of the provision, a careful reading of that legislative history demonstrates that Congress specifically rejected the approach the FDIC is now advocating by regulation. According to these comments, there was a managers' amendment to the bill on the Senate floor which changed the language in the proposed bill limiting insurance underwriting activities of a state bank from "in *that* State" to "in *a* State" (emphasis added) (See, 137 Cong. Rec. S16,683–85 (daily ed. Nov. 14, 1991)). Only two changes of note were subsequently made: the insertion of the requirement that the bank be well-capitalized and the elimination of a transition rule that was designed to allow banks and their subsidiaries to phase-out activities that would no longer be permissible. The latter was pointed to as evidence that Congress anticipated that all existing insurance underwriting activities would be grandfathered and that there was therefore no need for a transition rule. Senator Roth described the provision as enacted on the Senate floor as grandfathering all existing activities of state banks and their subsidiaries. "Apparently, the grandfather clause, which was drafted originally to exclude Delaware, did not and does not limit its protection to the home State, so to speak, but rather covers any State in which the bank was providing insurance it underwrites. Thus, when Delaware was included within the grandfather clause, its banks obtained the same rights as others.

Those rights are described as the "continuation of existing activities" in the head note preceding the text in the Senate bill * * * [T]he conference agreement preserves the rights of State banks authorized to underwrite insurance to continue to underwrite the same type of insurance in any State in which they provided such insurance as of November 21, 1991." (Cong. Rec. S18626, November 27, 1991, remarks of Senator Roth). Lastly, it was pointed out that the exchange between Senator Graham and Senator Garn cited by the FDIC in the preamble accompanying the proposed regulation pertained to interstate insurance sales restrictions that had been contained in the Senate bill and that the FDIC had taken from those remarks an incorrect inference.

After carefully reviewing the comments and reexamining the legislative history of section 24(d)(2)(B), the FDIC is persuaded that its initial reading of the provision was flawed. In response to the comments, the final regulation expands the FDIC's interpretation of the phrase "in a state" as excepting insurance underwriting activities by an insured state bank in a state where it was lawfully underwriting insurance as of November 21, 1991 and excepting the insurance underwriting activities of a bank's subsidiary of the bank to insurance underwriting activities in the state where the subsidiary was lawfully engaged in that activity as of November 21, 1991. Section 362.3(b)(7) has also been modified to make clear that the exception is only necessary when the insurance subsidiary is engaging in insurance underwriting activities that are not permissible for a national bank.

A discussion of the final regulation's treatment of "type of insurance" is found below under the heading "Notification of Exempt Insurance Underwriting Activities".

The provision in the proposed regulation indicating that a bank may retain its equity investment in a majority owned title insurance underwriting subsidiary if the bank was required before June 1, 1991 to provide title insurance as a condition of its charter is carried into the final regulation with one change. The exception as proposed indicated that it did not apply if the bank had converted its charter since June 1, 1991 or any transaction that is described in § 362.3(b)(4)(ii) occurs after June 1, 1991. The final regulation provides that the exception does not apply if any transaction that is described in § 362.3(b)(4)(ii) occurs except for a charter conversion. Upon closer review of section 24, the FDIC realized that the statute provides for loss of the exception only in the case of a change in control and not in the event of a charter conversion. The change in the final regulation corrects what had been an overly broad cross reference to § 362.3(b)(4)(ii) in that that provision not only encompasses a change in control but also takes in a charter conversion.

7. Common or Preferred Stock; Shares of Investment Companies

Section 362.3(b)(4)(i) of the final regulation provides that to the extent permitted by the FDIC, and subject to the limitations of § 362.3(d) of the final regulation, an insured state bank that is located in a state which as of September 30, 1991 authorized banks to invest in common or preferred stock listed on a national securities exchange or shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) and which during any time in the period beginning on September 30, 1990 and ending on November 26, 1991 made or maintained an investment in such stock or registered shares, may retain the listed stock or registered shares that it lawfully acquired or held prior to December 19, 1991 and may continue to acquire listed stock or registered shares. This language tracks the language found in section 24(f)(2) of the FDI Act.

The FDIC received five comments on this provision. One comment criticized the wording of the exception because, in the commentor's opinion, section 24(f)(2) of the FDI Act permits state banks to invest in any type of equity investment that is not permissible for a national bank and is not limited to permitting state banks to invest in listed stock or registered shares. Four comments objected to the requirement that common or preferred stock be "listed" in order for the stock to be eligible under the exception. (A large number of

comments focused on § 362.3(d) of the proposal which set out limits on the permissible investments that can be made pursuant to the exception. Those comments are discussed below under the heading, "Notice and Approval of Intent to Invest in Listed Common or Preferred Stock or Shares of Investment Company; Divestiture of Stock or Shares in Excess of 100% of Capital".)

The FDIC is of the opinion that to read section 24(f)(2) as broadly as suggested by the commentor who opined that section 24(f)(2) goes to any impermissible equity investment is neither consistent with the language of the provision nor the provision's legislative history. If the exception were intended to be as expansive as suggested, there would be no need for the provision to require that the bank actually have made or maintained investments during the indicated time period in listed stock or registered shares and the heading of paragraph (f) of section 24 would not read "Common and Preferred Stock Investment". What is more, the legislative history of section 24(f) reveals an intent by the drafters to create an exception for banks that had invested in listed common and preferred stock and registered shares. There is no indication that the exception was to extend beyond those types of securities. In view of the above, § 362.3(b)(4)(i) of the proposed regulation has been adopted in final as proposed.

The final regulation retains the reference to common or preferred stock "listed" on a national securities exchange. It is the FDIC's opinion that the FDIC is bound to give full recognition to the word "listed" in section 24(f)(2). Nothing in the legislative history of the provision provides any basis upon which to construe the language in any other fashion than to simply require that the stock in question be listed. In short, the FDIC is of the opinion that it lacks the discretion to deviate from the standard set out in the statute that the common or preferred stock must be "listed". The FDIC has therefore rejected the comments urging the FDIC to allow unlisted preferred stock to be eligible under the exception provided that the company which issued the stock is listed and the comment urging the FDIC to allow the acquisition of privately placed stock pursuant to the exception.

Paragraph (4)(ii) of § 362.3(b) of the proposal provided that the exception for listed stock and registered shares ceases to apply in the event that the bank converts its charter or the bank undergoes four types of transactions. Those transactions were: any time a bank undergoes a transaction for which a notice is required to be filed under section 7(j) of the FDI Act; any time a bank undergoes a transaction subject to section 3 of the Bank Holding Company Act (12 U.S.C. 1842); any time control of the bank's parent company changes; and any time the bank is merged into another depository institution. This provision of the proposal is based upon section 24(f)(5) of the FDI Act which indicates that the exception created by section 24(f)(2) would cease to operate if the bank converts its charter or undergoes a change in control.

The FDIC received 75 comments on this aspect of the proposal. In every case the comments expressed the opinion that the proposal was overly broad in what it considered to be a change in control that would terminate the ability to take advantage of the exception. Some of these comments indicated that section 24(f)(5), "Loss of Exception Upon Acquisition", should only be construed as coming into play when a true acquisition occurs. Specifically, the FDIC was urged only to consider a transaction to be a change in control that would terminate the operation of the exception if the transaction brought about an actual, substantive change. The FDIC was urged to amend the proposal so as to not encompass one bank holding company formations, acquisitions of 10 percent of a bank's stock, and mergers between two banks each of which are eligible to make investments under the exception.

Based upon the comments, the final regulation has been modified as follows: A transaction subject to section 3 of the Bank Holding Company Act will not result in the loss of the exception if the transaction is a one bank holding company formation in which all or substantially all of the shares of the holding company will be owned by persons who were shareholders of the bank; a transaction that is presumed to be an acquisition of control under section 303.4(a) of the FDIC's regulations thus triggering a change in bank control notice pursuant to section 7(j) of the FDI Act (12 U.S.C. 1817(j)) will not result in the loss of the exception; and the exception will not be lost if the bank is acquired by or merged into a depository institution that is itself eligible for the exception. Thus, an acquisition of 10 percent of the voting stock of an eligible bank will not cause the loss of the exception nor will a one bank holding company formation.

State banks should be aware that, depending upon the circumstances, the exception will be considered lost after a merger transaction in which an eligible bank is the survivor. For example, if a state bank that is not eligible for the exception is merged into a much smaller state bank that is eligible for the exception, the FDIC may determine that in substance the eligible bank has been acquired by a bank that is not eligible for the exception.

Lastly, the final regulation provides that in the event an eligible bank undergoes any of the transactions which result in the loss of the exception the bank is not prohibited from retaining its existing investments unless the FDIC determines that retaining the investments will adversely affect the bank's safety and soundness and the FDIC orders the bank to divest the stock and/or shares. This provision has been adopted in the final regulation without any changes from the proposal inasmuch as no comments were received. State banks should be aware that the fact that the FDIC has not taken action to order divestiture does not preclude a bank's appropriate banking agency (when that agency is an agency other than the FDIC) from taking steps to require divestiture of the stock and/or shares.

Divestiture of Prohibited Equity Investments

1. Requirement To Divest

Section 362.3(c)(1) of the proposed rule indicated that any insured state bank which acquired prior to December 19, 1991 any equity investment that is not of a type, or in an amount, that is permissible for a national bank must divest the equity investment as quickly as prudently possible but in no event later than December 19, 1996 unless one of the exceptions of the proposed rule applies. The preamble accompanying the final regulation indicated that, although the FDIC is required by statute to see that a bank divests any prohibited equity investment as quickly as prudently possible, it is not the FDIC's responsibility to determine exactly how a bank will accomplish the divestiture. The FDIC is the final arbiter, however, of when divestiture can be prudently accomplished. Banks were advised that in the FDIC's opinion it would not be prudent to arbitrarily hold equity investments that are subject to divestiture until the final divestiture date without adequate documentation as to the reasons why prolonging the divestiture program is prudent. Lastly, it was the FDIC's stated intent to review a bank's plan for divestiture and take such action as may be appropriate if the plan does not allow for divestiture as quickly as prudently possible.

Several comments were received which expressed some concern over the level of involvement by the FDIC in the divestiture process. These comments expressed the opinion that the FDIC's involvement should be very limited so as not to usurp management of the bank. Some comments stated that a divestiture plan presented by a bank for approval would reflect a clearer understanding of the overall impact of the timing of the divestiture on the bank's performance than the FDIC could derive and that rejection of the plan by the FDIC could result in the FDIC requiring divestiture when to do so would be inconsistent with the prudent management of the bank.

The FDIC takes note of this criticism and wishes to emphasize that the agency does not intend to become involved in the bank's management. However, in order to fulfill its statutory responsibility to ensure that prohibited equity investments are divested in a timely and prudent manner, the FDIC may require divestiture in a more timely fashion than the bank has planned if it is the FDIC's judgment that it can be done prudently.

One comment asked that the FDIC waive the prohibitions of section 23A of the Federal Reserve Act (12 U.S.C. 371c) if a bank wishes to accomplish divestiture by transferring the equity investment to an affiliate. The FDIC cannot waive any applicable prohibition under section 23A. That provision of federal law should not be a problem, however, as the sale of an asset to an nonbank affiliate does not usually trigger section 23A.

Section 362.3(c)(1) of the proposed regulation also indicated that any SAIF member state bank which holds an equity investment that is subject to divestiture pursuant to § 333.3 of the FDIC's regulations and which is also subject to divestiture under the proposal are not allowed until 1996 to complete divestiture. In such a case, the equity investment must be divested as quickly as prudently possible but in no event later than July 4, 1994 or any earlier date established by a divestiture plan that was filed with and approved by the FDIC pursuant to § 333.3. The preamble accompanying the proposed regulation stated that it was the FDIC's belief that it is inappropriate to allow such institutions a longer time to accomplish divestiture as it has been established that the institution can prudently accomplish divestiture in advance of December 19, 1996. It was also the FDIC's opinion that it would be an inappropriate diversion of the FDIC's resources to revisit the question of divestiture of these assets. No comments were received with respect to this aspect of § 362.3(c)(1).

Section 362.3(c)(1) is being adopted as proposed with one technical change. It has come to the FDIC's attention that § 362.3(c)(1) as proposed inadvertently contained the date July 4 rather than July 1. The operative divestiture date under § 333.3 of the FDIC's regulations is July 1, 1994. The final regulation corrects this error.

2. Divestiture Plan

The preamble accompanying the proposed rule states that any insured state bank that is required to divest an equity investment must submit a divestiture plan with the regional director for the Division of Supervision for the region in which the bank's principal office is located not later than 60 days from the effective date of the regulation. The divestiture plan must describe the obligor, type, amount, book and market values (estimated or known) of the equity investments subject to divestiture as of the bank's most recent call report date prior to the filing; set forth the bank's plan to comply with the divestiture period; describe the anticipated gain or loss, if any, from the divestiture of the investment(s) and the impact on the bank's capital; and include a copy of the resolution by the bank's board of directors or board of trustees authorizing the filing of the divestiture plan. The regional director may request additional information as deemed appropriate. The preamble indicated that it was the FDIC's intent to review each plan for the purpose of determining whether or not the insured state bank that filed the plan can prudently divest the equity investments in question in a more expeditious fashion than that contemplated under the plan filed with the regional office. The proposal also specifically provides that an insured state bank that has filed a divestiture plan may act in accordance with its plan until such time as the bank is informed in writing by the appropriate FDIC official that the plan is unacceptable.

None of the comments objected to the content of the divestiture plan as set out in § 362.3(c)(3) of the proposal. That provision is being adopted without change. As stated above, numerous comments were received which questioned the FDIC's need to closely scrutinize divestiture plans that had been provided by the bank's management and approved by the bank's board of directors. The commentors felt that as long as the plan provides for a divestiture by the December 19, 1996 date the FDIC should not be overly concerned with the manner in which the divestiture is accomplished. The FDIC believes, however, that the statute requires the FDIC to ensure that not only are the impermissible equity investments divested by the December 19, 1996 date but that divestiture is accomplished prior to that date if divestiture can be accomplished sooner in a prudent manner given the nature and type of the equity investments.

3. Retention of Equity Investment During Divestiture Period

Section 362.3(c)(4) of the proposed regulation indicated that the FDIC may impose such conditions and restrictions on the retention of the equity investments as the FDIC deems appropriate including requiring divestiture in advance of December 19, 1996. No comments were received in response to this provision and it is being adopted in final without any change.

It is contemplated that the FDIC will communicate in writing its objection or non-objection to the bank's divestiture plan. the FDIC's decision concerning the adequacy of the divestiture plan will be based on the information presented. As subsequent events may alter the continued validity of the FDIC's original determination, any non-objection on the part of the FDIC will typically be conditioned upon the continued validity of any assumptions upon which the plan is based, the continued vitality of the bank in question, and the continuation of facts and circumstances existing at the time the non-objection was communicated.

Notice and Approval of Intent to Invest in Listed Common or Preferred Stock or Shares of Investment Company; Divestiture of Stock or Shares in Excess of 100% of Capital

1. Requirement to File Notice and Receive FDIC Approval

Paragraph (1) of § 362.3(d) of the proposed regulation provided that an insured state bank could only acquire or retain listed stock or registered shares pursuant to the exception contained in § 362.3(b)(4) of the proposal, "Common or preferred stock; shares of investment companies", if the bank filed a one-time notice with the FDIC setting forth the bank's intention to acquire and retain such securities and the FDIC determined that acquiring or retaining such securities would not pose a significant risk to the insurance fund. The proposal directed that the notice be submitted to the regional director for the Division of Supervision for the region in which the

bank's principal office is located. The preamble accompanying the proposal further indicated that a bank may retain the listed stock or registered shares that it lawfully held on December 19, 1991 while the notice is pending (provided that those investments do not exceed 100 percent of the bank's tier one capital) but that they may not make any new investments in listed stock or registered shares until the bank receives the FDIC's approval. It was further FDIC's expressed opinion that a bank could not take advantage of the exception in § 362.3(b)(4) until the FDIC responded to the notice even if the FDIC did not do so prior to the elapse of 60 days from the date on which the notice was filed with the FDIC. The following text, which discusses the timing of FDIC's response to the notice, appeared in the preamble accompanying the proposed regulation.

The FDIC recognizes that section 24 contemplates that notices will normally be reviewed and a determination be made within 60 days. It is therefore the FDIC's intention to respond to the notices within 60 days to the extent practicable. However, the FDIC has concluded that the 60-day period in paragraph (f)(6)(B) of section 24 does not allow a bank to make additional investments if the FDIC does not respond before expiration of the 60-day period from the FDIC's receipt of the notice. Paragraph (f)(6) which is captioned, "Notice *and Approval*" [emphasis added] contemplates affirmative approval by the FDIC.[3] In addition, paragraph (f)(6) does not expressly indicate that the bank may proceed in the absence of a determination by the FDIC within the 60-day period,[4] nor does it require that the FDIC "shall" or "must" make a determination within the 60-day period.[5]

Neither the earlier provision found in H.R. Rep. No. 102–330 nor the statute as enacted expressly specifies a consequence for any failure by the FDIC to act within the 60-day period. A well-recognized rule uniformly applied by the courts holds that:

A statutory time period is not mandatory unless it both expressly requires an agency or public official to act within a particular time period and specifies a consequence for failure to comply with the provision.[6]

The FDIC Board of Directors has followed this rule.[7]

The FDIC has therefore concluded that section 24(f)(6) does not require the FDIC to act within the 60-day period. Although the FDIC is not required by law to do so, it is the FDIC's intent to respond to notices filed pursuant to § 362.3(d) within 60 days of receipt of the notice.

The FDIC received one comment which objected to the proposal requiring that a bank file a notice in order to take advantage of the exception in § 362.3(b)(4). Three comments objected to the FDIC effectively eliminating the 60-day time period in the statute. One of the three comments suggested that the FDIC consider allowing a bank that has filed a notice to proceed to make investments under the exception unless the FDIC affirmatively objects.

The FDIC is adopting § 362.3(d)(1) as proposed without any changes. It is the FDIC's considered opinion that section 24(f) does not provide the FDIC any discretion in this matter, *i.e.*, section 24(f) requires that the FDIC receive prior notice and that the FDIC must affirmatively respond to the notice before a bank can proceed to make investments. Likewise, the FDIC continues to be of the opinion, for the reasons set forth above, that the failure of the FDIC to respond to a notice before 60 days has elapsed does not operate as an approval under the statute. The FDIC is hopeful that notices can be processed in advance of 60 days and will do everything possible to do so.

2. Content of Notice.

Section 362.3(d)(2) of the proposal stated the content of the one-time notice to be provided to the Regional Director must include the following:

i. A description of the obligor, type, amount, and book and market values of the listed stock and/or registered shares held as of December 19, 1991;

ii. The highest dollar amount of the bank's investments in listed stock and/or registered shares between September 30, 1990 and November 26, 1991, both in the aggregate and individually in each of the two categories, expressed as a percentage of Tier 1 capital as reported in the consolidated report of condition for the quarter in which the high dollar amount of investment occurred;

iii. A description of the bank's funds management policies and how the bank's investments (planned or existing) in listed stock and/or registered shares relate to the objectives set out in the bank's funds management policies;

iv. A description of the bank's investment policies and a discussion as to what extent those policies:

A. Limit concentrations in listed stocks and/or registered shares by both issue and industry;

B. Set an aggregate limit on investment in listed stock and/or registered shares; and,

C. Deal with the sale of listed stock and/or registered shares in light of market conditions;

v. A discussion of the parameters used to determine the quality of the bank's outstanding investments in listed stock and/or registered shares as well as future investments;

vi. A copy of the resolution by the board of directors or board of trustees authorizing the filing of the notice; and,

vii. Such additional information as deemed appropriate by the regional director.

Numerous comments indicated that the notice as proposed was too detailed and requested that the FDIC provide a standardized format for the notice. Several comments indicated that much of the requested information was already available through examinations and had already been evaluated by the FDIC during the examination process. Only one of the comments suggested information to be included in the notice as an alternative to the proposal.

While certain changes have been made to the notice to reflect changes in other portions of the final regulation, the requirement for a somewhat detailed

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[3] An earlier version of the provision was simply entitled "Notice of Paragraph (2) Activities". The word "approval" was subsequently added to the title. H.R. Rep. No. 102–330, 102d Cong., 1st Sess., at 55 (Nov. 19, 1991).

[4] The language of paragraph (f)(6) as enacted stands in clear contrast with the language found in H.R. Rep. No. 102–330. The earlier version provided a bank could engage in any investment activity pursuant to paragraph (2) only if notice were filed and "the Corporation *has not determined, within 60 days of receiving such notice*" [emphasis added] that the investment would pose a significant risk to the appropriate insurance fund. Under the earlier version, one might argue that failure of the FDIC to act within 60 days satisfied the second of the two elements of the provision, thus a bank could proceed with its investments as notice had been filed and the FDIC had not determined within 60 days of receipt of the notice that there is a risk to the fund. However, the above language was not enacted.

[5] Paragraph (f)(6) thus stands in contrast to other provisions of the FDI Act and other federal statutes, which (a) clearly provide a set time period in which the FDIC must act on a notice, and (b) provide that failure to act cuts off the FDIC's ability to object to the conduct or activity which is the subject of the notice (absent some other independent authority to do so). (See, for example section 7(j) of the FDI Act (12 U.S.C. 1817(j)), section 32 of the FDI Act (12 U.S.C. 1831i), and 12 U.S.C. 3204(8)).

[6] *Fort Worth National Corp.* v. *Federal Savings and Loan Insurance Corp.*, 469 F.2d 47, 58 (5th Cir. 1972). *See* e.g., *Mayor's Office of Employ* v. *U.S. Dept. of Labor*, 775 F.2d 196, 201 (7th Cir. 1985); *St. Regis Mohawk Tribe, New York* v. *Brock*, 769 F.2d 37, 41 (2d Cir, 1985); *Thomas* v. *Barry*, 729 F.2d 1469, 1470 n. 5 (D.C. Cir. 1984); *Marshall* v. *Local Union No. 1374, Int. Ass'n of Mach.*, 558 F.2d 1354, 1357 (9th Cir. 1977); *Usery* v. *Whitin Mach., Works, Inc.*, 554 F.2d 498, 501 (1st Cir. 1977); and *Maryland Casualty Co.* v. *Cardillo*, 99 F.2d 432, 434 (D.C. Cir. 1938).

[7] FDIC Docket No. 86–43k, par. 5111, A–1205 (January 19, 1988).

notice remains. The FDIC continues to be of the opinion that the information is essential if the FDIC is to properly evaluate whether the retention of the bank's existing investments and the continued exercise of the investment authority under the exception poses a significant risk to the deposit insurance fund. While a bank's investment portfolio and its funds management policies and procedures may have remained essentially static over time, changes in the marketplace since the bank's last examination may dictate the need to reevaluate the FDIC's assessment of that portfolio and those policies. This is especially so as the time period between the date of the bank's most recent examination and the date of the bank's notice lengthens. Thus the FDIC does not feel that it can simply rely upon data previously gathered during the supervisory process in order to evaluate the notice. Nor do we feel that a standardized notice form is appropriate. The information called for by the final regulation does not lend itself to submission in a prepared format. All in all it is our opinion that allowing a bank to submit the requested information in letter form (perhaps even accompanied by photocopies of relevant bank policies) will prove the least time consuming and costly for banks. Much of the information that is called for by the final regulation should be readily available to the bank in some form or another and banks are encouraged to rely upon existing documents already in their possession. Submitting a copy of the relevant portions of existing policies supplemented if necessary by a brief discussion pertaining to areas of the notice not specifically covered by the bank's written policies should suffice. Should questions arise as to how much information to include, banks are encouraged to contact their appropriate regional office for clarification.

Changes to the content of the notice from the proposal include a deletion of the requirement for a description of the listed stock and/or registered shares held by the bank on December 19, 1991. In its stead, the bank must state the bank made or maintained investments in listed stock and/or registered shares during the period between September 30, 1990 and November 26, 1991. Such a statement is needed to ensure that the bank does in fact qualify for the exception. The requirement that the highest dollar amount of listed stock and registered shares computed separately and not in the aggregate, held during the window period has been deleted. A bank is required, however, to provide the aggregate highest dollar amount of its investment in listed shares and/or registered securities as a percentage of Tier 1 capital for the quarter in which such investment occurred as well as the aggregate dollar amount of such investments expressed as a percentage of Tier 1 capital as of December 19, 1991. The bank may use Tier 1 capital as reported on the bank's consolidated report of condition for December 31, 1991 if that is more convenient.) This information is necessary in order to determine compliance with the limitations on such holdings as provided by § 362.3(d)(4) of this regulation. Lastly, the reference to book value has been inserted in the final regulation. This change is in response to comments that are more fully discussed under the heading "Maximum Permissible Investment" below.

3. FDIC Determination

Section 362.3(d)(3) of the proposal, "FDIC Determination", set out the standard against which the FDIC proposed to evaluate notices filed pursuant to paragraph (d)(1), i.e., whether there is a significant risk to the fund posed by the exercise of the investment authority pursuant to the exception. It also indicated that the FDIC may condition or restrict approval as necessary or appropriate and provided that the FDIC may require the notifying bank to divest some or all of its investments in listed stock and/or registered shares if upon a review of the notice it is determined that the exercise of the excepted investment authority poses a significant risk to the fund. A notice may also be denied in its entirety.

The preamble accompanying the proposed regulation indicated that the recitation in § 362.3(d)(3) that the FDIC may impose conditions or restrictions in connection with an approval was nothing more than a restatement of the FDIC's existing implied authority to take such action. The preamble also indicated that insured state banks should note that section 24(i) of the FDI Act specifically provides that nothing in section 24 shall be construed as limiting the authority of the FDIC to impose more stringent conditions and that section 24 does not limit the authority of the FDIC to take cease-and-desist action against any insured state bank in the event the exercise of the excepted investment authority is found to constitute under the circumstances an unsafe and unsound banking practice.

Under § 362.3(d)(3) as proposed, divestiture of listed stock and/or registered shares may be ordered if the FDIC has reason to believe that retention of the investments in question will have an adverse effect on the safety and soundness of the notifying bank. Divestiture is not limited to investments held by the bank at the time it files its notice. If the FDIC grants approval for an insured state bank to make investments pursuant to § 362.3(b)(4), and it is determined at any time after the approval is given that the retention of listed stock and/or registered shares acquired pursuant to that approval poses a safety and soundness risk to the bank, the FDIC may require the divestiture of any of the investments.

Section 362.3(b)(3) is being adopted in final as proposed without any change. None of the comments received in response to the proposal took issue with any portion of § 362.3(d)(3) as proposed. In fact, many comments conceded that the FDIC has the clear authority under the statute to condition or restrict use of the exception and that the FDIC may withhold entirely its approval for use of the exception. These comments as well as many others, however, uniformly objected to proposed paragraph (4) of § 362.3(d) which set out the proposed maximum permissible investment that a bank could make pursuant to the exception for listed stock and/or registered shares (see discussion below). A few comments urged the FDIC to be flexible when evaluating whether a given security poses a significant risk to the fund and urged the FDIC to make its evaluations based on the portfolio as a whole. It is in fact the FDIC's intent to do so not only in the context of the securities portfolio as a whole but in the context of the bank's overall condition and its stated investment policies.

4. Maximum Permissible Investment

By far the greatest number of comments received on the proposal addressed proposed § 362.3(d)(4), "Maximum Permissible Investment". As proposed, § 362.3(d)(4) provided that permissible investments under § 362.3(b)(4) would be treated in two groupings, i.e., permissible investments in listed stock and permissible investments in registered shares. As proposed the highest amount of investment in listed stock permitted an insured state bank under the exception would be the highest level of investment in such securities that the bank made during the period from September 30, 1990 to November 26, 1991 expressed as a percentage of the bank's tier one capital as reported for the quarter in which the high investment occurred. Likewise, an insured state bank's investment in registered shares could not exceed the highest level of investment the bank made during that period in such shares expressed as a

percentage of the bank's tier one capital as reported for the quarter in which the high investment occurred. In any event, the aggregate of the bank's investments in both groups could not exceed 100 percent of the bank's tier one capital. The following explanation of how proposed § 362.3(d)(4) was to operate appeared in the preamble accompanying the proposed regulation.

The bank's investment in listed stock is treated separately from its investment in registered shares thus, the bank is allotted two limits, the aggregate of which cannot exceed 100 percent of the bank's tier one capital. If for example, the bank's highest investment in listed stock over the period represented 45 percent of the bank's tier one capital, the maximum permissible investment in listed stock that the FDIC may allow is 45 percent of tier one capital. If the bank had not made or maintained any investments in registered shares during the period, the FDIC cannot permit future investments in registered shares.

If the FDIC determines that a significant risk will be posed to the deposit insurance fund if the FDIC approves (1) the retention of existing investments in listed stock and/or registered shares, and (2) the continued or future investment in such stock and/or shares to the maximum possible investment, the FDIC may set a lower percentage of the bank's tier one capital as the bank's maximum permissible investment.

Once the FDIC has determined the bank's permissible maximum investment, investments in listed stock and/or registered shares may be made in the future only if the new investment, when added to outstanding investments, does not cause the bank to exceed the permissible maximum percentage of the bank's tier one capital as reported on the bank's call report for the period immediately preceding the investment. In short, the bank is not limited to the highest dollar amount of the investment that it made during the period from September 30, 1990 to November 26, 1991. The permissible maximum percentage is set based upon that amount, however, the percentage, once determined, is used with reference to the bank's tier one capital at the time an investment is made. What is more, if the investment when made is within the maximum permissible investment percentage, the investment will not be considered to be in violation of the regulation, nor subject to divestiture, merely because the bank's tier one capital later declines.

The preamble accompanying the proposal specifically recognized that there are many possibilities to choose from in deciding when to measure capital for purposes of applying the exception for listed stocks and registered shares and requested comment on what date or time frame would be appropriate when measuring capital. The preamble also sought comment on whether or not the regulation should measure the investment as a percentage of total capital as opposed to tier one capital. In addition, the preamble requested comment on the agency's conclusions regarding section 24(f)(2) of the statute which formed the basis of § 362.3(d)(4) of the proposal. Specifically, the preamble indicated that the FDIC recognized that the language of the section 24(f)(2) of the FDI Act may be susceptible to a different construction than that which the agency had taken even though the position as reflected in the proposal was, in the agency's words, "the most consistent with the overall intent of section 24".

Comments on this aspect of the proposal were overwhelmingly critical of grouping investments in listed stock and registered shares in "two baskets" and of setting the maximum permissible investment to the highest level of investment during the period between September 30, 1991 and November 26, 1991. The comments, including several from members of congress, indicated that the language and intent of the statute was to permit investments up to a maximum of 100 percent of capital unless the FDIC had a specific concern about a particular bank making such investments. FDIC was urged not to across the board by regulation foreclose any bank from investing up to 100 percent of its capital by setting a lower maximum investment based upon what the bank had invested during the relevant time period. (Some comments objected to the time period itself as being arbitrary.) Many of the comments reminded the FDIC that it has the ability through its safety and soundness oversight to monitor these investments and can address any concerns that arise on a case-by-case basis. Additionally, the "two basket" approach was criticized as not being in the best interests of state banks as it would reduce their ability to effectively manage their investment portfolios.

After carefully considering these comments, the FDIC has decided to make a number of amendments to § 362.3(d)(4). The "two basket" approach has been eliminated. The FDIC is persuaded by the comments that to adopt two separate caps for investments in listed stock and registered shares could undermine the prudent management of a bank's investment portfolio. Therefore, the final regulation allows a bank that is eligible for the exception under § 362.3(b)(4) to change its mix of listed stock and registered shares up to whatever maximum the FDIC has set. Likewise, a bank is not required to have invested in both listed stock and registered shares during the time period from September 30, 1990 and November 26, 1991 in order to be eligible to invest pursuant to the exception. It will suffice that the bank had invested in either listed stock or registered shares.

Finally, the FDIC feels constrained by the language of the statute to test a bank's eligibility to use the exception based upon whether investments were made during the time period set out in the statute. Although the time period may be considered by some to be arbitrary, the statute clearly looks to that time period as a measure of eligibility.

In addition to eliminating the two separate caps on investments in listed stock and registered shares, the final regulation does not automatically limit a state bank to, at most, its highest aggregate investment during the period from September 30, 1990 to November 26, 1991. The FDIC is persuaded after reviewing the comments, some of which came from members of congress, and after carefully reviewing the language of section 24(f)(2) that that provision of law can be fairly read to allow a bank to invest up to 100 percent of its capital in listed stock and/or registered shares provided that the FDIC gives its approval.

The final regulation adopts what can be best described as basically a case-by-case approach to deciding whether any particular bank will be permitted to invest up to 100 percent of its capital in listed stock and/or registered shares with the benefit of the doubt on the matter given to well-capitalized banks and, to a certain extent, to adequately capitalized banks. Under the final regulation as adopted it will generally be presumed that it will not present a significant risk to the insurance fund for any well-capitalized state bank that files a notice pursuant to § 362.3(d)(1) to invest up to 100 percent of its tier one capital in listed stock and/or registered shares. The same presumption will operate in the case of an adequately capitalized bank absent some mitigating factors. In contrast, however, it is presumed under the final regulation that, in the absence of some mitigating factors, it will present a significant risk to the insurance fund for any state bank that is under-capitalized to invest in listed stock and/or registered shares in excess of the highest aggregate amount that the bank had invested in such stock and/or shares during the period from September 30, 1990 to November 26, 1991 expressed as a percentage of the bank's tier one capital as reported by the bank in its consolidated report of condition for the quarter in which the high aggregate investment occurred. "Adequately capitalized" and "under

capitalized" have the same meaning as used for prompt corrective action purposes.

The FDIC feels that it is appropriate, at least initially, to distinguish between banks based upon their capital on the assumption that a better capitalized bank is more able to withstand any losses incurred from its securities portfolio than a bank that has less capital. Thus, unless the FDIC has reason to determine otherwise, well-capitalized banks and adequately capitalized banks can expect to receive approval to exercise the exception up to a maximum of 100 percent of tier one capital.

The final rule treats banks that are under capitalized differently in that the rule still retains the reference to the highest aggregate level of investment during the relevant time period but this time only as a bench mark. A bank that is under capitalized is not absolutely precluded from making investments up to 100 percent of its tier one capital but the FDIC must be satisfied based upon the overall circumstances that for the bank to do so will not pose a significant risk to the insurance fund despite the bank's capital position. If the FDIC determines after reviewing the notice and any additional information that the bank wishes to submit that the bank should be limited to what it has historically invested over the period in listed stock and/or registered shares, limiting a bank to that level of investment should not be disruptive nor be viewed as unfair. It can be fairly presumed that in most instances the high level of investment during the relevant period will reflect a bank's history of investment over time and that that level of investment will be consistent with its overall investment portfolio strategy.

The above approach is consistent with comments which indicated that the statute should be read as allowing investments up to 100 percent of capital but also does not read the language "to the extent permitted by the Corporation" out of the statute. The approach is also consistent with those who commented that the FDIC should rely upon an approach that is more tailored to each individual bank taking into consideration such things as the amount of the bank's risk-based and tier one capital, the bank's earnings, the overall content of the bank's portfolio, the bank's liquidity position, and the level of the bank's non-performing assets.

State banks should note that a well-capitalized bank or adequately capitalized bank whose capital level falls below that necessary to be considered well-capitalized or adequately capitalized may continue to hold its investments that were made pursuant to the exception and continue to manage its existing portfolio unless the FDIC affirmatively directs otherwise. As it may prove more damaging to a bank if the FDIC were to flatly prohibit it from "managing" its existing investments, i.e., replacing listed stock and/or registered shares that have been sold, it is the FDIC's present intention to handle these situations as appropriate on a case-by-case basis under section 24(f)(7), section 8(b) of the FDI Act (12 U.S.C. 1818(b)), Part 325 of the FDIC's regulations (12 CFR 325), Part 308 of the FDIC's regulations dealing with prompt corrective action (12 CFR 308), and any other provision of law or regulation which grants the FDIC the authority to take supervisory action, address safety or soundness, violations of law, deficient capital levels or other practices.

State banks should also note that a bank which is not well-capitalized or adequately capitalized and which has been denied approval to make investments pursuant to § 362.3(b)(4) up to 100 percent of its tier one capital but which has received approval to make such investments to some lesser extent, may request a modification of the order issued in response to its notice filed pursuant to § 362.3(d)(1) if the bank's capital subsequently meets the definition of well-capitalized or adequately capitalized.

The remainder of paragraph (4) of § 362.3(d) as adopted in final provides that (1) a bank may in no event make investments pursuant to the exception in excess of 100 percent of the bank's tier one capital as measured in its most recent consolidated report of condition; (2) a bank's maximum investment under the exception is to be measured according to book value; (3) to be permissible, any acquisition of listed stock or registered shares made after December 19, 1991 cannot exceed, when made, the maximum permissible investment percentage (as set out in the FDIC's approval of the bank's notice of intent to make investments) of the bank's tier one capital as reported on the bank's consolidated report of condition for the period immediately preceding the acquisition; and (4) the FDIC may set a maximum relevant percentage investment that is lower than either 100 percent of tier one capital or the bank's highest aggregate level of investment during the relevant period.

The reference to book value has been added to the regulation in response to a number of comments which inquired whether a bank's investment is to be measured according to its book value or its market value. The comments urged the FDIC to use book value (i.e., the lower of cost or market value) rather than market value because the latter measurement, if used, could operate to remove a bank's ability to make additional investments if the value of the bank's investments increases. The FDIC agrees that that result should be avoided and has therefore amended the final regulation.

The FDIC did not receive any comments suggesting any alternative times at which to measure capital for the purposes of determining whether a bank's investment is permissible, i.e., within the limit on the bank's maximum permissible investment under the exception. Therefore, the final regulation measures capital as of the time an investment is made, specifically capital as reported in the consolidated report of condition for the period immediately prior to the acquisition. If an acquisition was permissible when made, the investment need not be divested merely because the bank's capital falls. However, the bank may be ordered to divest some or all of the assets in question should the FDIC determine that the investment presents a safety or soundness problem.

The FDIC received five comments which indicated that the regulation should use total capital as opposed to tier one capital. Two comments indicated that tier one capital was an appropriate measure. The final regulation continues to measure a bank's investment against tier one capital. Total capital as presently measured by the FDIC and the Federal Reserve Board includes the reserve for loan losses. Inasmuch as those funds are designed to absorb losses from the loan portfolio and are not available to absorb losses from the investment portfolio, it is the FDIC's opinion that total capital is an inappropriate figure against which to limit the size of a bank's listed stock and/or registered shares.

The statement in the final regulation indicating that the FDIC may set a maximum permissible investment limit lower than that otherwise applicable under § 362.3(d)(4)(i) (in the case of the final regulation 100 percent of tier one capital or the highest aggregate level of investment during the relevant time period) merely reflects the FDIC authority, and obligation under section 24, to approve or deny use of the exception based upon the FDIC's assessment of whether a significant risk will be posed to the fund. It is consistent with section 24(i) which indicates that

nothing in section 24 shall be construed as limiting the authority of the FDIC to impose more stringent conditions than those set out therein.

Finally, state banks should note that they are not limited under § 362.3(d)(4) of the final regulation to a fixed dollar amount of investment. The maximum permissible investment is based upon a percentage of the bank's tier one capital. The percentage, once determined, is used with reference to the bank's tier one capital at the time an investment is made.

5. Divestiture of Excess Stock or Shares

Section 362.3(d)(5) of the proposal governed the divestiture of listed stock and registered shares by state banks which hold such stock and/or shares of 100 percent of tier one capital or in excess of the maximum permissible investment set by the FDIC if that investment limit is lower than 100 percent of tier one capital. Paragraph (d)(5) of § 362.3 is being adopted in final as proposed without any change. The discussion in the preamble which accompanied the proposed version of this paragraph is republished below.

Section 24(f)(4) of the FDI Act provides a transition period during which an insured state bank is required to divest any stock and/or shares that it held as of December 19, 1991 in excess of 100 percent of the bank's capital. Section 362.3(d)(5) of the proposal sets out the divestiture requirement and, as provided by the statute, indicates that the excess must be divested by at least ⅓ in each of the three years beginning on December 19, 1991. The proposal indicates that the excess is to be determined by looking to the bank's tier one capital as measured on December 19, 1991. (Tier one capital as measured in the bank's December 31, 1991 call report may be used if it is more convenient to do so.) Insured state banks are required to reduce the excess to a level that is no greater than 100 percent of the bank's tier one capital by December 19, 1994 if the maximum permissible investment set by the FDIC in connection with a notice filed pursuant to § 362.3(d)(1) is 100 percent of tier one capital. Insured state banks that have such an excess are presently subject to the divestiture requirement and should have already divested ⅓ of the excess or be planning to divest ⅓ of the excess prior to December 19, 1992. The requirement to divest at least ⅓ of the excess each year is waived if divesting a lesser amount will reduce the bank's outstanding investment to 100 percent of the bank's current tier one capital. Banks for which the FDIC has set a maximum permissible investment that is lower than 100 percent of tier one capital, must submit a divestiture plan with the FDIC regional office within 60 days of being so informed. Such excess investment must be divested as quickly as prudently possible but in no event later than December 19, 1996. The divestiture plan should contain the same information specified in § 362.3(c)(3).

Notification of Exempt Insurance Underwriting Activities

Section 362.4 of the proposed regulation set out the information that a state bank was to submit to the FDIC regarding its excepted insurance underwriting activities and those of its subsidiaries. In response to comments relieved with respect to § 362.3(b)(7) of the proposal the content of the notice as required by the final regulation has been modified. Under the final regulation the notice must contain: The name of the bank and/or subsidiary; the state or states in which the bank and/or subsidiary was underwriting insurance on November 21, 1991; contain a citation for the bank's/subsidiary's authority to conduct insurance underwriting activities; and a list of the types of insurance that the bank and/or subsidiary provided to the public as of November 21, 1991 in the states previously identified. The provision has also been modified to make clear that a state bank is not required to list any type of insurance underwriting activity that is permissible for a national bank.

The FDIC received 8 comments on the issue of the meaning of "types of insurance". Although most of the comments suggested that the regulation define "type" of insurance broadly according to categories of insurance, some of the comments felt that the regulation should distinguish between insurance products within a category. After reflecting on this issue, the FDIC is of the opinion that the regulation should not have the effect of allowing a bank or its subsidiary to initiate the underwriting of an insurance product that was not underwritten as of November 21, 1991 merely because the insurance product falls within a broad category of insurance in which the bank/subsidiary was actively underwriting policies. For example, a bank may have underwritten medical malpractice insurance (a property and casualty product) but did not underwrite automobile insurance (another property and casualty product). Different insurance products within the same broad category of insurance may be underwritten on entirely different standards and may be subject to entirely different risks. The FDIC does not feel that it was congress's intent to allow a bank or its subsidiary to take on entirely different underwriting risks nor to allow a bank to initiate the underwriting of a different sort of insurance policies than that which were underwritten as of November 21, 1991. (After all, the heading to section 24(d)(2)(B) reads "Continuation of Existing Activities".) Therefore the FDIC will consider various product lines of insurance to be distinct types of insurance for the purposes of § 362.4 and § 362.3(b)(7).

Finally, the FDIC received one comment that expressed concern that the preamble accompanying the proposed regulation contained a reference to annuities when asking for comment on how to construe "type" of insurance. The comment indicated that annuities are not considered to be insurance even though they are typically issued by insurance companies. According to the comment the ordinary dictionary meaning of the word "insurance" does not include annuities; case law recognizes a distinction between annuities and insurance; an annuity contract does not indemnify against loss, something that is a basic characteristic of insurance; annuities are more akin to investments and have been so recognized; state law often distinguishes between annuities and insurance even when authorizing insurance companies to issue annuities; and the Office of the Comptroller of the Currency has recognized annuities as being primarily financial investments.

The FDIC is persuaded that an annuity contract is not an insurance contract. Therefore, a state bank is not required to list annuities in its notice. The issuance of an annuity is to be considered an "activity". Whether or not a state bank or its subsidiaries may issue annuities will therefore be treated in accordance with section 24(a) and section 24(d)(1) of the FDI Act and regulations promulgated by the FDIC implementing those provisions.

Delegation of Authority

Section 362.5 of the proposed regulation provided that the authority to review and act upon divestiture plans submitted pursuant to § 362.3(c)(2) as well as the authority to approve or deny notices filed pursuant to § 362.3(d) is delegated to the Director, Division of Supervision, and where confirmed in writing by the Director, to an associate director, Division of Supervision or the appropriate regional director or deputy regional director. The provision is being adopted as proposed with one change. The final regulation delegates in the same fashion the authority to act on

requests by a bank to retain an equity investment in an insurance underwriting subsidiary despite the fact that the bank does not meet the definition of "well-capitalized".

Regulatory Flexibility Analysis

The Board of Directors has concluded after reviewing the final regulation that the regulation will not impose a significant economic hardship on small institutions. The final regulation does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulation. The Board of Directors therefore hereby certifies pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the final regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.).

List of Subjects in 12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institution, Investments.

In consideration of the foregoing, the FDIC hereby amends chapter III, title 12 of the Code of Federal Regulations by adding a new Part 362 to subchapter B to read as follows:

PART 362—ACTIVITIES AND INVESTMENTS OF INSURED STATE BANKS

Sec.
362.1 Purpose and scope.
362.2 Definitions.
362.3 Equity investments.
362.4 Notification of exempt insurance activities.
362.5 Delegation of authority.

Authority: 12 U.S.C. 1816, 1818, 1819(tenth), 1831a.

§ 362.1 Purpose and scope.

The purpose of this part is to implement the provisions of section 24 of the Federal Deposit Insurance Act (12 U.S.C. 1831a) which sets forth certain restrictions and prohibitions on the activities and investments of insured state banks. In addition, consistent with the overall purpose of section 24, it is the intent of this part to ensure that activities and investments undertaken by insured state banks do not present a risk to either of the deposit insurance funds, are safe and sound, are consistent with the purposes of federal deposit insurance, and are otherwise consistent with law.

§ 362.2 Definitions.

For the purposes of this section, the following definitions shall apply:

(a) *Company* shall mean any corporation, partnership, business trust, association, joint venture, pool, syndicate or other similar business organization.

(b) *Control* shall mean the power to vote, directly or indirectly, 25 per centum or more of any class of the voting stock of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and policies of a company.

(c) An insured state bank will be considered to *convert its charter* if the bank undergoes any transaction which causes the bank to operate under a different form of charter than that under which it operated as of December 19, 1991, however, a change from mutual to stock form shall not be considered to constitute a charter conversion.

(d) *Depository institution* means any bank or savings association.

(e) *Equity interest in real estate* means any form of direct or indirect ownership of any interest in real property, whether in the form of an equity interest, partnership, joint venture or other form, which is accounted for as an investment in real estate or real estate joint venture under generally accepted accounting principles or is otherwise determined to be an investment in a real estate venture under Federal Financial Institutions Examination Council Call Report Instructions. The phrase equity interest in real estate does not include the following:

(1) An interest in real property that is used or intended to be used by the insured state bank or its subsidiaries as offices or related facilities for the conduct of its business or future expansion of its business;

(2) An interest in real property that is acquired in satisfaction of debts previously contracted for in good faith or acquired in sales under judgments, decrees or mortgages held by the insured state bank or acquired under deed in lieu of foreclosure provided that the property is not intended to be held for real estate investment purposes and is not held longer than the shorter of any time limit on holding such property set by applicable state law or regulation or the time limit on holding such property that is applicable by statute or regulation for a national bank; and

(3) Interests in real property that are primarily in the nature of charitable contributions to community development corporations provided that the contribution to any one community development corporation does not exceed 2 percent of the bank's tier one capital and the bank's total contribution to all such corporations does not exceed 5 percent of the bank's tier one capital, provided however, that the bank's aggregate investment in such interest may be as great as 10 percent of the bank's tier one capital if its appropriate Federal banking agency has determined that making such investments does not pose a significant risk to the deposit insurance fund. In the case of an insured state nonmember bank, making an aggregate investment in interests in real property that are primarily in the nature of charitable contributions up to a maximum of 10 percent of tier one capital shall not be considered to present a significant risk to the deposit insurance fund.

(f) *Equity investment* means any equity security as defined in § 362.2(g); any partnership interest; any equity interest in real estate as defined in § 362.2(e); and any transaction which in substance falls into any of these categories even though it may be structured as some other form of business transaction, however, the term *equity investment* shall not include any of the foregoing if it is acquired through foreclosure or settlement in lieu of foreclosure.

(g) *Equity security* means any stock (other than adjustable rate preferred stock and money market (auction rate) preferred stock), certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, or voting-trust certificate; any security immediately convertible at the option of the holder without payment of substantial additional consideration into such a security; any security carrying any warrant or right to subscribe to or purchase any such security; and any certificate of interest or participation in, temporary or interim certificate for, or receipt for any of the foregoing. The term *equity security* does not include any of the foregoing if it is acquired through foreclosure or settlement in lieu of foreclosure.

(h) The phrase *equity investment permissible for a national bank* shall be understood to refer to any equity investment authorized for national banks under the National Bank Act (12 U.S.C. 21 et seq.) or any other statute.

Investments expressly authorized by statute or recognized as permissible in regulations, official bulletins or circulars issued by the Office of the Comptroller of the Currency or in any order or interpretation issued in writing by the Office of the Comptroller of the Currency will be accepted as permissible for state banks.

(i) *Insured state bank* shall mean any state bank insured by the Federal Deposit Insurance Corporation (FDIC) whether or not a member of the Federal Reserve System.

(j) *Lower income* means income that is less than or equal to the median income for the area in which the qualified housing project is located as determined by state or federal statistics. The "area" in which a housing project is located shall be understood to refer to the relevant Metropolitan Statistical Area (MSA) in which the project is located if the project is located within an MSA. If the project is not located in a MSA, the median income of the "area" in which the project is located shall be understood to refer to the median income of the state or territory in which the project is located exclusive of the designated MSA's if no state statistics for the local area are available.

(k) *National securities exchange* means a securities exchange that is registered as a national securities exchange by the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) and the National Market System, i.e., the top tier of the National Association of Securities Dealers Automated Quotation System (NASDAQ).

(l) *Residents of the state* shall be understood to include companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the state.

(m) *Significant risk to the deposit insurance fund* shall be understood to be present whenever there is a high probability that any insurance fund administered by the FDIC may suffer a loss.

(n) *Subsidiary* means any company directly or indirectly controlled by an insured state bank.

(o) *Tier one capital* shall have the same meaning as set forth in Part 325 of this chapter in the case of an insured state nonmember bank and, in the case of an insured state member bank, shall have the same meaning as set forth in regulations defining the term tier one capital as adopted by the bank's appropriate federal banking agency.

(p) *Well-capitalized* shall have the same meaning as is found in § 325.103(b)(1) of this chapter, however, for the purposes of applying this definition, the terms *risk-weighted assets, total capital,* and *total book assets* shall have the respective meaning prescribed in regulations issued by the appropriate federal banking agency. In order to be considered well-capitalized for the purposes of § 362.3(b)(7), an insured state bank must meet the above requirements before excluding the bank's investment in its insurance underwriting department and/or its insurance underwriting subsidiary and the bank must be adequately capitalized after such investment is excluded from the bank's capital. The term *adequately capitalized* shall have the same meaning as is found in § 325.103(b)(2) of this chapter. The bank's "investment" in its subsidiary will be considered to equal the amount invested in the subsidiary's equity securities plus any debt issued by the subsidiary that is held by the bank. The bank's investment in a department will be considered to equal the total of any funds transferred to the department which is represented on the department's accounts and records as an accounts payable, a liability, or equity of the department except that transfers of funds to the department in payment of services rendered by the department will not be considered an investment in the department.

§ 362.3 Equity investments.

(a) *Prohibited investments.* No insured state bank may directly or indirectly acquire or retain any equity investment of a type, or in an amount, that is not permissible for a national bank.

(b) *Exceptions.*—(1) *Majority owned subsidiaries.* An insured state bank is not prohibited from acquiring or retaining a majority interest in a subsidiary. If the FDIC denied an application by a Savings Association Insurance Fund (SAIF) member state bank for permission to acquire or retain the majority interest in a subsidiary pursuant to § 333.3 of this chapter, this exception does not apply. If the denial concerned an application for permission to retain the investment, the SAIF member state bank must divest its interest in the subsidiary in accordance with whatever conditions and restrictions are set forth in the FDIC's order denying the application.

(2) *Qualified housing projects.* (i) Subject to the limitation contained in paragraph (b)(2)(ii) of this section, an insured state bank is not prohibited from investing as a limited partner in a partnership the sole purpose of which is direct or indirect investment in the acquisition, rehabilitation, or new construction of a qualified housing project. A qualified housing project shall be understood to mean residential real estate intended to primarily benefit lower income persons throughout the period of the bank's investment including but not necessarily limited to any project eligible for the low income housing tax credit under section 42 of the Internal Revenue Code (26 U.S.C. 42). A residential real estate project that does not qualify for the tax credit under section 42 of the Internal Revenue Code may be considered primarily for the benefit of lower income persons if 50 percent or more of the housing units are to be occupied by lower income persons. A real estate project that does not qualify for the tax credit under section 42 of the Internal Revenue Code will be considered residential despite the fact that some portion of the total square footage of the project is utilized for commercial purposes provided that such commercial use is not the primary purpose of the project.

(ii) Investments described in paragraph (b)(2)(i) of this section may only be made if the bank's investment in the partnership, when aggregated with any existing investment in such a partnership or partnerships, does not exceed 2 percent of the bank's total assets as reported on the bank's most recent consolidated report of condition. For the purposes of this section, legally binding commitments are included as part of the bank's investment.

(3) *Savings bank life insurance.* Unless it is otherwise found to pose a significant risk to the insurance fund of which the bank is a member, an insured state bank located in Massachusetts, New York, or Connecticut is not prohibited from owning stock in a savings bank life insurance company provided that the savings bank life insurance company discloses to purchasers of life insurance policies, annuities, and other insurance products that the policies offered to the public are not insured by the FDIC, are not obligations of, and are not guaranteed by, any insured state bank. The following or similar statement will satisfy this requirement: "This [policy, annuity, insurance product] is not a federally insured deposit and is not an obligation of, nor is it guaranteed by, any federally insured bank." The disclosure must be made prior to the time of purchase, must be prominent, and must be in a separate document clearly labeled "consumer disclosure" if the disclosure does not appear on the face of the policy, annuity or other insurance product. If state law or regulation provides for substantially

similar disclosure requirements, compliance with the state imposed disclosure requirements will satisfy the requirements of this paragraph (b)(3).

(4) *Common or preferred stock; shares of investment companies.* (i) To the extent permitted by the FDIC, and subject to the requirements of paragraph (d) of this section, an insured state bank that is located in a state which as of September 30, 1991 authorized investment in:

(A) (*1*) Common or preferred stock listed on a national securities exchange (listed stock); or

(*2*) Shares of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1, et seq.) (registered shares); and

(B) Which during any time in the period beginning on September 30, 1990 and ending on November 26, 1991 made or maintained an investment in such listed stock or registered shares, may retain whatever listed stock or registered shares that were lawfully acquired or held prior to December 19, 1991, and continue to acquire listed stock and/or registered shares.

(ii) The exception provided for by paragraph (b)(4)(i) of this section shall cease to apply to any insured state bank if the bank converts its charter, the bank undergoes any transaction for which notice is required to be filed under section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) except a transaction that is presumed to be an acquisition of control under § 303.4(a) of this chapter, the bank undergoes any transaction subject to section 3 of the Bank Holding Company Act (12 U.S.C. 1842) other than a one bank holding company formation in which all or substantially all of the shares of the holding company will be owned by persons who were shareholders of the bank, the bank is acquired by or merged into a depository institution other than a depository institution described in paragraph (b)(4)(i) of this section, or control of the bank's parent company changes. In such event the insured state bank may not make any additional investments pursuant to the exception provided for by paragraph (b)(4)(i) of this section. The bank is not prohibited under this section from retaining its existing investments provided that the FDIC does not order a divestiture under paragraph (d)(3) of this section, section 8 of the Federal Deposit Insurance Act (FDI Act, 12 U.S.C. 1818) or some other provision of the FDI Act or FDIC's regulations, or some other provision of law.

(5) *Stock of company that provides director and officer liability insurance.* An insured state bank is not prohibited from acquiring up to 10 percent of the voting stock of a company that solely provides or reinsures directors', trustees', and officers' liability insurance coverage or bankers' blanket bond group insurance coverage for insured depository institutions.

(6) *Shares of depository institutions.* An insured state bank is not prohibited from acquiring or retaining the voting shares of a depository institution if the institution engages only in activities permissible for national banks; the institution is subject to examination and regulation by a state bank supervisor; 20 or more depository institutions own voting shares of the institution but no one institution owns more than 15 percent of the shares; and the institution's voting shares (other than directors' qualifying shares or shares held under or acquired through a plan established for the benefit of the officers and employees) are owned only by depository institutions.

(7) *Interests in insurance subsidiaries.* (i) A well-capitalized insured state bank is not prohibited from retaining after December 19, 1992 its equity investment in a majority owned subsidiary that was lawfully providing insurance as principal in a state on November 21, 1991 of a sort that could not be so provided by a national bank provided that the activities of the subsidiary continue to be limited to underwriting insurance of the same type provided by the subsidiary as of November 21, 1991 to residents of the state, individuals employed in the state, and any other person to whom the subsidiary provided insurance as principal without interruption since such person resided in or was employed in the state. In the case of resident companies or partnerships, the subsidiary's activities must be limited to providing insurance to the company's or partnership's employees residing in the state and/or to providing insurance to cover the company's or partnership's property located in the state.

(ii) A bank that does not meet the requirements necessary to be considered well-capitalized for the purposes of paragraph (b)(7)(i) of this section may file an application with the regional director for the Division of Supervision for the region in which the bank's principal office is located requesting permission to retain its insurance underwriting department and/or subsidiary. Such application will be granted solely in the FDIC's discretion but in no event will it be granted unless the FDIC determines that the bank is expected to satisfy the definition of well-capitalized for the purposes of paragraph (b)(7) no later than three years from December 9, 1992, and it is determined that retention of the department and/or subsidiary until the bank meets the definition of well-capitalized will not pose a significant risk to the insurance fund. The application may be in letter form and should contain the bank's plan for meeting the well-capitalized definition before three years from December 9, 1992, taking into consideration the gradual deduction of the bank's investment over that period.

(iii) An insured state bank is not prohibited from retaining after December 19, 1992 its equity investment in a majority owned title insurance underwriting subsidiary provided that the bank was required before June 1, 1991 to provide title insurance as a condition of the bank's initial chartering under state law and none of the transactions described in paragraph (b)(4)(ii) of this section (other than a charter conversion) has occurred since June 1, 1991.

(c) *Divestiture of prohibited equity investments*—(1) *Requirement to divest.* Any equity investment acquired prior to December 19, 1991 that is not of a type, or in an amount, that is permissible for a national bank, and which does not fall within one of the exceptions in paragraph (b) of this section, must be divested as quickly as prudently possible but in no event later than December 19, 1996. If a SAIF member state bank holds an equity investment that was subject to divestiture pursuant to § 333.3 of this chapter, and the equity investment is subject to divestiture under this paragraph (c)(1) the equity investment must be divested as quickly as prudently possible but in no event later than July 1, 1994 or any earlier date established by a divestiture plan that was filed by the bank under, and approved by the FDIC pursuant to, § 333.3 of this chapter.

(2) *Requirement to file divestiture plan.* Any insured state bank that is required by paragraph (c)(1) of this section to divest an equity investment must submit a divestiture plan with the regional director for the Division of Supervision for the region in which the bank's principal office is located not later than 60 days from December 9, 1992. An insured state bank that has submitted a plan pursuant to this section may proceed to act in accordance with that plan unless and until it is informed in writing by the FDIC that the plan is unacceptable.

(3) *Content of divestiture plan.* The divestiture plan shall:

(i) Describe the obligor, type, amount, book and market values (estimated or

known) of the equity investments subject to divestiture as of the bank's most recent consolidated report of condition prior to the filing;

(ii) Set forth the bank's plan to comply with paragraph (c)(1) of this section;

(iii) Describe the anticipated gain or loss (anticipated or realized) if any from the divestiture of the investment and the impact thereof on the bank's capital (including capital ratios before and after the sale);

(iv) Include a copy of a resolution by the bank's board of directors or board of trustees authorizing the filing of the divestiture plan; and

(v) Provide such other information as requested by the regional director.

(4) *Retention of equity investments during divestiture period.* Upon review of the divestiture plan and such additional information as requested by the regional director, and at any time during the divestiture period, the FDIC may impose such conditions and restrictions on the retention of the equity investments as the FDIC deems appropriate including requiring divestiture in advance of December 19, 1996.

(d) *Notice and approval of intent to invest in common or preferred stock or shares of an investment company; divestiture of excess investments*—(1) *Notice and required FDIC determination.* No insured state bank may acquire or retain any listed stock or registered shares pursuant to paragraph (b)(4) of this section unless the bank files a one-time notice with the FDIC setting forth the bank's intention to acquire and retain the listed stock or registered shares and the FDIC has determined that acquiring or retaining listed stock or registered shares will not pose a significant risk to the deposit insurance fund of which the bank is a member. The notice must be filed with the regional director for the Division of Supervision for the region in which the bank's principal office is located.

(2) *Content of notice.* The notice shall contain:

(i) A statement indicating whether the bank made or maintained investments in listed stock and/or registered shares during the period between September 30, 1990 and November 26, 1991;

(ii) The aggregate dollar book value amount of the bank's investment in listed stock and registered shares held as of December 19, 1991 expressed as a percentage of the bank's tier one capital as measured on December 19, 1991 (tier one capital as reported on the bank's December 31, 1991 consolidated report of condition may be used in lieu of calculating tier one capital as of December 19, 1991);

(iii) The aggregate highest dollar book value amount of the bank's investments in listed stock and registered shares between September 30, 1990 and November 26, 1991 expressed as a percentage of tier one capital as reported in the consolidated report of condition for the quarter in which the aggregate high dollar amount of investment occurred;

(iv) A description of the bank's funds management policies and how the bank's investments (planned or existing) in listed stock and/or registered shares relate to the objectives set out in the bank's funds management policies;

(v) A description of the bank's investment policies and a discussion of to what extent those policies:

(A) Limit concentrations in listed stock and/or registered shares both by issue and by industry;

(B) Set an aggregate limit on investment in listed stock and/or registered shares; and

(C) Deal with the sale of listed stock and/or registered shares in light of market conditions;

(vi) A discussion of the parameters used to determine the quality of the bank's outstanding and proposed investments in listed stock and/or registered shares as well as future investments;

(vii) A copy of a resolution by the board of directors or board of trustees authorizing the filing of the notice; and

(viii) Such additional information as deemed appropriate by the regional director.

(3) *FDIC determination.* Approval of a notice filed under paragraph (d)(1) of this section will not be granted unless the FDIC determines that acquiring and retaining the listed stock and/or registered shares does not pose a significant risk to the insurance fund of which the bank is a member. Approval may be made subject to whatever conditions or restrictions the FDIC determines is necessary or appropriate. The FDIC may require divestiture of some or all of the investments in listed stock or registered shares made during the period from September 30, 1990 to December 19, 1991, as well as any investments in listed stock or registered shares made subsequent to that period if it is determined that retention of the investments in question will have an adverse effect on the safety and soundness of the bank.

(4) *Maximum permissible investment.* (i) The maximum permissible investment in listed stock and registered shares an insured state bank may make pursuant to paragraph (b)(4) of this section may in no event exceed one hundred percent of the bank's tier one capital as measured in its most recent consolidated report of condition. Book value of the investment shall be used for the purposes of compliance with this limit. Generally, it will be presumed that it does not pose a significant risk to the fund for a well-capitalized bank to acquire and retain listed stock and/or registered shares pursuant to paragraph (b)(4) of this section up to a maximum of one hundred percent of the bank's tier one capital, and absent some mitigating factors, it will also be presumed that it does not present a significant risk to the fund for an adequately capitalized bank to acquire and retain such stock and/or shares up to a maximum of one hundred percent of the bank's tier one capital. It will also be presumed, absent some mitigating factors, that it does present a significant risk to the fund for a bank that is under capitalized to acquire or retain listed stock and/or registered shares in excess of the highest aggregate level of investment made by the bank in such listed stock and/or registered shares during the period from September 30, 1990 to November 26, 1991 expressed as a percentage of the bank's tier one capital as reported by the bank in its consolidated report of condition for the quarter in which the high aggregate investment occurred. "Adequately capitalized" and "under capitalized" shall have the same meaning as is found in § 325.103 of this chapter.

(ii) The FDIC, in response to a notice filed under paragraph (d)(1) of this section, may set a percentage as the maximum permissible investment for any insured state bank that is lower than that which would otherwise be applicable under paragraph (d)(4)(i) of this section.

(iii) Any acquisition of listed stock or registered shares by an insured state bank made after December 19, 1991 pursuant to approval of a notice filed under paragraph (d)(1) of this section may not, when made, exceed the maximum permissible investment percentage (as set out in the FDIC's approval of such notice) of the bank's tier one capital as reported on the bank's consolidated report of condition for the period immediately preceding the acquisition.

(5) *Divestiture of excess stock and/or shares.* (i) An insured state bank that held as of December 19, 1991 investments in listed stock and/or registered shares in an aggregate amount in excess of 100 percent of the bank's tier one capital as measured on December 19, 1991 is prohibited from retaining the excess listed stock and/or registered shares. (Tier one capital as reported on the bank's December 31,

1991 consolidated report of condition may be used in lieu of calculating tier one capital as of December 19, 1991.) Such bank's outstanding investment in listed stock or registered shares must comply by no later than December 19, 1994 with the maximum permissible investment set for the bank by the FDIC in connection with the notice filed pursuant to § 362.3(d)(1) if the bank's maximum permissible investment is 100 percent of tier one capital. In such event, the bank shall divest the excess investment by not less than ⅓ in each of the three years beginning on December 19, 1991, provided however, that the bank shall be relieved of the obligation to divest at least ⅓ of its excess investment each year if divesting a lesser amount will reduce the bank's outstanding investment to 100 percent of its current tier one capital. If the bank's maximum permissible investment set by the FDIC is lower than 100 percent of tier one capital, paragraph (d)(5)(ii) of this section shall apply.

(ii) If an insured state bank does not receive approval in connection with a notice filed pursuant to paragraph (d)(1) of this section to retain its outstanding investment in listed stock and/or registered shares, the bank must, as quickly as prudently possible but in no event later than December 19, 1966, divest the listed stock and/or registered shares for which approval to retain was denied. The bank must file a divestiture plan with the regional director for the Division of Supervision for the region in which the bank's principal office is located no later than 60 days after the bank receives notice that approval to retain the investment(s) was denied. The divestiture plan shall contain the information specified in paragraph (c)(3) of this section.

§ 362.4 Notification of exempt insurance activities.

Any insured state bank that was lawfully underwriting insurance in a state on November 21, 1991, and any insured state bank that has a subsidiary that was lawfully underwriting insurance in a state on November 21, 1991, shall submit a notice to the regional director for the Division of Supervision for the region in which the bank's principal office is located not later than 60 days from December 9, 1992, if those insurance underwriting activities would not be permissible for a national bank or a subsidiary of a national bank. The notice requirement does not apply in the case of an insured state bank described in § 362.3(b)(7)(ii). The notice shall contain the following information:

(a) The name of the bank and/or subsidiary:

(b) The state or states in which the bank and/or its subsidiary was underwriting insurance on November 21, 1991:

(c) A recitation of the authority for the bank or subsidiary to conduct insurance underwriting activities;

(d) A list of the types of insurance that the bank and/or subsidiary provided to the public as of November 21, 1991 in the state(s) identified in paragraph (b) of this section. For purposes of this list, various lines of insurance are considered to be distinct types of insurance.

§ 362.5 Delegation of authority.

The authority to review and act upon divestiture plans submitted pursuant to § 362.3(c)(2), the authority to approve or deny notices filed pursuant to § 362.3(d), and the authority to approve or deny applications pursuant to § 362.3(b)(7)(ii) is delegated to the Director, Division of Supervision, and where confirmed in writing by the Director, to an associate director, Division of Supervision or the appropriate regional director or deputy regional director.

By Order of the Board of Directors.

Dated at Washington, DC this 27th day of October, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-26696 Filed 11-6-92; 8:45 am]

BILLING CODE 6714-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 703

Investment and Deposit Activities

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; confirmation of effective date.

SUMMARY: This final rule will confirm the effective date of § 703.5(e) of the NCUA Rules and Regulations. It is necessary because the effective date of that section was delayed until the effective date of part 704 of the NCUA Rules and Regulations was known. It is intended to make the effective date of § 703.5(e) coincident with the effective date of part 704.

EFFECTIVE DATE: The effective date of § 703.5(e) is December 1, 1992.

FOR FURTHER INFORMATION CONTACT: Lisa Henderson, Staff Attorney, 202-682-9630, or Charles Felker, Investment Officer, 202-682-0640.

SUPPLEMENTARY INFORMATION: On October 17, 1991, the NCUA Board issued a final rule amending part 703 of the NCUA Rules and Regulations (56 FR 56000, Oct. 31, 1991). The rule became effective on December 2, 1991, except for § 703.5(e), which was to become effective on March 1, 1992. The effective date of § 703.5(e) was delayed because that section references part 704 of the Rules and Regulations, which was in the process of being amended. The NCUA Board had anticipated that new part 704 would be in effect by March 1, 1992, but subsequently determined that it would be several months before that part was issued as a final rule and took effect. On February 19, 1992, the NCUA Board issued a final rule delaying the effective date of § 703.5(e) and making it effective upon the effective date of part 704 (57 FR 6553, Feb. 26, 1992). The rule noted that the effective date would be published in the **Federal Register**.

On May 7, 1992, the NCUA Board issued a final rule amending part 704 (57 FR 22626, May 28, 1992). The effective date of the rule is December 1, 1992. Therefore, the effective date of § 703.5(e) is December 1, 1992.

By the National Credit Union Administration Board on October 29, 1992.

Becky Baker,

Secretary of the Board.

[FR Doc. 92-27014 Filed 11-6-92; 8:45 am]

BILLING CODE 7535-01-M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

12 CFR Part 1502

Availability of Information Under the Freedom of Information Act

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Final rule.

SUMMARY: This final rule prescribes procedures to implement the Freedom of Information Act. The Thrift Depositor Protection Oversight Board, which is an agency for the purposes of the Freedom of Information Act, is required to make available certain records pursuant to published rules and to promulgate regulations specifying a schedule of fees applicable to the processing of requests for its records. The final rules sets forth the kinds of information made available to the public and procedures for inspecting or obtaining documents and records of the Board.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Lawrence Hayes, telephone (202) 786–9681.

SUPPLEMENTARY INFORMATION:

Background

The Thrift Depositor Protection Oversight Board (Board) is a corporate instrumentality of the United States, established as the "Oversight Board" by section 21A(a)(1) of the Federal Home Loan Bank Act, 12 U.S.C. 1441a(a)(1), as added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The Oversight Board was redesignated as the Thrift Depositor Protection Oversight Board by the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991, Public Law No. 102–233, section 302(a), 105 Stat. 1761, 1767. The Board's principal duty is to oversee the Resolution Trust Corporation (RTC), also established under FIRREA, whose principal duty is to manage and resolve cases involving failing and failed thrift institutions.

Pursuant to 12 U.S.C. 1441a(a)(2), the Board is an agency of the United States for the purposes of the Freedom of Information Act (FOIA), 5 U.S.C. 552, which requires agencies to publish certain materials, make certain materials available for public inspection and copying and other records available to any person in accordance with published rules, and promulgate regulations under FOIA, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests.

Final Rule

On June 16, 1992, the Board published a proposed rule to implement FOIA. The comment period ended on August 17, 1992. No comments were received.

The Board's final rule, which is substantially unchanged from the proposed rule, establishes regulations and procedures for the implementation of FOIA by the Board. The RTC is a mixed-ownership Government corporation that, like the Board, is an agency of the United States of the purposes of FOIA when it is acting as a corporation. The final rule does not apply to the RTC, and its procedures are not applicable to the publication of RTC documents or the availability of RTC records under FOIA.

Consistent with the requirements of FOIA, the final rule divides Board records into three major categories and provides methods under which each category of information, to the extent not exempt from disclosure, will be published or made available by the Board. The categories are: (1) Information to be published in the **Federal Register**; (2) information to be made available for public inspection and copying; and (3) information to be made available promptly to any person upon appropriate request. The rule sets forth detailed procedures for the processing of requests, including procedures for appealing denials. Under the rule, requests for records created by or obtained from the RTC or another agency may be referred to the RTC or such other agency.

The final rule includes a schedule of fees for the processing of requests and procedures for determining when such fees should be waived or reduced. The schedule of fees conforms to the guidelines promulgated by the Director of the Office of Management and Budget, 52 FR 10012, March 27, 1987; and the procedures concerning the waiver or reduction of fees follow the guidance of the memorandum of the Department of Justice issued on April 2, 1987. In this connection it should be noted that § 1502.10(d)(1)(ii), which sets forth the requirement of 5 U.S.C. 552(a)(4)(A)(iv)(II) that no agency shall charge fees for certain requests for the first two hours of search time or for the first one hundred pages of duplication, also incorporates the Office of Management and Budget's guidelines on this matter by referring to the "cost equivalent" of such search time and duplication. The Office of Management and Budget guidelines provide (52 FR 10019):

> For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will normally be "8½ × 11" or "11 × 14." Thus, requesters would not be entitled to 100 microfiche or computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction.
>
> Similarly, the term "search time" in this context has as its basis, *manual search*. To apply this term to searches made by computer, agencies should determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, agencies should begin assessing charges for the computer search.

The final rule describes or refers to exemptions listed in FOIA pursuant to which agency records may be withheld from the public. In this connection, the regulatory statement of the fifth exemption, 5 U.S.C. 552(b)(5), which among other things, incorporates what has come to be known as the "deliberative process privilege," specifically includes records of the deliberations of the Board, except for the records of the Board's open meetings, which are held at least six times each year.

The Conference Report accompanying FIRREA discussed briefly the status of the Board and the RTC as agencies for the purposes of FOIA and stated that neither the Board nor the RTC acts as a supervisor or regulator of insured depository institutions. H.R. Rep. No. 101–222, 101st Cong., 1st Sess. 410 (1989). Although the Board does not regulate or supervise depository institutions, it is the Board's intention to utilize 5 U.S.C. 552(b)(8), which specifically exempts examination reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, to withhold in appropriate circumstances examination report and similar information forwarded to the Board by a financial institution regulatory agency. When forwarded, such information has been provided to the Board to enable it to carry out its statutory functions; and it is the position of the Board that the use of the eighth exemption in appropriate circumstances is consistent with its governing statute and the statements in the Conference Report.

Order Concerning Availability of Indexes

The final rule provides that the Board shall maintain and make available current indexes providing identifying information for the public as to any matter required by 5 U.S.C. 552(a)(2) to be made available or published. For the Board, such matters are not significant in volume, and the Board believes that requests for such matters, identifying information about such matters by category, and indexes identifying such matters may be handled most expeditiously and efficiently under ordinary request procedures. Elsewhere in this issue of the **Federal Register** the Board is publishing its order determining that publication of current indexes is unnecessary and impracticable. The Board will provide copies of any such index on request at a cost not to exceed the direct cost of duplication.

Effective Date

The Board finds good cause to make this final rule effective upon publication in that requests and appeals under FOIA may thereby be processed without delay in accordance with agency regulations.

Executive Order 12291

The final rule is not a major rule under Executive Order No. 12291.

Regulatory Flexibility Act

The Thrift Depositor Protection Oversight Board certifies that the rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The total economic impact of the rule is minimal.

Paperwork Reduction Act

The collections of information in the final rule have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and assigned control number 3203–0002.

The collections of information in the rule are in §§ 1502.6, 1502.8, and 1502.10. This information is required by the Board to identify the requesters and the records sought, enable submitters of business information to apply for confidential treatment, and assure appropriate assessment and payment of fees. This information will be used to process requests and records. The likely respondents are persons or entities seeking information from records of the Board. It is not likely that persons or entities will submit confidential business information to the Board.

The total annual reporting and recordkeeping burden that will result from these collections is estimated not to exceed fifteen hours. The estimated average burden hours per response is not more than one-half hour for requesters of records under §§ 1502.6 and 1502.10. The annual number of likely respondents is estimated not to exceed twenty-six, and the proposed frequency of response is on occasion.

List of Subjects in 12 CFR Part 1502

Confidential business information, Freedom of information.

For the reasons set forth in the preamble, chapter XV of title 12 of the Code of Federal Regulations is amended by adding new part 1502 to subchapter A to read as follows:

PART 1502—AVAILABILITY OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Sec.

Authority: 5 U.S.C. 552; 12 U.S.C. 1441a(a)(2) and (13).

§ 1502.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by the Thrift Depositor Protection Oversight Board (Board) pursuant to 5 U.S.C. 552 and 12 U.S.C. 1441a(a) (2) and (13).

(b) *Purpose.* This part sets forth the kinds of information made available to the public and the rules and procedures for obtaining documents and records of the Board.

(c) *Scope.* This part applies to the information and records of the Board, an instrumentality of the United States separate and distinct from the Resolution Trust Corporation (RTC); and this part does not govern or set forth procedures for the implementation of the Freedom of Information Act by the RTC. This part explains:

(1) The kinds of information which the Board is required to publish in the **Federal Register**;

(2) The kinds of records made available to the public on request;

(3) The kinds of information made exempt from disclosure;

(4) The procedures for obtaining records and for processing requests;

(5) The schedule of fees for processing requests; and

(6) The procedures for appealing denials of requests for information.

§ 1502.2 Definitions.

As used in this part, the following terms shall have the following meanings:

(a) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(e).

(b) *Appeal* means the administrative appeal by a requester of an adverse initial determination on a request for records, as described in 5 U.S.C. 552(a)(6)(A)(ii).

(c) *Business information* means trade secrets and commercial or financial information provided to the Board that arguably is exempt from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4).

(d) *Denial* means a denial, based upon an exemption of the Freedom of Information Act, of a request for records, or a denial of a fee waiver request.

(e) *Director* means the Board's Vice President for Public Affairs or, in case of the absence or a vacancy in the office of the Vice President, the head or acting head of the Board's Office of Public Affairs.

(f) *President* means the President of the Board.

(g) *Request,* except for the purposes of § 1502.10, means any request for Board records made pursuant to 5 U.S.C. 552(a)(3).

(h) *Requester,* except for the purposes of § 1502.10, means any person who makes a request to the Board pursuant to 5 U.S.C. 552(a)(3).

(i) *Submitter* means any person or entity that provides business information to the Board.

§ 1502.3 Published information.

(a) Subject to the exemptions described or referred to in § 1502.11 and to paragraph (b) of this section, pursuant to 5 U.S.C. 552(a)(1) the Board shall separately state and currently publish in the **Federal Register** for the guidance of the public:

(1) Descriptions of its organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which such forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the Board; and

(5) Each amendment, revision, or repeal of the foregoing.

(b) Except to the extent that a person has actual and timely notice of the terms thereof, such person is not required in any matter to resort to, or be adversely affected by, a matter required to be published pursuant to paragraph (a) of this section and not so published. For the purposes of this section, matter reasonably available to the class of persons affected thereby is deemed published in the **Federal Register** when it is incorporated by reference therein with the approval of the Director of the Federal Register.

§ 1502.4 Public inspection and copying.

(a) Subject to the exemptions described or referred to in § 1502.11 and to paragraphs (b), (d), and (e) of this

section, the Board shall make available for public inspection or copying:

(1) Final opinions of the Board, including concurring and dissenting opinions, as well as orders of the Board, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the Board and are not published in the **Federal Register**; and

(3) Administrative staff manuals and instructions of the Board to staff that affect a member of the public.

(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, the Board may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. In each case, however, the justification for the deletion shall be explained in writing. The Director is authorized to act for the Board in implementing this paragraph.

(c) The Board shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated and required by this section to be made available or published. The Board shall provide copies of such an index on request at a cost not to exceed the direct cost of duplication.

(d) A final order, opinion, statement of policy, interpretation, or staff manual or instruction described in paragraph (a) of this section that affects a member of the public may be relied on, used, or cited as precedent by the Board against a party other than an agency only if such document has been indexed and made available pursuant to this section or the party has actual and timely notice of the terms of the document.

(e) Applications to inspect or copy records of the Board that are made available in accordance with paragraphs (a) and (c) of this section shall be made to the Board's Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232.

§ 1502.5 Specific requests for records.

(a) Except with respect to the records made available pursuant to § 1502.3 and § 1502.4, and subject to the application of the exemptions in § 1502.11, the Board, upon any request for records that reasonably describes such records and complies with this part, shall make such records promptly available to any person.

(b) Records exempt from disclosure to the public pursuant to 5 U.S.C. 552(b), as described in § 1502.11, may be released if the President or the Board's General Counsel determines that disclosure is in the public interest, provided that such disclosure is not prohibited by statute, regulation, or order.

§ 1502.6 Request procedures.

(a) *Written requests.* Except as provided in paragraph (d) of this section, each request for Board records shall be made in writing, signed by or on behalf of the person making the request, and state that the request is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or this part. Requests shall be submitted to the Board's Office of Public Affairs, 1777 F Street, NW., Washington, DC 20232. The Director is authorized to act for the Board under this section.

(b) *Description of records and form of request.* (1) Each request for records must describe the records sought in reasonably sufficient detail to enable a Board employee who is familiar with the subject matter to locate the records with a reasonable amount of effort. A request for a specific category of records shall be regarded as fulfilling this requirement if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive of the Board's operations. Whenever possible, a request should include specific information about each record sought, such as the date, title, name, author, recipients, and subject matter of the record. If a request does not reasonably describe the records sought, the requester shall be advised what additional information is needed or why the request is insufficient. The requester shall also be given an opportunity to confer with Board staff with the objective of reformulating the request in a manner that will meet the requirements of this section.

(2) Both the envelope and the written request should be clearly marked "Freedom of Information Act Request." Each request shall include:

(i) The name and address of the person filing the request, and the telephone number, if any, at which the requester can be reached during normal business hours;

(ii) The title of any case in litigation to which the request relates, the court, and the nature of the case;

(iii) Whether the requested information is intended for commercial use, and whether the requester is an educational institution, noncommercial scientific institution, or news media representative, employing the definitions in § 1502.10(a);

(iv) A statement indicating the requester's wish to have a copy of a record; or a statement that the requester wishes to inspect a record before copying; and

(v) A statement agreeing to pay applicable fees or a fee waiver request that complies with § 1502.10.

(c) *Returned requests.* The Board need not accept or process a request that is not a request for identifiable records, does not comply with the requirements of paragraphs (a) and (b) of this section, or can be complied with only by designing an information retrieval system. The Board may return such a request, specifying the defects, and the requester may submit a corrected request, which shall be treated as a new request. If a request would require the generation of new documents or files or the creation or editing of a database, it will be returned as a request for which there are no responsive Board records.

(d) *Oral requests.* The Board may honor an oral request for Board records, but if the requester is dissatisfied with the Board's response and wishes to obtain further consideration, the requester must submit a written request, which shall be treated as an initial request.

(e) *Advance payment of fees.* Whenever the Board requires payment of any fee pursuant to § 1502.10(h) (1) or (2), the requester shall promptly remit the required payment to the Board as a condition to further processing of the request.

(f) *Date of receipt.* A request shall be considered as received for the purposes of this part when:

(1) A request that satisfies the requirements of paragraphs (a) and (b) of this section is received by the Office of Public Affairs; and

(2) If payment has been required under paragraph (e) of this section, payment is received from the requester.

§ 1502.7 Responses to requests.

(a) *Authority to grant or deny requests.* The Director is authorized to grant or deny any request for a Board record and to act for the Board under this section.

(b) *Determination.* Pursuant to 5 U.S.C. 552(a)(6)(A)(i), the Director's determination whether or not to comply with a request shall be made within ten days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of the request unless such time limit is extended pursuant to 5 U.S.C. 552(a)(6)(B) or agreement with the requester.

(c) *Notice of determination.* The Director shall immediately notify the requester in writing of the determination whether or not the Board will comply with a request. If a request is granted in whole or in part, the notice shall describe the manner in which a record

will be disclosed, whether by providing a copy of the record to the requester or by making a copy of the record available to the requester for inspection at a reasonable time and place, and any fees to be charged in accordance with § 1502.10. If a request is denied in whole or in part, the notice shall include a brief statement of the reason or reasons for the denial, including the exemption or exemptions relied upon, and inform the requester of the requester's right to appeal to the Board pursuant to § 1502.9.

(d) *Referrals.* To the extent that a request is for records that were created by or obtained from the RTC or another agency, the Board may refer the request to the RTC or such other agency for determination and a direct response to the requester. The Board shall promptly give written notice of such referral to the requester.

(e) *Classified information.* Whenever a request is made for a record containing information that has been classified or that may be eligible for classification by another agency under the provisions of an Executive Order concerning the classification of records, the Board shall refer the responsibility for responding to the request to the agency that classified the information or should consider classifying the information.

(f) *Unlocated or destroyed records.* If a requested record cannot be located from the information supplied, or is known or believed to have been destroyed or otherwise disposed of, the Director shall notify the requester in writing.

§ 1502.8 Business information.

(a) *General.* Business information provided to the Board by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. The President, the Director, or such other officer as the Board may designate, with the advice of the General Counsel to the Board, may act for the Board under this section.

(b) *Submission and request for confidential treatment.* (1) Any submitter of information to the Board who desires that it be afforded confidential treatment pursuant to 5 U.S.C. 552(b)(4) shall file an application for confidential treatment with the Board at the time the information is submitted or within a reasonable time thereafter.

(2) Each application for confidential treatment shall state in reasonable detail the facts and arguments supporting the application and its legal justification. Conclusory statements that particular information would be useful to competitors or would impair sales, or similar statements, generally will not be considered sufficient to justify confidential treatment.

(3) The submitter should clearly designate as "Confidential" all material for which confidential treatment is desired and separate it from other information in the submission.

(4) Applications for confidential treatment of any documents shall be considered in connection with a request for access to the documents. At their discretion, the Board, the President, or the Director may approve or disapprove an application for confidential treatment prior to a request for access to the documents.

(c) *Notice to submitters.* Except as provided in paragraph (h) of this section and to the extent permitted by law, the Board shall give prompt written notice to a submitter of a request or appeal encompassing business information provided to the Board by the submitter if:

(1) The submitter has designated the information as confidential pursuant to paragraph (b) of this section within ten years prior to the date of the request; or

(2) The Board has reason to believe that disclosure of the information may reasonably be expected to cause substantial competitive harm to the submitter.

(d) *Opportunity to object.* Through the notice described in paragraph (c) of this section, the Board shall afford the submitter or its designee a reasonable period of time within which to object to disclosure and state grounds for such objection. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, 5 U.S.C. 552(b)(4), shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Whenever possible, the statement should be supported by a certification by the submitter or an authorized representative of the submitter that the information has been treated as confidential by the submitter and has not been disclosed to the public. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(e) *Notice to requester.* At the same time that the Board notifies the submitter, the Board shall also notify the requester that the request is subject to the provisions of this section and that the submitter is being notified of the request.

(f) *Notice of intent to disclose.* (1) The Board shall consider carefully a submitter's objections and grounds for nondisclosure prior to deciding whether to disclose business information. If the Board decides to disclose business information over the objection of a submitter, the Board shall forward to the submitter a written notice, which shall include:

(i) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) Such notice of intent to disclose shall, to the extent permitted by law, be forwarded to the submitter a reasonable number of days prior to the specified disclosure date, and a copy of the notice shall be forwarded to the requester at the same time.

(g) *Notice of lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the Board shall promptly notify the submitter.

(h) *Exceptions to notice requirements.* The notice requirements of paragraph (c) of this section shall not apply if:

(1) The Board determines that the information shall not be disclosed;

(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such case, the Board shall provide the submitter with written notice of any final administrative decision to disclose information within a reasonable number of days prior to a specified disclosure date.

§ 1502.9 Appeals.

(a) *Appeal to the Board.* When a request or a fee waiver request has been denied in whole or in part, the Board fails to respond to a request within the time limits set forth in the Freedom of Information Act, or the Board responds that records have not been found and the requester deems such response to be an adverse action, the requester may appeal such action to the Board within thirty days of receipt of the notice of denial or response. An appeal to the Board shall be made in writing and shall be addressed to the President, Oversight Board, 1777 F Street, NW., Washington, DC 20232. Both the envelope and the letter of appeal itself should be clearly

marked "Freedom of Information Act Appeal."

(b) *Untimely appeals.* The Board may consider an untimely appeal if:

(1) It is accompanied by a written request for leave to file an untimely appeal; and

(2) The President determines, within the President's discretion and for good and substantial cause shown, that the appeal should be considered.

(c) *Action on appeals.* The President or such other officer as the Board may designate, with the advice of the General Counsel, shall act on behalf of the Board on appeals under this section, but no officer who has denied a request or application for a waiver or reduction in fees shall act on the appeal from that denial. The Board shall make a determination with respect to an appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal unless such time limit is extended pursuant to 5 U.S.C. 552(a)(6)(B) or agreement with the requester.

(d) *Form of action on appeal.* The disposition of an appeal shall be in writing and shall constitute final Board action on the request and appeal. A decision affirming in whole or in part the denial of a request shall include a brief statement of the reason or reasons for the affirmance and a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has his principal place of business, the judicial district in which the requested records are located, or in the District of Columbia. If the denial of a request is reversed on appeal, the requester shall be so notified, and the request shall be processed promptly in accordance with the decision on appeal.

§ 1502.10 Fees.

(a) *Definitions.* For the purposes of this section:

(1) *Commercial use* in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or a person on whose behalf the request is made, which can include furthering those interests through litigation. In determining whether a requester properly belongs in this category, the Board must determine the use to which a requester will put the documents requested. If the Board has reasonable cause to doubt the stated use, or if that use is not clear from the request itself, the Board will seek additional clarification before assigning the request to a specific category.

(2) *Direct costs* means those expenditures which the Board actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request. Direct costs include, for example, the salary of an employee performing work to respond to a request (the basic rate of pay for the employee plus a factor of 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Overhead expenses, such as the costs of space and heating or lighting the facility in which the records are stored, are not included in direct costs.

(3) *Duplication* refers to the process of making a copy of a document necessary to respond to a request. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. A copy shall be in a form that is reasonably usable by a requester.

(4) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education that operates a program or programs of scholarly research.

(5) *Fee waiver request* means a request for the waiver or reduction of a fee charged for processing a request.

(6) *News* means information that is about current events or that would be of current interest to the public.

(7) *Noncommercial scientific institution* refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* refers to any person that is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals, but only in those instances when they can qualify as disseminators of news, who make their products available for purchase or subscription by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through the organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination.

(9) *Request* means a request for records pursuant to 5 U.S.C. 552(a)(2) or 5 U.S.C. 552(a)(3).

(10) *Requester* means a person who makes a request to the Board pursuant to 5 U.S.C. 552(a)(2) or 5 U.S.C. 552(a)(3).

(11) *Review* refers to the process of examining documents located in response to a request that is for a commercial use to determine whether any portion of the document may be withheld. It also includes processing documents for disclosure, e.g., doing all that is necessary to excise portions and otherwise prepare the document for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(12) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Such activity is separate from review.

(b) *General.* (1) The Board's fees for the processing of requests shall recover the direct costs of search, duplication, or review in accordance with the following:

(i) Fees for the processing of requests shall be limited to reasonable standard charges for document search, duplication, and review when records are requested for commercial use.

(ii) Fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research or by a representative of the news media.

(iii) Fees for other requesters shall be limited to reasonable standard charges for document search and duplication.

(iv) No fee shall be charged if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

(v) Fees shall be assessed according to the schedule in paragraph (c) of this section; and all fees so assessed shall be charged to the requester except to the extent that the charging of fees is limited under paragraph (d) of this section or unless a waiver or reduction of fees is granted under paragraph (e) of this section.

(vi) Requests from record subjects for records about themselves, which are filed in Board systems of records, will be charged under the fee provisions of the

Privacy Act of 1974 (5 U.S.C. 552a), which permit fees only for reproduction or duplication of records, subject to the limitation in paragraph (d)(1) of this section.

(2) Except as otherwise specifically provided, the Director is authorized to act for the Board under this section.

(c) *Assessment of fees.* In responding to requests, the following fees shall be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (e) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (d) of this section. The Board may assess fees for time spent searching even if records cannot be located or if records located are subsequently determined to be entirely exempt from disclosure.

(ii) The fee assessed for other than computer searches shall be $3.25 for each quarter hour spent by clerical personnel in searching for and retrieving a requested record. If a search and retrieval requires the use of professional or managerial personnel, the fee assessed for other than computer searches shall be $7.00 for each quarter hour spent by such professional or managerial personnel.

(iii) For computer searches that may be undertaken through the use of existing programming, the requester shall be assessed the actual direct costs of the search. This shall include the cost of operating a processing unit for that portion of operating time that is directly attributable to searching for records responsive to the request as well as the costs of operator/programmer salary apportionable to the search. The Board is not required to alter or develop programming to conduct a search.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record, the fee shall be $0.10 per page. For copies produced by computer, such as tapes or printouts, a requester shall be charged the actual direct costs of such copy, including operator time. For other methods of duplication, requesters shall be charged the actual direct costs of duplicating a record.

(3) *Review.* (i) Commercial use requesters shall be assessed for review at the initial administrative processing level at the rates set forth in paragraph (c)(1)(ii) of this section.

(ii) No charge shall be assessed for review at the administrative appeal level of an exemption already applied. Records or portions of records withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again, however, to determine the applicability of exemptions not previously considered. The costs of such a subsequent review are assessable at the rates set forth in paragraph (c)(1)(ii) of this section.

(4) *Other services.* Applications for other services and materials that are not required by or subject to the Freedom of Information Act are chargeable at the actual cost to the Board. These include, but are not limited to:

(i) Certifying that records are true copies; and

(ii) Sending records to the requester by special methods such as express mail or messenger.

(5) *Use of private contractors.* The Board, not acting by delegated authority, may authorize contracting with private sector contractors for the services of locating, reproducing, and disseminating records in response to requests if the Board determines that such functions may be performed more efficiently and for less cost through private sector contractors. In such case, a requester shall be charged the actual costs to the Board for the services furnished with respect to the request, provided, however, that in no event shall the requester be charged more than what the Board would have charged if it had performed such services itself.

(d) *Limitations on charging fees.* Except for requesters seeking records for a commercial use, as defined in paragraph (a)(1) of this section, the Board shall provide without charge:

(1) The first 100 pages of duplication, or its cost equivalent; and

(2) The first two hours of search, or its cost equivalent.

(e) *Waiver or reduction of fees.* (1) Records responsive to a request shall be furnished without charge or at a charge reduced below that established under paragraph (c) of this section if the Board determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Board, that:

(i) Disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Disclosure is not primarily in the commercial interest of the requester.

(2) In order to determine whether the requirement set forth in paragraph (e)(1)(i) of this section is met, the Board shall consider the following four factors in sequence:

(i) Whether the subject of the requested records concerns the operations or activities of the government;

(ii) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether disclosure of the requested information will contribute to public understanding; and

(iv) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(3) In order to determine whether the requirement set forth in paragraph (e)(1)(ii) of this section is met, the Board shall consider the following two factors in sequence:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and

(ii) Whether the magnitude of an identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) If only a portion of the requested records satisfies the requirements of paragraphs (e)(1)(i) and (e)(1)(ii) of this section, a waiver or reduction shall be granted only as to that portion.

(5) Fee waiver requests shall be considered on a case-by-case basis. A fee waiver request shall address each of the factors listed in paragraphs (e) (2) and (3) of this section as they apply to each request for records.

(6) Normally no charge shall be made for providing records to Federal, state, or foreign governments, international governmental organizations, or local governmental agencies or offices.

(7) In connection with any request by an employee, former employee, or applicant for employment for records for use in prosecuting a grievance or complaint of discrimination against the Board, fees shall be waived if the total charges (including charges for information provided under the Privacy Act of 1974) are $50 or less; but the Board, in its discretion, may waive fees in excess of that amount.

(8) Appeals from denials of fee waiver requests shall be decided in accordance with § 1509.2(a) and the criteria set forth in paragraph (e)(1) of this section by an official authorized to decide appeals from denials of requests for records. Such appeals shall be addressed in writing to the Board within thirty days after receipt of a denial of a fee waiver request; both the envelope and the letter

of appeal itself should be clearly marked "Fee Waiver Request Appeal."

(f) *Notice of anticipated fees in excess of $25.00.* If the board determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the Board shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has agreed in advance to pay fees as high as those anticipated. If a requester is notified that actual or estimated fees may exceed $25.00, the request shall be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph (f) shall offer the opportunity to confer with Board staff for the purpose of reformulating the request to meet the requester's needs at a lower cost.

(g) *Aggregating requests.* If the Board reasonably believes that a requester or group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Board may aggregate any such requests and charge accordingly. It is considered reasonable for the Board to presume that multiple requests for clearly related documents made within a thirty day period have been made in order to evade fees. Multiple requests for unrelated documents will not be aggregated.

(h) *Advance payments.* (1) If the Board estimates that a total fee to be assessed under this section is likely to exceed $250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, unless it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) If a requester has previously failed to pay a records access fee within thirty days of the date of billing, the Board may require the requester to pay the full amount owed, plus any applicable interest, as provided for in paragraph (i) of this section, and to make an advance payment of the full amount of any estimated fee before the Board begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (h)(1) and (2) of this section, the Board shall not require the requester to make an advance payment. Payment owed for work already completed is not an advance payment.

(4) If the Board requires a payment under paragraph (h)(1) or (2) of this section, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) for the processing of an initial request or an appeal, and the permissible extensions of such limits, shall be deemed not to begin to run until the Board has received payment of the assessed fee.

(i) *Form of payment.* Payment of fees shall be made by check or money order payable to the Treasurer of the United States. The payment shall be forwarded to the Board.

(j) *Other statutes specifically providing for fees.* The fee schedule in this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records.

§ 1502.11 Exemptions.

(a) *General.* Pursuant to 5 U.S.C. 552(b), the disclosure requirements of 5 U.S.C. 552 and this part do not apply to certain matters which are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and that are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Board;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552(b)), provided that such statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Board, including, but not limited to, records of deliberations of the Board other than meetings held pursuant to 12 U.S.C. 1441a(a)(10);

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished only by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) *Other law enforcement records.* The Board may also withhold disclosure of records pursuant to 5 U.S.C. 552(c).

(c) *Segregable portions of record.* Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt. Reasonably segregable nonexempt portions of a record are those:

(1) Whose meaning is not distorted by deletion;

(2) That are sufficient to be intelligible and useful to the requester; and

(3) From which a skillful and knowledgeable person could not reconstruct any exempt information.

(d) *Computer information.* Information stored in a computer that can be segregated only by creating an information retrieval program is not considered reasonably segregable.

§ 1502.12 Preservation of records.

The Board shall preserve all correspondence relating to the requests it receives under this part, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be

destroyed while they are the subject of a pending request, appeal, or lawsuit under the Freedom of Information Act.

Peter H. Monroe,

President.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. 92-ASW-5; Special Conditions No. 29-ASW-8]

Special Conditions: Aerospatiale Model AS 332L2 "Super Puma" Helicopter, 30-Second Contingency Rating

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Aerospatiale Model AS 332L2 helicopter. This helicopter will have a novel or unique emergency contingency 30-second/2-minute one-engine-inoperative (OEI) rating. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 29 of the Federal Aviation Regulations (FAR).

EFFECTIVE DATE: December 9, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Richter, FAA, Rotorcraft Standards Staff, Fort Worth, Texas 76193-0112; telephone (817) 624-5125.

SUPPLEMENTARY INFORMATION:

Background

On June 6, 1989, Aerospatiale Helicopter Division applied for an amendment to the AS 332L1 Type Certificate H4EU through the French Direction Generale de l'Aviation Civile (DGAC) for the AS 332L2 version of the "Super Puma," a twin-engine, 9,150 kg (20,175-pound) transport category helicopter. On June 12, 1991, the French DGAC certified the Model AS 332L2 and issued French Type Certificate No. 56. A portion of the French certification basis included compliance with French special requirements for super contingency ratings. These special conditions are equivalent to the French special requirements.

The Model AS 332L2 is derived directly from the AS 332L1 with the following major modifications:

- Modified main rotor gearbox with new oil cooling system;
- Incorporated new design spheriflex main rotor hub and modified main rotor blades;
- Incorporated new design spheriflex tail rotor hub and new tail rotor blades;
- Modified intermediate and tail rotor gear boxes;
- Extended fuselage containing some composite components and shortened tail boom allowing increased passenger capacity;
- Incorporated advanced technology avionics containing dual duplex Automatic Flight Control System (AFCS) and Electronic Flight Instrument System (EFIS); and
- Upgraded Makila 1A2 engines with full authority digital electronic control (FADEC), increased performance, and unique 30-second/2-minute emergency power ratings.

Type Certification Basis

Under the provisions of the Federal Aviation Regulations (FAR) (14 CFR 21.101) and the Bilateral Airworthiness Agreement between the United States and France, the Societe National Industrielle Aerospatiale must show that the Model AS 332L2 meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. H4EU. The certification bases for the Model AS 332L2 helicopter are:

FAR 21.29 and FAR 29 effective February 1, 1965, including Amendments 29-1 to 29-9 plus §§ 29.305, 29.307, 29.571, 29.603, 29.605, 29.609, 29.610, 29.629, 29.951(c), 29.1183, 29.1305(a)(16) and 29.1529 through Amendment 29.10.

The applicant has elected to comply with FAR 29, Amendments 29-10 through 29-16, except § 29.397 at Amendment 29-12 as concerns the rotor brake; the Airworthiness Criteria for Helicopter Instrument Flight dated December 15, 1978; FAR Part 36 Noise Standards amended by Amendments 36-1 through the latest amendment in effect at the time of actual testing; and Special Conditions No. 29-ASW-1, Docket No. 90-ASW-4, dated January 23, 1991, containing provisions for the protection of electrical/electronic systems from high intensity radiated fields.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Model AS 332L2 helicopter because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.101(b)(2) 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, as required by §§ 11.28 and 11.29(b), and become a part of the type certification basis in accordance with § 21.101(b)(2).

Novel or Unusual Design Feature

The Aerospatiale Model AS 332L2 "Super Puma" helicopter is the first aircraft that will incorporate engines certificated with these unique 30-second/2-minute one-engine-inoperative (OEI) emergency power ratings. The engines will comply with the requirements of the Special Conditions contained in Docket No. 92-ANE-29; Notice No. SC-92-01-NE.

Discussion of Comments

Notice of Proposed Special Conditions No. SC-92-5-SW-2 was published in the **Federal Register** on August 12, 1992.

One comment was received regarding the wording in paragraph (f) of the proposed special conditions that states, "A means must be provided to indicate to the pilot when the engine is at the 30-second and 2-minute OEI power levels, when the event begins, and when the time interval expires." The commenter prefers the wording, "A means must be provided to alert the pilot * * *." The FAA agrees. The wording "to alert the pilot" is also more compatible with Notice of Proposed Rulemaking No. 89-26 and the European draft Joint Airworthiness Requirement (JAR) 29. In addition, clarification is provided in paragraph (a) that the 30-second/2-minute OEI power ratings also replace the 30-minute OEI power rating. Therefore, the special conditions are adopted as proposed except for the changes to paragraphs (a) and (f).

Conclusion

These special conditions apply to the Aerospatiale Model AS 332L2 "Super Puma" helicopter, the only aircraft that incorporates components capable of operating under unique 30-second/2-minute OEI emergency conditions.

This action affects only certain unusual or novel design features on one series of helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the AS 332L2 helicopter.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citation for these special conditions are as follows.

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.;

E.O. 11514; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Aerospatiale AS 332L2 "Super Puma" helicopter.

Special Emergency, One-Engine-Inoperative, (OEI) 30-Second/2-Minute Power Ratings

The helicopter engines must be certified and must meet the 30-second/2-minute OEI power ratings. The Makila 1A2 engines must have been certified using the special conditions specified in Docket No. 92-ANE-29; Notice No. SC-92-01-NE.

a. The 30-second/2-minute OEI power ratings replace the 2½-minute and 30-minute OEI power ratings.

b. The power assurance requirements of § 29.45(f) must be met.

c. Only the 2-minute OEI power may be used to demonstrate compliance with § 29.67.

d. In addition to the 200-hour rotor drive system and control mechanism test, the takeoff run must be conducted as prescribed in § 29.923(b)(1) except that immediately following any one 5-minute power-on run, each power source must simulate a failure, followed by the application of maximum torque and speed for use with 30-second OEI power to the remaining affected drive system power inputs for not less than 30 seconds, immediately followed by an application of maximum torque and speed for use with 2-minute OEI power for not less than 2 minutes. One of these runs must be conducted from a simulated "flight idle" condition. An affected power input includes all parts of the rotor drive system that can be adversely affected by the application of higher or asymmetric torque and speed. The components for this test must be those used for showing compliance with the remainder of the requirements in § 29.923. These tests may be conducted on a representative bench test facility when engine limitations either preclude repeated use of these powers or would result in premature engine removals during the test. The loads, frequency, and methods of application to the affected rotor drive system components must be representative of rotorcraft conditions.

e. A means must be provided to automatically control or otherwise prevent any engine from exceeding the installed engine limits associated with the 30-second power rating.

f. A means must be provided to alert the pilot when the engine is at the 30-second and the 2-minute OEI power levels, when the event begins, and when the time interval expires.

g. A device or system must be provided that records each usage and duration of 30-second and 2-minute OEI powers. Retrieval of the recorded data must be possible. The recorder must be capable of being reset only by ground maintenance personnel, and a means must be provided to verify proper operation of the system or device.

h. The 30-second/2-minute OEI power can only be used for continued operation of the remaining engine(s) after a failure or precautionary shutdown of an engine. It must be shown that, following application of 30-second or 2-minute OEI power, any damage will be readily detectable by inspections and other related procedures that must be furnished in accordance with Section A29.4, Appendix A, Part 29, and Section A33.4, Appendix A, Part 33.

i. The use of 30-second or 2-minute OEI power must be limited to not more than 30-seconds or 2 minutes, respectively, for any period in which those powers are used and must also be limited by the maximum rotational speed that may not be greater than the maximum value determined by the rotor design or the maximum value demonstrated during the type certification tests. Additionally, the use of these OEI ratings is limited by the maximum allowable gas temperature and the maximum allowable torque.

j. Each OEI limit or approved operating range must be marked to be clearly differentiated from the marking required in § 29.1549 (a) through (d). No marking is required for the 30-second OEI power limit.

The method of training flight crewmembers in the correct procedures and the use of these new OEI power ratings and equipment should be considered during the design and certification process. Training flights utilizing these ratings may be prohibitive based upon possible engine damage and cost, therefore, some form of simulation should be considered for training.

Issued in Fort Worth, Texas, on October 27, 1992.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92-27120 Filed 11-6-92; 8:45 a.m.]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-37-AD; Amendment 39-8369; AD 92-19-11]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that currently requires repetitive inspections to detect fatigue-related cracking of the main landing gear (MLG) wheel well pressure floor adjacent to body stations 880, 890, 930, and 940, and repair, if necessary. This amendment requires expansion of the inspection area to include Body Station 950. This amendment is prompted by several reports of fatigue-related cracking in the wheel well pressure floor. The actions specified by this AD are intended to prevent loss of cabin pressurization.

DATES: Effective December 14, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 14, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, WA 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket 92-NM-37-AD, 1601 Lind Avenue, SW., Renton, WA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stanton R. Wood, Aerospace Engineer, Seattle Aircraft Certification Office, Structures and Loads Section, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055-4056; telephone (206) 227-2772; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-17-06, Amendment 39-6691 (55 FR 33099, August 14, 1990), which is applicable to all Boeing Model 727 series airplanes, was published in the **Federal Register** on April 8, 1992 (57 FR 11922). The action proposed to require repetitive inspections to detect fatigue-related cracking of the main landing gear (MLG) wheel well pressure floor

adjacent to body stations 880, 890, 930, 940, and 950, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of several of its members, requests that AD 90-17-06 be revised, rather than superseded. Although the proposed action increases the scope of inspection, the added inspection area is already described in a revision to the Boeing service bulletin, that was previously referenced in AD 90-17-06. The commenter maintains that, in order for the AD number to have any significance, the AD should be revised, not superseded, whenever the applicable service bulletin is revised. Additionally the commenter considers that airline administrative costs to implement this change would be minimized by a revision to the existing AD in lieu of the issuance of a new AD. The FAA does not concur. The FAA's current policy (reference FAA Order 8040.1B) is that, whenever a "substantive change" is made to an existing AD, the AD must be superseded, rather than revised. "Substantive changes" are those made to any instruction or reference that affects the substance of the AD, and includes part numbers, service bulletin and manual references, compliance times, applicability, methods of compliance, corrective action, inspection requirements, and effective dates. In the case of this AD rulemaking action, the changes being made to the existing AD are considered substantive. This superseding AD is assigned a new amendment number and new AD number; the previous amendment is deleted from the system. This procedure facilitates the efforts of the Principal Maintenance Inspectors in tracking AD's and ensuring that the affected operators have incorporated the latest changes into their maintenance programs.

Further, with regard to administrative costs (paperwork changes) to affected operators, Federal Aviation Regulations (FAR) Section 121.380(a)(2)(v), "Maintenance recording requirements," requires that persons holding an operating certificate and operating under FAR Part 121 must keep records "indicating the current status of applicable airworthiness directives, including the method of compliance." Whether an existing AD is superseded or revised, the new AD is assigned a new AD number: a superseding AD is assigned a new 6-digit AD number; a revising AD retains the original 6-digit AD number, but an "R1" is added to it. In either case, the new AD is identified by its "new" AD number, not by the "old" AD number. In light of this, affected operators updating their maintenance records to indicate the current AD status would have to record a new AD number in all cases, regardless of whether the AD is a superseding or a revising AD. Further, operators are always given credit for work previously performed in accordance with the existing AD by means of the phrase in the compliance section of the AD that states, "Required . . . unless accomplished previously."

One commenter requests that the initial inspection compliance time be increased from the proposed 2,500 landings to 5,000 landings, in order to perform the initial inspection during scheduled heavy maintenance visits, and not disrupt passenger flights. Such an extension of the initial compliance time would allow inspection of the new area at BS 950 to be accomplished concurrently with the next routinely scheduled inspection of the area, thereby negating the need to schedule a special one-time inspection of this area. This commenter also points out that, other than the recent in-service findings of cracking at BS 950, service experience related to this area provides substantiation for an increase in the initial compliance time, especially for aircraft below 60,000 landings. The FAA does not concur. The FAA has determined that the proposed compliance time will permit the initial inspection to be performed during a regularly scheduled maintenance visit, and that any discrepancies will be detected in a timely manner. The FAA has determined that the compliance requirements, as proposed, represent the maximum time interval in which inspections and necessary repair can be accomplished, and an acceptable safety level be maintained. The FAA does not consider that the commenter has provided any data to substantiate an increase in this interval. The fact remains that fatigue cracking has occurred in the area of BS 950 and it is similar to the cracking that has occurred in the area currently required to be inspected by AD 90-17-06. Cracking in this area of the wheel well pressure floor, if not detected, could lead to loss of cabin pressurization.

Another commenter asks for clarification regarding the different inspection areas at BS 950 for Group I and Group II airplanes, in accordance with Revision 4 of the Boeing service bulletin. The FAA concurs that additional clarification is necessary. The intent of the revised service bulletin and the intent of the AD are to ensure inspection of pressure floor beads outboard of BL 50 to the side-of-body at BS 950 in both Group I and II airplanes. However, neither group of airplanes needs to be inspected inboard of BL 50 to the side-of-body at BS 950, since the structural area does not include pressure floor beads. Paragraph (c) of the final rule has been revised to clarify this point.

Since issuance of the proposed rule, the FAA has reviewed and approved Boeing Drawing 65C36247, Revision A, dated January 15, 1992. This drawing specifies additional repair and modification procedures for addressing the subject cracking. Paragraph (h) of the final rule has been changed to add the procedures contained in this drawing as an additional optional method of terminating action for the repetitive inspections. Paragraphs (e) and (f) of the final rule also have been changed to add the new drawing as an optional repair method.

Paragraph (i) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,574 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,007 airplanes of U.S. registry will be affected by this AD, that it will take approximately 114 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,313,890. This total cost figures assumes that no operator has yet accomplished the requirements of this AD.

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

to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [AMENDED]

2. Section 39.13 is amended by removing amendment 39-6691 (55 FR 33099, August 14, 1990), and by adding a new airworthiness directive (AD), amendment 39-8369, to read as follows:

92-19-11. BOEING: Amendment 39-8369. Docket 92-NM-37-AD. Supersedes AD 90-17-06, Amendment 39-6691.

Applicability: All Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of cabin pressurization, accomplish the following:

(a) For airplanes having line numbers 001 through 1432, perform a detailed visual, high frequency eddy current (HFEC), or dye penetrant inspection for cracks in the pressure floor, in accordance with Boeing Service Bulletin 727-53-149, Revision 2, dated March 20, 1981; or Boeing Service Bulletin 727-53-0149, Revision 3, dated November 2, 1989, or Revision 4, dated June 27, 1991. Accomplish the inspection prior to the compliance time specified in paragraph (a)(1) or (a)(2) of this AD, whichever occurs earlier:

(1) Prior to the accumulation of 30,000 landings, or within 2,500 landings after January 20, 1989 (the effective date of AD 88-26-02, amendment 39-6089), whichever occurs later; or

(2) Prior to the accumulation of 20,000 landings or within 2,500 landings after September 17, 1990 (the effective date of AD 90-17-06, amendment 39-6691), whichever occurs later.

(b) For airplanes defined as Group 2 in Boeing Service Bulletin 727-53-0149, Revision 3, dated November 2, 1989, and as Group I that have been modified in accordance with Boeing Service Bulletin 727-53-149, Revision 2, dated March 20, 1981: Prior to the accumulation of 20,000 landings since manufacture or within the next 2,500 landings after September 17, 1990 (the effective date of AD 90-17-06, Amendment 39-6691), whichever occurs later, perform a detailed visual, high frequency eddy current (HFEC), or dye penetrant inspection to detect cracks in the pressure floor, in accordance with Boeing Service Bulletin 727-53-0149, Revision 3, dated November 2, 1989; or Revision 4, dated June 27, 1991.

(c) For all airplanes listed in Boeing Service Bulletin 727-53-0149, Revision 4, dated June 27, 1991: Prior to the accumulation of 20,000 landings since manufacture, or within the next 2,500 landings after the effective date of this AD, whichever occurs later, perform a detailed visual, high frequency eddy current (HFEC), or dye penetrant inspection to detect cracks in the pressure floor adjacent to BS 950, outboard of BL 50, in accordance with Boeing Service Bulletin 727-53-0149, Revision 4, dated June 27, 1991.

(d) Repeat the inspection required by paragraphs (a), (b), or (c) of this AD, as applicable, at intervals as follows:

(1) If the previous inspection was accomplished using a visual or dye penetrant inspection technique, the next inspection must be accomplished within 4,000 landings.

(2) If the previous inspection was accomplished using an HFEC inspection technique, the next inspection must be accomplished within 5,000 landings.

(e) If cracks are detected as a result of any of the inspections required by this AD that do not exceed the limits listed in Table I in the Accomplishment Instructions of Boeing Service Bulletin 727-53-0149, Revision 3, dated November 2, 1989, or Revision 4, dated June 27, 1991, prior to further flight, repair in accordance with the interim repair described in Part II of the Accomplishment Instructions, or the permanent repair described in Part III of the Accomplishment Instructions of the service bulletin, or repair in accordance with Boeing Drawing 65C36247, Revision A, dated January 15, 1992. The interim repair must be replaced within 600 landings after accomplishment with the permanent repair.

(f) If cracks are detected as a result of any of the inspections required by this AD that exceed the limits listed in Table I in the Accomplishment Instructions of Boeing Service Bulletin 727-53-0149, Revision 3, dated November 2, 1989, or Revision 4, dated June 27, 1991, prior to further flight, accomplish the permanent repair described in Part III of the Accomplishment instructions of the service bulletin, or repair in accordance with Boeing Drawing 65C36247, Revision A.

(g) Blind fasteners installed in accordance with Part III of Boeing Service Bulletin 727-53-0149, Revision 3, dated November 2, 1989, or Revision 4, dated June 27, 1991, are to be used as an interim repair only. The blind fasteners have a life limit of 10,000 landings before they must be replaced with solid fasteners in accordance with Part III of the service bulletin. The blind fasteners must be inspected for loose or missing fasteners after accumulating 3,000 landings since installation or 1,000 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 2,500 landings. Blind fasteners installed prior to the effective date of this AD must be replaced prior to the accumulation of 10,000 landings or within 3,000 landings after the effective date of this AD, whichever occurs later.

(h) Terminating action for the repetitive inspection requirements of this AD is as follows:

(1) Incorporation of the permanent repairs in accordance with paragraph (e) or (f) of this AD terminates the repetitive inspection requirements of paragraph (d) of this AD for that area. Incorporation of the preventative modification described in Part IV of the Accomplishment Instructions of Boeing Service Bulletin 727-53-0149, Revision 3, dated November 2, 1989, or Revision 4, dated June 27, 1991, terminates the repetitive inspection requirement of paragraph (d) of this AD for that area.

(2) Repair or modification in accordance with Boeing Drawing 65C36247, Revision A, dated January 15, 1992, constitutes terminating action for the repetitive inspection requirement of paragraph (d) of this AD.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO).

Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

(j) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(k) The inspections, repairs, and modifications shall be done in accordance with Boeing Service Bulletin 727-53-0149, Revision 4, dated June 27, 1991; Boeing Service Bulletin 727-53-0149, Revision 3, dated November 2, 1989; as applicable; and Boeing Service Bulletin 727-53-0149, Revision 2, dated March 20, 1981, which contains the specified effective pages:

Page No.	Revision level shown on page	Date shown on page
1-22, 25-26, 28-54	2	Mar. 20, 1981.
23-24, 27	1	Sept. 19, 1980.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, WA 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on December 14, 1992.

Issued in Renton, WA, on August 26, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-27104 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-CE-32-AD; Amendment 39-8404; 92-23-04]

Airworthiness Directives; Beech 58, 58P, and 58TC Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech 58, 58P, and 58TC series airplanes. This action requires a modification to the engine controls support structure. The Federal Aviation Administration (FAA) has received several reports of cracked angle attachment clips that support the engine controls inside the pedestal on the affected airplanes. The actions specified by this AD are intended to prevent loss of engine throttle control caused by failure of the engine controls support angle attachment clips.

DATES: Effective December 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 8, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 676-7111. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4145; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech 58, 58P, and 58TC series airplanes was published in the Federal Register on July 8, 1992 (57 FR 30173). The action proposed to require a modification to the engine controls support structure in accordance with the instructions to Beech Kit No. 58-5016-1 S as referenced in Beech Service Bulletin No. 2439, dated May 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 237 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $257 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $113,049.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92-23-04 Beech: Amendment 39-8404; Docket No. 92-CE-32-AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial Numbers
58 and 58A	TH-1389 and TH-1396 through TH-1662.
58TC and 58TCA	TK-147 and TK-151.
58P and 58PA	TJ-436 and TJ-444 through TJ-497.

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

To prevent loss of engine throttle control caused by failure of the engine controls support angle attachment clips, accomplish the following:

(a) Modify the engine controls support structure in accordance with the instructions to Beech Kit No. 58-5016-1 S as referenced in Beech Service Bulletin No. 2439, dated May 1992.

Note: Beech Kit No. 58-5016-1 S consists of all the materials and instructions for replacing the engine controls support angle attachment clips with brackets, and may be obtained from the manufacturer at the address specified in paragraph (d) of this AD.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) The modification required by this AD shall be done in accordance with the instructions to Beech Kit No. 58-5016-1 S as referenced in Beech Service Bulletin No. 2439, dated May 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39-8404) becomes effective on December 8, 1992.

Issued in Kansas City, Missouri, on October 21, 1992.

John E. Tigue,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-27082 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-244-AD; Amendment 39-8405; AD 92-23-05]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, that currently requires a one-time inspection to detect chafing on the engine fire extinguishing pipe in the pylon area at rib 12, and repair, if necessary. This amendment requires repetitive visual inspections to detect chafing of the engine fire extinguishing pipe, and repair or replacement of worn pipes, if necessary; and eventual modification of the fire extinguishing pipe. This amendment is prompted by the development of a modification by the manufacturer which, when installed, will eliminate the need for repetitive inspections of the fire extinguishing pipe. The actions specified by this AD are intended to prevent a hole in the fire extinguishing pipe which, in the event of an engine fire, would produce a loss in the amount of fire extinguishant being delivered to the engine compartment.

DATES: Effective December 14, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 14, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-14-05, Amendment 39-6648 (55 FR 27803, July 6, 1990), which is applicable to certain Airbus Industrie Model A300 series airplanes, was published in the Federal Register on January 9, 1992 (57 FR 855). The action proposed to require repetitive visual inspections to detect chafing of the engine fire extinguishing pipe; repair or replacement of worn pipes, if necessary; and eventual modification of the fire extinguishing pipe.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

A second commenter requests that the FAA confirm that Airbus Industrie plans no further revisions to the service information cited in the notice. The commenter expresses concern over the number of times Airbus Industrie has revised the service information within the last six months and explains that accomplishment of the actions required by this AD within the specified compliance period would be difficult if additional service bulletin revisions are issued. The FAA notes that since issuance of the notice, Airbus Industrie has issued Revision 2 to Service Bulletin A300-28-055, dated December 18, 1991, which provides additional technical information to enable removal of the fire extinguisher pipe. The FAA has confirmed with Airbus Industrie that Revision 2 is the latest revision to that service bulletin and that no further revisions are planned. In addition, the FAA has reviewed the compliance times proposed in the notice, and has determined that these compliance times are appropriate for meeting the requirements of the AD. The FAA has changed the final rule to reflect the latest revision to the service bulletin as an additional source of service information.

One commenter recommends that the unsafe condition be changed to read as follows: "This condition, if not corrected, could result in a hole in the fire extinguishing pipe which, in the event of an engine fire, would produce a loss in the amount of fire extinguishant being delivered to the engine compartment." The FAA concurs that this phrasing more accurately describes the addressed unsafe condition. The FAA has changed the wording in the preamble to the final rule accordingly.

Paragraph (a) of the final rule has been changed to cite correctly the date of the Correction to Airbus Industrie All Operators Telex (AOT) 26/90/01. The date as it appears on the Correction is February 9, 1990.

Paragraph (e) of the final rule has been changed to clarify the procedure

for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 63 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the inspection required by paragraph (a) of this AD, and that it will take approximately 176 work hours per airplane (88 work hours per pylon) to accomplish the modification required by this AD. The average labor rate is $55 per work hour. Required parts will cost approximately $896 per airplane ($448 per pylon). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $680,148, or $10,796 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment[4]

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6648 (55 FR 27803, July 6, 1990), and by adding a new airworthiness directive (AD), amendment 39-8405, to read as follows:

92-23-05. Airbus Industrie: Amendment 39-8405. Docket 91-NM-244-AD. Supersedes AD 90-14-05, Amendment 39-6648.

Applicability: Model A300 series airplanes equipped with General Electric engines; up to and including airplane serial number 153 and serial number 157; on which Airbus Industrie Modification 8430 has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure proper operation of the fire extinguishing system, accomplish the following:

(a) Within 400 hours time-in-service after July 23, 1990 (the effective date of Amendment 39-6648, AD 90-14-05), perform an inspection of the engine fire extinguishing pipe in the pylon area at rib 12, in accordance with Airbus Industrie All Operators Telex (AOT) 26/90/01, dated February 9, 1990, and Correction, dated February 9, 1990. If chafing is found, prior to further flight, repair in accordance with the AOT.

(b) If no evidence of chafing is found as a result of the inspection required by paragraph (a) of this AD, perform repetitive visual inspections of the engine fire extinguishing pipe in the pylon area at rib 12 at intervals not to exceed 8,000 hours time-in-service, in accordance with Airbus Industrie Service Bulletin A300-26-055, Revision 1, dated September 4, 1991, or Revision 2, dated December 18, 1991. If wear is found that exceeds 0.6 mm (0.023 inch), prior to further flight, repair or replace the worn pipe in accordance with the service bulletin.

(c) Within 18 months after the effective date of this AD, modify the engine fire extinguishing pipe, and test the fire extinguishing bottles, in accordance with Airbus Industrie Service Bulletin A300-26-055, Revision 1, dated September 4, 1991, or Revision 2, dated December 18, 1991.

(d) Modification of the engine fire extinguishing pipe, in accordance with Airbus Industrie Service Bulletin A300-26-055, Revision 1, dated September 4, 1991, or Revision 2, dated December 18, 1991, constitutes terminating action for the repetitive visual inspections required by paragraph (b) of this AD.

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

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

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections, repair, replacement, modification, and test shall be done in accordance with the following Airbus Industrie service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
All Operators Telex (AOT) 26/90/01, February 9, 1990	1-2	(Original)	Feb. 9, 1990.
Correction to all Operators Telex (AOT) 26/90/01, February 9, 1990	1	(Original)	Feb. 9, 1990.
A300-26-055, Revision 1, September 4, 1991	1-22	1	Sept. 4, 1991.
A300-26-055, Revision 2, December 18, 1991	1, 5-6, 8-28	2	Dec. 18, 1991.
	2-4, 7	1	Sept. 4, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on December 14, 1992.

Issued in Renton, Washington, on October 23, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-27103 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-70-AD; Amendment 39-8376; AD 92-20-02]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires replacement of currently installed blind bolts that attach the latch brackets to the radome. This amendment is prompted by inspections during final assembly, which revealed that the nose radome latch bracket attach bolts had been installed incorrectly on several airplanes and resulted in the loss of the securing ring. The actions specified by this AD are intended to prevent the loss of the radome during flight or ground operations, which could lead to subsequent structural damage to the wing, empennage, or an engine.

DATES: Effective December 14, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 14, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on June 18, 1992 (57 FR 27194). That action proposed to require replacement of currently installed blind bolts that attach the latch brackets to the radome.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $70 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $940. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [AMENDED]

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

92-20-02. Fokker: Amendment 39-8376. Docket 92-NM-70-AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11290, 11296, 11298, 11299, 11301, 11306, 11308, 11310, and 11313; certificated in any category.

Compliance: Required as indicated, unless accomplished previously

To prevent structural damage to the wing, empennage, or an engine, caused by loss of the radome during flight or ground operations, accomplish the following:

(a) Within 6 months after the effective date of the AD, replace the currently installed blind bolts that attach the latch brackets to the radome with new bolts, in accordance with Fokker Service Bulletin SBF100-53-067, dated July 1, 1991.

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

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

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

(d) The replacement shall be done in accordance with Fokker Service Bulletin SBF100-53-067, dated July 1, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 14, 1992.

Issued in Renton, Washington, on September 3, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-27105 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-13

14 CFR Part 39

[Docket No. 91-CE-93-AD; Amendment 39-8407; AD 92-24-02]

Airworthiness Directives; de Havilland Model DHC-2 Beaver MK-I, MK-II, and MK-III Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to de Havilland Model DHC-2 Beaver MK-I, MK-II, and MK-III airplanes. This action requires repetitive inspections of the horizontal stabilizer front center spar web at the pickup and lightening holes for cracks, and horizontal stabilizer front center spar replacement if cracks are found. The Federal Aviation Administration (FAA) has received several reports of the horizontal stabilizer front center spar web cracking in the area of the pickup and lightening holes on the affected airplanes. The actions specified by this AD are intended to prevent horizontal stabilizer front center spar failure, which could lead to loss of control of the airplane.

DATES: Effective December 15, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from de Havilland, Inc., Downsview, Ontario, Canada, M2K 1Y5. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Franco Pieri, Aerospace Engineer, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephone (516) 791-6220.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain de Havilland Model DHC-2 Beaver MK-I, MK-II, and MK-III airplanes was published in the **Federal Register** on April 7, 1992 (57 FR 11696). The action proposed repetitive inspections of the horizontal stabilizer front center spar for cracks, and replacement of this spar if found cracked. The NPRM proposed that these actions would be done in accordance with de Havilland Service Bulletin (SB) 2/47, Revision B, dated December 20, 1991. The document also proposed the incorporation of the following modifications as specified in de Havilland SB 2/47 for certain airplanes that do not already have these modifications incorporated: 2/436—Installation of longer pick-up brackets; and 2/758—Installation of gusset plates on pick-up brackets.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from de Havilland, the manufacturer and sole commenter.

De Havilland states that the compliance time of the proposed AD should be in calendar time instead of hours time-in-service (TIS) because the cracks found on the front center spar web on the affected airplanes are associated with the number of times an airplane is maneuvered in a year instead of the amount of hours flown. After re-examining the circumstances related to the proposed action, the FAA concurs. Part of the FAA's decision is based on the fact that one operator may have utilized the airplane 100 hours TIS in 12 calendar months, but has actually handled the airplane through ground operation over 100 times. In this situation, the operator would not be required to comply with the proposed AD for several years if hours TIS were utilized as a compliance time even though the airplane would be subject to stress corrosion caused by ground handling.

Based on a review of all available aircraft utilization records, the FAA has determined that 12 calendar months is equal to 600 hours TIS. The proposed AD compliance times have been revised to the appropriate calendar time figure based on this calculation.

De Havilland also recommends that the fourth paragraph of the Discussion section of the preamble to the proposed AD be revised to add Modification 2/466—Installation of tailplane front spar without lightening holes. Since the body of the proposed AD contains NOTE 4, which clarifies Modification 2/466, the FAA has determined that it is not necessary to repeat this information. The only change to the proposed AD as a result of this comment is that the note is now referenced as NOTE 5 instead of NOTE 4.

In addition, de Havilland has revised Service Bulletin 2/47, to the Revision C level. This revision does not require any additional procedures than what was proposed with Revision B and only incorporates minor editorial corrections. The FAA has determined that this service bulletin revision should be incorporated into the AD.

After careful review of all information related to this AD including the comment discussed above, the FAA has determined that air safety and public interest require the adoption of the rule as proposed except for the change in the compliance times discussed above, the incorporation of the revised service bulletin, and minor editorial corrections. The FAA has determined that this change in the compliance times, service bulletin revision, and minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 149 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per airplane to accomplish the required inspection, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the inspections required by this AD on U.S. operators is estimated to be $49,170. The FAA has no available method of determining how many airplanes have incorporated Modifications 2/436 and 2/758. Therefore, a total cost analysis of these modifications for all U.S. operators is not available. However, the FAA estimates that it will take approximately 7 workhours to accomplish Modification 2/436 and approximately 7 workhours to accomplish Modification 2/758. The average labor rate is approximately $55 an hour. Parts for Modification 2/436 cost approximately $950 and parts for Modification 2/758 cost approximately $250. Based on these figures, Modification 2/436 will cost approximately $1,335 per airplane and Modification 2/758 will cost approximately $635 per airplane.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92-24-02 De Havilland: Amendment 39-8407; Docket No. 91-CE-93-AD.

Applicability: Model DHC-2 Beaver MK-I, MK-II, and MK-III airplanes (all serial numbers), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent horizontal stabilizer front center spar failure, which could lead to loss of control of the airplane, accomplish the following:

Note 1: The compliance times specified in this AD take precedence over those referenced in the service information.

(a) Within the next 4 calendar months after the effective date of this AD, accomplish the following:

(1) Dye penetrant inspect the horizontal stabilizer front center spar for cracks in accordance with paragraphs 1, 2, and 3 of Part A. of the Accomplishment Instructions section of de Havilland Service Bulletin (SB) 2/47, Revision C, dated September 4, 1992.

(i) If no cracks are found, accomplish the requirements of paragraph (a)(2) of this AD or accomplish the requirements of paragraph 5 of Part A. of the Accomplishment Instructions section of de Havilland SB 2/47, Revision C, dated September 4, 1992, whichever is applicable.

(ii) If cracks are found on airplanes not having a gusset plate installed on the rear face of the horizontal stabilizer front center spar (Pre-Modification 2/758), prior to further flight, replace the horizontal stabilizer front center spar in accordance with Part B. of the Accomplishment Instructions section of de Havilland SB 2/47, Revision C, dated September 4, 1992.

(iii) If cracks are found on airplanes that have a gusset plate installed on the rear face of the horizontal stabilizer front center spar (Post-Modification 2/758), within the next 8 calendar months, replace the horizontal stabilizer front center spar in accordance with Part B. of the Accomplishment Instructions section of de Havilland SB 2/47, Revision C, dated September 4, 1992.

(2) For airplanes that have lightening holes in the horizontal stabilizer front center spar (Pre-Modification 2/466) and that did not have the horizontal stabilizer front center spar replaced as required by either paragraph (a)(1)(ii) or (a)(1)(iii) of this AD, visually inspect the front spar web for cracks in accordance with paragraph 4 of Part A. of the Accomplishment Instructions section of de Havilland SB 2/47, Revision C, dated September 4, 1992.

(i) If no cracks are found, accomplish the requirements of paragraph 5 of Part A. of the Accomplishment Instructions section of de Havilland SB 2/47, Revision C, dated September 4, 1992.

(ii) If any cracks are found, prior to further flight, replace the horizontal stabilizer front center spar in accordance with Part B. of the Accomplishment Instructions section of de Havilland SB 2/47, Revision C, dated September 4, 1992.

Note 2: De Havilland SB 2/47, Revision C, dated September 4, 1992, references both the horizontal stabilizer front center spar and the tailplane front center spar. These are one and the same. For the purposes of this AD, all reference is to the horizontal stabilizer front center spar.

(b) If any previously stop-drilled cracks are found per the inspections specified in paragraphs (a)(1) and (a)(2) of this AD, within the following time frames, replace the horizontal stabilizer front center spar in accordance with Part B. of the Accomplishment Instructions section of de Havilland SB 2/47, Revision C, dated September 4, 1992, unless already accomplished in accordance with either paragraph (a)(1)(ii), (a)(1)(iii), or (a)(2)(ii) of this AD:

(1) Within the next 12 calendar months if the stop-drilled cracks have not progressed past the stop.

(2) Within the next 8 calendar months if the stop-drilled cracks have progressed past the stop and the airplane has a gusset plate installed on the rear face of the horizontal stabilizer front center spar (Post-Modification 2/758).

(3) Prior to further flight if the stop-drilled cracks have progressed past the stop and the airplane does not have a gusset plate installed on the rear face of the horizontal stabilizer front center spar (Pre-Modification 2/758).

(c) Within the next 24 calendar months after the effective date of this AD, accomplish the following:

(1) For airplanes having serial numbers (S/N) 1 through 100, install longer pick-up brackets (Modification 2/436) in accordance with the instructions in de Havilland Technical News Sheet B55, dated August 1, 1952, unless already incorporated.

Note 3: Modification 2/436 was incorporated at manufacture on airplanes beginning with S/N 101. Other airplanes may have incorporated this modification in the field.

(2) For airplanes having S/N 1 through 317, install a gusset plate on the rear face at each of the pick-up brackets (Modification 2/758) in accordance with the instructions in de Havilland Technical News Sheet B55, dated August 1, 1952, unless already incorporated.

Note 4: Modification 2/758 was incorporated at manufacture on airplanes beginning with S/N 318. Other airplanes may have incorporated this modification in the field.

Note 5: Modification 2/466—installation of tailplane front spar without lightening holes—is referenced in de Havilland SB 2/47, Revision C, dated September 4, 1992. Accomplishment of this AD incorporates this modification.

(d) Within the next 24 calendar months after the effective date of this AD or within 24 calendar months after accomplishing the requirements of paragraph (c) of this AD, whichever occurs later, and thereafter at intervals not to exceed 24 calendar months, visually inspect the front face of the horizontal stabilizer front center spar for cracks. If any cracks are found, prior to further flight, obtain a repair scheme from the manufacturer through the New York Aircraft Certification Office at the address specified in paragraph (f) of this AD, and accomplish the repair in accordance with the repair scheme obtained.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581. The request shall be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(g) The inspections and modifications required by this AD shall be done in accordance with de Havilland Service Bulletin 2/47, Revision C, dated September 4, 1992; and de Havilland Technical News Sheet B55, dated August 1, 1952. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from de Havilland, Inc.,

Downsview, Ontario, Canada, M2K 1Y5. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment (39-8407) becomes effective on December 15, 1992.

Issued in Kansas City, Missouri, on October 26, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-27106 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-74-AD; Amendment 39-8411; AD 92-24-06]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires replacement of the nylon bushings for the C-latches of the forward and rear service/emergency doors. This amendment is prompted by reports that, in extremely cold temperatures, the C-latches of the forward and rear service/emergency doors may freeze in their bushings. The actions specified by this AD are intended to prevent the C-latch bushings from being rendered temporarily inoperable, which could prevent an emergency evacuation through the forward and rear service/emergency doors.

DATES: Effective December 14, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 14, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on June 8, 1992 (57 FR 24200). That action proposed to require replacement of the nylon bushings for the C-latches of the forward and rear service/emergency doors.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One operator requests that the proposed compliance time of 3 months be extended to 6 months. This operator contends that the modification cannot be completed within the proposed 3-month timeframe without removing airplanes from service, due to the size of its fleet and the estimated downtime necessary to perform the modification (11.5 hours). The FAA concurs with the commenter's request to extend the compliance time, but not to the 6-month timeframe suggested by the commenter. The FAA has determined that extending the compliance time by one additional month will not adversely affect safety, yet will allow operators sufficient time to perform the modification without the burden of unscheduled removal of aircraft from service. Paragraph (a) of the final rule has been changed to specify a compliance time of 4 months.

One operator requests that the proposal be revised to permit accomplishment of the modification without removal of the service/emergency door; the service bulletin referenced in the proposal specifies removal of the door to accomplish the modification. This operator has received approval from Fokker to accomplish the modification without removing the door. The FAA cannot concur, since this operator has not submitted to the FAA substantiating data for accomplishing the modification without removing the service/emergency door. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for alternative methods of compliance with the requirements of this rule, if sufficient justification is presented to the FAA.

This same operator further requests that the proposal be revised to permit use of alternative cleaner solvents such as denatured alcohol or Desoto 110, since the proposed cleaner specified in the referenced service bulletin, methyl ethylketone, is a toxic chemical and poses a fire hazard because of its low flash point. The FAA cannot concur, since this operator has not submitted to the FAA any data to substantiate that the use of alternative cleaner solvents would not adversely affect the seals, the new bushings, and other parts used in the modification. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for alternative methods of compliance, if sufficient data are presented to the FAA to justify such requests.

One commenter requests that the proposal be revised to include a provision that would allow operators to make minor changes when accomplishing the requirements of the rule without prior approval from the FAA's Standardization Branch, under the alternative method of compliance provision, which the commenter views as overly restrictive and increasingly burdensome. The commenter suggests that the manufacturer's Designated Engineering Representative (DER) or the operator's Principal Maintenance Inspector (PMI) be authorized to approve these minor changes. The FAA does not concur. While DER's are authorized to determine whether a design or repair method complies with a specific requirement, they are not authorized to make the discretionary determination as to what the applicable requirement is to correct the unsafe condition. Moreover, the PMI's may not possess the necessary engineering expertise to evaluate these minor changes to ascertain whether they would significantly affect the airworthiness of the airplane. Furthermore, it is essential for the FAA, Standardization Branch, to be cognizant of all alternative methods of compliance approvals associated with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 31 airplanes of U.S. registry will be affected by this AD, that it will take approximately 23 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $7,520 per airplane. Based on these

figures, the total cost impact of the AD on U.S. operators is estimated to be $272,335, or $8,785 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92-24-06. Fokker: Amendment 39-8411. Docket 92-NM-74-AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11355, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent the C-latch bushings from being rendered temporarily inoperable, which could prevent the opening of the forward and rear service/emergency doors during an emergency evacuation, accomplish the following:

(a) Within 4 months after the effective date of this AD, remove the existing C-latch mechanisms and bushings of the forward and rear service/emergency doors, and install new C-latch mechanisms and bushings, Modification Kit SBF100-52-039A or SBF100-52-039B, in accordance with Fokker Service Bulletin SBF100-52-039, dated September 17, 1991.

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

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

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

(d) The removal and installation shall be done in accordance with Fokker Service Bulletin SBF100-52-039, dated September 17, 1991. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 14, 1992.

Issued in Renton, Washington, on October 27, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-27101 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-103-AD; Amendment 39-8409; AD 92-24-04]

Airworthiness Directives; Boeing Model 737-300, -400, and -500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737-300, -400, and -500 series airplanes, that requires modification of the engine thrust reverser control system. This amendment is prompted by an analysis by the manufacturer that indicates a potential exists for leakage across the piston seal in the thrust reverser actuator. The actions specified by this AD are intended to prevent uncommanded deployment of the thrust reverser.

DATES: Effective December 14, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 14, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen S. Bray, Aerospace Engineer, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2681; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737-300, -400, and -500 series airplanes was published in the **Federal Register** on July 2, 1992 (57 FR 29450). That action proposed to require modification of the engine thrust reverser control system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Boeing Commercial Airplane Group notes that its analysis of the auto-stow system did not indicate that "there is a high potential for leakage across the piston seal in the thrust reverser actuator," as stated in the Summary section of the preamble to the proposal. The commenter requests that the FAA revise this statement to reflect accurately the findings of the manufacturer's analysis. The FAA concurs that the description of the unsafe condition could be stated more

accurately. The applicable statement in the Summary section has been revised to reflect that the manufacturer's analysis indicates that "a potential exists for leakage across the piston seal in the thrust reverser actuator." This condition, although remote, could result in poor thrust reverser performance and possible uncommanded deployment of the thrust reverser.

Several commenters request that the proposed compliance time of 6 months to modify the engine thrust reverser control system be extended to 12 months, due to limited parts availability and problems of special scheduling of airplanes for accomplishment of the modification. The FAA concurs. The FAA has verified the existence of problems concerning parts availability and fleet-wide maintenance base scheduling. The FAA has determined that extending the compliance time for modification of the thrust reverser to 12 months will not adversely affect safety. The final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,174 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 600 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $396,000, or $660 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

92-24-04. Boeing: Amendment 39-8409. Docket 92-NM-103-AD.

Applicability: Model 737-300, -400, and -500 series airplanes; as listed in Boeing Alert Service Bulletin 737-78A1055, dated April 2, 1992, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded deployment of the thrust reverser, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the engine thrust reverser control system, in accordance with Boeing Alert Service Bulletin 737-78A1055, dated April 2, 1992.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Seattle ACO.

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

(d) The modification shall be done in accordance with Boeing Alert Service Bulletin 737-78A1055, dated April 2, 1992 This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 14, 1992.

Issued in Renton, Washington, on October 27, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service

[FR Doc. 92-27102 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-175-AD; Amendment 39-8408; AD 92-24-03]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes equipped with Pratt and Whitney PW4000 series engines, that currently requires deactivation, modification of the thrust reverser control system to improve the safeguards against uncommanded deployment of a thrust reverser, and subsequent reactivation of the thrust reverser system. This amendment adds requirements for repetitive inspections, tests, adjustments, and functional checks of the thrust reverser system. This amendment is prompted by a number of possible discrepancies currently identified in the thrust reverser control system which, in certain scenarios, could contribute to an uncommanded deployment. The actions specified in this AD are intended to prevent uncommanded deployment of a thrust reverser during flight, which could result in the reduced controllability of the airplane.

DATE: Effective November 24, 1992.

The incorporation by reference of certain publications listed in the

regulations was approved previously by the Director of the Federal Register as of November 8, 1991 (56 FR 55066, October 24, 1991).

The incorporation by reference of Boeing Service Bulletin 767-78-0046, Revision 1, dated September 17, 1992, is approved by the Director of the Federal Register as of November 24, 1992.

Comments for inclusion in the Rules Docket must be received on or before January 8, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-175-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lanny Pinkstaff, Aerospace Engineer, Seattle Aircraft Certification Office, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2684; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: On October 11, 1991, the FAA issued AD 91-22-09, Amendment 39-8069 (56 FR 55066, October 24, 1991), which is applicable to certain Model 767 series airplanes equipped with Pratt and Whitney PW4000 series engines, to require deactivation, modification, and subsequent reactivation of the thrust reverser system, to improve the safeguards against uncommanded thrust reverser deployments. That action was prompted by potential contamination of the hydraulic directional control valve (DCV). The actions required by that AD are intended to prevent contamination of the DCV, which could result in uncommanded deployment of a thrust reverser during flight, and subsequently, reduced controllability of the airplane.

Since issuance of that AD, several operators have reported cases of illumination of the thrust reverser isolation valve light and the appearance of left/right isolation valve messages on the engine indication and crew alerting system (EICAS). In some cases, no cause for the indications was found. One operator reported a case of repetitive illumination of the isolation valve light during flight. Replacement of relays, switches, and other thrust reverser system components did not correct the condition. The operator performed a detailed check of the thrust reverser system wiring, and found abrasion on the wiring for the auto restow proximity switch located on the right side of the left engine.

In light of these incidents, the FAA has determined that repetitive inspections and tests of the thrust reverser control and indication system, and repetitive inspections of certain engine wiring, are necessary to ensure the continued operational safety of these airplanes.

The FAA has reviewed and approved Boeing Service Bulletin 767-78-0046, Revision 1, dated September 17, 1992. This service bulletin describes procedures for repetitive inspections, tests, adjustments, and functional checks of the thrust reverser control and indication system, and of selected engine wiring. A specific check of the directional control valve "hot short" protection is included.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 91-22-09 to add requirements for repetitive inspections, tests, adjustments, and functional checks of the thrust reverser control and indication system and of selected engine wiring. This final rule cites Revision 1 of the Boeing service bulletin, described previously, as an appropriate source for service information.

This AD also requires that whenever routine maintenance action is performed that could disturb any portion of the thrust reverser control system, the functional test or tests relative to the system must be performed in accordance with the Boeing 767 Maintenance Manual. After such tests are accomplished, the repetitive inspections, tests, adjustments and functional checks of the thrust reverser system must continue.

Additionally, operators are required to submit a report to the FAA of the results of their initial inspections, tests, adjustments, and functional checks of the thrust reverser system.

Operators should note that the compliance times for the initial and repetitive actions required by this AD differ from those recommended in the relative Boeing service bulletin. In developing the compliance times for this AD action, the FAA determined that the hazard presented by an uncommanded deployment of a thrust reverser during flight will be reduced by the added inspection, test, adjustment, and functional check requirements of this AD. The compliance time of 3,000 flight hours, which is required for the initial and repetitive inspections, tests, adjustments, and functional checks of the thrust reverser control and indication system and of selected engine wiring; and 1,500 flight hours, which is required for the initial and repetitive checks of the grounding wire for the thrust reverser DCV; were determined to be appropriate, in consideration of the average utilization rate of the affected operators and the practical aspects of an orderly inspection of the fleet during regular maintenance periods.

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

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped

postcard on which the following statement is made: "Comments to Docket Number 92-NM-175-AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39— AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8069 (56 FR 55066, October 24, 1991), and by adding a new airworthiness directive (AD), amendment 39-8408, to read as follows:

92-24-03. Boeing: Amendment 39-8408. Docket 92-NM-175-AD. Supersedes AD 91-22-09, Amendment 39-8069.

Applicability: Model 767 series airplanes equipped with Pratt and Whitney PW4000 series engines, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note: Paragraph (a) of this AD restates the requirements of AD 91-18-51, paragraphs (a) and (b). Paragraph (b) of this AD restates the requirements of AD 91-22-09, paragraph (b). As allowed by the phrase, "unless accomplished previously," if the requirements of AD 91-18-51 and 91-22-09 have been accomplished previously, paragraphs (a) and (b) of this AD do not require those deactivations and modifications to be repeated.

To prevent in-flight thrust reverser deployment and subsequent reduced controllability of the airplane, accomplish the following:

(a) Within 7 days after August 23, 1991 (the effective date of AD 91-18-51), accomplish the following:

(1) Deactivate both left and right thrust reversers, in accordance with Section 78-31-1 of Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 9, dated May 1, 1991.

(2) Add the following to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by placing a copy of this AD in the AFM.

"Reduce by five percent the available accelerate-stop distance resulting from the Airplane Flight Manual takeoff performance analysis when the runway is wet or contaminated."

(b) Within 60 days after November 8, 1991 (the effective date of AD 91-22-09, Amendment 39-8069), modify the thrust reverser system in accordance with Boeing Service Bulletin 767-78-0051, dated October 9, 1991. Once this modification is accomplished, the thrust reverser system must be re-activated, and the AFM limitation required by paragraph (a)(2) of this AD may be removed.

(c) Accomplish the actions specified in paragraphs (c)(1) and (c)(2) of this AD in accordance with Boeing Service Bulletin 767-78-0046, Revision 1, dated September 17, 1992, and in accordance with the schedule specified.

(1) Prior to the accumulation of 3,000 flight hours since manufacture, or within 30 days after the effective date of this AD, whichever occurs later, perform all inspections, tests, adjustments, and functional checks of the thrust reverser control and indication system, and engine wiring specified in the service bulletin.

(i) Repeat these actions at intervals not to exceed 3,000 flight hours.

(ii) Whenever maintenance action is taken that could disturb any portion of the thrust reverser control system, the functional test or tests relative to the system must be performed in accordance with the Boeing 767 Maintenance Manual. After this test(s) is accomplished, the repetitive inspections, tests, adjustments and functional tests required by paragraph (c)(1)(i) of this AD must continue.

Note: The Boeing 767 Maintenance Manual should include Revision 78-646, Chapter 78, dated September 2, 1992.

(2) Prior to the accumulation of 1,500 flight hours since manufacture, or within 30 days after the effective date of this AD, whichever occurs later, perform a check of the grounding wire for the thrust reverser directional control valve (DCV) in accordance with Section III, paragraph B., of the service bulletin. Thereafter, repeat this check at the times specified in paragraph (c)(2)(i) and (c)(2)(ii):

(i) At intervals not to exceed 1,500 flight hours; and

(ii) Whenever maintenance action is taken that could disturb the DCV grounding circuit.

(d) If any of the inspections, tests, adjustments and/or functional checks required by paragraph (c) of this AD cannot be successfully performed as specified in the service bulletin, prior to further flight, deactivate the associated thrust reverser in accordance with Section 78-31-1 of Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 9, dated May 1, 1991. The thrust reverser must remain deactivated until all inspections, tests, adjustments and functional tests required by paragraph (c) of this AD are successfully completed.

(e) Within 45 days after accomplishing the initial inspections, tests, adjustments, and functional tests required by paragraph (c) of this AD, submit a report of the results, both positive and negative, to the Manager, Seattle Aircraft Certification Office (ACO), ANM-100S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056, or fax (206) 227-1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections, tests, adjustments, and functional checks shall be done in accordance with Boeing Service Bulletin 767-78-0046, Revision 1, dated September 17, 1992. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of Boeing Service Bulletin 767-78-0051, dated October 9, 1991; and Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 9, dated May 1, 1991; was approved previously by the Director of the **Federal Register** as of

November 8, 1991 (56 FR 55066, October 24, 1991). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on November 24, 1992.

Issued in Renton, Washington, on October 27, 1992.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-27081 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34-31398]

RIN 3235-AE54

Broker-Dealer Registration and Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of form amendments.

SUMMARY: The Commission is adopting clarifying amendments to Form BD, the application form for broker-dealer registration under the Securities Exchange Act of 1934. The purpose of the amendments is to provide a uniform definition of the term "proceeding," as used in the disciplinary background provisions, and to simplify processing of the Form. The Commission also is adopting an amendment to Schedule I of Form X-17A-5 (the FOCUS report) to require registered broker-dealers to disclose their affiliations, if any, with U.S. banks.

EFFECTIVE DATE: The amendments to Form BD become effective on November 16, 1992; the amendments to Schedule I of Form X-17A-5 become effective on December 9, 1992.

FOR FURTHER INFORMATION CONTACT: Robert L.D. Colby, Chief Counsel, or Belinda Blaine, Branch Chief (202) 504-2418, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

I. Introduction

In July 1992, the Commission adopted amendments to Form BD, the uniform application form for broker-dealer registration under the Securities Exchange Act of 1934 ("Exchange Act"), which were designed to simplify and consolidate the disclosure requirements of the Form.[1] At the same time, the Commission proposed for comment several additional amendments to Form BD.[2] The purpose of the proposed amendments was to clarify certain items in the Form by making technical modifications and by adding a uniform definition of the term "proceeding," as used in Item 7, the disciplinary background provision of the Form. In the Proposing Release, the Commission stated that the uniform definition of "proceeding" was intended to eliminate any existing confusion in the broker-dealer community as to the extent of disclosure required under Item 7.

Although no comments were submitted in connection with the proposed amendments, the membership of the North American Securities Administrators Association, Inc. ("NASAA") voted to adopted the amendments at their annual meeting in September 1992.[3] Therefore, for the reasons discussed in the Proposing Release, the Commission is adopting the amendments to Form BD as proposed. The Commission also is adopting a previously proposed revision to Schedule I of Form X-17A-5 (the FOCUS report), filed by registered broker-dealers with the Commission pursuant to Rule 17a-5 under the Exchange Act.[4]

II. Form BD

A. Description of Amendments

Item 7(G) of Form BD requires applicants for broker-dealer registration to disclose whether they or their control affiliates are "now the subject of any proceeding that could result in a 'yes' answer" to the questions posed in parts A through F. Parts A through F of Item 7 request information about any criminal, civil, or administrative action taken against the applicant or its control affiliates. The Commission historically has interpreted the term "proceeding" in Item 7(G) to include only administrative proceedings, civil litigation initiated by regulatory agencies, and final criminal actions.[5] In contrast, NASAA has interpreted "proceeding" to also include pending criminal charges and private civil litigation.[6]

In an effort to reconcile these differing interpretations, the Commission, NASAA, and the National Association of Securities Dealers, Inc. ("NASD") have developed a joint definition of the term "proceeding." Under this definition, which has been added to the instructions to Item 7, the term "proceeding" includes formal administrative and civil actions initiated by self-regulatory organizations ("SRO"), governmental agencies, and foreign financial regulatory authorities (as defined in Form BD), felony criminal indictments and informations, and misdemeanor informations involving the securities-related matters listed in Item 7(A)(1) of the Form.[7] This interpretation of "proceeding," however, does not require broker-dealers to disclose investigations, civil litigation not initiated by an SRO, governmental agency, or foreign financial regulatory authority, or criminal arrests and charges effected in the absence of a formal criminal indictment or information.

The Commission believes that this amendment to Item 7 is consistent with the purpose of Form BD—to provide a uniform application form that can be used by broker-dealers to register with the states, the Commission, and the NASD. Accordingly, the joint definition replaces NASAA's interpretation of "proceeding," as expressed in its 1989 resolution, and the Commission's interpretation, as discussed in its earlier releases.[8]

In addition to the amendments to the instructions to Item 7, several technical revisions have been made to Form BD. First, the general instructions to the Form have been amended to state explicitly that broker-dealers may only use the current version of Form BD when filing an application pursuant to Rule 15b1-1 [17 CFR 240.15b1-1] or an amendment pursuant to Rule 15b3-1 [17 CFR 240.15b3-1] under the Exchange

[1] Securities Exchange Act Release No. 34-30958 (July 27, 1992), 57 FR 34028 ("Release 34-30958"). The amendments clarified certain reporting requirements, updated the disciplinary history provisions of the Form to reflect the 1990 amendments to the federal securities laws, and narrowed the scope of ownership disclosure required by the schedules to the Form.

[2] Securities Exchange Act Release No. 30959 (July 27, 1992), 57 FR 34048 ("Proposing Release").

[3] NASAA is the organization of the fifty state securities agencies.

[4] 17 CFR 240.17a-5. The Commission did not receive any comments on the proposed amendments to Schedule I.

[5] Securities Exchange Act Release Nos. 2478 (February 6, 1976), 41 FR 7089, and 22468 (September 26, 1985), 50 FR 41867.

[6] NASAA Resolution (September 14, 1989).

[7] Item 7(A)(1) lists misdemeanors involving: (i) Investments or an investment-related business; (ii) fraud, false statements, or omissions; (iii) wrongful taking of property; and (iv) bribery, forgery, counterfeiting, or extortion.

A formal charge that is equivalent to an indictment or information but that is designated differently under state law also is considered a "proceeding" for purposes of Item 7.

[8] See notes 5 & 6, *supra*.

Act.[9] Second, Schedule A has been amended to add a question asking whether the applicant has any indirect owners to report on Schedule B. This will allow applicants to avoid having to file Schedule B only to indicate that they have no indirect owners. Finally, for regulatory purposes, an "official use only" column has been added to the Form.[10]

B. Filing Instructions and Effective Date

The amendments to Form BD adopted today and in Release 34–30958 become effective on November 16, 1992. Thus, all applicants filing for broker-dealer registration on or after that date must file on the new revised Form BD.

In addition, broker-dealers that currently are registered with the Commission should review their Form BD filings to determine whether they contain all of the information required by amended Item 7 (disciplinary background information).[11] To the extent that the revisions to Form BD result in a *new* affirmative answer to a question in Item 7, on or promptly after November 16, 1992, registered broker-dealers will be required to file an amendment to their Form BD.[12] Broker-dealers that can answer "no" to all of the new questions in amended Item 7 will *not* be required to file an amended Form BD at that time. Moreover, registered broker-dealers will not be required to make any filing on November 16, 1992, as a result of the other amendments to the Form, such as the amendments to Item 10 and the schedules.[13] All registrants, however, will be required to use the new revised Form and schedules the next time they need to update their ownership or other information pursuant to Rule 15b3–1.

Pursuant to section 4(c) of the Administrative Procedure Act,[14] publication of the amendments to Form BD may not be made less than thirty days before their effective date, absent good cause. As noted above, the amendments to Form BD adopted in Release 34–30958 become effective on November 16, 1992. In order to coordinate the effective date of those amendments with the amendments adopted today, and to allow the Commission and the NASD to publish the new revised Form in its entirety, the amendments to Form BD shall become effective on November 16, 1992, based on the Commission's finding of good cause.

III. Schedule I of the FOCUS Report

Rule 17a–5 under the Exchange Act generally requires all registered broker-dealers to file monthly and quarterly reports with the Commission on Form X–17A–5 (also known as the "FOCUS" report).[15] To supplement either Part II or IIA of the FOCUS report, registrants also are required to file Schedule I at the end of each calendar year. The purpose of this schedule is to obtain information about the economic and financial characteristics of the registrant.

Item 19 of Schedule I to the FOCUS report currently requests information about the registrant's affiliation with any foreign broker-dealer or bank. In addition to information about foreign bank affiliations, the Commission believes that it would be useful for regulatory purposes to obtain information about broker-dealer affiliations with U.S. banks. The Commission therefore is adopting an amendment to Schedule I to require broker-dealers to disclose whether they are an affiliate or subsidiary of a U.S. bank, and if so, to give the name of that affiliate or parent company, and the type of institution. The "Specific Instructions" to Schedule I also have been amended to refer to the definition of "bank" in Section 3(a)(6) of the Exchange Act.[16]

IV. Effects on Competition and Regulatory Flexibility Act Considerations

Section 23(a)(2) of the Exchange Act [17] requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission believes that the amendments to Form BD and Schedule I of the FOCUS report will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. On the contrary, the amendments to Form BD will mitigate some of the burdens currently associated with broker-dealer registration.

In addition, the Commission has prepared a Final Regulatory Flexibility Analysis ("FRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[18] regarding the revisions to Form BD and Schedule I of the FOCUS report. A copy of the FRFA may be obtained from Belinda Blaine, Branch Chief, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549; at (202) 504–2418.

List of Subjects in 17 CFR Part 249

Brokers, Reporting and recordkeeping requirements, Securities.

Statutory Basis and Text of Amendments

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

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

2. By revising Form BD (§ 249.501) to read as follows:

Note: Form BD does not and this revision will not appear in the Code of Federal Regulations.

BILLING CODE 8010–01–M

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[9] I.e., the most recent Form adopted by the Commission. The Commission will not accept applications or amendments filed on an obsolete Form.

[10] In addition, a few technical corrections have been made to the Form. For example, a "date status acquired column" has been added to Schedule B, similar to the column already included in Schedule A.

[11] For a description of the amendments to Item 7, *see* Release 34–30958.

[12] The amendment should include page 1 (the execution page), page 3 or 4 (amended to show the new affirmative answers to questions in Item 7), and Schedule DRP (providing detailed information with respect to the affirmative answers to questions in Item 7).

Broker-dealers that previously have reported an affirmative answer to a question in Item 7 do not need to refile in November unless they have new information to report

[13] See Release 34–30958.

[14] 5 U.S.C. 551 et seq.

[15] 17 CFR 240.17a–5. Form X–17A–5 appears at 17 CFR 249.617.

[16] 15 U.S.C. 78c(a)(6). Under this section, the term "bank" is defined as: (a) A banking institution organized under the laws of the United States; (b) a member bank of the Federal Reserve System; (c) any other banking institution doing business under the laws of any state or the United States, a substantial portion of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by state or federal authority having supervision over banks; and (d) a receiver, conservator, or other liquidating agent of any institution or firm included in the above paragraphs.

[17] 15 U.S.C. 78w(a)(2).

[18] 5 U.S.C. 603

OMB APPROVAL	
OMB Number:	3235-0012
Expires:	May 31, 1994
Estimated average burden hours per form.....	3.00

FORM BD

UNIFORM APPLICATION FOR BROKER-DEALER REGISTRATION

SEC 1490

INSTRUCTIONS FOR FORM BD

1. **Updating** -- By law, the applicant must update the Form BD information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason. Complete all amended pages in full and, except for Schedule C, circle the number of the item being changed.

2. **Contact Employee** -- The individual listed on page 1 as the contact employee must be authorized to receive all compliance information, communications and mailings and be responsible for disseminating it within the applicant's organization.

3. **Format**

   - Attach an Execution Page (Page 1) with original manual signatures to the initial Form BD filing and each amendment to the form. Amendments to Schedules C, D and DRP also must be accompanied by an Execution Page (Page 1). Schedules A & B are amended by filing Schedule C.
   - Type all information.
   - Give the name of the broker-dealer and date on each page.
   - Use only the current version of Form BD and its Schedules or a reproduction of them.

4. **Definitions**

   - Applicant -- The broker-dealer applying on or amending this form.
   - Control -- The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company. (This definition is used solely for the purpose of Form BD.)
   - Jurisdiction -- Any non-Federal government or regulatory body in the United States, Puerto Rico or Canada.
   - Person -- An individual, partnership, corporation or other organization.
   - Self-regulatory organization -- Any national securities or commodities exchange or registered securities association, or registered clearing agency.

5. **Schedules A, B and C** -- File Schedules A and B only with initial applications for registration. Use Schedule C to update Schedules A and B.

6. **Schedule D** -- Schedule D provides additional space for explaining "yes" answers to Form BD items (except for Item 7), but not for continuing Schedules A, B or C. To continue Schedules A, B or C, use copies of the Schedule being continued.

7. **Schedule DRP** -- All information relating to an event reportable under Item 7 must be provided on Schedule DRP. Applicant may submit a partially completed Schedule DRP (as specified in the Schedule) only if the applicant or control affiliate for whom the Schedule is being filed has submitted a fully-completed Schedule DRP (in connection with another Form BD filing) or a DRP Page (in connection with a Form U-4 filing) relating to the occurrence of the same event to the Central Registration Depository (CRD) system of the NASD. In such cases this fully-completed Schedule DRP or DRP Page must be attached to the applicant's Schedule DRP.

8. **Schedule E** -- Schedule E amendments reporting changes in Branch Offices may be submitted without an execution page.

9. **Government Securities Activities**

   A. Section 15C of the Securities Exchange Act of 1934 requires sole government securities broker-dealers to register with the SEC. To do so, use Form BD and answer "yes" to Item 12 if conducting only a government securities business.

   B. Broker-dealers registered or applicants applying for registration under Section 15(b) or 15B of the Exchange Act that conduct (or intend to conduct) a government securities business in addition to other broker-dealer activities (if any) must file a notice on Form BD by answering "yes" to Item 13A.

   C. Broker-dealers registered under Section 15(b) or 15B of the Exchange Act that cease to conduct a government securities business must file notice when ceasing their activities in government securities. To do so, file an amendment to Form BD and answer "yes" to Item 13B.

10. **Federal Information Law and Requirements** -- The Exchange Act, Sections 15, 15C, 17(a) and 23(a), authorize the SEC to collect the information on this form from applicants for registration as a broker or dealer (and persons associated with applicants). The information is used for regulatory purposes, including deciding whether to grant registration. The SEC maintains files of the information on this form and makes it publicly available. Only the Social Security Number information, which aids in identifying the applicant, is voluntary.

FORM BD
Page 1

Applicant:	SEC File No.: 8-	CRD No.:	DATE MM/DD/YY	Offical Use Only

Uniform Application for Broker-Dealer Registration

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the jurisdictions and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

☐ Application ☐ Amendment

1. Exact name, principal business address, mailing address, if different, and telephone number of applicant:

A. Full name of applicant (if sole proprietor, state last, first and middle name):

_____

B. IRS Empl. Ident. No.:

_____

C. Name under which broker-dealer business primarily is conducted, if different: List on Schedule D any other name by which the firm conducts business.

_____

D. If this filing makes a name change on behalf of the applicant, enter the previous name and specify whether the name change is of the applicant name (1A) or business name (1C):

_____ ☐ (1A) ☐ (1C)

E. Firm main address: (Do Not Use A P.O. Box)

_____ _____ _____ _____
(Number and street) (City) (State) (Zip Code - All Nine Digits)

F. Mailing address, if different:

_____

G. Business Telephone Number:

_____ _____
(Area Code) (Telephone Number)

H. Contact Employee:

_____ _____ _____ _____
(Name and Title) (Area Code) (Telephone No.)

EXECUTION

For the purpose of complying with the laws of the State(s) designated in Item 2 relating to either the offer or sale of securities or commodities, the undersigned and applicant hereby certify that the applicant is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s) or such other person designated by law, and the successors in such office, attorney for the applicant in said State(s), upon whom may be served any notice, process, or pleading in any action or proceeding against the applicant arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s), and the applicant hereby consents that any such action or proceeding against the applicant may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if applicant were a resident in said State(s) and had lawfully been served with process in said State(s).

The applicant consents that service of any civil action brought by or notice of any proceeding before the Securities and Exchange Commission or any self-regulatory organization in connection with the applicant's broker-dealer activities, or of any application for a protective decree filed by the Securities Investor Protection Corporation, may be given by registered or certified mail or confirmed telegram to the applicant's contact employee at the main address, or mailing address if different, given in Items 1.E. and 1.F.

The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said applicant. The undersigned and applicant represent that the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part hereof, current, and complete. The undersigned and applicant further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

_____
Date Name of Applicant

By: _____ _____
Signature and Title Print Name

Subscribed and sworn before me this _____ day of _____, _____ by _____
year Notary Public

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization. To amend, circle items being amended. Affix notary stamp or seal where applicable.

FORM BD Page 2	Applicant:		CRD No.:	DATE MM/DD/YY	Official Use Only

2. Indicate in the boxes below each jurisdiction in which the applicant is registered or wishes to register as a broker-dealer. If any registration, license, or membership listed is of a restricted nature, explain fully on Schedule D.

____ Securities and Exchange Commission

SRO: ASE ☐ BSE ☐ CBOE ☐ CSE ☐ MSE ☐ NASD ☐ NYSE ☐ PHLX ☐ PSE ☐ Other (Specify)____

JURISDICTION

AL ☐ AK ☐ AZ ☐ AR ☐ CA ☐ CO ☐ CT ☐ DE ☐ DC ☐ FL ☐ GA ☐ HI ☐ ID ☐
IL ☐ IN ☐ IA ☐ KS ☐ KY ☐ LA ☐ ME ☐ MD ☐ MA ☐ MI ☐ MN ☐ MS ☐ MO ☐
MT ☐ NE ☐ NV ☐ NH ☐ NJ ☐ NM ☐ NY ☐ NC ☐ ND ☐ OH ☐ OK ☐ OR ☐ PA ☐
RI ☐ SC ☐ SD ☐ TN ☐ TX ☐ UT ☐ VT ☐ VA ☐ WA ☐ WV ☐ WI ☐ WY ☐ PR ☐

3. Indicate date and place applicant obtained its legal status (i.e., place of incorporation, where partnership agreement was filed, or where applicant entity was formed):

Date of formation _____ (MM/DD/YY). Place of formation _____ of:

CORPORATION ☐ PARTNERSHIP ☐ SOLE PROPRIETORSHIP ☐ OTHER ☐ Specify_____

Applicant's fiscal year ends _____ (MM/DD).

Schedule A and, if applicable, Schedule B must be completed as part of all initial applications. Amendments to these Schedules must be provided on Schedule C.

4. If applicant is a sole proprietor, state full residence address and Social Security Number.

Social Security No:_____

_____ (Number and street) _____ (City) _____ (State). _____ (Zip Code - All Nine Digits)

5. Is applicant at the time of this filing succeeding to the business of a currently registered broker-dealer? (Do not report previous successions already reported on Form BD)..... Yes ☐ No ☐

If "yes," answer the questions below and describe the details of the succession on Schedule D.

A. Date of Succession: _____

B. Name of Predecessor: _____

IRS Empl. Ident. No.:_____ Firm CRD No. (if any):_____ SEC File Number: _____

6. Does any person not named in Item 1 or Schedules A, B, or C, directly or indirectly:

A. Control the management or policies of applicant through agreement or otherwise? See instructions for Definition of Control. (If yes, state on Schedule D the exact name of each person and describe the basis for the person's control.)..... Yes ☐ No ☐

B. Wholly or partially finance the business of applicant in any manner other than by: (1) a public offering of securities made pursuant to the Securities Act of 1933; (2) credit extended in the ordinary course of business by suppliers, banks and others; or a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1)? (If "yes," state on Schedule D the exact name of each person and describe the agreement or arrangement through which such financing is made available, including the amount thereof.)..... Yes ☐ No ☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM BD Page 3	Applicant:		CRD No.:	DATE MM/DD/YY	Official Use Only

7. Background Information

Use Schedule DRP for providing details to "yes" answers to the questions in Item 7

Definitions:

- Control affiliate - A person named in Items 1.A., 6. or in either Schedules A, B or C as control persons or any other individual or organization that directly or indirectly controls, is under common control with, or is controlled by the applicant, including any current employee except one performing only clerical, administrative, support or similar functions, or who, regardless of title, perform no executive duties or have no senior policy making authority.

- Investment or investment-related - Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association).

- Involved - Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

- Foreign financial regulatory authority - Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of investment or investment-related activities; and (3) a membership organization, a function of which is to regulate the participation of its members in the activities listed above.

- Proceeding - A formal administrative or civil action initiated by a governmental agency, self-regulatory organization or foreign financial regulatory authority, a felony criminal indictment or information (or equivalent formal charge), or a misdemeanor criminal information (or equivalent formal charge). Does <u>not</u> include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

A. In the past ten years has the applicant or a control affiliate been convicted of or pleaded guilty or nolo contendere ("no contest") in a domestic or foreign court to:

(1) a felony or misdemeanor involving:
- o investment or an investment-related business
- o fraud, false statements, or omissions
- o wrongful taking of property, or
- o bribery, forgery, counterfeiting or extortion? ..... Yes ☐ No ☐

(2) any other felony? ..... Yes ☐ No ☐

B. Has any domestic or foreign court:

(1) in the past ten years, enjoined the applicant or a control affiliate in connection with any investment related activity? ..... Yes ☐ No ☐

(2) ever found that the applicant or a control affiliate was involved in a violation of investment related statutes or regulations? ..... Yes ☐ No ☐

C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:

(1) found the applicant or a control affiliate to have made a false statement or omission? ..... Yes ☐ No ☐

(2) found the applicant or a control affiliate to have been involved in a violation of its regulations or statutes? ..... Yes ☐ No ☐

(3) found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? ..... Yes ☐ No ☐

(4) entered an order denying, suspending or revoking the applicant's or a control affiliate's registration or otherwise disciplined it by restricting its activities? ..... Yes ☐ No ☐

(5) imposed a civil money penalty on the applicant or a control affiliate, or ordered the applicant or a control affiliate to cease and desist from any activity? ..... Yes ☐ No ☐

D. Has any other federal regulatory agency, any state regulatory agency, or foreign financial regulatory authority:

(1) ever found the applicant or a control affiliate to have made a false statement or omission or been dishonest, unfair, or unethical? ..... Yes ☐ No ☐

(2) ever found the applicant or a control affiliate to have been involved in a violation of investmentregulations or statutes? ..... Yes ☐ No ☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM BD Page 4	Applicant:		CRD No.:	DATE MM/DD/YY	Official Use Only

(3) ever found the applicant or a control affiliate to have been a cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? Yes ☐ No ☐

(4) in the past ten years, entered an order against the applicant or a control affiliate in connection with an investment-related activity? Yes ☐ No ☐

(5) ever denied, suspended, or revoked the applicant's or a control affiliate's registration or license, prevented it from associating with an investment-related business, or otherwise disciplined it by restricting its activities? Yes ☐ No ☐

(6) ever revoked or suspended the applicant's or a control affiliate's license as an attorney or accountant? Yes ☐ No ☐

E. Has any self-regulatory organization or commodities exchange ever:

(1) found the applicant or a control affiliate to have made a false statement or omission? Yes ☐ No ☐

(2) found the applicant or a control affiliate to have been involved in a violation of its rules (other than a violation designated as a "minor rule violation" under a plan approved by the U.S. Securities and Exchange Commission)? Yes ☐ No ☐

(3) found the applicant or a control affiliate to have been the cause of an investment-related business having its authorization to do business denied, suspended, revoked, or restricted? Yes ☐ No ☐

(4) disciplined the applicant or a control affiliate by expelling or suspending it from membership, by barring or suspending its association with other members, or by otherwise restricting its activities? Yes ☐ No ☐

F. Has any foreign government, court, regulatory agency, or exchange ever entered an order against the applicant or a control affiliate related to investments or fraud other than as reported in Items 7.A., B., or D.? Yes ☐ No ☐

G. Is the applicant or a control affiliate now the subject of any proceeding that could result in a "yes" answer to parts A-F of this item? Yes ☐ No ☐

H. Has a bonding company denied, paid out on, or revoked a bond for the applicant? Yes ☐ No ☐

I. Does the applicant have any unsatisfied judgments or liens against it? Yes ☐ No ☐

J. Has the applicant or a control affiliate of the applicant ever been a securities firm or a control affiliate of a securities firm that has been declared bankrupt, had a trustee appointed under the Securities Investor Protection Act, or had a direct payment procedure begun? Yes ☐ No ☐

8. Does applicant:

A. Have any arrangement with any other person, firm or organization under which:

(1) Any of the accounts or records of applicant are kept or maintained by such person, firm, or organization? Yes ☐ No ☐

(2) The funds or securities of applicant or of any of its customers are held or maintained by such other person, firm or organization (other than a bank or satisfactory control location as defined in paragraph (c) of Rule 15c3-3 under the Securities Exchange Act of 1934, 17 CFR 240.15c3-3)? Yes ☐ No ☐

B. Have any arrangements with any other broker or dealer under which applicant refers or introduces customers to such other broker or dealer? Yes ☐ No ☐

If the answer to any subsection of Item 8 is "yes," furnish full details on Schedule D as to each such arrangement, including the full name and principal business address of the other person, firm, or organization, and a summary of each such arrangement. Clearly label the subsection of Item 8 to which the details of each arrangement are provided.

9. Directly or indirectly, does applicant control, is applicant controlled by, or is applicant under common control with any partnership, corporation, or other organization engaged in the securities or investment advisory business? Yes ☐ No ☐

If the answer to Item 9 is "yes," state full name and principal business address of such partnership, corporation, or other organization and describe the nature of control on Schedule D. If any of the control affiliates are registered through the CRD system, indicate the Firm CRD number to aid in identification. See instructions for Definition of Control.

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1).

FORM BD
Page 5

Applicant:		CRD No.:	DATE MM/DD/YY	Official Use Only

10. Check types of business engaged in (or to be engaged in, if not yet active) by applicant. Do not check any category that accounts for (or is expected to account for) less than 1% of annual revenue from the securities or investment advisory business.

A.	Exchange member engaged in exchange commission business other than floor activities	☐ EMC
B.	Exchange member engaged in floor activities	☐ EMF
C.	Broker or dealer making inter-dealer markets in corporate securities over-the-counter	☐ IDM
D.	Broker or dealer retailing corporate equity securities over-the-counter	☐ BDR
E.	Broker or dealer selling corporate debt securities	☐ BDD
F.	Underwriter or selling group participant (corporate securities other than mutual funds)	☐ USG
G.	Mutual fund underwriter or sponsor	☐ MFU
H.	Mutual fund retailer	☐ MFR
I.	1. U.S. government securities dealer	☐ GSD
	2. U.S. government securities broker	☐ GSB
J.	Municipal securities dealer	☐ MSD
K.	Municipal securities broker	☐ MSB
L.	Broker or dealer selling variable life insurance or annuities	☐ VLA
M.	Solicitor of time deposits in a financial institution	☐ SSL
N.	Real estate syndicator	☐ RES
O.	Broker or dealer selling oil and gas interests	☐ OGI
P.	Put and call broker or dealer or option writer	☐ PCB
Q.	Broker or dealer selling securities of only one issuer or associated issuers (other than mutual funds)	☐ BIA
R.	Broker or dealer selling securities of non-profit organizations (e.g. churches, hospitals)	☐ NPB
S.	Investment advisory services	☐ IAD
T.	1. Broker or dealer selling tax shelters or limited partnerships in primary distributions	☐ TAP
	2. Broker or dealer selling tax shelters or limited partnerships in the secondary market	☐ TAS
U.	Non-exchange member arranging for transactions in listed securities by exchange member	☐ NEX
V.	Trading securities for own account	☐ TRA
W.	Private placements of securities	☐ PLA
X.	Broker or dealer selling interests in mortgages or other receivables	☐ MRI
Y.	Other (give details on Schedule D)	☐ OTH

		Yes	No
11. A.	Does applicant effect transactions in commodity futures, commodities or commodity options as a broker for others or dealer for its own account?	☐	☐
B.	Does applicant engage in any other non-securities business? (If "yes," describe each other business briefly on Schedule D.)	☐	☐
12.	Is applicant applying for or continuing an existing registration solely as a government securities broker or dealer pursuant to Section 15C of the Securities Exchange Act of 1934?	☐	☐

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1.)

FORM BD Page 6	Applicant:		CRD No.:	DATE MM/DD/YY	Official Use Only

13. Notice of Government Securities Activities

A. Is applicant registered (or registering) as a broker-dealer under Section 15(b) of the Securities Exchange Act of 1934 and also acting or intending to act as a government securities broker or dealer in addition to other broker-dealer activities?..... Yes ☐ No ☐

(Do not answer "yes" if applicant answered "yes" to Question 12.)

B. Is applicant ceasing its activities as a government securities broker or dealer?..... Yes ☐ No ☐

(Do not answer "yes" unless previously answered "yes" to Question 13A.)

Answer all items. Complete amended pages in full, circle amended items and file with execution page (page 1.)

Schedule A of FORM BD Direct Owners and Executive Officers

Applicant:		CRD No.:	DATE MM/DD/YY	Official Use Only

(Answer for Form BD Item 3)

1. Use Schedule A only in new applications to provide information on the direct owners and executive officers of the applicant. Use Schedule B in new applications to provide information on indirect owners. File all amendments on Schedule C. **Complete each column.**

2. List below the names of:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and individual with similar status or functions;

   (b) in the case of an applicant that is a corporation, each shareholder that directly owns 5% or more of a class of a voting security of the applicant, unless the applicant is a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934);

   Direct owners include any person that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the applicant. For purposes of this Schedule, a person beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

   (c) in the case of an applicant that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital; and

   (d) in the case of an owner that is a trust, the trust and each trustee.

3. Are there any indirect owners of the applicant required to be reported on Schedule B?..... Yes ☐ No ☐

4. Complete the "Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

5. (a) In the "Control Person" column, enter "yes" if person has "control" as defined in the instructions to this Form, and enter "no" if the person does not have control. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "control persons."

   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Section 12 or 15(d) of the Securities Exchange Act of 1934.

6. Ownership codes are: NA - less than 5% B - 10% but less than 25% D - 50% but less than 75%
   A - 5% but less than 10% C - 25% but less than 50% E - 75% or more

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Date Title or Status Acquired MM/YY	Title or Status	Ownership Code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.

Schedule B of FORM BD Indirect Owners	Applicant:		CRD No.:	DATE MM/DD/YY	Official Use Only

(Answer for Form BD Item 3)

1. Use Schedule B only in new applications to provide information on the indirect owners of the applicant. Use Schedule A in new applications to provide information on direct owners. File all amendments on Schedule C. **Complete each column.**

2. With respect to each owner listed on Schedule A, (except individual owners), list below:

   (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

   For purpose of this Schedule, a person beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

   (b) in the case of an owner that is a partnership, all its general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital; and

   (c) in the case of an owner that is a trust, the trust and each trustee.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934) is reached, no ownership information further up the chain of ownership need be given.

4. Complete the "Status" column by entering status as partner, trustee, shareholder, etc, and if shareholder, class of securities owned (if more than one is issued).

5. (a) In the "Control Person" column, enter "yes" if the person has "control" as defined in the instructions to this Form, and enter "no" if the person does not have control.

   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

6. Ownership codes are: C - 25% but less than 50% D - 50% but less than 75% E - 75% or more

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Entity In Which Interest is Owned	Date Status Acquired MM/YY	Status	Ownership Code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer I

Schedule C of FORM BD Amendments to Schedules A & B

Applicant:		CRD No.:	DATE MM/DD/YY	Official Use Only

(Amendments to answers for Form BD Item 3)

1. This Schedule C is used to amend Schedules A and B of Form BD. Refer to those schedules for specific instructions for completing this Schedule C. **Complete each column.** File with a completed Execution Page (Page 1).

2. In the "Type of Amd." column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same person).

3. Ownership Codes are: NA - less than 5% B - 10% but less than 25% D - 50% but less than 75%
A - 5% but less than 10% C - 25% but less than 50% E - 75% or more

4. List below all changes to Schedule A (direct owners and executive officers):

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Type of Amd.	Date Title or Status Acquired MM/YY	Title or Status	Ownership Code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.

5. List below all changes to Schedule B (indirect owners):

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	Type of Amd.	Entity in Which Interest is Owned	Date Status Acquired MM/YY	Status	Ownership code	Control Person	PR	CRD No. If None: S.S. No., IRS Tax No.or Employer ID.

Schedule D of FORM BD Continuation Sheet

Applicant:		CRD No.:	DATE MM/DD/YY	Official Use Only

INSTRUCTIONS

- Use this Schedule D to report details of answers to Form BD Items except Item 7 and the other Schedules.
- File with a completed Execution Page (Page 1).
- Use this Schedule D only to report **new** information or **changes/updates** to previously submitted details. **Do not repeat previously submitted information.**
- Provide complete and concise information.

Item of Form (Section Number and/or Letter)	Answer

Schedule DRP of FORM BD Page 1	Applicant:		CRD No.:	DATE MM/DD/YY	Official Use Only

(Answer for Form BD Item 7)

INSTRUCTIONS

- This Schedule DRP must be filed upon occurrence of an event reportable under Item 7 of Form BD.
- Use a separate schedule for each event or proceeding. An event or proceeding may be reported for more than one person or entity using one Schedule DRP. File with a completed Execution Page (Page 1).
- One event may result in more than one "yes" answer in Item 7; if so, use only one schedule to report all information relating to the single event.
- Provide clear and concise answers for each item on this schedule.
- It is not a requirement that documents be provided for each event or proceeding. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this schedule.

1. A. The person(s) or entity(ies) for whom this Schedule DRP is being filed is (are): (check only one box)

☐ The Applicant ☐ One or more control affiliates ☐ Applicant and one or more control affiliates

If this Schedule DRP is being filed for a control affiliate, give the full name of the control affiliate below for individuals, Last name, First name, Middle name). If the control affiliate is registered with the CRD, provide the CRD number. If not, indicate "non-registered" in the space for the CRD Number.

Control Affiliate Name: _____ CRD No: _____

Control Affiliate Name: _____ CRD No: _____

Control Affiliate Name: _____ CRD No: _____

Control Affiliate Name: _____ CRD No: _____

B. If the control affiliate is registered through the CRD, has the control affiliate submitted a DRP (with Form U-4) or Schedule DRP to the CRD system for the event? ..... Yes ☐ No ☐

If answer is no, then complete Items 2-9 below. If the answer is yes, no other information on this schedule must be provided, but a copy of the DRP or Schedule DRP submission must be attached.

NOTE: The completion of this form does not relieve the control affiliate of its obligation to update its CRD records.

2. This Schedule DRP relates to the following questions in Item 7.

7A(1) ☐	7C(3) ☐	7D(4) ☐	7E(4) ☐
7A(2) ☐	7C(4) ☐	7D(5) ☐	7F ☐
7B(1) ☐	7C(5) ☐	7D(6) ☐	7G ☐
7B(2) ☐	7D(1) ☐	7E(1) ☐	7H ☐
7C(1) ☐	7D(2) ☐	7E(2) ☐	7I ☐
7C(2) ☐	7D(3) ☐	7E(3) ☐	7J ☐

3. Is this schedule being filed to change or update any information regarding a previously reported event or proceeding? ..... Yes ☐ No ☐

4. Who initiated this event or proceeding? (Enter name of firm, regulator, customer, etc.)

_____

5. What type of event or proceeding was this? (i.e., Civil, Administrative, Criminal)

_____

Schedule DRP of FORM BD Page 2	Applicant:		CRD No.:	DATE MM/DD/YY	Official Use Only

6. On what date was the event or proceeding initiated?

7 Identify the docket or case number of the event or proceeding (if any).

8. What were the allegations against the applicant and/or control affiliate? (Include amounts of actual or alleged damages or claims, the type of product involved, and the name of the broker-dealer, if different from the current applicant.)

9. A. What is the current status of the event or proceeding?

B. On what date was this status reached?

C. What was the result? (Include felony/misdemeanor, a description of the penalties, amount of fine, payment or settlement; terms of the disposition, length of suspension or restriction, etc.)

10. You may provide a brief summary of this event or proceeding (Optional). (Your information must fit within the space provided.)

Schedule E of FORM BD	Applicant:		CRD No.:	DATE MM/DD/YY	Official Use Only

Use this schedule to open (ADD) or close (DELETE) business locations of applicant, and to update (CHANGE) information relating existing applicant business locations other than the main office.

Instructions for Items 1-7. Complete Item 1-7 for each entry except where noted.

Item 1. Applicant must check one box only. For initial filings all business locations would be checked **ADD**. Failure to check this item will result in an incomplete filing and a delay in processing.

Item 2. Complete for all entries. The address must be the physical location. **Post Office box only designations are not sufficient and cannot be processed.**

Item 3. Complete for all entries. Give Supervisor name (last, first, middle) as it appears on most recent Form U-4 filing.

Item 4. Complete ONLY when applicant changes the address for an existing business location.

Item 5. Complete for all entries (if available).

Item 6. Complete for all entries. Will represent opening, closing, or effective date of change for that business location. Schedule E form date will be substituted for the effective date if Item 6 is incomplete or missing.

Item 7. Complete for all entries. Check **YES** or **NO** to denote whether location will be an Office of Supervisory Jurisdiction (OSJ) as defined in the NASD Rules of Fair Practice, Article III Section 27.

Item 8. Complete branch i.d. or billing code for all entries.

Repeat Items 1-8 for each business location submitted on this filing.

---

1. ___ADD ___DELETE ___CHANGE
(you must check one box)

Complete Item 4 only if you are changing the address for this office.

2. ______________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

4. ______________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

7. OSJ
Y___ or N__

8. I.D. or Code
____

3. ______________________
Supervisor - Last, First, Middle Name

5. ______________________
CRD Number of Supervisor

6. ______/______/______
Effective date (mm/dd/yr)

---

1. ___ADD ___DELETE ___CHANGE
(you must check one box)

Complete Item 4 only if you are changing the address for this office.

2. ______________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

4. ______________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

7. OSJ
Y___ or N__

8. I.D. or Code
____

3. ______________________
Supervisor - Last, First, Middle Name

5. ______________________
CRD Number of Supervisor

6. ______/______/______
Effective date (mm/dd/yr)

---

1. ___ADD ___DELETE ___CHANGE
(you must check one box)

Complete Item 4 only if you are changing the address for this office.

2. ______________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

4. ______________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

7. OSJ
Y___ or N__

8. I.D. or Code
____

3. ______________________
Supervisor - Last, First, Middle Name

5. ______________________
CRD Number of Supervisor

6. ______/______/______
Effective date (mm/dd/yr)

---

1. ___ADD ___DELETE ___CHANGE
(you must check one box)

Complete Item 4 only if you are changing the address for this office.

2. ______________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

4. ______________________
Street
____
P.O. Box (if appropriate), Suite, Floor
____
City, State, Zip Code + 4

7. OSJ
Y___ or N__

8. I.D. or Code
____

3. ______________________
Supervisor - Last, First, Middle Name

5. ______________________
CRD Number of Supervisor

6. ______/______/______
Effective date (mm/dd/yr)

BILLING CODE 8010-01-C

3. By amending Form X-17A-5 Schedule I (§ 249.617) by adding instruction 19a, b, and c to the Specific Instructions, redesignating Questions 19–22 as Questions 20–23, and adding Question 19 to read as follows:

Note: The text of Form X-17A-5 Schedule I does not and this amendment will not appear in the Code of Federal Regulations.

Form X-17A-5, Schedule I

* * * * *

Specific Instructions

* * * * *

19a b & c—Report whether respondent directly or indirectly controls, is controlled by, or under common control with, a U.S. bank. If the answer is "yes," provide the name of the affiliated bank and/or bank holding company, and describe the type of institution. The term "bank" is defined in Section 3(a)(6) of the Securities Exchange Act of 1934.

* * * * *

19. (a) Respondent directly or indirectly controls, is controlled by, or under common control with, a U.S. bank.

(enter applicable code: 1=Yes 2=No) ———

(b) Name of parent or affiliate ———

(c) Type of institution — ———

* * * * *

By the Commission.

Dated: November 4, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-27233 Filed 11-6-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 92-25]

RIN 2125-AD01

National Bridge Inspection Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: The FHWA is revising its regulation on the National Bridge Inspection Standards (NBIS). The revision modifies the frequency of inspection requirements set forth in 23 CFR 650.305. Currently, States must inspect bridges at intervals not to exceed two years unless the FHWA grants an exemption under § 650.305(c) of the NBIS. The NBIS regulation permits an exemption from the two-year inspection frequency for certain types of groups of bridges where past inspection reports and favorable experience and analysis justify the increased interval of inspection. A State proposing to inspect some bridges at intervals exceeding two years must submit a detailed proposal and supporting data to the FHWA for approval. In such cases, the interval between inspections would be determined on the basis of the State's proposal and supporting data. The current regulation, however, does not establish the maximum period that would be permitted in these cases.

This rulemaking amends § 650.305(c) to specify four years as the maximum interval between inspections. The revision is in conformance with *Center for Auto Safety* v. *FHWA*, in which the D.C. Court of Appeals ruled that the current regulation was not valid because it failed to "establish" any "maximum time period between inspections" as required by statute.

DATES: This regulation is effective December 9, 1992. Comments must be submitted on or before January 8, 1993.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 92-25, Federal Highway Administration, Office of the Chief Counsel, room 4232, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. David H. Densmore, Bridge Management Branch, Bridge Division, Office of Engineering, (202) 366-4617; or Ms. Vivian Philbin, Office of Chief Counsel, (202) 366-0780, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The NBIS for bridges on all public roads are set forth in 23 CFR part 650, subpart C. Section 650.303 specifies inspection procedures and frequencies, minimum qualifications of personnel, and requirements for inventory, reporting, load posting and recordkeeping. The Standards reflect the FHWA's rulemaking of August 26, 1988 (53 FR 32611), which incorporated several new provisions aimed at recognizing advances in training and bridge inspection techniques, intensifying bridge inspection efforts on certain bridges, improving recordkeeping, and providing for varying the frequency of inspection for certain types or groups of bridges. The 1988 final rule added § 650.305(c) which provides that "the maximum inspection interval may be increased for certain types or groups of bridges where past inspection reports and favorable experience and analysis justifies the increased interval of inspection. If a State proposes to inspect some bridges at greater than the specified 2-year interval, the State shall submit a detailed proposal and supporting data to the Federal Highway Administration for approval." In 1984, the FHWA withdrew a proposal to increase the two-year interval between inspections (49 FR 17039), 17040). The change in policy reflected in the 1988 rulemaking was based on information and experience gained through additional review and analysis of National Bridge Inventory (NBI) data since 1968, the availability of more comprehensive data for off-system bridges, and the fact that advances had been made in training and bridge inspection techniques.

Although the 1988 rulemaking did not specify the maximum interval between inspections that would be permitted under § 650.305(c), the FHWA stated its intended policy for administering the regulation in the preamble to the rulemaking. The preamble suggested a maximum of four years between inspections and stated that "[o]nly under very unique and special circumstances would periods longer than four years be considered by FHWA." (53 FR 32613). The policy is restated in a Technical Advisory T 5140.21 [1] that was issued shortly after the rule was promulgated. Paragraph 5(a) of Technical Advisory T 5140.21, which specifies the conditions that must be met when submitting requests to the FHWA for inspection intervals longer than two years, states that intervals should not exceed four years. Since the 1988 final rule, the FHWA has interpreted § 650.305(c) as not to allow inspection intervals to exceed four years. All FHWA approvals of inspection intervals longer than two years have been within the four year maximum.

In addition to permitting the two-year interval between inspections to be increased for certain types and groups of bridges, the 1988 final rule also added a new § 650.303(e)(2), which establishes

[1] *Revisions to the National Bridge Inspection Standards (NBIS)*, Technical Advisory T 5140.21, U.S. Department of Transportation, Federal Highway Administration, Washington, DC, September 16, 1988. Available for inspection and copying as prescribed in 49 CFR part 7 appendix D. A copy is in the file for FHWA Docket No. 92-25.

a maximum period for underwater inspection, not to exceed five years.

In its 1989 lawsuit, the Center for Auto Safety (CAS) challenged the inspection frequency provisions of 23 CFR 650.303(e)(2) and 650.305(c), alleging both regulations to be arbitrary, capricious, and not in accordance with the law.

The district court rejected the CAS' arguments and upheld the FHWA's promulgation of 23 CFR 650.303(e)(2) and 650.305(c). *Center for Auto Safety* v. *FHWA*, No. 89–1941–OG (D. D.C. July 27, 1990). The district court found that the FHWA did not ignore the issue of safety by allowing a procedure for exemptions to the former two-year inspection requirement. Moreover, the court accepted the information contained in the 1988 final rule regarding the withdrawal of the 1984 rulemaking action on inspection frequencies. In so doing, the court rejected the CAS' claim that the FHWA failed to provide a reasonable explanation for reversing an earlier determination regarding inspection freqencies.

On February 19, 1992, the U.S. Court of Appeals for the District of Columbia reversed that part of the district court decision upholding § 650.305(c), concluding that it could not be reconciled with 23 U.S.C. 151(b)(2) because it failed to "establish" any "maximum time period between inspections," as required under 23 U.S.C. 151(b)(2). *Center for Auto Safety* v. *FHWA*, 956 F.2d 309 (D.C. Cir. 1992). The court of appeals ruled that, although the Technical Advisory did establish a maximum time period between inspections, the maximum time period was not legally binding because the Technical Advisory was not adopted through notice and comment rulemaking. With respect to the maximum time period suggested in the regulatory preamble to the 1988 rulemaking, the court of appeals found that the language was too weak to establish the maximum time period required by statute. Finally, the court of appeals stated that, in its effort to cure § 650.305(c), the FHWA needed to identify what materials constitute the administrative record and include any necessary evidentiary support within those materials.

On April 16, 1992, the United States district court ordered the case remanded to the FHWA for further proceedings consistent with the opinion of the court of appeals. It is the intent of this rulemaking to clarify and correct § 650.305(c) to provide for a maximum interval between inspections. It is also the FHWA's intent to include in this rulemaking additional studies and data in support of the maximum inspection interval.

Discussion of Comments to Docket 87–10

Forty-six comments on inspection frequency were submitted to Docket No. 87–10 in response to the FHWA's April 7, 1987, notice of proposed rulemaking (52 FR 11092 at 11096). The FHWA's rulemaking of August 26, 1988 (53 FR 32611 at 32613) provided a summary of the comments as follows:

Of the forty-six commenters on this issue, thirty-three were in favor of providing for additional flexibility in inspection frequency for bridges and thirteen were not in favor of any change. The majority of commenters in favor of the change had specific concerns or suggestions for implementing the change. Most agreed that State experience, age and condition of bridges, and type of frequency of traffic volume as suggested in the April 7, 1987, NPRM, (52 FR 11092) should be considered along with other considerations.

Several commenters suggested that no bridge should be inspected less frequently than once every two years until it had at least one in-depth inspection. Three others suggested that only bridges that are rated high with respect to their safety, serviceability, and condition be considered for less frequent inspections. Suggested minimum condition ratings ranged from 6 (satisfactory condition) to 8 (very good condition), on a scale of 0 to 9, and suggested minimum sufficiency ratings ranged from 40 to 50. (The sufficiency rating is a numeric value that is computed from NBI data and used to assess bridge sufficiency. A value of 100 represents an entirely sufficient bridge.) Two comments were made that a two-year frequency should be kept for all bridges greater then fifteen or twenty years old. A number of commenters emphatically stated that all scour vulnerable bridges (i.e., bridges whose foundations are susceptible to undermining during floods) should be inspected immediately after or during floods. Others stated that bridges that do not have a well established record of reliability, (e.g., load posted bridges and bridges with fatigue-prone pin connections, complex welded, non-redundant or damaged members) should be inspected at least once every two years. Several agreed that longer periods between inspections are appropriate for concrete culverts and short span concrete Tee beam and slab bridges in good conditions but metal culvert bridges that depend upon shape for stability should be inspected more frequently.

Thirteen commenters against the proposal were generally concerned that lengthening the time between inspections would have an adverse effect on bridge safety. A number of State Department of Transportation commenters believe that their maintenance and bridge management data needs will require them to continue to inspect all bridges at least every two years. Others have State laws which require inspection every one or two years. At least five commenters strongly emphasized that some bridges need to be inspected more often than once every two years. One commenter emphasized that the current two-year maximum period between inspections should be the maximum time between inspections. Two commenters strongly suggested that bridge owners should be required to place much more emphasis and resources into bridge inspection programs.

Discussion

The August 26, 1988, final rule recognized the need for bridge inspections at intervals of less than two years in some cases. The issue was addressed in § 650.305(b) which states: "Certain types of groups of bridges will require inspection at less than two-year intervals. The depth and frequency to which bridges are to be inspected will depend on such factors as age, traffic characteristics, state of maintenance, and known deficiencies. The evaluation of these factors will be the responsibility of the individual in charge of the inspection program."

Suggestions and concerns of commenters on implementing a change that would permit longer intervals than two years between inspections were considered and addressed to the extent practical in the FHWA Technical Advisory which implemented the August 26, 1988, rulemaking. Paragraph 5(a)(1) lists criteria identifying classes of bridges that should not be considered for routine inspection at intervals longer than two years. These criteria exclude bridges that are in poor condition, that have inventory ratings less than the State's legal load, that have spans exceeding 100 feet, that lack load path redundancy, that are very susceptible to vehicular damage, and that are uncommon or unusual designs, or that are designs where there is little performance history. Paragraph 5(a)(2) recommends that bridges receive an in-depth inspection that reveals no major deficiencies before being considered for inspection intervals longer than two

years. Paragraph 5(a)(4) indicates that bridges with fracture critical members, distressed members, or underwater members are subject to special inspection requirements of § 650.303(e), and that any structure that has been subjected to an earthquake, a major flood, or any other potentially damaging event should immediately receive a damage inspection. Paragraph 5(a)(7) recommends that criteria used to establish the interval between inspections, if greater than two years, include structure type, age, load rating, condition and appraisal, volume of traffic including truck traffic, recent major maintenance or structural repair history, and an assessment of the frequency and degree of overload. State proposals to inspect some bridges at intervals exceeding two years will be subjected to analysis under the FHWA Technical Advisory criteria.

Discussion of Revisions

This rulemaking modifies the NBIS to establish a four-year maximum time period between inspections for bridges that are exempted from the normal two-year inspection frequency under the present 23 CFR 650.305(c).

In the FHWA's judgment, inspection frequencies exceeding two years but no longer than four years will provide for the safe operation of certain types and classes of bridges. However, because of the wide variety of circumstances and conditions that may exist for individual bridges, the FHWA does not make a determination, in advance, of which bridges should qualify for inspection intervals exceeding two years. Rather, the FHWA chooses to make the decision on a case-by-case basis and only after consideration of a State's detailed proposal and data in support of a longer inspection interval. Paragraph 5 of the FHWA's Technical Advisory T 5140.21 provides guidance for identifying bridges that are candidates for inspection intervals longer than two years, as well as the conditions that must be met before the FHWA will consider an exemption from the two-year inspection interval.

To be considered for inspection intervals longer than two years, a bridge must first receive an in-depth inspection and this inspection must reveal no major deficiencies; that is, no conditions are present that would significantly affect the safety and durability of the bridge. In addition, regardless of exemptions under § 650.305(c), the special inspection requirements under § 650.305(e) are applicable to all bridges. See FHWA Technical Advisory T 5140.21, Paragraphs 5(a)(2) and 5(a)(4).

A primary consideration in establishing appropriate inspection intervals is the expected rate of structural deterioration. Inspections must be frequent enough to preclude the chances that a poor condition would be reached over the extended period between inspections. Information on the rate of bridge deterioration and the service life expectancy of bridges is limited to a few relatively recent studies (all within the past 10 years), and all are based on data contained within the NBI.

The most comprehensive study [2] is one conducted by Transportation Systems Center (TSC) for the FHWA in 1985, which considered data on the performance of 152,000 bridges 25 years or under in age. This study developed equations that predict bridge element conditions as a function of age, traffic volume, location (State), type of structure, and other factors. The study showed that the deterioration of highway bridges is, on the average, slow over the first 25 years. That is, a newly constructed bridge in good condition will typically remain in relatively good condition for 25 years barring some major external event such as an earthquake, a flood, a fire, or a collision. In relatively benign environments (e.g., desert areas), bridges exhibit much slower rates of deterioration than bridges in more aggressive environments (e.g., coastal areas). In addition, in the northern parts of the United States, bridge deck deterioration is likely to occur more rapidly than in southern parts because of more frequent salting of highways and bridges in wintertime for snow and ice removal.

In conjunction with the TSC bridge deterioration study, the FHWA concurrently developed a bridge needs model which uses the TSC deterioration prediction equations. Termed the Bridge Needs and Investment Process (BNIP) [3] this model uses NBI data to estimate current and projected bridge conditions and needs. It is intended to forecast general types of deficiencies, improvements, and costs that will be needed on a systemwide, statewide, or nationwide basis.

The results of the TSC and two State studies on deterioration that were available in 1985 are summarized in an FHWA publication on Bridge Management Systems.[4] The State studies were performed by the New York State Department of Transportation (NYSDOT) [5] in 1981 and the Wisconsin Department of Transportation (WisDOT) [6] in 1983. The Bridge Management System report also includes the results of an FHWA study on deterioration that was made as a part of the report preparation. The Bridge Management System report, together with the TSC study, the BNIP model, the NYSDOT study, the WisDOT study, and four deterioration studies performed subsequent to 1985 for the Departments of Transportation of North Carolina,[7] Virginia,[8] Pennsylvania,[9] and Indiana [10]

[2] A National Bridge Deterioration Model, U.S. Department of Transportation, Transportation Systems Center, Report No. SS-42-U5-26, Cambridge, MA., September 1985. Available for inspection and copying as prescribed in 49 CFR part 7 appendix D. A copy is in the FHWA Docket No. 92-25.

[3] Bridge Needs and Investment Process, Technical Documentation and User Guide, Version 2.0, U.S. Department of Transportation, Federal Highway Administration, Office of Environment and Planning, Planning Analysis Division, Highway Performance Analysis Branch, Washington, D.C., Publication Number FHWA-PD-91-011, January 1991. Available for inspection and copying a prescribed in 49 CFR part 7 appendix D. A copy is in the file for FHWA docket No. 92-25.

[4] Bridge Management Systems, U.S. Department of Transportation, Federal Highway Administration, Demonstration Projects Division, Washington, DC., Report No. FHWA-DP-71-01R, October, 1989. Available for inspection and copying as prescribed in 49 CFR part 7 appendix D. A copy is in the file for FHWA docket No. 92-25.

[5] Fitzpatrick, M., Low, D., and Dixon, W., Deterioration of New York State Highway Structures, Bridge and Pavement Maintenance, Transportation Research Record 800, Washington, DC., National Research Council, Transportation Research Board, pp 1-8, 1981. Available for inspection and copying as prescribed in 49 CFR part 7 appendix D. A copy is in the file for FHWA docket No. 92-25.

[6] Hyman, W., Hughes, D., and Dobson, T., The Least Cost Mix of Bridge Replacement and Repair on Wisconsin's State Highways Over Time—A Computer Simulation, Draft Technical Report, Wisconsin Department of Transportation, April, 1983. Available for inspection and copying as prescribed in 49 CFR part 7 appendix D. A copy is in the file for FHWA docket No. 92-25.

[7] Chen, C., Johnston, D., Bridge Management Under a Level of Service Concept Providing Optimum Improvement Action, Time, and Budget Prediction, Report No. FHWA/NC/88-004, Center for Transportation Engineering Studies, Department of Civil Engineering, North Carolina State University, Raleigh, NC., September, 1987. Available for inspection and copying as prescribed in 49 CFR part 7 appendix D. A copy is in the file for FHWA docket No. 92-25.

[8] Allen, G., McKeel, W., Development of Performance and Deterioration Curves As a Rational Basis for a Structures Maintenance Management System, Virginia Transportation Research Council, Charlottesville, VA., Proceedings—6th Annual International Bridge Conference, Pittsburgh, PA, June 1989. Available for inspection and copying as prescribed in 49 CFR part 7 appendix D. A copy is in the file for FHWA docket No. 92-25.

[9] West, H., McClure, R., Gannon, E., Raid, H., Siverling, B., A Nonlinear Deterioration Model for the Estimation of Bridge Design Life, Research Project No. 86-07, The Pennsylvania Transportation Institute, Pennsylvania State University, University Park, PA., September, 1989. Available for inspection and copying as prescribed in 49 CFR part 7 appendix D. A copy is in the file for FHWA docket No. 92-25.

[10] Jiang, Y., Sinha, K., The Development of Optimal Strategies for Maintenance, Rehabilitation

Continued

have been placed in the FHWA docket files. The FHWA's conclusion based on these studies is that highway bridges of the type that would be considered for exemptions under § 650.305(c), if properly constructed and presently showing no signs of significant deterioration, will not deteriorate to an unsafe condition in a four-year period in the absence of some major damaging event.

On the basis of the information available on bridge deterioration rates, the FHWA concludes that permitting up to a four-year interval between inspections under the exemption process outlined will not present a risk to public safety.

Rulemaking Analyses and Notices Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

FHWA has decided to amend the bridge regulation through this interim final rule without further prior notice and additional opportunity for comment because inspection frequency was the subject of public comment in the earlier rulemaking. See 52 FR 11092 at 11096 (notice of proposed rulemaking) and 53 FR 32611 at 32613 (final rule).

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under regulatory polices and procedures of the Department of Transportation. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rule on small entities. This rule would affect State and local governmental entities responsible for bridge inspection activities. This rule provides such governmental entities with flexibility to extend the period between bridge inspections subject to stringent conditions and FHWA approval. The FHWA believes that the increased inspection period permitted by this rule would be available for a very limited number of bridges nationwide, and that relatively few governmental entities will be affected. Based on the evaluation, the FHWA certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980. (44 U.S.C. 3501 *et seq.*)

National Environmental Policy Act

The agency has analyzed this section for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Services Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subject in 23 CFR Part 650

Bridges, Highways and roads, Grant programs—transportation, Reporting and recordkeeping requirements.

Issued on: November 2, 1992.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA amends 23 CFR part 650, subpart C as set forth below.

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

1. The authority citation for 23 CFR part 650 continues to read as follows:

Authority: 23 U.S.C. 109(a) and (h), 144, 151, 351, and 319; 23 CFR 1.32; 49 CFR 1.48(b); E.O. 11988, Floodplain Management, May 24, 1977 (42 FR 26951); Department of Transportation Order 5650.2 dated April 23, 1979 (44 FR 24678); sec. 161 of Pub. L. 97–424, 96 Stat. 2097, 3135; Pub. L. 97–134, 95 Stat. 1699; and 33 U.S.C. 401–491 *et seq.*, 511 *et seq.*

Subpart C—Highway Bridge Replacement and Rehabilitation Program

2. In § 650.305, paragraph (c) is revised to read as follows:

§ 650.305 Frequency of inspections.

* * * * *

(c) The maximum inspection interval may be increased for certain types or groups of bridges where past inspection reports and favorable experience and analysis justify the increased interval of inspection. If a State proposes to inspect some bridges at greater than the specified two-year interval, the State shall submit a detailed proposal and supporting data to the Federal Highway Administrator for approval. The maximum time period between inspections shall not exceed four years.

[FR Doc. 92–27064 Filed 11–6–92; 8:45 am]

BILLING CODE 4910–22–M

and Replacement of Highway Bridges, Final Report Vol 6: Performance Analysis and Optimization, Report FHWA/IN/JHRP–89/13, Joint Highway Research Project, Engineering Experiment Station, Purdue University, West Lafayette, IN, October 5, 1990. Available for inspection and copying as prescribed in 49 CFR part 7 appendix D. A copy is in the file for FHWA docket No. 92–25.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–38

[FPMR Amendment G–99]

Motor Vehicle Registration, Identification, and Exemptions

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation adds the District of Columbia, St. Elizabeths Hospital, the Department of the Interior (DOI), U.S. Park Police, and the Department of Veterans Affairs, Office of the Inspector General, as organizations that have been granted unlimited exemption from the requirement to display Government identification and Government license plates and reflects reorganizations within the Department of Labor (DOL), Office of Labor-Management Standards. The regulation also revises scheduled maintenance requirements, omits references to model year 1975 and earlier motor vehicles and identifies Federally-mandated emission programs and State mechanical and emission inspection programs that Federal executive agencies must adhere to. These actions are required to clarify organizational changes within the Department of Health and Human

Services (HHS), DOI, and DOL; to clarify scheduled maintenance procedures for Government-owned and -leased motor vehicles, and to clarify requirements for State mechanical and emission inspections. This regulation will clarify which Federal agencies have unlimited exemptions from the requirement to display Government identification, clarify scheduled maintenance guidelines for Federal motor vehicles, and clarify responsibilities of Federal agencies when participating in State managed mechanical and emission inspection programs.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Michael W. Moses, Sr., Fleet Management Division, 703–305–6273.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

In October 1987, a reorganization within the Department of Health and Human Services (HHS) transferred control of St. Elizabeths Hospital to the District of Columbia. This regulation had not been changed to reflect this reorganization. The regulation is now being changed to show the District of Columbia as a new paragraph under Unlimited Exemptions reflecting the same exemption for St. Elizabeths Hospital that was previously allowed under HHS.

In July 1991, GSA received a request from the Department of Interior (DOI) to add the National Park Service to the list of DOI activities that are granted unlimited exemptions from the requirement to display Government identification on motor vehicles. The National Park Service traditionally requests limited exemptions each year for ongoing undercover vehicle use. GSA agreed to the request for an unlimited exemption, but in the interest of economy, decided to wait until other changes to this area of the regulation were requested. GSA is now incorporating this change into the Federal Property Management Regulations (FPMR).

GSA was notified in December 1991 that the Department of Labor (DOL) had reorganized and that one of DOL's offices identified under unlimited exemptions from the requirement to display Government identification on motor vehicles was incorrect. After coordinating with DOL, GSA found that the Labor-Management Services Administration has been renamed the Office of Labor-Management Standards. Accordingly, the change is being made to the FPMR at this time.

In April 1992, GSA received a request from the Department of Veterans Affairs (VA) for an unlimited exemption from the requirement to display Government identification on vehicles operated by the Office of the Inspector General. The VA presently requests yearly exemptions under the provisions of § 101–38.200(f). GSA agreed to this request for unlimited exemption from the requirement to display Government identification and is now incorporating the change.

The Government commercially leases motor vehicles to augment its Government-owned fleet. These leased vehicles are subject to the same scheduled maintenance standards as Government-owned motor vehicles. Current language in FPMR Subpart 101–38.5 concerning scheduled maintenance of motor vehicles does not reference Government-leased vehicles. In view of the aforementioned, this subpart is now being updated to include references to both government-owned and -leased vehicles.

The scheduled maintenance portion of FPMR Subpart 101–38.5 references motor vehicles with a model year of 1975 and earlier. The Government has disposed of virtually all vehicles with a model year prior to 1976 and has no specific inspection schedules for these vehicles. Accordingly, the reference to these model years is deleted.

The Fleet Management Division of GSA has received many requests from Federal agencies for clarification of the applicability of State motor vehicle inspection programs to Government-owned or -leased vehicles. Of specific concern are Federally-mandated emissions inspection programs provided under the provisions of the Clean Air Act, as amended, and how State mechanical and emission inspection programs relate to Government-owned or -leased vehicles that are titled in a State, Commonwealth, territory, or the District of Columbia.

Unless otherwise exempted by a State, Government-owned or -leased motor vehicles must comply with Federally-mandated emission testing programs. The fact that Government-owned or -leased vehicles may or may not be registered with a State has no bearing when Federal agencies are participating in these State-administered, Federally-mandated emission programs. Additionally, Federal agencies participating in Federally-mandated emission testing programs are required to pay State fees for testing and program administration, unless the fees are waived by the State.

Government-owned or -leased motor vehicles that have been exempted from the display of Government identification and Government license plates are required to participate in State mechanical and emission testing programs, unless waived by the State. The cost of these inspections, unless the fee is waived by the State, is the responsibility of the activity using the vehicle. These fees may include any certificates or stickers normally issued to a similar non-Government vehicle.

List of Subjects in 41 CFR Part 101–38

Motor equipment management.

For the reasons set forth in the preamble, 41 CFR part 101–38 is amended as follows:

PART 101–38—MOTOR EQUIPMENT MANAGEMENT

1. The authority citation for part 101–38 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Subpart 101–38.2—Registration, Identification, and Exemptions

2. Section 101–38.204–1 is amended by redesignating paragraphs (e) thru (t) as paragraphs (f) thru (u), revising redesignated paragraphs (i), (j) and (l) and adding new paragraphs (e) and (v) to read as follows:

§ 101–38.204–1 Unlimited exemptions.

* * * * *

(e) District of Columbia. Motor vehicles operated by St. Elizabeths Hospital in out-patient work where the identification of the vehicles would be prejudicial to the patient.

* * * * *

(i) Health and Human Services, Department of. Motor vehicles operated by the Food and Drug Administration in undercover law enforcement and similar investigative work; one vehicle operated by the National Institutes of Health in transporting mentally disturbed children; and motor vehicles operated by the Office of Investigations and

Office of the Inspector General that are used for law enforcement and investigative purposes.

(j) Interior, Department of the. Those motor vehicles operated by the U.S. Fish and Wildlife Service in the enforcement of Federal game laws; motor vehicles assigned to the special agents of the Bureau of Land Management whose duties are to investigate crimes against public lands; motor vehicles assigned to special officers of the Bureau of Indian Affairs; motor vehicles operated by the National Park Service assigned to the U.S. Park Police and other law enforcement activities which are used for undercover surveillance to investigate crimes against public lands; and motor vehicles assigned to the special agents of the Office of Inspector General whose duties are to investigate possible crimes of fraud and abuse by departmental employees and its contractors and grantees.

* * * * *

(l) Labor, Department of. All motor vehicles used for investigation, law enforcement, and compliance by the Manpower Administration (Bureau of Apprenticeship and Training); Office of Labor-Management Standards; Occupational Safety and Health Administration; Employment Standards Administration; and Mine Safety and Health Administration.

* * * * *

(v) Veterans' Affairs, Department of. All motor vehicles used for investigative purposes by the Office of the Inspector General.

Subpart 101-38.5—Scheduled Maintenance

3. Sections 101-38.500, 101-38.501 and 101-38.502 are revised to read as follows:

§ 101-38.500 Scope and applicability.

This subpart prescribes agency requirements and guidelines covering a maintenance program for government-owned or -leased motor vehicles, and is applicable to all agency-owned or -leased motor vehicles located in any State, Commonwealth, territory, or possession of the United States.

§ 101-38.501 Agency requirements.

Each executive agency shall establish a scheduled maintenance program for all its Government-owned or -leased motor vehicles.

§ 101-38.502 Guidelines.

(a) A scheduled maintenance program should include a recorded, systematic procedure for the servicing and inspection of motor vehicles to:

(1) Ensure their safe and economical operating condition throughout the period of use;

(2) Meet established emission standards; and

(3) Meet warranty requirements.

(b) Agencies will ensure that all Government-owned or -leased, commercial design motor vehicles have inspection and servicing, including tune-ups, performed in accordance with the manufacturers' recommendations, or more frequently if local operating conditions require.

(c) Proper maintenance ensures that Government-owned or -leased vehicles—

(1) Operate in the most energy efficient manner and

(2) Meet Federal and State emission standards, including safe and proper operation of the catalytic converter and electronic/computerized emission components.

4. Section 101-38.503 is redesignated as 101-38.504 and revised and a new section 101-38.503 is added to read as follows:

§ 101-38.503 Compliance with State inspection programs.

(a) When required by State motor vehicle administrations, executive agencies will comply with all Federally-mandated motor vehicle emission inspection programs. Federal agencies will reimburse State activities for the cost of these emission inspections, unless the State waives the inspection fee.

(b) Motor vehicles authorized to display State, Commonwealth, territory, or District of Columbia license plates in accordance with §§ 101-38.200(f) and 101-38.204 will comply with required State mechanical and emission inspections. The cost of these inspections, including associated certificates or stickers, will be the responsibility of the using agency.

§ 101-38.504 Assistance to agencies.

GSA will make available fleet management technicians, on a reimbursable basis, to assist agencies in establishing or revising their scheduled maintenance programs. Requests for fleet management assistance shall be submitted by owning agencies to the General Services Administration, Attn: FBF, Washington, DC 20406.

Dated: October 5, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92-27032 Filed 11-6-92; 8:45 am]

BILLING CODE 6820-24-M

41 CFR Parts 301-1 and 304-1

[FTR Interim Rule 4]

RIN 3090-AE19

Federal Travel Regulation; Acceptance of Payment From a Non-Federal Source for Travel Expenses

AGENCY: Federal Supply Service, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule revises certain policy provisions of, and makes clarifying and editorial changes to, the provisions of Interim Rule 3 published March 8, 1991, with request for comments. Interim Rule 3 implemented legislation governing the acceptance of travel, subsistence, and related expenses from a non-Federal source. The changes reflected in this Interim Rule 4 with request for comments are based on comments solicited and received relative to Interim Rule 3.

DATES: This Interim Rule 4 is effective December 9, 1992, and applies to payments accepted on or after December 9, 1992, for travel performed on or after December 9, 1992. Comments are requested on part 304-1 only and must be submitted by January 8, 1993.

ADDRESSES: Send comments to the General Services Administration, Transportation Management Division (FBX), Washington, DC 20406, telefax (703) 305-7946.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, Transportation Management Division (FBX), Washington, DC 20406, telephone FTS or commercial (703) 305-5253.

SUPPLEMENTARY INFORMATION: Section 302 of the Ethics Reform Act of 1989 (Pub. L. 101-194, November 30, 1989) amended title 31, United States Code, by adding a new section 1352 "Acceptance of travel and related expenses from non-Federal sources." Pub. L. 101-280, May 4, 1990, renumbered and amended various provisions of section 1352, now designated as section 1353, and gives the Administrator of General Services, in consultation with the Director of the Office of Government Ethics, authority to issue implementing regulations.

This Interim Rule 4 implements 31 U.S.C. 1353 and governs the acceptance by an executive branch agency of payment for travel, subsistence, and related expenses from a non-Federal source in connection with the attendance of an employee at certain meetings and similar functions. The rule also provides authority for an agency to accept payment in connection with the

attendance of an accompanying spouse in some circumstances. It modifies Interim Rule 3 with request for comments published by the General Services Administration (GSA) on March 8, 1991 (56 FR 9878).

During the 60-day comment period provided for by Interim Rule 3, GSA received 22 responses from Government agencies, a Federal employee union, a trade organization, and a public interest group (three of the responding agencies merely acknowledged publication of the regulation). GSA has carefully reviewed each submission. Changes based on comments received have been grouped by subject area and are discussed in the following general analysis.

Authority to Accept Payments

Interim Rule 4 incorporates the provisions of Interim Rule 3 and provides agencies authority to accept payment from a non-Federal source for travel, subsistence, and related expenses of an employee (and/or accompanying spouse) attending a meeting or similar function. Although there is no requirement that the non-Federal source offering the payment be the sponsor of the event, it is expected that it will normally be the non-Federal sponsor or co-sponsor of the meeting or similar function that will be the source of payment, or at least a non-Federal source with an interest in the event. Carried forward in § 304–1.4(c) of Interim Rule 4, however, is the provision that payments may be accepted from a non-Federal source that does not have an interest in the subject matter of the meeting or similar function so long as payment is provided in kind and consists of the types of services the non-Federal source generally provides; e.g., air passenger transportation services provided by a commercial airline. Two agencies questioned the advisability or necessity of including this provision. Since sources with no interest in the subject matter of an event will most often not even know that the event has been planned, this provision may be little used. GSA does not wish to preclude acceptance of payment from a non-Federal source, however, just because the source is not sponsoring the meeting or otherwise does not have a substantive interest in it. Thus, an agency could for example, accept a hotel's offer of a free final night's lodging for agency participants in connection with a four-day environmental conference jointly sponsored by the agency and a public interest group.

Additionally, payment must be in the form of a check or similar instrument made payable to the agency, or payment in kind. Section 304–1.4(a) has been revised to clarify that payment acceptance is contingent on advance issuance of a general (rather than item-by-item) authorization to accept payment. Once an agency has authorized the employee and/or spouse to receive payment on the agency's behalf, payment may be received for benefits not initially offered by the non-Federal source. As a practical matter, payments in kind must be received on behalf of the agency by the employee or spouse. Thus, it is the traveler who receives the dinner, the seat on the airplane, or the hotel room on behalf of the agency. Further, Interim Rule 4, like Interim Rule 3, requires that checks made payable to the agency and received by the employee or spouse on behalf of the agency, must be submitted as soon as practicable for credit to the agency appropriation applicable to such expenses. Neither an employee nor spouse is authorized to receive cash or a check or similar instrument made payable to the traveler.

Although general advance authorization is sufficient, an employee must still exercise care not to receive or utilize benefits from the non-Federal source that cannot be accepted by the agency under section 1353 or by the employee consistent with some other authority, such as the applicable standards of conduct regulation.

One agency recommended that Interim Rule 3 be modified to permit acceptance of payment in a situation where advance approval of the payment is not possible, arguing that an employee's risk of personal liability for improper acceptance would serve as a sufficient deterrent to prevent abuse. We were not persuaded that this change is warranted. While the requirement for advance approval may result in the agency having to expend funds that might otherwise have been provided by a non-Federal source, the requirement for advance approval is consistent with the longstanding practice of approving an employee's official travel plans in advance. Moreover, there is less risk that an employee will receive an improper payment on behalf of the agency if advance approval is required.

Relationship to Other Authorities

Section 304–1.8(a) of Interim Rule 3 was drafted to emphasize that 31 U.S.C. 1353 is authority for an agency to accept payment for official travel and that it does not disturb authorities which authorize an employee to accept payment from a non-Federal source for such travel. Thus, notwithstanding the existence of section 1353, the Foreign Gifts and Decorations Act (5 U.S.C. 7342) will continue to provide authority for an employee to accept travel-related benefits when the donor of the gift is a foreign government. Similarly, 5 U.S.C. 4111 will continue to authorize the acceptance by an employee of payment for travel, subsistence, and other expenses incident to training or attendance at certain meetings. On the other hand, § 1353 supersedes an agency's gift acceptance statute when an offered payment is for travel to a meeting or similar function. Section 304–1.2(a) has been amended to clarify that § 1353 does not authorize acceptance of payment by an employee for personal use.

In response to several comments, § 304–1.8(a) of Interim Rule 3 has been amended to clarify the relationship between § 1353 and agency standards of conduct regulations. Agency standards of conduct regulations generally prohibit an employee's acceptance of gifts from certain prohibited sources unless permitted by an exception. (The executive branch-wide standards of conduct regulation established by the Office of Government Ethics (OGE) and recently published at 57 FR 35006, Aug. 7, 1992 (to be codified at 5 CFR part 2635), will supersede agency standards of conduct regulations and will similarly restrict the acceptance by employees of gifts from a prohibited source.) The revision to § 304–1.8(a) also is intended to make it clear that an agency's acceptance of payment under authority of § 1353 for the official travel of an employee to a meeting or similar function does not preclude the employee's acceptance of other benefits offered in connection with attendance at that event, provided that the employee's acceptance is consistent with the applicable standards of conduct regulation. Thus, for example, while a promotional calendar offered to an employee by another participant is not a benefit that may be accepted by an agency under § 1353, the employee who attends the event may be able to accept the calendar in his/her personal capacity under the applicable standards of conduct regulation. Moreover, while § 1353 may be used only in connection with a meeting or similar function that is held away from the employee's official station, the applicable standards of conduct regulation may authorize an employee to accept a gift of free attendance at certain events that are held locally, such as certain widely-attended gatherings.

One agency suggested that Interim Rule 3 be modified to emphasize that § 1353 neither authorizes nor prohibits an agency from accepting payment from

a non-Federal source when the travel is partially or wholly for attendance at or participation in an event other than a meeting or similar function. This suggestion was not adopted. When travel is undertaken solely to attend an event other than a meeting or similar function, § 304–1.8(a) indicates that § 1353 is not authority to accept payment and that it does not supersede any other available authority in those circumstances. When travel is undertaken only in part to permit attendance at a meeting or similar function, § 304–1.8(a) already permits the use of more than one authority to govern payment acceptance in the case of any given trip away from the traveler's official station.

Prohibition on Solicitation

The prohibition on solicitation of payment from a non-Federal source for travel, subsistence, and related expenses has been moved from the general policy section in § 304–1.3 to a separate paragraph (§ 304–1.2(b)) to emphasize that an agency through its employee shall not under any circumstance solicit payment from a non-Federal source. Since even mere mention of the authority to accept payment from a non-Federal source to attend a meeting or similar function could be interpreted as a solicitation of payment, the rule strictly prohibits an employee from mentioning the subject prior to the receipt of an invitation. There is no requirement that such an invitation be made formally in writing. Additionally, to avoid complicating any discussions of a proposed event that is still in the planning stages and which will be sponsored jointly by an agency and a non-Federal source, the provisions of Interim Rule 3 have been modified to state in Interim Rule 4 that a non-Federal source may be advised of the authority provided by § 1353 in the course of any discussions of an event to be sponsored jointly by the agency and the non-Federal source.

Definitions

Several comments focused on the definition of "meeting or similar function". The term "meeting or similar function" has been amended to apply only to events which are sponsored or cosponsored by a non-Federal source. Thus, § 1353 may not be used to accept payment from a non-Federal source in connection with an agency's own 4-day Regional Administrator's conference. One agency questioned why Interim Rule 3 did not permit use of § 1353 to accept payment in connection with an event required to carry out an agency's statutory and regulatory functions. The agency referred to its past practice of using the agency's statutory gift acceptance authority to accept funding in connection with employee attendance at events related to the statutory and regulatory functions of the agency, provided no actual or apparent conflict of interest resulted. Interim Rule 4 has no application with respect to an agency's use of its own gift acceptance statute for travel to other than a meeting or similar function and continues to exclude events required to carry out an agency's statutory and regulatory functions. This is intended to minimize the perception that programs and services mandated as part of an agency's mission would be made available only to those who could afford to pay. As a user aid, we have provided additional examples to clarify that the term "statutory or regulatory functions" is intended to encompass a broader variety of essential functions than those specific only to an agency with regulatory responsibilities.

We also have added examples of common events that fall within the definition of "meeting or similar function". These illustrations should serve to highlight the similarity of § 1353 to provisions in the applicable standards of conduct regulation that may authorize an employee's acceptance of benefits at events that do not take place away from the employee's official station. It is important to note that in order to be considered a meeting or similar function, an employee's participation in a speaking engagement, gathering of mutual interest, or awards ceremony must not be required to carry out the agency's statutory and regulatory functions. In some cases, an agency may consider a particular speech or type of speech (e.g., training) to be essential to, and not merely in furtherance of, the agency's mission. An agency could, for example, have a specific statutory or regulatory mandate to educate a particular audience concerning an agency policy, program, or operation. Finally, the definition of the term "meeting or similar function" is not intended to encompass long-term temporary duty or training travel. It is intended that agencies will determine, on an individual case basis, the appropriate period for which travel payments may be accepted. As guidance in making such a determination, it would not be appropriate for an agency to accept payment for travel that exceeds three weeks' duration.

The term "payment in kind" has been clarified to specifically reflect other benefits provided in lieu of funds paid to an agency by check or similar instrument; for example, the waiver of a fee charged in connection with attendance at a particular event.

Also, the definition of the term "non-Federal source" has been revised to clarify that it includes the government of the District of Columbia.

Spousal Travel

Section 1353 specifically directs GSA to promulgate regulations that set the conditions under which an agency may accept payment from a non-Federal source for travel, subsistence, and related expenses of a spouse attending a meeting or similar function. As was made clear by the use of the word "accompanying" in §§ 304–1.3 and 304–1.4 of Interim Rule 3, the authority of § 1353 cannot be utilized to accept payment for a spouse's travel unless the spouse is traveling to the same event as the employee. However, an agency's acceptance of payment in connection with an employee's attendance at an event is not a condition precedent to its acceptance of payment in connection with the spouse's attendance. Thus, an agency that uses appropriated funds to pay for the employee's travel may accept payment from a non-Federal source for the accompanying spouse's travel to the same event. Interim Rule 3 established a standard that the accompanying spouse's presence at a meeting or similar function must support the mission of the employee's agency or substantially assist the employee in carrying out official duties through attendance at, or participation in, the meeting or similar function. Interim Rule 4 retains this same standard in a modified format.

We have clarified the circumstances when acceptance of payment is permissible for an accompanying spouse by creating a new paragraph (b) in § 304–1.3 that describes three conditions under which the spouse's attendance may be determined to be in the interest of the agency.

First, incorporating the standard of Interim Rule 3, a spouse's attendance may be considered in the interest of the agency if the presence of the spouse will support the mission of the agency or substantially assist the employee in carrying out his/her official duties. The fact that an invitation has been extended to the spouse is not sufficient to establish that this condition is met. Nor is the fact that others in attendance will be accompanied by their spouse generally sufficient. However, in particular circumstances, such as when attendance by a spouse is expected for reasons of international protocol, the fact that others in attendance will be

accompanied by spouses may be a significant factor in determining whether the standard is met. Second, a spouse's attendance may be authorized if the spouse will attend an awards ceremony or other event described in § 304–1.2(c)(3). And third, the spouse's attendance may be authorized if the spouse will participate in substantive programs related to the agency's policies, programs, or operations. For example, in the case of an environmental conference attended by an employee with responsibility for national parks, payment could be accepted for the accompanying spouse who will participate with other spouses in a seminar on Volunteerism in National Parks.

Conflict-of-Interest Analysis

Section 304–1.2(b)(2) of Interim Rule 3 defined a "conflicting non-Federal source" as any source that "has interests that may be substantially affected by the performance or nonperformance of the employee's duties". In the case of a conflicting non-Federal source, § 304–1.5 of Interim Rule 3 required that the authorized agency official determine that "the agency's interest in the employee's . . . attendance at or participation in the event outweighs concern that the acceptance of the payment may or may reasonably appear to influence improperly the employee in the performance of his/her official duties." The interim rule also provided guidance to authorized agency officials in making this determination, listing factors to be considered such as "the nature and sensitivity of any pending matter affecting the interests of the conflicting non-Federal source [and] the significance of the employee's role in any such matter. . . ."

Section 1353 is silent concerning conflict-of-interest considerations. The statute merely states that an agency "may accept payment . . . from non-Federal sources" and then includes a provision requiring the seminannual public disclosure of the source of all payments accepted. While one association commented that reimbursement "does not create any impression of improper influence" and "simply involves the reimbursement of expenses incurred by the Government for benefits derived by the association and its members," several other comments recommended a strengthening of the conflict-of-interest analysis required by Interim Rule 3 to minimize the potential for even the appearance of conflict. One organization recommended the repeal of the underlying statute.

Additionally, several comments argued that the conflict-of-interest standard adopted in Interim Rule 3 was inconsistent with existing standards found elsewhere in Federal ethics law. Thus, for example, one agency argued that GSA should have adopted the statutory criteria for granting a waiver of 18 U.S.C. 208, the conflict-of-interest statute that prohibits an employee from participating in particular matters in which he/she has a financial interest. Another agency suggested that the standard adopted was inconsistent with the appearance of impropriety analysis it employs in interpreting its own statutory gift acceptance authority. Other comments stated that GSA had deviated from the principles set forth in Executive Order 12674, as amended, and current standards of conduct regulations applicable to employee conduct.

In response to the concerns expressed about the standard adopted in Interim Rule 3, we have strengthened the conflict-of-interest standard in § 304–1.5 by deleting what had been characterized as Interim Rule 3's "balancing test." The section apparently had the unintended effect of implying that payments might be accepted even if the presence of an actual conflict-of-interest or an appearance of impropriety. While the standard included in Interim Rule 3 was intended to offer agencies some flexibility in determining whether to accept payments from a non-Federal source, it was not anticipated that the standard would be applied unreasonably, such as to permit acceptance from a party to a matter pending before the employee for decision.

In revising § 304–1.5, we considered a number of options. Consistent with our obligation to interpret the underlying statute in a manner that effectuates its intent, we did not amend the rules to prohibit acceptance of payment from a "prohibited source," as suggested by at least one comment. The term "prohibited source" is commonly used to describe those persons or entities from whom an employee may not accept gifts under the applicable standards of conduct regulation. It is a broad term that encompasses any person regulated by, or doing or seeking to do business with, an agency. In the case of official travel that the agency determines to be in furtherance of its mission, we do not believe that acceptance of payment should be precluded solely on the basis that the non-Federal source seeks official action on some matter from someone at the agency. Thus, in connection with an Army Assistant Secretary's speech on the topic of reductions in force, given at an Army contractors' convention, we do not believe that the agency's acceptance of payment from the contractor should be precluded solely because the non-Federal source happens to have a contract with some component of the Army.

The term "prohibited source" also encompasses any person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. This standard was used in Interim Rule 3 as the definition of "conflicting non-Federal source." We considered whether to impose a flat ban on the acceptance of payment for travel, subsistence, and related expenses from entities substantially affected by the performance or nonperformance of a particular employee's duties. We concluded that this would be an unreasonable regulatory limitation in view of the statute's clear intent to permit agencies with tight travel budgets to benefit from travel expenses payments donated from outside sources. It goes without saying that a private group most often will wish to invite a Federal speaker who is knowledgeable about the Federal programs or operations that affect that particular group. Correspondingly, employees with an interest in a private group's subject matter—whether presented in a conference, seminar, or training course—will often have duties that impact in some way on the event's sponsor(s) or other non-Federal participant(s). Since it likely would be very difficult to determine in such cases whether the impact would be "substantial," the conflict-of-interest standard was amended.

Section 304–1.5, as revised, requires that an authorized agency official undertake a conflict-of-interest analysis in all cases. Before payment may be accepted from a non-Federal source under the authority of Interim Rule 4, the authorized agency official must consider the circumstances and make a determination that the acceptance of payment would not cause a reasonable person with knowledge of all facts relevant to a particular case to question the integrity of agency programs or operations if payment is accepted from the non-Federal source. Interim Rule 4 lists a number of factors which, together with any other relevant considerations, should guide the authorized agency official in making this determination on a case-by-case basis. The factors include the nature of the employee's official duties, whether they impact on the non-Federal source offering

payment, and the purpose of the meeting or similar function. We deleted one of the factors that had been listed in Interim Rule 3 to remove any implication that the importance of an event can override an appearance of impropriety.

While we did not impose a flat ban on the acceptance of payment from certain categories of donors, we recognize that the acceptance of payment from a non-Federal source in certain circumstances can give rise to an appearance of impropriety. Questions concerning the integrity of an agency's programs may arise, for example, if the circumstances make it appear that it is the donor's intent to influence the employee or agency in future actions or to reward the employee for past actions. Moreover, regardless of the donor's apparent intent, the facts surrounding an offer of payment for travel expenses might give rise to an appearance that the offer will improperly influence an employee in the performance of his/her official duties or otherwise affect the integrity of the agency's programs.

In the case of the Army Assistant Secretary, the authorized agency official would be expected to advise against acceptance of payment from the company if the Assistant Secretary was then serving as the source selection official for a procurement involving that contractor as a competitor. This would be true even if the contractors' convention was viewed by the Army as an excellent forum at which to speak about the upcoming reductions in force. On the other hand, it might be appropriate for the National Institutes of Health to accept a large pharmaceutical association's offer to fund a scientist's trip to a conference on AIDS even if the scientist was at the time performing experiments in relation to a promising new hypertension drug developed by a company that belongs to the association. Similarly, acceptance of payment from a trucking industry association might be authorized in the case of a Department of Transportation attorney who is asked to address the association concerning the interpretation of a regulation that he/she drafted and that is applicable to the entire industry.

The considerations enumerated in § 304–1.5 are not intended to be used to condone acceptance of payment where an appearance of impropriety is present. Rather, they are a guide to assist authorized agency officials in avoiding the acceptance of payment in circumstances that might lead a reasonable person to question the integrity of the agency's programs or operations.

New § 304–1.5(b) permits an authorized agency official to qualify acceptance of the offered payment by, for example, authorizing attendance at only a portion of the event or limiting the type or character of benefits that may be accepted. While § 304–1.5(a)(6) permits an authorized official to consider the value and character of offered travel benefits when determining whether to accept the payment in the first instance, paragraph (b) of the section permits acceptance to be qualified when deemed necessary to address appearance of impropriety concerns. Payment accepted under § 1353 is accepted by the agency to facilitate the accomplishment of its mission, not for personal benefit of the employee. On the other hand, in considering any qualified acceptance of travel benefits under paragraph (b), an authorized agency official should consider whether the limitation will be detrimental to the agency's interest by unduly restricting the Federal employee from participating in the event on the same basis as other participants.

Expenses Authorized to Be Accepted by an Agency

Section 304–1.2(b)(8) of Interim Rule 3 defined the travel, subsistence, and related expenses that may be accepted by an agency under § 1353. That definition indicated that agencies may accept the types of expenses that are payable under the Federal Travel Regulation (FTR), 41 CFR chapter 301, or under analogous provisions of chapter 100 of Volume 6 of the Foreign Affairs Manual (6 FAM 100) or Volume 1 of the Joint Federal Travel Regulations (JFTR), as well as conference or training fees. This definition is now set forth in § 304–1.2(c)(7).

In addition to the types of expenses payable under the applicable travel regulation, the definition of travel, subsistence, and related expenses includes benefits which cannot be paid under the applicable travel regulation and which are provided in kind and made available by the sponsor to all attendees incident to and for use at the meeting or similar function. Provided that the authorized official has determined that the sponsor(s) is a non-Federal source from which payment may be accepted, this permits the employee or spouse to receive benefits made available to all attendees by the sponsor(s), even though the benefit may not have been provided, for example, as part of the conference or training fee. Thus, this authority would permit an employee or spouse to enjoy a dinner dance available to all attendees hosted by the sponsor(s) in connection with the meeting or similar function, but would not permit the employee to accept for use at a later date, two tickets to a professional baseball game even if the two tickets were given to all other participants. Moreover, if the dinner dance were hosted by someone other than the sponsor(s), the evening's entertainment could not be accepted under § 1353.

One agency posed questions intended to highlight the difficulty of applying the standard permitting the acceptance of certain benefits if provided incident to and for use at the meeting or similar function. Thus, the commenting agency asked if it would be an appropriate travel-related expense if as part of the course agenda, participants of the meeting attended a buffet dinner while watching an NFL Playoff Game from a private skybox facility. The agency then asked whether it would make any difference if the course agenda called for a lecture to be delivered by an industry representative.

The provision in question was designed to allow Federal employees to participate fully in an event on the same basis as other participants. To the extent that the comment expresses concern that an employee might be treated to a vacation-like course of study, it should be noted that the regulation has built-in protection against such misuse of the authority to accept payment for travel expenses. A travel order should not be issued under the applicable travel regulations, and consequently, payment should not be accepted unless the travel will further the agency's mission. Agencies have discretion in assigning an employee to attend an outside course and would be expected to review the course agenda before making such an assignment. Moreover, an agency is free to authorize an employee's attendance at only those parts of a meeting or similar function that serve the interest of the agency. Finally, nothing in Interim Rule 4 requires an agency to utilize the authority granted by Congress in 31 U.S.C. 1353 to accept payment from a non-Federal source. Use of the authority is at the agency's discretion.

To further ensure that an employee may fully participate in those portions of an event he/she is authorized to attend, § 304–1.6 provides that payments accepted under authority of § 1353 are not subject to the maximum rates or transportation class of service limitations otherwise prescribed in the FTR or the JFTR when full payment is made by the non-Federal source for one or more types of the travel expenses. This permits the agency to accept a check from a non-Federal source to cover the cost of a room at a hotel, even

though the cost exceeds the lodging portion of the otherwise applicable maximum per diem rate. Similarly, the agency may accept that same night's lodging if provided for the employee in kind. As clarified in Interim Rule 4, the agency also may accept payment for premium-class air transportation even when the employee otherwise would not be authorized to fly premium class. However, an agency may not accept payment in excess of applicable maximum per diem or actual subsistence expense rates, or transportation class of service limitations, unless the accommodation or other benefit is comparable in value to that offered to, or purchased by, other similarly situated individuals attending the meeting or similar function.

Section 304–1.3 has been revised to indicate that the authority to accept payments in excess of otherwise applicable maximum per diem or actual subsistence expense rates applies only with respect to those prescribed in the FTR for the continental United States and to those prescribed by the Secretary of Defense for nonforeign areas; the authority does not apply with respect to maximum per diem rates established by the Secretary of State for foreign areas. Similarly, § 304–1.3 reflects that the authority to accept payments in excess of transportation class of service limitations applies only with respect to those prescribed in the FTR or the JFTR, not to those prescribed in 6 FAM 100.

Reimbursement Procedures

Interim Rule 3 provided authority for an agency to reimburse an employee and/or accompanying spouse an amount exceeding that payable under the applicable travel regulation when a non-Federal source provides full payment in excess of the regulatory limitation for a given type of travel expense. Section 304–1.6 has been revised to clarify that this authority applies only to maximum per diem or actual subsistence expense rates prescribed in 41 CFR chapter 301 or Civilian Personnel Per Diem Bulletins issued by the Department of Defense (DOD), and to transportation class of service limitations prescribed in 41 CFR chapter 301 or the JFTR. Regulatory limitations still prevail when partial or no payment is made for a particular type of travel expense.

Several agencies expressed concern about travel expense reimbursement in an instance when a non-Federal source does not make the promised payment and the agency (based on an offer of payment from the non-Federal source) authorized travel, and the employee and/or the accompanying spouse incurred travel expenses, in excess of regulatory limitations. Interim Rule 4, therefore, contains an added provision in § 304–1.6 to indicate that in an instance involving full payment of a particular type of expense in excess of the regulatory limitation, the agency should (as opposed to shall) require payment in advance of the travel.

This provision constitutes practical advice to the agency since the agency will be obligated to reimburse the employee up to the maximum level provided in the applicable travel regulation without regard to whether the non-Federal source ultimately sends a check to the agency. A practice of obtaining advance payment also protects the employee who might otherwise pay or charge amounts exceeding the applicable maximum only to discover that the Government is not authorized to provide reimbursement for the full amount of the expenditure when the non-Federal source does not provide full payment to the agency.

Section 304–1.7 has been revised to reflect that the authority to exceed maximum per diem and actual subsistence expense rates applies only to those prescribed in 41 CFR chapter 301 or Civilian Personnel Per Diem Bulletins issued by DOD; the authority to exceed transportation class of service limitations applies only to those prescribed in 41 CFR chapter 301 or the JFTR. Additionally, a new subparagraph (e) has been added to § 304–1.3 to indicate that when it is known in advance of travel that a non-Federal source will make partial payment to cover some but not all of the subsistence expenses that are expected to be incurred, the agency should authorize a reduced per diem rate that is commensurate with the employee's (and/or accompanying spouse's, when applicable) anticipated remaining subsistence expense levels. For example, when a non-Federal source agrees to pay $40 to an agency for an employee's dinner, the employee will itemize the expense on the voucher and be reimbursed separately for the $40 meal. Since the employee otherwise would be entitled to a flat rate M&IE allowance, the agency should, in such a circumstance, set a reduced per diem rate to cover the remaining subsistence expenses (i.e., breakfast, lunch, and incidental expenses) expected to be incurred by the employee.

One agency asserted that reimbursement to an employee's spouse should be limited to the amount received from the non-Federal source when that amount is lower than the amount normally reimbursable under the applicable travel regulation since most agencies do not have funds which may be expended for spousal travel. It is important to note that § 304–1.4 requires spousal travel to be under an official travel authorization. Thus, the recommendation was not adopted. The fact that issuance of a travel authorization for the spouse will obligate the agency to reimburse expenses in accordance with the applicable travel regulation should be taken into account in determining whether to issue the travel authorization and to accept payment for spousal travel.

Reporting Requirements

Interim Rule 4 modifies Interim Rule 3 by: incorporating an expanded list of specific data elements that must be semiannually reported to OGE in regard to agency acceptance of payment for travel, subsistence, and related expenses from a non-Federal source; clarifying that reports are to be based on when payment is received rather than when travel is performed; establishing criteria for determining the value of an in-kind payment; and explaining the rules for public disclosure of information.

Interim Rule 4 also stresses that only agencies may accept and report payments, and that negative reports are required. Although individual employees have no duty to report acceptance of payment under this authority, the authority does not relieve an employee of the duty to report acceptance of payment under other authorities.

Interim Rule 3 explained that the $250 reporting threshold would be met when the total of payments received from non-Federal sources per employee and/or spouse exceeds that amount with respect to attendance at a particular event. If an agency were to accept six $50 payments in connection with the attendance of six employees at a single function, the reporting threshold would not be met. However, if an agency were to accept payments of $150 for an employee and $150 for that employee's spouse in connection with one function, the threshold would be met. One agency, expressing some confusion about this per event reporting threshold, posed the example of payment from a non-Federal source for the cost of airline tickets covering both legs of a two-leg trip. In applying this threshold, the agency should consider the meeting or similar function as the event. Thus, the threshold would be met as soon as $250 in benefits is accepted, whether for one or both legs of the trip.

Section 304–1.9(a) of Interim Rule 3 specified the information to be included

in the report. One agency commented that it would be very useful if a sample reporting form could be incorporated into the regulation as it is not clear how much detail is required. While GSA and OGE have discussed the format of a reporting form and have distributed an early working draft to assist agencies in submitting semiannual reports that meet the requirements of Interim Rule 3, no official form has yet been approved. To facilitate uniform reporting in the absence of a form, § 304–1.9(a)(2) of Interim Rule 4 specifies the order in which the required information must be submitted.

In response to several comments, revised § 304–1.9(a) also more clearly identifies the information that must be reported. In this regard, we considered comments from three agencies recommending that GSA permit the reporting of estimated rather than actual amounts accepted. In the case of payment provided other than in kind, Interim Rule 4 continues to require a report of the actual amount accepted. As specified in § 304–1.9(a)(2)(vi), for each meeting or similar function an agency must itemize all benefits accepted and report the amount of the payment for each. This section further provides, however, that "benefits accepted as part of a conference or training fee need not be reported separately." Consequently, in the case of an agency that accepts the waiver of a training fee entitling an employee to training materials and a lunch, the agency need only report acceptance of the fee and its value. The lunch and training materials need not be separately itemized. Section 304–1.9(a)(2)(vii) requires an agency to report the total amount of payments accepted in connection with a particular event, specifying separately the total of payments received by check or similar instrument and the total value of payments provided in kind.

Section 304–1.9(a)(3) describes the proper method of valuing benefits provided in kind. In the case of a conference, training, or similar fee, an agency is to report the amount charged other participants. In the case of transportation or lodging, the agency is to report the actual cost to the non-Federal source or to indicate the rate that would have been charged a similar non-Federal source for a similar benefit at the time the benefit was provided. The value of meals or other benefits, when not provided incident to transportation, lodging, or a fee, is to be reported by indicating the cost to the non-Federal source, or by supplying a reasonable approximation of the market value of the benefit. The option to report an approximate value with respect to meals should alleviate the burden on an agency that otherwise would, as one agency noted, have to expend considerable resources attempting to define the actual cost.

Section 1353 requires the public disclosure of agency reports. Interim Rule 3 implemented these provisions without exception. Certain agencies, however, have expressed concern that agencies not be required to disclose information that is protected by statute from disclosure. One of these comments suggested that the head of each agency be authorized to withhold information otherwise required to be reported when the head of the agency (or his/her designee) determines that disclosure reasonably could be expected to jeopardize the national security. While we did not authorize agency heads to make this determination, we have provided in § 304–1.9(a)(6) that "[t]o the extent that information is protected from disclosure by statute, an agency is not required to furnish information otherwise required to be reported." As further set forth in this section, protected information is required to be made available to OGE "for review by properly cleared OGE personnel." While affected agencies should prepare the reports required by § 304–1.9(a), they should retain these reports for examination at the request of the Director of OGE.

One agency recommended the insertion of language that would call for the periodic audit of an agency's reports furnished under § 1353. The comment suggested that this review should be undertaken by the agency's Inspector General. While we did not incorporate into Interim Rule 4 a provision relative to audits, we do expect that OGE will review agency implementation of this part in connection with the review of agency ethics programs it performs pursuant to the Ethics in Government Act of 1978, as amended (see 5 CFR part 2638).

Finally, there have been several inquiries concerning whether an agency is compelled to accept payment from a non-Federal source as specified in this rule. It is important to note that this rule merely provides authority for an agency to accept payment; it does not in any way direct the acceptance of such payment. Agencies that decide to use the payment acceptance authority must internally implement procedures that suit the agency's mission and are in accordance with the provisions of this rule.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Parts 301–1 and 304–1

Government employees, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR parts 301–1 and 304–1 are amended as follows:

PART 301–1—APPLICABILITY AND GENERAL RULES

1. The authority citation for part 301–1 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; 31 U.S.C. 1353; 40 U.S.C. 486(c); and E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

Subpart A—Authority, Applicability, and General Rules

2. Section 301–1.2 is amended by revising paragraph (c) to read as follows:

§ 301–1.2 Applicability.

* * * * *

(c) To the extent the Government has received payment, as defined in § 304–1.2(c) of this subtitle, and except as provided in § 304–1.7 of this subtitle, acceptance of such payment for, and reimbursement by an agency to, an employee (and/or the accompanying spouse of such employee when applicable) under part 304–1 of this subtitle are not subject to the maximum rates or transportation class of service limitations prescribed in this chapter for reimbursable travel expenses.

* * * * *

3. Part 304–1 is revised to read as follows:

PART 304–1—ACCEPTANCE OF PAYMENT FROM A NON-FEDERAL SOURCE FOR TRAVEL EXPENSES

Sec.

Sec.

Authority: 5 U.S.C. 5701–5709; 31 U.S.C. 1353; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 304–1.1 Authority.

This part is issued under the authority of 31 U.S.C. 1353 and 5 U.S.C. 5701–5709.

§ 304–1.2 General.

(a) *Applicability.* This part applies to agency acceptance of payment from a non-Federal source for travel, subsistence, and related expenses with respect to the attendance of an employee in a travel status (and/or the accompanying spouse of such employee when applicable) at any meeting or similar function relating to the official duties of the employee. This part does not authorize acceptance of such payments by an employee or the accompanying spouse of an employee in his/her personal capacity (see, however, § 304–1.8(a)).

(b) *Solicitation prohibited.* An employee shall not solicit payment for travel, subsistence, and related expenses from a non-Federal source. However, after receipt of an invitation from a non-Federal source to attend a meeting or similar function or in the course of discussions of an event to be sponsored jointly by the agency and the non-Federal source, the agency or employee may inform the non-Federal source of this authority.

(c) *Definitions.* As used in this part, the following definitions apply:

(1) *Agency.* "Agency" means an executive agency as defined in 5 U.S.C. 105, and includes an independent agency as well as an agency within the Executive Office of the President.

(2) *Employee.* "Employee" means an appointed officer or employee of an agency, including a special Government employee as defined in 18 U.S.C. 202, or an expert or consultant appointed under the authority of 5 U.S.C. 3109.

(3) *Meeting or similar function.* "Meeting or similar function" means a conference, seminar, speaking engagement, symposium, training course, or similar event that takes place away from the employee's official station, and is sponsored or cosponsored by a non-Federal source. This term does not include a meeting or other event required to carry out an agency's statutory or regulatory functions (i.e., a function that is essential to an agency's mission), such as investigations, inspections, audits, site visits, negotiations, or litigation. The term also does not include promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal source's products or services. A meeting or similar function need not be widely attended for purposes of this definition, and includes but is not limited to the following:

(i) An event at which the employee will participate as a speaker or panel participant, including an event at which the employee will give an oral presentation focusing on his/her official duties or on the policies, programs, or operations of the agency;

(ii) A conference, convention, seminar, symposium or similar event the primary purpose of which is to receive training other than promotional vendor training, or to present or exchange substantive information concerning a subject of mutual interest to a number of parties;

(iii) An event at which the employee will receive an award or honorary degree, which is in recognition of meritorious public service that is related to the employee's official duties, and which may be accepted by the employee consistent with the applicable standards of conduct regulation.

(4) *Non-Federal source.* "Non-Federal source" means any person or entity other than the Government of the United States. The term includes any individual, private or commercial entity, nonprofit organization or association or international or multinational organization (irrespective of whether an agency holds membership in the organization or association), or foreign, state, or local government (including the government of the District of Columbia).

(5) *Payment.* "Payment" means funds paid by a non-Federal source for travel, subsistence, and related expenses by check or similar instrument to an agency, or payment in kind.

(6) *Payment in kind.* "Payment in kind" means goods, services, or other benefits provided by a non-Federal source for travel, subsistence, and related expenses in lieu of funds paid to an agency by check or similar instrument for the same purpose.

(7) *Travel, subsistence, and related expenses.* "Travel, subsistence and related expenses" means the same types of expenses payable under chapter 301 of this subtitle or analogous provisions of chapter 100 of Volume 6 of the Foreign Affairs Manual (6 FAM 100) [1] or Volume 1 of the Joint Federal Travel Regulations (JFTR).[2] Also encompassed in this definition are such expenses as conference or training fees (in whole or in part) as well as benefits which cannot be paid under the applicable travel regulation and which are provided in kind and made available by the sponsor(s) to all attendees incident to and for use at the meeting or similar function.

§ 304–1.3 Policy

(a) *Acceptance of payment for employee.* As provided in this part, an agency may accept payment from a non-Federal source (or authorize an employee to receive such payment on its behalf) with respect to attendance of the employee at a meeting or similar function which the employee has been authorized to attend in an official capacity on behalf of the employing agency.

(b) *Acceptance of payment for an accompanying spouse.* An agency may accept payment under this part from a non-Federal source for an accompanying spouse when the spouse's presence at the meeting or similar function is in the interest of the agency. A spouse's presence at an event may be determined to be in the interest of the agency if the spouse will:

(1) Support the mission of the agency or substantially assist the employee in carrying out his/her official duties;

(2) Attend a ceremony at which the employee will receive an award or honorary degree described in § 304–1.2(c)(3); or

(3) Participate in substantive programs related to the agency's programs or operations.

(c) *Administration and delegation of authority.* Payment acceptance must be in accordance with internal agency procedures. Agencies shall ensure that officials delegated authority to determine the propriety of accepting payments under this part are at as high an administrative level as practical to ensure adequate consideration and review of the circumstances surrounding the offer and acceptance of the payment.

(d) *Payment in excess of regulatory limitations.* When a non-Federal source makes full payment for subsistence expenses or for common carrier transportation expenses, acceptance of payment for, and, when applicable, reimbursement by an agency to, an employee (and/or the accompanying

[1] Chapter 100 of Volume 6 of the Foreign Affairs Manual (6 FAM 100) is available from the Department of State, Publishing Services, Washington, DC 20520–0854.

[2] Volume 1 of the Joint Federal Travel Regulations (JFTR) is available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

spouse of such employee when applicable) under this part are not subject to:

(1) The maximum per diem or actual subsistence expense rates prescribed in chapter 301 of this subtitle or by the Secretary of Defense in Civilian Personnel Per Diem Bulletins; or

(2) The transportation class of service limitations prescribed in chapter 301 of this subtitle or the JFTR.

(e) *Reduced per diem rate in partial payment situation.* If the designated agency official determines in advance of the travel that a payment covers some but not all of the per diem costs to be incurred by the employee (and/or the accompanying spouse when applicable), the agency should authorize a reduced per diem rate, in accordance with § 301–7.12 of this subtitle or analogous provisions of 6 FAM 100 or the JFTR, as applicable, that is commensurate with the known subsistence expense levels.

§ 304–1.4 Conditions for acceptance.

(a) An agency may accept payment for employee and/or spousal travel from a non-Federal source when a general authorization to accept payment (rather than an item-by-item authorization) is issued in advance of the travel following a determination by the agency official designated in accordance with § 304–1.3(c) that the payment is:

(1) For travel relating to an employee's official duties (including attendance because the employee's presence at the meeting is necessary to permit participation in the meeting by another employee or because a spouse's presence at the meeting or similar function is in the interest of the agency) under an official travel authorization issued to the employee, and to an accompanying spouse when applicable;

(2) For attendance at a meeting or similar function (as defined in § 304–1.2(c)(3) relating to the official duties of the employee; and

(3) From a non-Federal source that is not disqualified under § 304–1.5 on conflict-of-interest grounds.

(b) Payments may be accepted from multiple sources under paragraph (a) of this section.

(c) If a meeting or similar function does not concern a subject of mutual interest to the employee's agency and the non-Federal source, acceptance of payment from the non-Federal source under paragraph (a) of this section is limited to payment in kind and to the types of services the non-Federal source generally provides; e.g., air passenger transportation services provided by a commercial airline.

§ 304–1.5 Conflict-of-interest analysis.

(a) Payment from a non-Federal source shall not be accepted if the authorized agency official determines that acceptance under the circumstances would cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations. In making this determination, an authorized agency official shall be guided by all relevant considerations, including, but not limited to:

(1) The identity of the non-Federal source;

(2) The purpose of the meeting or similar function;

(3) The identity of other expected participants;

(4) The nature and sensitivity of any matter pending at the agency affecting the interests of the non-Federal source;

(5) The significance of the employee's role in any such matter; and

(6) The monetary value and character of the travel benefits offered by the non-Federal source.

(b) The authorized agency official may find that, while acceptance from the non-Federal source is permissible, it is in the interest of the agency to qualify acceptance of the offered payment by, for example, authorizing attendance at only a portion of the event or limiting the type or character of benefits that may be accepted.

§ 304–1.6 Payment guidelines.

(a) *Payment other than in kind.* Payments from a non-Federal source for an employee and/or accompanying spouse, other than payments in kind, shall be by check or similar instrument made payable to the agency. Any such payment received by the employee on behalf of the agency for his/her travel and/or that of the accompanying spouse is accepted on behalf of the agency and is to be submitted as soon as practicable for credit to the agency appropriation applicable to such expenses. When the acceptance of payment has been approved in advance by the designated agency official, the agency, or employee on behalf of the agency for his/her travel (and/or that of the accompanying spouse, when applicable), may, in accordance with the provisions of § 304–1.3(d), accept payment in excess of applicable limitations, provided that the accommodation or other benefit furnished is comparable in value to that offered to, or purchased by, other similarly situated individuals attending the meeting or similar function. When the applicable limitation will be exceeded, payment should be required in advance of the travel.

(b) *Payment in kind.* When the acceptance of payment has been approved in advance by the designated agency official, the employee, for his/her travel (and/or that of the accompanying spouse, when applicable), may, in accordance with the provisions of § 304–1.3(d), accept payment in kind in excess of applicable limitations, provided that the accommodation or other benefit furnished is comparable in value to that offered to, or purchased by, other similarly situated individuals attending the meeting or similar function.

§ 304–1.7 Reimbursement claims for official travel expenses.

(a) The employee (and/or accompanying spouse when applicable) shall submit to the employing agency on authorized reimbursement forms all travel expense reimbursement claims, and shall itemize all expenses incurred which exceed applicable limitations (see § 304–1.3(d)). Generally, the employee, and/or accompanying spouse when applicable, shall be reimbursed an amount not to exceed applicable limitations. However, when the non-Federal source, in accordance with the provisions of § 304–1.3(d), makes full payment in excess of applicable limitations for reimbursable subsistence expenses or common carrier transportation expenses incurred, reimbursement shall be the amount of the payment from the non-Federal source. Reimbursement for expenses in excess of regulatory limitations shall not in any case exceed the amount of the expenses incurred.

(b) The agency may reimburse the employee (and/or accompanying spouse of such employee when applicable) for only the types of expenses defined in §§ 301–7.1 (b)(6) and (c) of this subtitle or in analogous provisions of 6 FAM 100 or the JFTR, as applicable, for per diem allowances, transportation expenses, or other miscellaneous travel expenses.

(c) If an accepted payment covers only a portion of one or more types of the expenses incurred (e.g., $50.00 per night for lodging in a locality with an $85.00 per night maximum lodging allowance), the agency shall reimburse the employee (and/or accompanying spouse when applicable) only the amount to which he/she otherwise would be entitled under applicable regulation (chapter 301 of this subtitle, 6 FAM 100, or the JFTR). (See § 304–1.3(e) regarding reduced per diem rate situations.)

(d) If an accepted payment covers in full one or more types of expenses described in paragraph (b) of this

section (e.g., payment for lodging accommodations) but does not cover all of the travel expenses incurred, the agency shall reimburse the employee (and/or accompanying spouse of such employee when applicable) for those expenses that are not covered by the payment, not to exceed applicable limitations established in chapter 301 of this subtitle or in analogous provisions of 6 FAM 100 or the JFTR.

§ 304-1.8 Limitations and penalties.

(a) This part is the only authority under which an agency may accept payment from a non-Federal source, or authorize an employee to accept such payment on behalf of the agency, in connection with the attendance of its employee (and/or the accompanying spouse of such employee when applicable) at a meeting or similar function. An agency may not accept, under an agency gift statute or other similar authority, payment for travel, subsistence, and related expenses incurred by an employee and/or accompanying spouse to attend a meeting or similar function. However, nothing in this part prohibits an agency or employee from accepting payment as follows:

(1) When authorized under 5 U.S.C. 4111 or 5 U.S.C. 7342;

(2) When payment is for travel to be performed for a partisan rather than an official purpose in the case of an employee who is exempt from the Hatch Act under 5 U.S.C. 7324(d);

(3) When authorized pursuant to an agency gift statute or similar statutory authority and payment is for attendance at or participation in an event (other than a meeting or similar function) relating to the official duties of the employee; or

(4) When consistent with the applicable standards of ethical conduct regulation concerning personal acceptance of gifts.

(b) An employee who accepts any payment in violation of this part is subject to the following:

(1) The employee may be required, in addition to any penalty provided by law and applicable regulations, to repay for deposit to the general fund of the Treasury, an amount equal to the amount of the payment so accepted; and

(2) When repayment is required under paragraph (b)(1) of this section, the employee shall not be entitled to any reimbursement from the Government for such expenses.

§ 304-1.9 Reports.

(a) *Agency reports.* Each agency shall submit semiannual reports of payments (see definition of payment in § 304-1.2(c)) which total more than $250 per event, and which have been accepted under this part with respect to the attendance at, or participation in, a meeting or similar function by an agency employee, and/or accompanying spouse of such employee when applicable. Negative reports are required.

(1) *Submission.* The head of each agency (or his/her designee) shall submit the semiannual report to the Director of the Office of Government Ethics (OGE), 1201 New York Avenue, N.W., Suite 500, Washington, DC 20005-3917. The report shall be based on when payment is received rather than when travel is performed, and shall be submitted as follows:

(i) Not later than May 31 of each year with respect to payments received in the preceding period beginning on October 1 and ending on March 31; and

(ii) Not later than November 30 of each year with respect to payments received in the preceding period beginning on April 1 and ending on September 30.

(2) *Information required.* Except as provided in paragraph (a)(6) of this section, the report shall specify the following information in the order presented:

(i) The name of the agency submitting the report;

(ii) Each event (meeting or similar function) for which an agency accepts payment under this part of more than $250 for an employee and spouse together, or for either the employee or the spouse separately, including:

(A) The sponsor(s) of the event;

(B) The location of the event;

(C) The date(s) of the event; and

(D) The nature of the event;

(iii) The name of each employee for whom such payment was accepted in connection with the event, including:

(A) The employee's Government position; and

(B) The employee's travel date(s) in connection with attendance at the event;

(iv) The name of the accompanying spouse, if applicable, for whom payment was accepted in connection with the event, including:

(A) The name of the employee accompanied by the spouse;

(B) The employee's Government position; and

(C) The spouse's travel date(s) in connection with attendance at the event;

(v) The identity of any non-Federal source from which payment was accepted in connection with the event;

(vi) An itemization of the benefits accepted by the agency in connection with attendance at the event, including for each benefit:

(A) A description of the benefit, provided that benefits accepted as a part of a conference or training fee need not be reported separately;

(B) The method of payment (payment in kind or by check or similar instrument);

(C) The individual for whom payment was accepted (employee or spouse);

(D) The non-Federal source that provided the benefit; and

(E) The amount of the payment; and

(vii) The total value of the payments accepted for the employee and/or spouse in connection with the event identified as follows:

(A) The total amount of payments provided by check or similar instrument; and

(B) The total value of payments provided in kind.

(3) *Valuation of payments in kind.* In the case of conference, training, or similar fees waived or paid by the non-Federal source, report the amount charged other participants. In the case of transportation or lodging, report the cost to the non-Federal source, or indicate the rate that would have been charged a similar non-Federal source for a similar benefit at the time the benefit was provided. In the case of meals or other benefits that are not provided incident to transportation, lodging, or a conference, training, or similar fee, report the cost to the non-Federal source or provide a reasonable approximation of the market value of the benefit.

(4) *Valuation of noncommercial benefits furnished by a non-Federal source*—(i) *Transportation.* In the case of transportation on a chartered, corporate or other private aircraft, report the first-class rate that would have been charged by an air common carrier at the time the transportation was provided or, if common carrier transportation was unavailable between the two locations, report the cost of chartering a similar aircraft using a commercially available service.

(ii) *Lodging.* In the case of lodging for which no commercial rate is available, report the maximum lodging rate prescribed in chapter 301 of this subtitle; section 925, a per diem supplement to the Standardized Regulations (Government Civilians, Foreign Areas); or Civilian Personnel Per Diem Bulletins issued by the Secretary of Defense, as applicable.

(5) *Public availability of reports.* Except as provided in paragraph (a)(6) of this section, the Director of OGE shall make any report filed pursuant to this section available for public inspection and copying within 30 days after the applicable due date or within 30 days

after the date OGE actually receives the report, whichever is later.

(6) *Exemption.* To the extent that information is protected from disclosure by statute, an agency is not required to furnish information otherwise required to be reported. Information that may be disclosed shall be submitted to OGE and made available to the public in accordance with paragraph (a)(5) of this section. Information that is not disclosed because it is protected from disclosure by statute shall be made available by the reporting agency for review by properly cleared OGE personnel.

(b) *Employee reports.* Payments properly accepted under this part are accepted by the agency. Receipt of a benefit by an employee and/or the accompanying spouse, when applicable, on behalf of the agency under the authority of this part is not required to be reported as a gift on any confidential or public financial disclosure report that the employee is required to file pursuant to law or OGE regulation. Acceptance of payment by an employee for himself/herself and/or the accompanying spouse, when applicable, under authorities other than this part may be subject to other reporting requirements such as those required by the Ethics in Government Act of 1978, as amended, including reporting the payment on the employee's financial disclosure report.

Dated: October 14, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92-26901 Filed 11-6-92; 8:45 am]

BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 68

[CC Docket No. 92-90; FCC 92-443]

Telephone Consumer Protection Act of 1991; Correction

AGENCY: Federal communications Commission.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule, which was published Friday, October 23, 1992 (57 FR 48333). The rule relates to amendment of the Commission's rules to establish procedures for avoiding unwanted telephone solicitations to residences, and to regulate the use of automatic telephone dialing systems (autodialers), prerecorded or artificial voice messages, and telephone facsimile machines.

EFFECTIVE DATE: December 20, 1992.

FOR FURTHER INFORMATION CONTACT: Suzanne Hutchings, Domestic Services Branch, Domestic Facilities Division, Common Carrier Bureau, (202) 634-1802.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these corrections amends parts 64 and 68 of the Commission's rules to establish procedures for making telephone solicitations to residences, and for using automatic telephone dialing systems (autodialers), prerecorded or artificial voice messages, and telephone facsimile machines. The Report and Order (R&O) is issued pursuant to requirements of the Telephone Consumer Protection Act of 1991 (TCPA) Pub. L. 102-243, Dec. 20, 1991), which, effective December 20, 1992, amends title II of the Communications Act of 1934, as amended, by adding new section 227 and conforming section 2(b).

Need for Correction

As published, the summary and final regulations contain errors which are in need of correction.

Correction of Publication

Accordingly, the publication on October 23, 1992 of the final regulations, which were the subject of FR Doc. 92-25686, is corrected as follows:

SUPPLEMENTARY INFORMATION: On page 48334, in the first paragraph (continuing from the previous page), line 3 of the paragraph and inside the parentheses, the date "October 14, 1992" is corrected to read "October 16, 1992".

Paperwork Reduction Act Statement

On page 48334, in the first column, in the paragraph entitled "*Estimated Annual Burden,*" the phrase " * * * estimated to be 30,000 recordkeepers × 260 hours per recordkeeper = 7,800,000 recordkeeping hours." is corrected to read " * * * estimated to be 30,000 recordkeepers × 31.2 hours per recordkeeper = 936,000 recordkeeping hours.", and the phrase " * * * estimated to average 260 hours per recordkeeper,* * * " is corrected to read " * * * estimated to average 31.2 hours per recordkeeper,* * * ".

Final Regulatory Flexibility Analysis

On page 48334, in the third column, under the subheading "I. *Need and Purpose of this Action*", in the 16th line from the bottom of the page, the date "December 21, 1992" is corrected to read "December 20, 1992".

Supart L—Restrictions on Telephone Solicitation

§ 64.1200 [Corrected]

On page 48336 in § 64.1200, paragraph (e)(2)(iii) (continuing from the previous page, in the first column on the second line which reads " * * * must obtain a consumer's consent to * * * ", the text is corrected to read " * * * must obtain a consumer's prior express consent to * * * ".

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-27090 Filed 11-6-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 86-3; FCC 92-478]

Eligibility for the Specialized Mobile Radio Services in the 800 MHz Land Mobile Band

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order denying request for stay.

SUMMARY: The Commission has adopted an order denying a request to stay its termination of several waivers permitting wireline telephone common carriers to become base station licensees in the Specialized Mobile Radio Service. These waivers, when granted, were conditioned upon the outcome of the proceeding in PR Docket No. 86-3, which considered elimination or modification of the existing restriction on the eligibility of wireline telephone common carriers to become Specialized Mobile Radio Service licensees. The Commission terminated its proceeding in PR Docket No. 86-3 because its original notice of proposed rule making and the comments filed in response to it did not reflect numerous changes in the Specialized Mobile Radio industry subsequent to adoption of the notice.

EFFECTIVE DATE: October 30, 1992.

FOR FURTHER INFORMATION CONTACT: Myra G. Kovey, (202) 632-6497, Private Radio Bureau.

SUPPLEMENTARY INFORMATION:

Order

In the matter of amendment of part 90 of the Commission's rules governing eligibility for the specialized mobile radio services in the 800 MHz land mobile band.

Adopted: October 22, 1992.
Released: October 30, 1992.
By the Commission:

1. By order, 7 FCC Rcd 4398 (1992), we terminated our proceeding in PR Docket No. 86-3, where we considered elimination or modification of our existing restrictions on the eligibility of wireline telephone common carriers to become base station licensees in the Specialized Mobile Radio (SMR) Service. Citing numerous changes in the SMR industry subsequent to adoption of the Notice of proposed rule making in the proceeding,[1] we found that neither the notice nor the comments filed in response to it remained relevant to a meaningful determination of the issues.[2]

2. Having terminated PR Docket No. 86-3, we also terminated several waivers of the wireline prohibition that we had previously granted conditioned on the outcome of this proceeding.[3] To minimize disruption of service, though, we provided a short transition period. All outstanding conditional waivers would be terminated within ninety days of the effective date of the order unless, within sixty days after the effective date, waiver recipients submitted a showing justifying their waivers in view of the policy considerations undergirding the wireline restriction. Waiver recipients submitting showings would retain their SMR interests while their submissions were under consideration.[4]

3. Southwestern Bell Corporation seeks a stay of this waiver termination.[5] We evaluate its request under the four-element test traditionally adopted for this purpose: (1) The likelihood that petitioners will prevail on the merits of the appeal; (2) the likelihood of irreparable injury to the petitioners in the absence of a stay; (3) injury to other interested parties that might arise from grant of a stay; and (4) where the public interest lies.[6]

4. Southwestern Bell maintains that failure to stay the termination of its waiver will cost it the time and expense of rejustification, or, worse yet, of planning disposal or dissolution of its existing SMR properties. If a stay is not granted and properties are disposed of before the case is completed, furthermore, Southwestern Bell argues that it will be irreparably harmed by the loss of its licenses and that its end users will suffer from the loss of its service. Southwestern Bell predicts that it will prevail on the merits of its appeal. And, it argues, there is no possibility of harm to others should a stay be granted, since it has operated for almost five years under its waiver without complaint of discrimination or unfair competition.

5. While we do not share Southwestern Bell's confidence in the ultimate success of its appeal, we must assess its claim in a flexible fashion, balancing the equities through a consideration of the other aspects of our test.[7] Southwestern Bell asserts, and we agree, that a premature relinquishing of control over its SMR interests could cause irreparable harm to the company and considerable inconvenience and expense to its systems' end users. Our order does not mandate loss of control, however, but simply terminates existing waivers with an express invitation to rejustify them. Thus, as a practical matter, submitting a new waiver showing is the only "injury" that Southwestern Bell, or any other waiver recipient, will face absent grant of a stay.[8]

6. We do not, on balance, find this task of preparing and submitting a waiver justification so injurious as to tip the scales of hardship toward Southwestern Bell. Until and unless Southwestern Bell is forced to relinquish control of its SMR interests, an event that is neither imminent nor inevitable under our order, other interested parties are not affected by our decision. Southwestern Bell may, upon submission of a waiver justification, continue operating its systems as it has in the past. The *status quo*, in short, is not significantly changed by the operation of our order.

7. In view of the above, we conclude that equitable relief staying the termination of conditional waivers in our order in PR Docket No. 86-3 is not justified. Accordingly, it is ordered, That the petition for stay filed by Southwestern Bell Corporation is denied.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-27091 Filed 11-6-92; 8:45 am]

BILLING CODE 6712-01-M

[1] Notice of Proposed Rule Making, PR Docket No. 86-3, 51 FR 2910 (January 22, 1986).

[2] Bell Atlantic Enterprises International, Inc. and Southwestern Bell Corporation have filed petitions for reconsideration of the Order. BellSouth Corporation has filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit.

[3] These included waivers granted to Pacific Telesis, Inc., Advanced Paging Services, Inc., US West Paging, Inc., Southwestern Bell, and Bell Atlantic Enterprises International, Inc.

[4] Order at 4399.

[5] American Mobile Telecommunications Association, Inc., has filed an opposition to the petition for stay.

[6] See, *e.g.*, Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977).

[7] Holiday Tours, Inc., *supra.*, at 843.

[8] Should a submission be denied, the waiver recipient would then be required to either relinquish control of its SMR interests or appeal the staff's denial through appropriate channels. Neither prospect is so immediate as to warrant equitable relief at this time, however.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

RIN 2125-AC75

Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs; Correction

AGENCY: Office of the Secretary, Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical correction.

SUMMARY: This document contains a technical correction to the final rule on uniform relocation assistance and real property acquisition that appeared at pages 33264 through 33266 in the **Federal Register** of July 27, 1992 (57 FR 33264) FR Doc. 92-17638. This correction is necessary to correct the reference to title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) in the final rule text.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: G.B. Saunders, Chief, Operations Division, Office of Right-of-Way, HRW-20, (202) 366-0142; or Reid Alsop, Office of the Chief Counsel, HCC-31, (202) 366-1371, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In FR Doc. 92-17638, in the issue of Monday, July 27, 1992, on page 33266, the reference to the United States Code for title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) contained an error in citing to the section number which must be corrected for proper citation.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

Accordingly, 49 CFR 24.103 is corrected by making the technical amendment as set forth below.

PART 24—[AMENDED]

1. The authority citation for part 24 continues to read as follows:

Authority: 42 U.S.C. 4601 *et seq.*; 49 CFR 1.48(cc).

§ 24.103 [Corrected]

2. In § 24.103(d)(2) the citation "(FIRREA) (12 U.S.C. 1331 *et seq.*)." is revised to read "(FIRREA) (12 U.S.C. 3331 *et seq.*)."

This document is issued under the authority of 23 U.S.C. 315 and 49 CFR 1.48.

Issued on: November 2, 1992.

Steven E. Wermcrantz,

Chief Counsel.

[FR Doc. 92-27066 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-22-M

Federal Highway Administration

49 CFR Part 383

RIN 2125-AD07

Commercial Driver's License Standards; Disqualifications, Technical Amendment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This document corrects a final rule that appeared in the **Federal Register** on October 3, 1989 (54 FR 40788). The correction is necessary to remove a duplicative paragraph involving minimum periods of disqualifications and penalties for convictions of disqualifying offenses and durations of disqualifications for persons who commit criminal offenses or serious traffic violations.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. W. Teresa Doggett, Driver Standards Division, Office of Motor Carrier Standards, (202) 366-4001, or Mr. Paul Brennan, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Title 49, Code of Federal Regulations, § 383.51 was amended by a final rule published in the **Federal Register** on October 3, 1989 (54 FR 40788). The rule included minimum periods of disqualifications and penalties for convictions of disqualifying offenses and durations of disqualifications for persons who commit criminal offenses or serious traffic violations. When § 383.51(c) was amended on October 3, 1989, paragraph (c)(3) should have been omitted. The FHWA is therefore amending § 383.51(c) to remove paragraph "(c)(3)" since it is duplicative of paragraph "(c)(2).".

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not major within the meaning of Executive Order 12291 or significant within the meaning of Department of Transportation regulatory policies and procedures. Since this final rule makes only a technical amendment to current regulatory language, it is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

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

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 383

Commercial driver's license standards requirements and penalties, Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In view of the above, the FHWA is amending 49 CFR Part 383 as follows:

PART 383—[AMENDED]

1. The authority citation for 49 CFR part 383 continues to read as follows:

Authority: Title XII of Pub. L. 99-570, 100 Stat. 3207-170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; and 49 CFR 1.48.

§ 383.51 [Amended]

2. Section 383.51 is amended by removing paragraph (c)(3).

Issued on: November 2, 1992.

Steven E. Wermcrantz,

Chief Counsel.

[FR Doc. 92-27067 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-22-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub-No. 10)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1992 Update

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: In this proceeding the Commission adopts the 1992 user fee update. The fee increases here result from the implementation of the update formula set forth in the Commission's regulations. Because final rules have been adopted in *Safety Fitness Policy*, 8 I.C.C.2d 123 (1991), the Commission will implement the filing fee increases for permanent and emergency temporary motor carrier operating authority applications and motor carrier finance proceedings which were deferred in *Regulations Governing Fees for Services—1990 Update*, 7 I.C.C.2d 3 (1990), and *Regulations Governing Fees for Services—1991 Update*, 8 I.C.C.2d 13 (1991). After review of the comments the Commission has determined that it is appropriate to adopt only a 25 percent increase to the capped fees for rail

finance, abandonment, and exemption proceedings, which were adopted in *Regulations Governing Fees For Services—1989 Update,* 5 I.C.C.2d 817 (1989). Also in view of the public's concerns about the proposed increases for complaints and complaint-type declaratory orders, the Commission adopts modified fee increases to $1,000 for each of those fee categories.

EFFECTIVE DATE: These regulations are effective on December 9, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King 202–927–5493. (TDD for hearing impaired: 202–927–5721).

SUPPLEMENTARY INFORMATION: On August 10, 1992, at 57 FR 35557, the Commission issued a notice of proposed rulemaking in this proceeding which proposed the 1992 user fee update. The Commission concludes that these fee increases will not have a significant economic impact on a substantial number of small entities because the Commission's regulations provide for the waiver of filing fees when the required showing of financial hardship or public interest criteria is established.

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: October 28, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701, and 49 U.S.C. 10321.

2. Section 1002.1 is amended by revising paragraph (b) and the chart in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for records search, review, copying, certification, and related services.

* * * * *

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $20.00 per hour.

* * * * *

(f) * * *

(6) * * *

Grade	Rate	Grade	Rate
GS–1	$6.23	GS–9	$14.55
2	6.78	10	16.03
3	7.65	11	17.61
4	8.58	12	21.10
5	9.61	13	25.09
6	10.70	14	29.65
7	11.90	15 and over	34.88
8	13.18		

* * * * *

3. Section 1002.2 is amended by revising paragraph (f) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceedings	Fees
Part I: Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority.	$250.
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products.	100.
(3) A petition to interpret or clarify an operating authority under 49 CFR 1160.64.	2,400.
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plant site, or the change of a highway name or number.	40.
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923.	200.
(6) An application to remove restriction or broaden unduly narrow authority.	250.
(7) An application for authority to deviate from authorized regular-route authority under 49 U.S.C. 10923(a).	100.
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b).	100.
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1).	80.
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue.	20
(11) Request for name change of carrier, broker, or household goods freight forwarder.	9.
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1167.2.	60.
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10526(a)(5).	60.
(14) [Reserved].	
(15) A joint petition to substitute applicant in a pending operating rights proceeding.	25.
(16) [Reserved].	
Part II: Non-Rail Applications to Discontinue Transportation	
(17) A notice or petition to discontinue ferry service under 49 U.S.C. 10908.	10,000.
(18) A petition to discontinue motor carrier of passenger transportation in one state.	1,000.
(19) [Reserved].	
Part III: Non-Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(20) An application for the pooling or division of traffic.	1,900.
(21) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343.	900.
(22) An application for approval of a non-rail rate association agreement, 49 U.S.C. 10706.	12,200.
(23) An application for approval of an amendment to a non-rail rate association agreement.	
(i) Significant amendment	2,000.
(ii) Minor amendment	40.
(24) An application for temporary authority to operate a motor or water carrier. 49 U.S.C. 11349.	200.
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker's license under 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544.	250.
(26) [Reserved].	
(27) A petition for exemption under 49 U.S.C. 11343(e).	250.
(28)–(32) [Reserved].	
Part IV: Rail Application for Operating Authority	
(33)(i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	3,200.
(ii) Exempt transaction under 49 CFR 1150.31.	1,500
(34) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i).	3,900.

Type of proceedings	Fees
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii).	2,200.
(36)–(37) [Reserved].	
Part V: Rail Applications to Discontinue Transportation Services	
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act [Subtitle E of Title XI of Public Law 97–35], bankrupt railroads, or exempt abandonments under 49 CFR 1152.50).	4,500.
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act.	200.
(40) Abandonments filed by bankrupt railroads. 49 CFR 1152.40.	800.
(41) Exempt abandonments. 49 CFR 1152.50.	2,125.
(42) A notice or petition to discontinue passenger train service.	10,000.
(43) [Reserved].	
Part VI: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103.	8,400.
(45) An application for the pooling or division of traffic. 49 U.S.C. 11342.	4,500.
(46) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11343:	
(i) Major transaction	164,700.
(ii) Significant transaction	32,900.
(iii) Minor transaction	2,700.
(iv) Exempt transaction [49 CFR 1180.2(D)].	650.
(v) Responsive application	2,700.
(47) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11343:	
(i) Major transaction	164,700.
(ii) Significant transaction	32,900.
(iii) Minor transaction	2,700.
(iv) Exempt transaction [49 CFR 1180.2(d)].	650.
(v) Responsive application	2,700.
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11343:	
(i) Major transaction	164,700.
(ii) Significant transaction	32,900.
(iii) Minor transaction	2,700.
(iv) Exempt transaction [49 CFR 1180.2(d)].	650.
(v) Responsive application	2,700.
(49) An application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11343:	
(i) Major transaction	164,700.
(ii) Significant transaction	32,900.
(iii) Minor transaction	2,700.
(iv) Exempt transaction [49 CFR 1180.2(d)].	650.
(v) Responsive application	2,700.
(50) An application for a determination of fact of competition. 49 U.S.C. 11321 (a)(2) or (b).	32,900.
(51) An application for approval of a rail rate association agreement 49 U.S.C. 10706.	31,000.
(52) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	5,700.
(ii) Minor amendment	40.
(53) An application for authority to hold a position as officer or director. 49 U.S.C. 11322.	300.
(54)(i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for competitive bidding requirements of Ex Parte No. 158, 49 CFR Part 1175. 49 U.S.C. 11301.	1,400.
(ii) An exempt transaction under 49 CFR Part 1175.	650
(55) A petition for exemption (other than a rulemaking) filed by rail carriers. 49 U.S.C. 10505:	
(i) Financial exemption petitions	3,625.
(ii) Abandonment exemption petitions.	3,000.
(iii) Construction, extension, acquisition, or operation of a rail line petitions.	3,000.
(iv) Other exemption petitions	1,625.
(56)–(59) [Reserved].	
Part VII: Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers, or freight forwarders of household goods.	1,000.
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares, or charges. 49 U.S.C. 10705(f)(1)(A).	3,900.
(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding.	1,000.
(ii) All other petitions for declaratory order.	1,200.
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increases.	6,800.
(64) A petition for exemption from filing tariffs by bus carriers.	250.
(65) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A).	3,100.
(66) Petition for review of state regulation of intrastate rates, rules, or practices filed by interstate rail carriers. 49 U.S.C. 11501.	1,800.
(67) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate bus carriers. 49 U.S.C. 11501.	1,900.
(68)–(71) [Reserved].	
Part VIII: Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster).	550.
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements.	50.
(74) The filing of tariffs, rate schedules, contracts and/or contract summaries, including supplements.	9 per series transmitted.
(75) Special docket applications from rail and water carriers. (There is no fee for requests involving sums of $25,000 or less).	60.
(76) Informal complaint about rail rate application.	250.
(77)(i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD).	3,300.
(ii) An application for original qualification as self-insurer for cargo insurance.	300.
(78) A service fee for insurer, surety or self insurer accepted certificate of insurance, surety bond, or other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of $10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity.	10 per accepted certificate or other instrument submitted in lieu of a broker surety bond.
(79) A petition for waiver of any provision of the lease and interchange regulations. 49 CFR Part 1057.	350.
(80) A petition for reinstatement of revoked operating authority.	60.
(81)–(82) [Reserved].	
(83) Petition for reinstatement of a dismissed operating rights application.	350.
(84) Filing of documents for recordation. 49 U.S.C. 11303 and 49 CFR 1177.3(c).	16 per document.

Type of proceedings	Fees
(85) Valuations of railroads lines in conjunction with purchase offers in abandonment proceeding.	1,200.
(86) Informal opinions about rate applications (all modes).	40.
(87)–(95) [Reserved].	
Part IX: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent.	12 per delivery.
(97) Request for service list for proceedings.	9 per list.
(98) Requests for copies of the one-percent carload waybill sample.	100.
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation.	17 per movement verified.
(100) Application fee for Interstate Commerce Commission Practitioners' Exam.	80.

[FR Doc. 92–27080 Filed 11–6–92; 8:45 am]

BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 57, No. 217
Monday, November 9, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-183-AD]

Airworthiness Directives; Beech Model 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Beech Model 400A airplanes. This proposal would require an inspection of certain circuit breaker wiring, and correction of any discrepancies found. This proposal is prompted by a recent report that, apparently during production, one of two bus wires on a Model 400A airplane was inadvertently connected to the incorrect side of a circuit breaker, leaving the circuit unprotected by its circuit breaker; this situation could result in the overheating of the wiring. The actions specified by the proposed AD are intended to prevent the loss of standby power and the possibility of an electrical fire.

DATES: Comments must be received by January 6, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-183-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Mr. C. Dale Bleakney, Aerospace Engineer, Systems and Equipment Branch, ACE-130W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4135; fax (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-183-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-183-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The FAA has received a recent report that, apparently during production, one of the two "16 AWG" bus wires on a Model 400A airplane was inadvertently connected to the load side of the left-hand interstage turbine temperature (LH ITT) circuit breaker instead of the bus side, leaving the LH ITT circuit unprotected by its circuit breaker. If a ground-short type electrical fault affects the LH ITT circuit, the wiring could become overheated, possibly leading to smoke and fumes in the cockpit. In order to clear this type of electrical fault, electrical power from the entire standby bus would have to be removed. This condition, if not corrected, could result in the loss of standby power and the possibility of an electrical fire.

The FAA has reviewed and approved Beechcraft Service Bulletin No. 2458 (ATA Code 39-10), dated August 1992, that describes procedures for an inspection of the LH ITT circuit breaker wiring, and correction of any discrepancies found. The effectivity listing in this service bulletin is limited only to certain airplane serial numbers; Beech has identified those airplanes listed as ones on which the addressed unsafe condition may exist. The FAA has confirmed that this condition does not exist on Model 400A airplanes that are not listed in the service bulletin.

Since an unsafe condition has been identified that is likely to exist on other products of this same type design, the proposed AD would require an inspection of the LH ITT circuit breaker wiring, and correction of any discrepancies found. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 15 Model 400A series airplanes of the affected design in the worldwide fleet. The FAA estimates that 15 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,650, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished

the proposed requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Beech Aircraft Corporation: Docket 92-NM-183-AD.

Applicability: Model 400A airplanes; serial numbers RK-2 through RK-29, inclusive, RK-31, and RK-32; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of standby power and the possibility of an electrical fire, accomplish the following:

(a) Within 100 hours time-in-service after the effective date of this AD, inspect the left-hand interstage turbine temperature (LH ITT) circuit breaker wiring, in accordance with Beechcraft Service Bulletin No. 2458 (ATA Code 39-10), dated August 1992. Prior to further flight, correct any discrepancies found, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

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

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

Issued in Renton, Washington, on November 3, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-27142 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 91N-0505]

RIN 0905-AA06

Status of Certain Additional Over-the-Counter Drug Category II and III Active Ingredients; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of August 25, 1992 (57 FR 38568), stating that certain ingredients in over-the-counter (OTC) drug products are not generally recognized as safe and effective or are misbranded. The document was inadvertently published with an incorrect compliance date in two places in the regulation. The compliance date listed reflected a date based upon publication of the proposed rule; however, the compliance date is to be based on a date 6 months following publication of a final rule. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

In FR Doc. 92-20209, appearing on page 38568, in the **Federal Register** of Tuesday, August 25, 1992, the following corrections are made:

§ 310.545 [Corrected]

1. On page 38573, in § 310.545 *Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses*, in paragraph (a)(8)(ii), "February 26, 1993" is corrected to read "(insert date 6 months after date of publication of the final rule in the **Federal Register**)".

2. On page 38575, in paragraph (d)(4), "February 26, 1993" is corrected to read "(insert date 6 months after date of publication of the final rule in the **Federal Register**)".

Dated: October 27, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-27084 Filed 11-6-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA-5-92]

RIN 1545-AQ50

Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy Estates of Individuals

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed income tax regulations under section 1398 of the Internal Revenue Code relating to the application of sections 469 and 465 to the bankruptcy estates of individuals. The proposed rules would affect individual taxpayers who file bankruptcy petitions under chapter 7 or chapter 11 of title 11 of the United States Code and have passive activity losses and credits under section 469 or losses that are not allowed under section 465.

DATES: Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled on December 17, 1992, must be received by December 3, 1992.

ADDRESSES: Send comments, requests to appear, and outlines of oral comments to be presented at the public hearing to:

Internal Revenue Service, ATTN: CC:CORP:T:R (IA-5-92), P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Amy J. Sargent of the Office of Assistant Chief Counsel (Income Tax & Accounting) at (202) 622-4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information in this regulation is in §§ 1.1398-1(f) and 1.1398-2(f). This information is required by the Internal Revenue Service to determine which taxpayers elect the application of the regulations. This information will be used to monitor compliance with the regulations. The likely respondents are individuals and bankruptcy estates.

These estimates are an approximation of the average time expected to be necessary to collect required information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their circumstances. Estimated total reporting burden: 600,000 hours. The estimated burden per respondent varies from .5 hour to 1.5 hour, depending on individual circumstances, with an estimated average of 1 hour. Estimated number of respondents: 600,000. Estimated frequency of response: 1.

Background

This document proposes an amendment to title 26 of the Code of Federal Regulations to designate additional attributes that pass from the debtor to the bankruptcy estate under section 1398(g) of the Internal Revenue Code of 1986 (the "Code") and that, upon termination of the estate, pass from the bankruptcy estate to the debtor under section 1398(i). Section 1398 was added to the Code by section 3(a)(1) of the Bankruptcy Tax Act of 1980 (Pub. L. 96-589), and was amended by section 104(b)(14) (A) and (B), section 301(j)(8), and section 1812(a)(5) of the Tax Reform Act of 1986 (Pub. L. 99-514). Section 1398 provides rules for the taxation of an individual debtor's bankruptcy estate. When an individual files for bankruptcy under chapter 7 (relating to liquidations), 11 U.S.C. sections 701-766, or chapter 11 (relating to reorganizations), 11 U.S.C. sections 1101-1174, the estate is treated as an entity separate and apart from the individual debtor.

Under section 1398(g), the estate succeeds to certain enumerated attributes of the individual, including (1) net operating loss carryovers; (2) charitable contribution carryovers; (3) recovery of tax benefit items; (4) credit carryovers; (5) capital loss carryovers; (6) basis, holding period, and character of assets; and (7) method of accounting. In addition, section 1398(g)(8) provides that other attributes of the debtor, to the extent provided in regulations prescribed by the Secretary as necessary or appropriate to carry out the purposes of section 1398, also pass to the estate.

Section 1398(i) provides that, upon termination of the estate, the debtor succeeds to the attributes enumerated in section 1398(g)(1)-(6) in a manner similar to that provided in section 1398(g), taking into account that the transfer is from the estate to the debtor instead of from the debtor to the estate. Additionally, section 1398(i) provides that other attributes of the estate, to the extent provided in regulations prescribed by the Secretary as necessary or appropriate to carry out the purposes of section 1398, also pass to the debtor upon termination of the estate.

Section 469 of the Code was added by section 501 of the Tax Reform Act of 1986. Under section 469, passive activity losses and credits are disallowed and treated as a deduction or credit allocable to the same activity in the next taxable year. Passive activity losses and credits are not among the attributes enumerated in section 1398 (g) and (i).

Section 465 was added to the Code by section 204 of the Tax Reform Act of 1976. Section 465 limits a taxpayer's deductible loss from an activity to the taxpayer's amount "at risk," within the meaning of section 465(b), in that activity. If a loss is not allowed under section 465, it is treated as a deduction allocable to the same activity in the next taxable year. Losses that are not allowed under section 465 are not among the attributes enumerated in section 1398 (g) and (i).

Explanation of Provisions

I. Passive Activity Losses and Credits (Sec. 469)

The proposed regulations provide that the bankruptcy estate succeeds to the unused passive activity losses and credits of an individual debtor in a case under chapter 7 (relating to liquidations) or chapter 11 (relating to reorganizations) of title 11 of the United States Code. Transferring unused passive activity losses and credits from the debtor to the estate is consistent with one of the primary purposes of section 1398, i.e., treatment of the bankruptcy estate as the tax successor of the debtor. The unused passive activity losses and credits to which the estate succeeds are determined as of the first day of the debtor's taxable year in which the bankruptcy case commences. This rule is consistent with section 1398(g), which provides that the estate succeeds to and takes into account the specified attributes determined as of the first day of the taxable year in which the bankruptcy case commences.

The proposed regulations address the transfer of property from the estate to the debtor (other than by sale or exchange) before the termination of the estate. Such a transfer may occur if, for example, the debtor identifies property as exempt under section 522 of title 11 of the United States Code or property is abandoned to the debtor under section 554(a) of that title. The proposed regulations provide such a transfer of an interest in a passive activity as defined in section 469(c) shall not be treated as a taxable disposition. This rule is consistent with the case law, which holds that the transfer (other than by sale or exchange) of an asset from the estate to the debtor before the termination of the estate is a nontaxable disposition. See, e.g., *In re Olson*, 100 B.R. 458 (Bankr. N.D. Ia. 1989), aff'd, 121 B.R. 346 (N.D. Ia. 1990), aff'd, 930 F.2d 6 (8th Cir. 1991).

The proposed regulations provide that in the case of a transfer from the estate to the debtor (other than by sale or exchange) of an interest in a passive activity or former passive activity before the termination of the estate, the debtor succeeds to and takes into account the estate's unused passive activity loss and credit from the activity (determined as of the first day of the estate's taxable year in which the transfer occurs). In the case of a transfer of assets that constitute part of an activity, the debtor succeeds to and takes into account the allocable portion of unused passive activity loss and credit as determined by the estate. This treatment of unused

passive activity losses and credits differs from the current treatment of net operating losses, which remain with the estate even if the loss-producing assets are transferred from the estate to the debtor prior to the termination of the estate. Unused passive activity losses and credits are different from net operating losses in that the former arise from a specific activity and the latter arise from the comprehensive tax position of the taxpayer. The proposed regulations do not change the present treatment of net operating losses under section 1398.

Finally, the proposed regulations provide that upon the termination of the estate, the debtor shall succeed to and take into account the estate's unused passive activity loss and credit. See section 1398(i).

II. At Risk Losses (Sec. 465)

The proposed regulations provide that the bankruptcy estate succeeds to any losses of an individual debtor that are not allowed under section 465 (unused losses) in a case under chapter 7 (relating to liquidations) or chapter 11 (relating to reorganizations) of title 11. The rules in the proposed regulations for the transfer of unused losses from the debtor to the estate and from the estate to the debtor generally parallel the rules in the proposed regulations for passive activity losses and credits under section 469.

III. Effective Dates

The provisions of § 1.1398–1 and § 1.1398–2 are proposed to be effective for bankruptcy cases commencing on or after November 9, 1992. For cases commenced before November 9, 1992, the proposed regulations apply only if a joint election is made by the debtor and the estate. In cases under chapter 7, the election shall be valid only with the written consent of the bankruptcy trustee. In cases under chapter 11, the election shall be valid only if it is incorporated (1) into a bankruptcy plan that is confirmed by the bankruptcy court or (2) into an order of the court.

Special Analysis

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations. Therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the proposed rules will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments (preferably a signed original and eight copies) submitted to the Internal Revenue Service. We request suggestions of additional tax attributes for designation as attributes that pass from the debtor to the estate under section 1398(g)(8). We also request comments on whether the computation of tax liability under section 1341, with respect to the computation of tax where the taxpayer restores a substantial amount of income held under a claim of right, should be designated as an attribute that passes from the debtor to the estate under section 1398(g)(8). All comments will be available for public inspection and copying. A public hearing will be held on December 17, 1992. See the notice of hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Amy J. Sargent of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. Other personnel from the Internal Revenue Service participated in their development.

List of Subjects in 26 CFR 1.1398–1 Through 1.1398–2

Bankruptcy, Income taxes.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. An undesignated center heading is added immediately following § 1.1388–1 to read as follows: "Rules Relating to Individuals' Title 11 Cases"

Par. 3. Sections 1.1398–1 and 1.1398–2 are added to read as follows:

§ 1.1398–1 Treatment of passive activity losses and passive activity credits in individuals' title 11 cases.

(a) *Scope.* This section applies to cases under chapter 7 or chapter 11 of title 11 of the United States Code, but only if the debtor is an individual.

(b) *Definition and rules for general application.* For purposes of this section—

(1) *Passive activity* and *former passive activity* have the meanings given in section 469 (c) and (f)(3);

(2) The unused passive activity loss (determined as of the first day of a taxable year) is the passive activity loss (as defined in section 469(d)(1)) that is disallowed under section 469 for the previous taxable year; and

(3) The unused passive activity credit (determined as of the first day of a taxable year) is the passive activity credit (as defined in section 469(d)(2)) that is disallowed under section 469 for the previous taxable year.

(c) *Estate succeeds to losses and credits upon commencement of case.* The bankruptcy estate (the estate) succeeds to and takes into account, beginning with its first taxable year, the debtor's unused passive activity loss and unused passive activity credit (determined as of the first day of the debtor's taxable year in which the case commences).

(d) *Transfers from estate to debtor—* (1) *Transfer not treated as taxable event.* If, before the termination of the estate, the estate transfers an interest in a passive activity or former passive activity to the debtor (other than by sale or exchange), the transfer is not treated as a disposition for purposes of any provision of the Code assigning tax consequences to a disposition. The transfers to which this rule applies include transfers from the estate to the debtor of property that is exempt under section 522 of title 11 of the United States Code and abandonments of estate property to the debtor under section 554(a) of such title.

(2) *Treatment of passive activity loss and credit.* If, before the termination of the estate, the estate transfers an interest in a passive activity or former passive activity to the debtor (other than by sale or exchange)—

(i) The estate must allocate to the transferred interest, in accordance with § 1.469–1(f)(4), part or all of the estate's unused passive activity loss and unused passive activity credit (determined as of the first day of the estate's taxable year in which the transfer occurs); and

(ii) The debtor succeeds to and takes into account, beginning with the debtor's taxable year in which the transfer occurs, the unused passive activity loss and unused passive activity credit (or part thereof) allocated to the transferred interest.

(e) *Debtor succeeds to loss and credit of the estate upon its termination.* Upon termination of the estate, the debtor succeeds to and takes into account, beginning with the debtor's taxable year

in which the termination occurs, the passive activity loss and passive activity credit disallowed under section 469 for the estate's last taxable year.

(f) *Effective date*—(1) *Cases commencing on or after November 9, 1992. This section applies to cases commencing on or after November 9, 1992.*

(2) *Cases commencing before November 9, 1992*—(i) *Election required.* This section applies to a case commencing before November 9, 1992, and terminating on or after that date if the debtor and the estate jointly elect its application in the manner prescribed in paragraph (f)(2)(v) of this section (the election). The caption "ELECTION PURSUANT TO § 1.1398–1" must be placed prominently on the first page of each of the debtor's returns that is affected by the election (other than returns for taxable years that begin after the termination of the estate) and on the first page of each of the estate's returns that is affected by the election.

(ii) *Scope of election.* This election applies to the passive and former passive activities and unused passive activity losses and passive activity credits of the taxpayers making the election.

(iii) *Amendment of previously filed returns.* The debtor and the estate making the election must amend all returns (except to the extent they are for a year that is a closed year within the meaning of paragraph (f)(2)(iv)(D) of this section) they filed before the date of the election to the extent necessary to provide that no claim of a deduction or credit is inconsistent with the succession under this section to unused losses and credits. The Commissioner may revoke or limit the effect of the election if either the debtor or the estate fails to satisfy the requirement of this paragraph (f)(2)(iii).

(iv) *Rules relating to closed years*—(A) *Estate succeeds to debtor's passive activity loss and credit as of the commencement date.* If, by reason of an election under this paragraph (f), this section applies to a case that was commenced in a closed year, the estate, nevertheless, succeeds to and takes into account the unused passive activity loss and unused passive activity credit of the debtor (determined as of the first day of the debtor's taxable year in which the case commenced).

(B) *No reduction of unused passive activity loss and credit for passive activity loss and credit not claimed for a closed year.* In determining a taxpayer's carryover of a passive activity loss or credit to its taxable year following a closed year, a deduction or credit that the taxpayer failed to claim in the closed year, if attributable to an unused passive activity loss or credit to which the taxpayer succeeded under this section, is treated as a deduction or credit that was disallowed under section 469.

(C) *Passive activity loss and credit to which taxpayer succeeds reflects deductions of prior holder in a closed year.* A loss or credit to which a taxpayer would otherwise succeed under this section is reduced to the extent the loss or credit was allowed to its prior holder for a closed year.

(D) *Closed year.* For purposes of this paragraph (f)(2)(iv), a taxable year is closed to the extent the assessment of a deficiency or refund of an overpayment is prevented, on the date of the election and at all times thereafter, by any law or rule of law.

(v) *Manner of making election*—(A) *Chapter 7 cases.* In a case under chapter 7 of title 11 of the United States Code, the election is made by obtaining the written consent of the bankruptcy trustee and filing a copy of the written consent with the returns of the debtor and the estate for their first taxable years ending after November 9, 1992.

(B) *Chapter 11 cases.* In a case under chapter 11 of title 11 of the United States Code, the election is made by incorporating the election into a bankruptcy plan that is confirmed by the bankruptcy court or into an order of such court and filing the pertinent portion of the plan or order with the returns of the debtor and the estate for their first taxable years ending after November 9, 1992.

(vi) *Election is irrevocable.* Except as provided in paragraph (f)(2)(iii) of this section, the election, once made, is binding on both the debtor and the estate and is irrevocable.

§ 1.1398–2 Treatment of section 465 losses in individuals' title 11 cases.

(a) *Scope.* This section applies to cases under chapter 7 or chapter 11 of title 11 of the United States Code, but only if the debtor is an individual.

(b) *Definition and rules for general application.* For purposes of this section—

(1) *Section 465 activity* means an activity to which section 465 applies; and

(2) For each section 465 activity, the unused section 465 loss from the activity (determined as of the first day of a taxable year) is the loss (as defined in section 465(d)) that is not allowed under section 465(a)(1) for the previous taxable year.

(c) *Estate succeeds to losses upon commencement of case.* The bankruptcy estate (the estate) succeeds to and takes into account, beginning with its first taxable year, the debtor's unused section 465 losses (determined as of the first day of the debtor's taxable year in which the case commences).

(d) *Transfers from estate to debtor*—(1) *Transfer not treated as taxable event.* If, before the termination of the estate, the estate transfers an interest in a section 465 activity to the debtor (other than by sale or exchange), the transfer is not treated as a disposition for purposes of any provision of the Code assigning tax consequences to a disposition. The transfers to which this rule applies include transfers from the estate to the debtor of property that is exempt under section 522 of title 11 of the United States Code and abandonments of estate property to the debtor under section 554(a) of such title.

(2) *Treatment of section 456 losses.* If, before the termination of the estate, the estate transfers an interest in a section 465 activity to the debtor (other than by sale or exchange) the debtor succeeds to and takes into account, beginning with the debtor's taxable year in which the transfer occurs, the transferred interest's share of the estate's unused section 465 loss from the activity (determined as of the first day of the estate's taxable year in which the transfer occurs). For this purpose, the transferred interest's share of such loss is the amount, if any, by which such loss would be reduced if the transfer had occurred as of the close of the preceding taxable year of the estate and been treated as a disposition on which gain or loss is recognized.

(e) *Debtor succeeds to losses of the estate upon its termination.* Upon termination of the estate, the debtor succeeds to and takes into account, beginning with the debtor's taxable vear in which the termination occurs, the losses not allowed under section 465 for the estate's last taxable year.

(f) *Effective date*—(1) *Cases commencing on or after November 9, 1992.* This section applies to cases commencing on or after November 9, 1992.

(2) *Cases commencing before November 9, 1992*—(i) *Election required.* This section applies to a case commencing before November 9, 1992, and terminating on or after that date if the debtor and the estate jointly elect its application in the manner prescribed in paragraph (f)(2)(v) of this section (the election). The caption "ELECTION PURSUANT TO § 1.1398–2" must be placed prominently on the first page of each of the debtor's returns that is affected by the election (other than returns of taxable years that begin after the termination of the estate) and on the

first page of each of the estate's returns that is affected by the election.

(ii) *Scope of election.* This election applies to the section 465 activities and unused losses from section 465 activities of the taxpayers making the election.

(iii) *Amendment of previously filed returns.* The debtor and the estate making the election must amend all returns (except to the extent they are for a year that is a closed year within the meaning of paragraph (f)(2)(iv)(D) of this section) they filed before the date of the election to the extent necessary to provide that no claim of a deduction is inconsistent with the succession under this section to unused losses from section 465 activities. The Commissioner may revoke or limit the effect of the election if either the debtor or the estate fails to satisfy the requirement of this paragraph (f)(2)(iii).

(iv) *Rules relating to closed years—*(A) *Estate succeeds to debtor's section 465 loss as of the commencement date.* If, by reason of an election under this paragraph (f), this section applies to a case that was commenced in a closed year, the estate, nevertheless, succeeds to and takes into account the section 465 losses of the debtor (determined as of the first day of the debtor's taxable year in which the case commenced).

(B) *No reduction of unused section 465 loss for loss not claimed for a closed year.* In determining a taxpayer's carryover of an unused section 465 loss to its taxable year following a closed year, a deduction that the taxpayer failed to claim in the closed year, if attributable to an unused section 465 loss to which the taxpayer succeeds under this section, is treated as a deduction that was not allowed under section 465.

(C) *Loss to which taxpayer succeeds reflects deductions of prior holder in a closed year.* A loss to which a taxpayer would otherwise succeed under this section is reduced to the extent the loss was allowed to its prior holder for a closed year.

(D) *Closed year.* For purposes of this paragraph (f)(2)(iv), a taxable year is closed to the extent the assessment of a deficiency or refund of an overpayment is prevented, on the date of the election and at all times thereafter, by any law or rule of law.

(v) *Manner of making election—*(A) *Chapter 7 cases.* In a case under chapter 7 of title 11 of the United States Code, the election is made by obtaining the written consent of the bankruptcy trustee and filing a copy of the written consent with the returns of the debtor and the estate for their first taxable years ending after November 9, 1992.

(B) *Chapter 11 cases.* In a case under chapter 11 of title 11 of the United States Code, the election is made by incorporating the election into a bankruptcy plan that is confirmed by the bankruptcy court or into an order of such court and filing the pertinent portion of the plan or order with the returns of the debtor and the estate for their first taxable years ending after November 9, 1992.

(vi) *Election is irrevocable.* Except as provided in paragraph (f)(2)(iii) of this section, the election, once made, is binding on both the debtor and the estate and is irrevocable.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

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26 CFR Parts 1 and 602

[IA-5-92]

RIN 1545-AQ50

Carryover of Passive Activity Losses and Credits and At Risk Losses to Bankruptcy Estates of Individuals; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document contains notice of a public hearing on proposed regulations under section 1398 of the Internal Revenue Code Relating to the application of sections 469 and 465 to the bankruptcy estates of individuals.

DATES: The public hearing will be held on Thursday, December 17, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, December 3, 1992.

ADDRESSES: The public hearing will be held in room 2615, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IA-5-92), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-8452 or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1398 of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Friday, November 27, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-26678 Filed 11-6-92; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR19-1-5511; FRL-4532-1]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this action, EPA invites public comment on its proposed approval of revisions to the State of Oregon Implementation Plan. EPA is proposing to approve revisions to OAR chapter 340 Division 30 (Specific Air Pollution Control Rules For Areas With Unique Air Quality Control Needs) submitted by the State of Oregon Department of Environmental Quality on October 13, 1989 and November 15, 1991, for the limited purpose of advancing the national ambient air

quality standards (NAAQS) related air quality protection goals of the Clean Air Act (CAA).

DATES: Comments must be postmarked on or before December 9, 1992.

ADDRESSES: Comments Should be Addressed to: Laurie M. Kral, Environmental Protection Agency, Air & Radiation Branch, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.

Copies of the materials submitted to EPA may be examined during normal business hours and a reasonable fee may be charged for copying:

Environmental Protection Agency, Air and Radiation Branch, Docket #OR19-1-5511, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.

State of Oregon, Department of Environmental Quality, 811 SW. Sixth Avenue, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, Environmental Protection Agency, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101, Telephone: (206) 553-6510.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 (52 FR 24634) the Environmental Protection Agency revised the National Ambient Air Quality Standards (NAAQS) for particulate matter. Total suspended particulate matter or "TSP" was replaced as an indicator for particulate matter for the ambient standard by a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10).

To implement the revised NAAQS, EPA promulgated revisions to 40 CFR Parts 51 and 52 also on July 1, 1987 (52 FR 24672). As described below, these actions established requirements for the preparation, adoption, and submittal of State Implementation Plans (SIPs) necessary to protect the revised NAAQS.

On August 7, 1987 (52 FR 29383), EPA categorized areas of the Nation into three groups based on the likelihood that the existing SIP would require revision in order to protect the PM-10 NAAQS. The Grant Pass Urban Growth Boundary area (UGB) and the Medford-Ashland Air Quality Maintenance Area (AQMA) were identified as areas with a strong likelihood of violating the PM-10 NAAQS and requiring substantial SIP revisions. Therefore, they were listed as Group I areas.

In response to this action, the Oregon Department of Environmental Quality (ODEQ) revised the Division 30 Rules, applicable to the Medford-Ashland and Grants Pass Group I areas, and submitted revisions to EPA on October 13, 1989.

Congress then revised the Clean Air Act by passage of the Clean Air Act Amendments of 1990 (Pub. L. No. 101-549, 104 Stat. 2399, November 15, 1990). The revised Act designated, by operation of law, existing PM-10 Group I areas as moderate PM-10 nonattainment areas. See sections 107(d)(4)(B)(i) and 188(a) of the CAA, 42 U.S.C. 7407(d)(4)(B)(i) and 7513(a). In addition, section 107(d)(4)(B)(ii) required that "any area containing a site for which air quality monitoring data show a violation of the national ambient air quality standard for PM-10 before January 1, 1989 (as determined under part 50 appendix K of title 40 of the Code of Federal Regulations) is hereby designated nonattainment for PM-10". This action resulted in the La Grande Urban Growth Boundary area as being designated a moderate nonattainment for PM-10. See 56 FR 56694, 56820 (Nov. 6, 1991) (codification of Oregon PM-10 nonattainment areas). The Act also imposed new SIP requirements for moderate PM-10 nonattainment areas. See generally 57 FR 13498 (April 16, 1991) and 57 FR 18070 (April 28, 1992).

The revised Act required, among other things, that the State of Oregon submit to EPA by November 15, 1991, provisions to assure that RACM (including RACT) applicable to stationary sources of PM-10 be implemented by December 10, 1993, for the three nonattainment areas and that the State demonstrate either that the PM-10 NAAQS will be attained in the areas by December 31, 1994, or that attainment by such date is not practicable (hereafter the "demonstration" requirement). *Id*; sections 172(c)(1) and 189(a) of the CAA. Because EPA construes RACT to apply to existing stationary sources in a nonattainment area that are reasonable to control in light of the attainment needs of the area (and the feasibility of the controls) (see 57 FR at 13540-44), EPA will evaluate the Division 30 Rules in reference to the specific PM-10 RACM (including RACT) requirement during EPA's review of the full control strategies and associated PM-10 demonstration requirement for each of the three areas.

To address the designation of La Grande as a nonattainment area and in response to previous EPA comments on the 1989 submittal, ODEQ again revised the Division 30 Rules and submitted the revision on November 15, 1991. The Division 30 Rules, as submitted on November 15, 1991, now apply to the Grants Pass, Medford-Ashland and La Grande PM-10 nonattainment areas. The preceding analysis applies with equal force to the November 15, 1991, submittal.

II. Technical Evaluation

OAR Chapter 340, Division 30—On October 13, 1989, ODEQ submitted a revision to OAR Chapter 340, Division 30 (retitled as—Specific Air Pollution Control Rules For Areas With Unique Air Quality Control Needs) by revising sections -005, -010, -015, -025, -040, -043, -044, -050, -055 and -065. In addition, sections -021, -046, -067 and -111 were added and section -045 was deleted. This revision was submitted to reduce PM-10 emissions from specific industrial sources in Oregon's Medford-Ashland and Grants Pass Group I PM-10 areas. The emission reductions to be achieved as a result of the 1989 revision, in conjunction with PM-10 reductions from additional sources (e.g. area sources), were to constitute the control measures (emissions reductions) needed to demonstrate attainment of the PM-10 NAAQS for the Medford-Ashland and Grants Pass Group I areas.

In general, application of the existing rules was expanded to include industrial sources in the Grants Pass Group I area. Specifically: (1) The rules required more effective controls for plywood veneer driers and large wood fired boilers in the Medford-Ashland and Grants Pass areas; (2) the particulate matter emission offset ratio was increased to 1.2 pounds of reduction in existing emissions for every one pound of new emissions; (3) additional source-testing and continuous emissions monitoring were required; and (4) numerous definitions were revised and others were added which defined source operating parameters.

However, during EPA's review of the 1989 submittal, several problems were discovered. These included numerous emission limitations which did not have specified averaging times, the definitions for certain terms critical to enforcement of the new emission limitations were unacceptable and several other definitions were inconsistent with EPA requirements and with ODEQ definitions in other rules.

In response to EPA's comments on the 1989 submittal, ODEQ corrected the deficient sections except for -015(3)(c) and resubmitted them on November 15, 1991. Deficiencies in the 1989 submittal were corrected by the 1991 submittal in the following manner: (1) OAR 340-30-010 was corrected by revising the definition of "modified Source" to refer to Oregon's statewide definition of "major modification" in their new source review rules. This clarified the

distinction between potential and actual emissions. (2) OAR 340-30-010(23) which defines "offset" was revised to clarify that emissions of one pollutant cannot be traded for emissions of another pollutant. (3) OAR 340-30-010(2) which defines "average operating opacity" was revised to specify an averaging time. (4) OAR 340-30-010(8) and OAR 340-30-021(1)(b) which defined "design capacity" and its associated standard were deleted due to problems with enforcement of the standard. (5) The definitions for "fuel moisture content by weight greater than or less than 20 percent" defined in OAR 340-30-010 (12) and (13) were revised to add a test method. (6) The definition of "particulate matter" defined in OAR 340-30-015 was revised to specify a test method and averaging time. (7) OAR 340-30-015 (2) and (3)(b) were revised for clarification and enforceability purposes. (8) The exemption for "wet plumes" contained in OAR 340-30-021(1)(b) was deleted from the 1989 version because the test method associated with the veneer dryer emission limitations address measurement of a wet plume. In addition, OAR 340-30-045, which previously contained compliance schedules, was deleted from the regulations. Compliance dates for the revised emission limitations were added to the individual emission standard regulations.

The 1989 and the 1991 submittals also made the following changes to the Division 30 Rules: (1) The applicability of the rules was expanded to include the La Grande PM-10 nonattainment area. (2) Section -050, which requires the monitoring of PM-10 emissions and other parameters was added. This requirement is applicable to the wood products industries. (3) Section -115, which requires a dual fuel feasibility study for large wood-waste boilers in the Medford-Ashland AQMA was added and (4) Sections 200 to 230, new rules for controlling particulate matter emissions specific to the La Grande PM-10 nonattainment area, were added.

EPA is therefore, proposing to approve the November 15, 1991, submittal except for sections -015(3)(c) and -111. At this time, EPA is not taking any action on the revision to these sections. As 340-30-015(3)(c) is currently written, the rule is not approvable according to section 173(c)(1) of the Clean Air Act because it allows for emission credits to be based on actual and allowable emissions. Action on OAR 340-30-015(3)(c) and OAR 340-30-111 (Emission Offset) will be taken when Oregon submits a comprehensive SIP revision to their New Source Review rules as required by the CAA of 1990.

III. Summary of Action

EPA is today soliciting public comment on its proposed approval of revisions to the State of Oregon Implementation Plan for OAR 340 Division 30 (Specific Air Pollution Control Rules for Areas With Unique Air Quality Control Needs) -005, -010, -012, -015 (except for (3)(c)), -021, -025, -030, -040, -043, -044, -045, -046, -050, -055, -060, -065, -067, -115, -200, -205, -210, -215, -220, -225, and -230.

EPA's action today does not in any manner constitute an approval of a specific PM-10 nonattainment planning requirement applicable to the PM-10 nonattainment areas in Oregon affected by these rules. In addition, EPA is proposing not to take action on OAR 340-30-015(c) and OAR 340-30-111.

The above revisions to the State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and other State Regulations) were made to support Oregon's PM-10 Nonattainment Area control strategy(ies) required by, among other things, Sections 110 and 172 of the CAA, 42 U.S.C. 7410 and 7502. The Division 30 regulations target industrial sources in the Grants Pass, Medford-Ashland, and La Grande PM-10 nonattainment areas in the State of Oregon. However, these industrial source control measures are not the sole PM-10 control measures relied upon to demonstrate attainment of the PM-10 NAAQS is these areas nor are they accompanied with a demonstration of timely attainment in the affected areas. Accordingly, this action does not contain a determination that the specific requirement that the State of Oregon submit provisions assuring that reasonably available control measures or "RACM" (including reasonably available control technology of "RACT" are implemented in these areas no later than December 10, 1993 has been met nor does it analyze the specific attainment needs for the three nonattainment areas. See sections 172(c)(1) and 189(a) of the CAA. The adequacy of the industrial source regulations to achieve the expected emission reductions will be evaluated during EPA's review of the PM-10 attainment plan for each of the three areas.

Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted in triplicate, to the address listed in the front of this notice. Public comments postmarked by December 9, 1992 will be considered in the final rulemaking action taken by EPA.

IV. Administrative Review

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

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

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

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

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

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for permanent waiver for Table 2 and 3

revisions. OMB has agreed to continue to temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. §§ 7401–7671q.

Dated: September 30, 1992.

Dana A. Rasmussen,

Regional Administrator.

[FR Doc. 92–27125 Filed 11–6–92; 8:45 am]

BILLING CODE 6560–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[PP Docket No. 92–468] FCC 92–468

Encryption Technology for Satellite Cable Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; notice of Inquiry.

SUMMARY: This Notice of Inquiry ("Notice") initiates an inquiry into encryption technology for satellite cable programming. The Notice responds to a request from members of Congress for the Commission to review efforts to develop an additional source of decoder modules compatible with the current de facto industry standard in the C-band and to examine the feasibility of ensuring that compatible decoder modules, regardless of manufacturer, be eligible for authorization through the Direct Broadcast Satellite Authorization Center run by General Instrument Corporation. The inquiry also addresses related technological issues, such as the feasibility and utility of a standard decoder interface to work with multiple encryption systems and the implications for encryption technology of the apparent trend toward digital video transmissions.

DATES: Comments must be received on or before December 23, 1992; reply comments must be received on or before January 7, 1993.

ADDRESSES: Comments and reply comments may be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Levy, Office of Plans and Policy, (202) 653–5940.

SUPPLEMENTARY INFORMATION: This inquiry is the Commission's third examination of encryption technology for satellite cable programming. Satellite cable programming is defined in the Communications Act as "video programming which is transmitted via satellite and which is primarily intended for direct receipt by cable operators for their retransmission to cable subscribers." The Commission's earlier encryption technology findings are in Report in General Docket No. 86–336, 2 FCC Rcd. 1669 (1987) 52 FR 10136, March 30, 1987, Second Report in Gen. Docket No. 86–366, 3 FCC Rcd. 1202 (1988) 53 FR 9701, March 24, 1988, and Report in General Docket No. 89–78, 5 FCC Rcd. 2710 (1990) 55 FR 18388, May 2, 1990.

Currently, all major cable networks use satellite distribution and 14 local commercial television signals also are transmitted by American satellite carriers. These satellite feeds deliver programming to cable system headends, other commercial subscribers, and individual households. The de facto industry encryption standard adopted by the programmers is known as Videocipher II (VC II). General Instrument Corporation (GIC) controls patent rights to VC II technology and, up to now, has been the sole licenser of it. Recently, some VC II patent rights became available to Titan Corporation, which has announced plans to produce competing but compatible decoder modules and has indicated its desire to make use of the DBS Center. GIC operates the DBS Center, which the programmers use to authorize their home satellite dish customers to receive programming each month.

The inquiry seeks comment on the prospects for "intra-VC II" competition and on the operation of the DBS Center, in order to identify the technical and contractual considerations that would need to be addressed if a programmer should wish to use the DBS Center to authorize non-GIC VC II decoders. This will make it possible to assess the impact on GIC and on other programmers of using the DBS Center to authorize another manufacturer's decoders and to determine the feasibility of this use of the DBS Center.

In its 1990 encryption report, the Commission affirmed its continuing interest in encryption technology developments. Pursuant to that commitment, the inquiry seeks information on encryption technologies that might compete with the VC II, both those that are available today and those likely to develop, particularly those exploiting the possibilities inherent in all-digital transmissions.

In a related matter, the Commission denied a request by the Consumer Satellite Coalition (CSC) for an inquiry/hearing into GIC's patent licensing and other business practices, but granted CSC's request for consideration of a standard decoder interface. The Commission will treat the CSC petition as an informal comment in this proceeding.

The complete text of this Notice of Inquiry is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452–1422, 1919 M Street, SW., room 246, Washington, DC 20554.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–27131 Filed 11–6–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1152 and 1201

[Ex Parte No. 274 (Sub-No. 26)]

Abandonment Proceedings: Elimination of the Revenue and Cost Data for All Years Prior to the Base Year Period

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to modify its regulations by eliminating the requirement that applications for abandonment include revenue and cost data for the two calendar years and that part of the current year occurring prior to the filing of the application. With the Commission now placing primary importance on the future projected operations of the line segments, past operating results have less impact in the decision making process. The elimination of this data would reduce the reporting burden placed upon the railroads. The traffic and shipper data for the prior two calendar years and the partial current year will be retained, as these are necessary data in arriving at an informed decision.

DATES: Comments on the proposed changes are due on or before December 24, 1992.

ADDRESSES: Send an original and 10 copies of comments, referring to Ex Parte No. 274 (Sub-No. 26), to: Office of

the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: William T. Bono, (202) 927-5720, James R. Wells, (202) 927-6238, (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: In September 1987, the Railroad Accounting Principles Board (RAPB) issued its final report recommending, among other things, that the Commission adopt a forward looking analytical approach to abandonment proceedings. This recommendation resulted in the Commission's inclusion of the forecast year concept. The forecast year projection is the primary operating information upon which the Commission relies in this decision making process. With the significant importance thus placed on future operations, the usefulness of revenue and cost data for past time periods is greatly diminished. Therefore, we are proposing to remove references requiring the inclusion of the prior two calendar years' and a separate showing of the available portion of the current year's revenue and cost data from the regulations. The traffic and shipper data requirements of the regulations will remain unchanged.

This rulemaking also proposes other amendments to the regulations that would correct references to annual reports and cost formulas that are no longer current. It further proposes to eliminate the separate calculation of subsidy year operating results included in Exhibit I, which is now required to be filed with the application for abandonment.

If the amendments to the abandonment regulations are adopted as proposed, the Branch Line Accounting System (BLAS), 49 CFR part 1201, subpart B, proposed here would also require revision. The revisions will amend the collection of data under BLAS to correspond with the proposed revisions of the reporting periods for revenue and cost data now required to be submitted in applications for abandonment.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

If adopted, the revised regulations proposed here would lessen the burden imposed on small entities by both data collection and reporting requirements.

List of Subjects

49 CFR Part 1152

Administrative practice and procedure, Conservation, Environmental protection, National forests, National parks, National resources, National trails system, Public lands—grants, Public lands—rights-of-way, Railroads, Recreation and recreation areas, Reporting and recordkeeping requirements.

49 CFR Part 1201

Railroads, Reporting and recordkeeping requirements.

Decided: October 28, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett concurred with a separate expression. Vice Chairman McDonald dissented. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1152 and 1201 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

1. The authority citation for part 1152 continues to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; and 49 U.S.C. 10321, 10362, 10505, 10903, 10904, 10905, 10906, 11161, and 11163.

2. Section 1152.22 is proposed to be amended by revising the introductory text of paragraph (c) to read as follows, by removing and reserving paragraph (d)(2), by removing paragraphs (d)(5) and (d)(6) and by removing and reserving paragraph (h)(2):

§ 1152.22 Contents of application.

* * * * *

(c) *Service provided.* Description of the service performed on the line for the base year (as defined by § 1152.2(c)) including the actual:

* * * * *

(d) * * *

(2) [Reserved]

* * * * *

(h) * * *

(2) [Reserved]

* * * * *

3. Section 1152.32 is proposed to be amended by revising the fourth sentence of the introductory text; and the seventh sentence of the introductory text of paragraph (g) to read as follows:

§ 1152.32 Calculation of avoidable costs.

* * * Those expenses apportioned under this section shall be derived from the latest Form R-1 Annual Report for Class I railroads, filed with the ICC prior to the conclusion of the subsidy year, and company records for all other non-Class I railroads, and assigned to the branch according to the procedures set forth in § 1152.33 of these regulations. * * *

* * * * *

(g) * * * The total of the repair and maintenance accounts, all accounts designated XX-XX-42, and depreciation shall be divided into time-related costs and mileage-related costs on the basis of 50 percent time and 50 percent mileage for repairs, and 60 percent time and 40 percent mileage for depreciation. * * *

* * * * *

4. Section 1152.33 is proposed to be amended by revising paragraphs (c)(1)(i)(A)(*1*) and (c)(1)(i)(B)(*1*) to read as follows:

§ 1152.33 Apportionment rules for the assignment of expenses to on-branch costs.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) * * *

(*1*) Multiply the total amounts in these accounts (from the R-1 Annual Report, Schedule 410) by 69 percent which is the ratio of train-mile and running expenses,

* * * * *

(B) * * *

(*1*) Multiply the total amounts in these accounts by 31 percent, which is the ratio of terminal expenses,

* * * * *

§ 1152.36 [Amended]

5. Section 1152.36 is proposed to be amended by removing the column "Projected subsidy year operations" from the chart at the end of this section.

PART 1201—RAILROAD COMPANIES

6. The authority citations at subpart A and subpart B are removed and a new authority citation for part 1201 is added to read as follows:

Authority: 5 U.S.C. 553, and 49 U.S.C. 11166, and Sec. 205(e)(1)(A), Regional Rail Reorganization Act of 1973, Pub. L. 93-236, 87 Stat. 985, 994, as amended by sec. 309 of the Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 92-210, 90 Stat. 31, 57.

7. In subpart B, number 920 is proposed to be amended by removing the first and second sentences of paragraph (a)(1) and adding, in their place, a new sentence to read as follows:

920 Collection of data.

(a) * * *

(1) The collection of data shall commence at such time as is necessary to complete the revenue and cost computations for the time periods required in § 1152.22(d) of the National Subsidy Standards. * * *

* * * * * *

[FR Doc. 92-27079 Filed 11-6-92; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB 83

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Endemic Puerto Rican Ferns

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Thelypteris inabonensis* (no common name), *T. verecunda* (no common name), and *T. yaucoensis* (no common name) to be endangered pursuant to the Endangered Species Act (Act) of 1973, as amended. These three species, all terrestrial ferns endemic to the island of Puerto Rico, are currently restricted to two or three localities each. The ferns are threatened by habitat destruction and modification, forest management practices, hurricane damage, restricted distribution, and possible collection. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Thelypteris inabonensis*, *T. verecunda*, and *T. yaucoensis*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 8, 1993. Public hearing requests must be received by December 24, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Southeast Regional Office, suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera at the Caribbean Field Office address (809/851-7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/331-3583).

SUPPLEMENTARY INFORMATION:

Background

Thelypteris inabonensis was described by Dr. George R. Proctor in 1985 from specimens collected at the headwaters of the Rio Inabón, Toro Negro Commonwealth Forest, in the municipality of Ponce (Proctor 1989). In 1988, it was found near the summit of Cerro Rosa in the municipality of Ciales. No other localities for this species are known (Proctor 1991). *T. inabonensis* is rare and localized in wet montane forest at elevations of 1120 to 1250 meters. In the Toro Negro Commonwealth Forest, this species grows along a stream bank in sierra palm (*Prestoea montana*) forest, on the east bank of the Rio Inabón. Thirty-four plants were counted in this locality (Proctor 1991). At the Cerro Rosa locality, approximately 12 plants were found in deeply-shaded humus near the summit area. The habitat of the second locality is montane mossy forest with sierra palms.

Thelypteris inabonensis is a terrestrial fern with an erect and slender (ca 0.5 cm diameter) rhizome that is clothed at the apex with numerous dark lustrous brown, and densely setulose scales. The fronds are erect-arching, up to 60 cm long. The stipes are 5–10 cm long and clothed with grayish acicular hairs, and they have numerous spreading scales similar to those of the rhizome. This species differs from all other Puerto Rican thelypterid ferns due to the presence of scales and acicular hairs on the rachis. The blades are narrowly elliptic and up to 55 cm long. The species has 25–30 pairs of sessile pinnae, rounded at the apex, and with up to 7 pairs of simple veins. the tissue has numerous short, erect, acicular hairs and lacks glands. The small sori, which have a densely long-ciliate indusium, are located dorsally on veins.

The size and the beauty of this fern makes the species very attractive to collectors. Although *T. inabonensis* occurs within the Toro Negro Commonwealth Forest (managed by the Commonwealth Department of Natural Resources) where collecting is not permitted, the areas are difficult to monitor. Also, the sheltered areas of the Rio Inabón were lightly affected by Hurricane Hugo in 1989. The fact that only 46 individuals are known to exist in only two localities, makes the species vulnerable to the loss of any one individual.

Thelypteris verecunda was described by Dr. George R. Proctor in 1985 from specimens collected from Barrio Charcas in the municipality of Quebradillas (Proctor 1989). Two other localities are known for the species: Barrio Bayaney, Hatillo, and Barrio Cidral in the municipality of San Sebastian. In Quebradillas and San Sebastian, only one individual has been collected from each locality. In Barrio Bayaney, about 20 plants are known (Proctor 1988). All these localities are privately owned lands.

Thelypteris verecunda is a terrestrial fern with creeping, 2–3 mm thick rhizomes. The apex bears brown scales, 1 mm long and 0.5 mm wide. The species has dimorphic fronds which are clothed throughout with star-shaped hairs, and numerous, much longer simple hairs. The stipes or stalks are 1–1.5 cm long and 0.4–0.5 mm thick. The sterile blades are oblongate, 2.5–4 cm long, 1.5–2 cm broad, truncate at the base, and rounded at the broadly lobed apex. The sterile blades have 2–4 pairs of short-stalked, round-oblong, 0.8–1 cm long and 0.4–0.6 cm wide, entire pinnae with simple veins. The fertile blades are linear to attenuate, 13–15 cm long, 1.2–1.8 cm broad, and truncate at the base. The rachis bears a minute proliferous bud below the apex. These blades have 15–20 pairs of mostly rounded-oblong to oval, 0.3–0.4 cm wide, short-stalked, entire pinnae. The small and erect sori, which have a minute indusium, are located in an inframedial position, and bear a tuft of long, white and simple hair.

The fact that this fern is very rare and is known from only three sites makes the species extremely vulnerable to the loss of any individual. Clearing or development of these privately owned areas would result in elimination of the species. The species could also be an attractive item for collectors.

Thelypteris yaucoensis was described by Dr. George R. Proctor in 1984 from specimens collected at Barrio Rubias in the municipality of Yauco (Proctor 1989). This species is also known from two other localities: Los Tres Picachos, Barrio Toro Negro in Ciales; and the summit area of Pico Rodadero, Barrio Sierra Alta in the municipality of Yauco. Approximately 65 individuals have been estimated in these 3 sites (Proctor 1988). This endemic fern is very rare, and is located in humus on steep, shaded rocky banks and ledges at high elevations (850–1200 meters) (Proctor 1989).

Thelypteris yaucoensis is a terrestrial fern with an erect, 0.5 mm thick rhizome, which is bearded at the apex with a tuft of brown, narrowly to broadly lance-attenuate, 5–8 mm long scales. The few fronds are 44–52 cm long and have lustrous light brown, glabrous, 18–22 cm

long stipes. The blades are narrowly deltate to oblong, 25–31 cm long, 10–14 cm broad, acuminate at the apex, and truncate at the base. The rachis, costae, and costules are more or less stellate-puberulous on both sides. This fern has 13–15 pairs of alternate, irregularly linear-oblong pinnae. The pinnae are mostly simple, with 5–6 pairs of veins and are all free, except for the lowest pairs which are more or less joined. This fern has inframedial to medial sori, which are ciliated with minute forked and 3-branched hairs, and have small indusia often hidden by the sporangia.

T. yaucoensis is also located on privately owned land. Clearing or development of the areas would result in the elimination of the species. This species could be very attractive for collectors. The extreme rarity of this fern makes the species very vulnerable to the loss of any individual.

Thelypteris inabonensis, T. verecunda, and *T. yaucoensis* were recommended for Federal listing in an interagency workshop held to discuss candidate plants in September 1988. The species were subsequently included in category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in the notice of review for plant taxa published in the **Federal Register** of February 21, 1990 (55 FR 6184). *Thelypteris inabonensis* and *Thelypteris verecunda* are considered to be critical plants by the Natural Heritage Program of the Puerto Rico Department of Natural Resources.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Thelypteris inabonensis* Proctor, *Thelypteris verecunda* Proctor, and *Thelypteris yaucoensis* Proctor, are as follows:

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

Destruction and modification of habitat may be one of the most significant factors affecting the numbers and distribution of these three endemic ferns. Two of the species (*T. verecunda,* and *T. yaucoensis*) are known only from privately owned lands. The clearing or development of these areas would result in the elimination of these species. Although *T. inabonensis* occurs within a Commonwealth forest (Toro Negro Commonwealth Forest), the small populations may be affected by forest management practices and collection. These three fern species are rare, extremely restricted in distribution, and very vulnerable to habitat destruction or modification. The extreme rarity of these species makes the loss of any one individual even more critical.

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

Taking for these purposes has not been a documented factor in the decline of these fern species. However, these three species may be very attractive for collectors.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of these species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Thelypteris inabonensis, T. Verecunda,* and *T. yaucoensis,* and are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, enhance their protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Probably the most important factor affecting *T. inabonensis, T. verecunda,* and *T. yaucoensis* in Puerto Rico is their limited distribution. The area where *Thelypteris inabonensis* is found was lightly damaged in 1989 by Hurricane Hugo.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Thelypteris inabonensis, T. verecunda,* and *T. yaucoensis* as endangered. The extreme rarity of these ferns makes the species very vulnerable to the loss of any plant. Only two populations of *T. inabonensis,* and three populations of *T. verecunda* and *T. yaucoensis* are known to occur. Collecting may severely impact these populations. Habitat modification can alter microclimatic conditions, and thus may dramatically affect these three very rare and endemic fern species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent at this time due to the potential for taking. The number of populations of *Thelypteris inabonensis, T. verecunda,* and *T. yaucoensis* are sufficiently small that vandalism and collection could seriously affect the survival of these species. The size and the beauty of these ferns makes the species very attractive for collectors. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities.

Take is regulated by the Act with respect to endangered plants only in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands, or (2) removal, cutting, digging up, damaging, or destroying in knowing violation of any State law or regulation, including State criminal trespass law. With the exception of only one site occurring in a Commonwealth forest, all of the sites for these ferns are found on privately owned land, and currently receive no protection under Commonwealth law. While listing under the Act increases the public's awareness of a species' plight, it can also increase the desirability of a species to collectors. As stated above, these ferns are very limited in distribution and numbers and are potentially desirable to collectors. Discovery and elimination of any of these plants could compromise the survival of the species. These ferns also could be adversely affected by increased visits to, and associated trampling of, occupied sites as a result of critical habitat designation.

In the unlikely event that Federal involvement should occur in the areas where these plants occur, the Service believes that such involvement can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitats. Protection of

these species' habitats will also be addressed through the recovery process and, if there is Federal involvement, through the Section 7 consultation process.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for these three fern species, as discussed above. Federal involvement that would adversely affect the species is not anticipated.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for these three species will ever be sought or issued, since the species are not known to be in cultivation and are uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

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

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Thelypteris inabonensis, T. verecunda,* and *T. yaucoensis;*

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

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject areas and their possible impacts on any of these three species.

Final promulgation of a regulation on *Thelypteris inabonensis, T. verecunda,* and *T. yaucoensis* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

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

References Cited

Proctor, G.R. 1988. Status of Puerto Rican Endemic Ferns. List presented in the Interagency Workshop on candidate plant species. Caribbean Islands National Wildlife Refuge, Boquerón, Puerto Rico.

Proctor, G.R. 1989. Ferns of Puerto Rico and the Virgin Islands. The New York Botanical Garden, Bronx, New York. 389 pp.

Proctor, G.R. 1991. Puerto Rican Plant Species of Special Concern; Status and Recommendations. Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales, San Juan, Puerto Rico. 196 pp.

Author

The primary author of this proposed rule is Ms. Marelisa Rivera, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Thelypteridaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Thelypteridaceae—Marsh fern family:						
*	*	*	*	*	*	
Thelypteris inabonensis	None	U.S.A. (PR)	E	NA	NA	
*	*	*	*	*	*	
Thelypteris verecunda	None	U.S.A. (PR)	E	NA	NA	
*	*	*	*	*	*	
Thelypteris yaucoensis	None	U.S.A. (PR)	E	NA	NA	
*	*	*	*	*	*	

Dated: October 8, 1992.

Bruce Blanchard,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 92–27132 Filed 11–6–92; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 920937–2238]

Threatened Fish and Wildlife; Steller Sea Lions

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

ACTION: Proposed rule and request for comments.

SUMMARY: With few exceptions, vessel entry within 3 nautical miles (nm) of listed Steller sea lion rookery sites in the Bering Sea, Aleutian Islands, and Gulf of Alaska is currently prohibited. This prohibition was established concurrent with the listing of the Steller sea lion (*Eumetopias jubatus*) as a threatened species under the Endangered Species Act to aid the species' recovery. NMFS now proposes, for the purpose of safe navigational transit, to authorize two additional exceptions to this prohibition. These exceptions would allow vessels transiting: (1) Akutan Pass at Cape Morgan, Akutan Island, and (2) between Clubbing Rocks and Chirni Island to approach the rookeries no closer than 1 nm. NMFS has determined that (1) these navigational routes have been used traditionally by vessels; (2) vessels transiting these routes that maintain a minimum distance of 1 nm from sea lion rookeries and remain in continuous transit, are not likely to have a significant adverse affect on Steller sea lions; and (3) there are no reasonable and acceptable alternatives for navigation in the vicinity of these locations. Comments are requested on whether NMFS should allow vessel transit as proposed, and whether additional navigational routes near rookeries should be excepted.

DATES: Comments on this proposed rule must be received by December 24, 1992.

ADDRESSES: Comments should be mailed to Dr. Steven Zimmerman, National Marine Fisheries Service, Protected Resources Management Division, P.O. Box 21668, Juneau, AK 99802. A copy of the Environmental Assessment is available upon request.

FOR FURTHER INFORMATION CONTACT: Susan Mello, NMFS Alaska Region, Protected Resources Management Division, (907) 586–7235.

SUPPLEMENTARY INFORMATION:

Background

Via an emergency interim rule (55 FR 12645, April 5, 1990), NMFS listed the Steller (northern) sea lion as a threatened species under the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543). Coincident with the listing, NMFS, to aid in the species' recovery, by regulation: (1) Prohibited, with limited exceptions, vessel entry within 3 nm of listed Steller sea lion rookeries; (2) prohibited shooting at or near Steller sea lions; and (3) reduced the allowable level of take incidental to commercial fisheries in Alaskan waters (50 CFR 227.12).

The emergency rule included an exception for transit through rookery buffer zones at 12 listed straits, passes, and narrows. During the comment period on the interim rule, one commenter objected to this navigational transit exception and recommended that a showing of necessity and advanced approval should be required. NMFS published a proposed rule (55 FR 29792, July 20, 1990), which did not propose a navigational transit exception from the final rule. NMFS did not propose an exception because of the presumed availability of alternative routes and the buffer zone exception for emergency situations. No comments were received on that portion of the proposed rule, and the final rule did not include an exception for navigational routes (55 FR 49204, November 26, 1990).

Subsequent to these actions, NMFS promulgated additional protection measures for Steller sea lions. Under the Magnuson Fishery Conservation and Management Act, NMFS has prohibited groundfish trawling within 10 nm of listed Steller sea lion rookeries year round, and within 20 nm of five Steller sea lion rookeries during the Bering Sea and Aleutian Islands winter pollock roe fishery (57 FR 2683, January 23, 1992).

Proposal

During the North Pacific Fishery Management Council's January 1992 meeting, a representative of the fishing industry testified that the 3-nm no-entry zone around the Akutan/Cape Morgan sea lion rookery created a significant safety hazard to fishing vessels. In a subsequent letter to the Alaska Regional Director, the same representative requested that NMFS reevaluate the specific navigational routes contained in the emergency interim rule.

In response to this request, NMFS evaluated the need for, and the likely effects of, reestablishing navigational routes. Based on review of the available information, NMFS has preliminarily determined that exceptions for the purposes of navigational transit are warranted at Akutan Pass and in the

vicinity of Clubbing Rocks. For this reason, as authorized under 50 CFR 227.12(b)(5), the Assistant Administrator granted a temporary exemption for this activity (see 57 FR 47276, October 15, 1992).

In addition, NMFS proposes to amend existing regulations to provide for a permanent exemption for navigational transit through two buffer zones. Vessels will be required to maintain a minimum distance of 1 nm from the rookery boundaries, and may only engage in continuous navigational transit through the buffer zones. A limited exception to allow transit through these two areas under these conditions is not anticipated to cause significant disruption to sea lion behavior. Vessel traffic has occurred traditionally through waters encompassed by these two buffer zones, particularly by vessels operated out of Dutch Harbor, Sand Point, and King Cove. Alternative routes entail significantly increased safety hazards for vessel operators and crew, and are viewed by NMFS as not being acceptable alternatives. Therefore, NMFS is proposing an exemption to the buffer zones at Cape Morgan, Akutan Island and Clubbing Rocks for navigational transit.

Classification

Based on an environmental assessment (EA) prepared by NMFS, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined, that this action will not have a significant impact on the environment. As a result of this determination, an environmental impact statement was not prepared. A copy of the EA may be obtained from the address listed above (see **ADDRESSES**).

NMFS has determined that the proposed action is likely to cause only minimal disruption in normal sea lion behavior and is not likely to imperil the survival or impede the recovery of Steller sea lions. The Agency has conducted a consultation under section 7 of the ESA which concluded that implementation of this exemption for navigation through the buffer zones in these two locations is not likely to jeopardize the continued existence of Steller sea lions. The maintenance of a 1-nm minimum approach within the navigational routes, in conjunction with other existing regulations, is expected to provide adequate protection for Steller sea lions.

The Assistant Administrator has determined that the proposed rule is not a "major rule" that requires a regulatory impact analysis under E.O. 12291. The proposed rule is expected to reduce economic costs to a sector of the public.

The General Counsel for the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities since the rule would result in reduced economic costs for vessel operators. As a result, a regulatory flexibility analysis was not prepared.

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

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

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: November 2, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR part 227 is proposed to be amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.12, a new paragraph (b)(6) is added to read as follows:

§ 227.12 Steller sea lion.

* * * * *

(b) * * *

(6) *Navigational transit.* Paragraph (a)(2) of this section does not prohibit a vessel in transit from passing through a strait, narrows, or passageway listed in this paragraph if the vessel proceeds in continuous transit and maintains a minimum of 1 nautical mile from the rookery site. The listing of a strait, narrows, or passageway does not indicate that the area is safe for navigation. The listed straits, narrows, or passageways include the following:

Rookery	Straits, narrows, or pass
Akutan Island	Akutan Pass between Cape Morgan and Unalga Island.
Clubbing Rocks	Between Clubbing Rocks and Cherni Island.

* * * * *

[FR Doc. 92-27134 Filed 11-6-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 920372-2072]

Pacific Coast Groundfish Fishery

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

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) requests public comments on a proposed rule recommended by the Pacific Fishery Management Council to establish a flexible starting date for the "regular" season for the fixed gear (nontrawl) sablefish fishery off California, Oregon, and Washington, and to establish 72-hour closed periods both immediately before and immediately after the regular season. The flexible starting date for the regular season would precede by 3 days the earliest sablefish fixed gear season opening in the Gulf of Alaska. This action is intended to preserve traditional fishing opportunities for many smaller Pacific coast nontrawl vessels by preventing premature achievement of the nontrawl harvest guideline by intensive early-season fishing by large nontrawl vessels prior to the opening of the Gulf of Alaska sablefish fishery. It is necessary to maintain stability in the nontrawl sablefish fishery, to extend the Pacific coast nontrawl sablefish fishery to the maximum extent practicable, and to minimize the safety risks that would arise for operators of small vessels if compelled to fish in severe winter weather to assure themselves a portion of the annual harvest guideline.

DATES: Comments on the proposed rule must be received on or before December 7, 1992.

ADDRESSES: Comments on the proposed rule should be sent to Mr. Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or Mr. E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213.

Copies of the draft Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from the Pacific Fishery Management Council, 2000 SW. First Avenue, suite 420, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, Rodney R. McInnis at 310-980-4040, or the Pacific Fishery Management Council at 503-326-6352.

SUPPLEMENTARY INFORMATION: The Pacific Fishery Management Council

(Council) makes recommendations to the Secretary for the management of fisheries under the Pacific Coast Groundfish Fishery Management Plan (FMP). This action is being taken under procedures for addressing socio-economic issues set forth at section III.B.(c) of the appendix to 50 CFR part 663. An analysis of the biological, social, and economic impacts of the proposed opening of the nontrawl sablefish fishery is contained in the draft EA/RIR that is available from the Council (see **ADDRESSES**).

Background

Sablefish constitutes one of the most valuable components of the groundfish fisheries off the coast of Washington, Oregon, and California (the Pacific coast) and Alaska. Although taken in both trawl and nontrawl fisheries, sablefish is the principal species harvested by the nontrawl fleet. In the past, with some exceptions in the years 1990–1992, the nontrawl sablefish fishery has been regulated under an annual quota that was available beginning on January 1.

Nontrawl fishing effort in the Pacific coast sablefish fishery has increased dramatically during recent years, resulting in shorter seasons. Contributing to this effort increase, especially early in the year, has been participation by large nontrawl vessels that traditionally fish off Alaska. Delayed openings of the Alaska nontrawl sablefish fishery have resulted in a 3–4 month "window" where operators of nontrawl fishing vessels can fish in the Pacific coast sablefish fishery prior to leaving for Alaska. The result has been rapid achievement of the Pacific coast sablefish harvest guideline and preemption of fishing opportunities for many smaller, local vessels that fish only the west coast fishery. These vessel operators have traditionally relied on a longer season that has given them the ability to focus fishing effort during periods of better weather. Now competition for the available harvest forces smaller vessel operators to take greater risks fishing in severe winter weather. Furthermore, increased early season fishing effort for sablefish encourages the harvest of sablefish nearer to the late winter spawning season when flesh quality and product yield may not be as good as later in the season.

Prior to the 1991 season, the Council recommended that the Pacific coast nontrawl regular sablefish season begin April 1, concurrent with the expected April 1 opening of the Gulf of Alaska nontrawl sablefish seasons. NMFS approved and implemented the Council's recommendation. However, the North Pacific Fishery Management Council subsequently recommended that the Alaska seasons begin on May 15, an action also approved by NMFS. This circumstance resulted in the continuation of early and intense effort in the Pacific coast fishery. The entire nontrawl sablefish quota for the Pacific coast was taken by July 1, 1991. The fishery was closed until September 27, 1991, when a 300-pound trip limit was established by an emergency rule (56 FR 50063; October 3, 1991). The closure caused severe financial hardship for many nontrawl vessel operators who depend on small landings of sablefish as a steady source of revenue throughout the year.

In 1992, the nontrawl regular season opening date was delayed from April 1 until May 12 (3 days before the Alaska opening) by emergency regulation. Despite this delay, the nontrawl sablefish quota was taken in a little over 2 weeks, with the regular season closed on May 27, 1992. Had the fishery opened April 1, as scheduled, the season would have been even shorter due to the added participation of many vessels before leaving for the May 15 Alaska season opening.

This discussion applies only to the regular sablefish season. Limited sablefish landings are also allowed both before and after the regular season. These landings are regulated under restrictive trip landing and frequency limits, classified as "routine" management measures at 50 CFR 663.23(c)(1)(i)(E), allowing bycatch in non-sablefish fisheries and some very small directed sablefish nontrawl fisheries, mainly off California. The regular season is characterized by the absence of trip landing or frequency limits, except for those necessary to restrict the harvest of undersized (juvenile) sablefish.

The Council's recommendation for a flexible starting date for the regular season, based on the earliest opening of the Gulf of Alaska nontrawl sablefish fisheries, accomplishes what the Council intended to do in 1991, which was to achieve the desired balance among competing interests in the nontrawl fishery, and coordinate the beginning of the regular season for sablefish off the Pacific coast with the openings in Alaska.

The Council considered public comment in several alternative dates at its September and November 1991 meetings, and considered the advice of its advisory subpanel, Scientific and Statistical Committee, Groundfish Management Team, and the public. The Council concluded that by linking the beginning of the Pacific coast regular season with the earliest season opening in the Gulf of Alaska, effort would be distributed more evenly between the two areas, counteracting the recent trend towards increased effort in the Pacific coast area early in the year. Nontrawl fishermen who traditionally fish only the Pacific coast would be afforded longer seasons, be able to fish in better weather, and sablefish yield and quality could be improved.

Proposed Action

The Council recommends that the regular season for the Pacific coast sablefish nontrawl fishery begin 3 days prior to the earliest scheduled openings of any regulatory district in the Gulf of Alaska. All regulatory districts in the Gulf of Alaska normally open at the same time in order to distribute fishing effort throughout the Gulf of Alaska, thus avoiding adverse biological and social impacts (wastage, gear conflicts, grounds preemption, etc.) that could occur as a result of allowing the entire fishing fleet to concentrate sequentially in each area. The Council is recommending nearconcurrent openings of the Pacific coast and Gulf of Alaska nontrawl sablefish fisheries for some of the same reasons. The Council chose to begin the Pacific coast regular season 3 days prior to the earliest Gulf of Alaska season opening because it presumed that those boats that choose to fish in Alaska will have departed for Alaska at least 3 days prior to the opening date. In 1992, the Gulf of Alaska nontrawl sablefish fisheries opened on May 15.

In order to facilitate enforcement of trip landing and frequency limits that are effective prior to and after the regular nontrawl sablefish season, the Council also recommended that the taking and retention, possession, or landing of sablefish be prohibited for 72 hours immediately prior to and immediately after the regular season. This will prevent fishermen from getting a head start on the regular season and stockpiling sablefish taken under the trip limit regime until the regular season begins, and will facilitate the transition from unlimited landings to landings regulated by trip limit following the close of the regular season.

This proposed rule provides a procedure by which the NMFS Northwest Regional Director will announce each year the date on which the regular nontrawl sablefish season off the Pacific Coast will begin once the earliest Gulf of Alaska opening date is known. Normally, the Regional Director will include the regular season opening

date and the dates of the initial 72-hour closure in the "Notice of Annual Harvest Specifications and Management Measures" published in the **Federal Register** at the beginning of each fishing year, but may announce the date in a separate **Federal Register** notice, at a later date, if the Alaska season opening changes following publication of the "Notice of Annual Harvest Specifications and Management Measures."

Classification

This proposed rule is published under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1810 *et seq.*, and was prepared at the request of the Council. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), initially has determined that this proposed rule is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an Environmental Assessment and Regulatory Impact Review (EA/RIR) for this proposed rule and concluded that there will be no significant impact on the human environment. You may obtain a copy of the EA/RIR from the Council (see **ADDRESSES**).

Biological Opinions under the Endangered Species Act, pertaining to the groundfish fishery, concluded that implementation of the FMP would not jeopardize the continued existence of any of the species considered. This proposed rule will not have impacts that differ from those discussed in the Biological Opinions, and NMFS has concluded that further consultations are not necessary.

The Assistant Administrator initially has determined that this is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The proposed action will not have a cumulative effect on the economy of $100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse impacts are anticipated on competition, employment, investments, productivity, innovation, or competitiveness of U.S.-based enterprises. This conclusion is based on the EA/RIR prepared for this rule, which indicates that the gross revenues generated from the various sectors of the nontrawl gear sablefish fishery are not expected to differ substantially as a result of setting a season opening date tied to the opening of the fixed gear sablefish fishery off Alaska. The net effect will be to distribute the impact of the fishery along the coast. It does not guarantee a specific share to any particular user group.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. This proposed rule would spread the impact of the fishery along the coast without encouraging additional effort early in the year by vessels that have traditionally fished in other areas. As a result, the smaller nontrawl fishing vessels that have traditionally fished only the Pacific coast should have a greater opportunity for a longer season. The operators of larger vessels that have the capability to fish either off the Pacific coast or off Alaska will continue to be free to choose their primary area of activity. The resulting changes in the annual gross incomes of the majority of these smaller and larger vessels due to this proposed rule is believed to be insignificant.

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

The Council has initially determined that this proposed rule is consistent to the maximum extent practicable with the approved coastal zone management programs of the States of Washington, Oregon, and California. This initial determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

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

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and recordkeeping requirements.

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

Dated: November 3, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 663 is proposed to be amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for Part 663 continues to read as follows:

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

2. In § 663.23, paragraph (b)(2) is revised to read as follows:

§ 663.23 Catch restrictions.

* * * * *

(b) * * *

(2) *Nontrawl sablefish.* (i) The regular season for the nontrawl sablefish fishery will begin each year at 0001 hours on the date 3 days before the earliest opening of the nontrawl sablefish fishery regulated under 50 CFR part 672 (Gulf of Alaska Groundfish).

(ii) Taking and retaining, possession, or landing of sablefish taken by nontrawl gear is prohibited for 72 hours immediately preceding the beginning of the regular season for the nontrawl sablefish fishery.

(iii) Taking and retaining, possession, or landing of sablefish taken by nontrawl gear is prohibited for 72 hours immediately following the closure of the regular season.

(iv) The Assistant Administrator will publish a notice in the Federal Register announcing the dates on which the regular season for the nontrawl sablefish fishery will begin and end. For the periods before and after the regular season, trip landing and/or frequency limits may be imposed under paragraph (c) of this section to allow for bycatch of sablefish in other fisheries, and to allow very small directed fisheries with nontrawl gear. Trip limits to protect juvenile sablefish also may be imposed, at any time of year, under paragraph (c) of this section.

* * * * *

[FR Doc. 92-27067 Filed 11-6-92; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 217
Monday, November 9, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Agricultural Science and Technology Review Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), as amended, the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: Agricultural Science and Technology Review Board (hereafter referred to as the Review Board).

Date: December 8-9, 1992.

Time: December 8-8:30 a.m.-5 p.m., December 9-8:30 a.m.-5 p.m.

Place: U.S. Department of Agriculture, 221-A Administration Building, Washington, DC 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: Identify and rank high priority and emerging technological issues that are significant to American agriculture.

Contact Person for Agenda and More Information: Ms. Marshall Tarkington, Executive Secretary, Science and Education Advisory Committees, room 432-A Administration Building, U.S. Department of Agriculture, Washington, DC 20250-2200; Telephone (202) 720-3684.

Done in Washington, DC, this 30th day of October 1992.

Clare I. Harris,

Associate Administrator.

[FR Doc. 92-27118 Filed 11-6-92; 8:45 am]

BILLING CODE 3410-22-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 604]

Resolution and Order; Ted Davis Manufacturing, Inc. Plant (Voice Coil Motors) Oklahoma City; OK

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port Authority of the Greater Oklahoma City Area, grantee of FTZ 106, filed with the Foreign-Trade Zones Board (the Board) on October 24, 1991, requesting special-purpose subzone status at the voice coil motor plant of Ted Davis Manufacturing, Inc., in Oklahoma City, Oklahoma, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790-50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status

Ted Davis Manufacturing, Inc., Oklahoma City, OK

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act) the Foreign-Trade Zone Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Wherease, an application from the Port Authority of the Greater Oklahoma City Area, grantee of Foreign-Trade Zone 106, for authority to establish a special-purpose subzone (for activity that involves no inverted tariffs) at the voice coil motor manufacturing plant of Ted Davis Manufacturing, Inc., in Oklahoma City, Oklahoma, was filed by the Board on October 24, 1991 (FTZ Docket 66-91, 56 FR 56186, 11-1-91); and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that the proposal is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 106B) at the Ted Davis Manufacturing, Inc., plant in Oklahoma City, Oklahoma, at the location described in the application, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790-50808, 10-8-91), including § 400.28.

Signed at Washington, DC, this 29th day of October, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-27141 Filed 11-6-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: By a decision dated October 28, 1992, the Binational Panel affirmed in part and remanded in part the Department of Commerce's determination on remand in the antidumping duty administrative review made by the U.S. Department of

Commerce, International Trade Administration, Import Administration, respecting Replacement Parts for Self-Propelled Bituminous Paving Equipment From Canada (Secretariat File No. USA-90-1904-01). A copy of the complete panel decision is available from the FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules, as amended.

Background

This decision is the third by this binational panel in this matter. The panel was formed after a Request for Panel Review was filed by Northern Fortress Ltd., the Canadian manufacturer, on June 14, 1990. The binational panel issued decisions on May 24, 1991 and May 15, 1992, each of which affirmed in part and remanded in part the determinations made by the investigating authority in this matter. In its current decision, dated October 28, 1992, the binational panel again affirmed in part and remanded in part Commerce's determination on remand.

Panel Decision

On the basis of the administrative record, the applicable law, the written submissions of the parties, and a hearing held on October 9, 1992, at which all parties were heard, the Panel remanded Commerce's determination that the country of origin of 31 allegedly non-Canadian parts could not be verified because that determination was not supported by substantial evidence, and affirmed Commerce's determination in all other respects.

The Panel directed Commerce to submit a revised determination consistent with the Panel opinion no later than 30 days from the date of issuance of the opinion (by November 27, 1992).

Dated: November 4, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92-27140 Filed 11-6-92; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of panel.

SUMMARY: By a decision dated October 30, 1992, the Binational Panel reviewing the final results of the fourth administrative review of the countervailing duty order respecting Live Swine from Canada, made by the Department of Commerce, International Trade Administration, Import Administration, 56 FR 28531 (June 21, 1991) affirmed in part and remanded in part the Department's determination made on remand on July 20, 1992 (Secretariat File No. USA-91-1904-03). A copy of the complete Panel decision is available from the FTA Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country either review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review whether it conforms with the antidumping or countervailing duty of the law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules, as amended.

BACKGROUND: This is the second binational panel decision in this matter, which was initiated on July 8, 1991, when the Canadian Pork Council and its members (CPC) filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. In addition, the Government of Canada (Canada) and the Government of Quebec (Quebec) filed Requests for Panel Review in this matter.

In its first decision, dated May 19, 1992, the panel remanded in part to Commerce for reconsideration several determinations regarding various federal and provincial agricultural subsidy programs and a determination not to create a separate subclass for weanlings. Commerce provided a determination on remand to the Panel on July 20, 1992. That determination on remand was challenged by the Canadian complainants on August 10, 1992, in accordance with the Rules.

PANEL DECISION: Based upon the submissions of the participants and an oral hearing held on September 10, 1992, the Panel majority again remanded Commerce's determinations on remand that the federal Tripartite program and the Province of Quebec's Farm Income Stabilization Insurance program conferred countervailable benefits and ordered the agency to determine that the programs did not confer such benefits. The panel majority also instructed Commerce to determine that weanlings constituted a distinct subclass of live

swine and ordered the agency to calculate a separate rate for weanlings. The panel majority affirmed Commerce's determination on remand in all other respects.

The panel chairman filed a partial dissenting opinion.

Dated: November 4, 1992.

James R. Holbien,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92-27139 Filed 11-6-92; 8:45 am]

BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

Florida Keys National Marine Sanctuary Advisory Council; Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Florida Keys National Marine Sanctuary Advisory Council; notice of open meeting.

SUMMARY: The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

TIME AND PLACE: November 23, 1992 from 9 a.m. until adjournment. The meeting location will be at the Hawks Cay Resort, Mile Marker 61, Route 1, Duck Key, Florida.

AGENDA: 1. Discussion of management alternatives.

PUBLIC PARTICIPATION: The meeting will be open to public participation and the last thirty minutes will be set aside for oral comments and questions. Seats will be set aside for the public and the media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Pamala James at (305) 743-2437 or Ben Haskell at (202) 606-4016.

Dated: November 3, 1992.

Frank W. Maloney,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program.

[FR Doc. 92-27110 Filed 11-6-92; 8:45 am]

BILLING CODE 3510-08-M

COMMISSION ON CIVIL RIGHTS

Amendment to Notice of Public Meeting of the Florida State Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida State Advisory Committee announced at FR Doc 92-26242, 57 FR-49063, will convene at 1 p.m. to 5 p.m. on Tuesday, November 24, 1992, at the Metro-Dade Government Center, 111 NW. First Avenue, 18th floor conference room, Miami, Florida 33128. (This amendment is change of address only.)

Dated at Washington, DC, October 30, 1992.

Carol-Lee Hurley,

Regional Programs Coordination Unit.

[FR Doc. 92-27036 Filed 11-6-92; 8:45 am]

BILLING CODE 6335-01-M

COMMISSION OF FINE ARTS

Commission of Fine Arts; Meeting

The Commission of Fine Arts' next meeting is scheduled for 3 December 1992 at 10:00 AM in the Commission's offices in the Pension building, suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 29 October 1992.

Charles H. Atherton,

Secretary.

[FR Doc. 92-27035 Filed 11-6-92; 8:45 am]

BILLING CODE 6330-01-M

COMMISSION ON NATIONAL AND COMMUNITY SERVICE

Serve-American (K-12) Clearinghouse

AGENCY: Commission on National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Commission on National and Community Service is announcing the availability of a project solicitation for proposals to establish a Serve-America (K-12) clearinghouse and the amount of funding available for the project.

ADDRESSES: All requests for the solicitation must be made in writing to the Commission on National and Community Service, 529 14th Street, suite 452, Washington, DC 20045, Attention: Kim Goodman.

FOR FURTHER INFORMATION CONTACT: Ruby Anderson, Serve-America Program Officer, or Mike Kenefick, Senior Grants Officer, at (202) 724-0600.

SUPPLEMENTARY INFORMATION: The Commission on National and Community Service, established by the National and Community Service Act of 1990, as amended, seeks to promote the development of a major national community service movement, focused initially on youth. Toward this end, the Commission provides program funds, technical assistance, and other services to States, organizations and institutions to develop and expand community service opportunities. In addition, the Commission is authorized to support this goal through the establishment of a clearinghouse. Up to $2 million, over a three-year period, has been allocated by the Board of Directors of the Commission for a Serve-America (K-12) clearinghouse.

The Commission announces the availability of a project solicitation to establish a Serve-America (K-12) clearinghouse. As a major disseminator of technical advice on K-12 service-learning programs and practices, the clearinghouse will identify and distribute program information—including instructional materials and program descriptions—through various media. The clearinghouse is expected to gain access to significant literature, practices and curriculum within the K-12 service-learning field; maintain a database; possess an understanding of critical needs and issues of the field; provide appropriate technical advice to a broad and diverse audience; and develop and implement dissemination programs that will deliver appropriate materials and services to the field.

Public and private non-profit agencies with extensive experience in community service, adult volunteer and partnership programs, youth service, intergenerational service programs, and working with at-risk youth are eligible to submit proposals. Collaborations that take advantage of existing information systems, data bases and organizational capabilities are strongly encouraged.

The solicitation will be available on or about December 1, 1992. Qualified organizations should submit written requests for copies of the solicitation to

the Commission on National and Community Service, 529 14th Street, NW., suite 452, Washington, DC 20045, Attention: Kim Goodman.

Dated: November 1, 1992.

Catherine Milton,

Executive Director.

[FR Doc. 92-27071 Filed 11-6-92; 8:45 am]

BILLING CODE 6820-BA-M

DEPARTMENT OF DEFENSE

Department of the Army

Military/Industry Mobile Home Symposium

AGENCY: Military Traffic Management Command.

ACTION: Notice of open meeting.

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-462), announcement is made of the following committee meeting:

Name of the Committee: Military/Industry Mobile Homes Symposium

Date of the Meeting: 3 December 1992

Time: 0930-1530 hours

Place: Headquarters, Military Traffic Management Command, Falls Church, VA

Proposed Agenda:

1. The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

2. All interested persons desiring to submit topics to be discussed, should contract the Commander, Military Traffic Management Command, ATTN: MTPP-M, 5611 Columbia Pike, Falls Church, VA 22041-5050, (703) 756-1600 between 0800-1630 hours. Topics to be discussed should be received on or before 5 November 1992.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-27033 Filed 11-6-92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of 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 December 9, 1992.

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 5624, Regional Office Building 3, Washington, DC 20202-4651.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 708-5174.

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 3, 1992.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Extension
Title: Lender's Interest and Special Allowance Request and Report
Frequency: Quarterly
Affected Public: State or local governments; businesses or other for-profit; non-profit institutions
Reporting Burden:
Responses: 42,176
Burden Hours: 84,352
Recordkeeping Burden:
Recordkeepers: 10,544
Burden Hours: 18,452
Abstract: This information collection is used to pay interest and special allowance to holders of Part B loans. The Department will use the information to enhance departmental reporting for budgetary projections, program planning and evaluation, departmental audits and financial and statistical reporting on Part B programs.

Office of Special Education and Rehabilitative Services

Type of Review: Existing
Title: Complaint Procedures under Part B of the Individuals with Disabilities Education Act
Frequency: Weekly
Affected Public: State or local governments
Reporting Burden:
Responses: 2,158
Burden Hours: 14,027
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This paperwork burden is associated with the development of complaint processing procedures for a State or subgrantee participating in the program funded under Part B of the Individuals with Disabilities Education Act.

Office of Special Education and Rehabilitative Services

Type of Review: Existing
Title: LEA Application under Part B of the Individuals with Disabilities Education Act
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 15,376
Burden Hours: 445,904
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by State or Local Education Agencies to apply for funding under the Individuals with Disabilities Act. The Department will use the information to make grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement

Title: Performance Report for Early Intervention Program for Infants & Toddlers with Disabilities Program
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 57
Burden Hours: 969
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: States are required to submit an annual report to the Secretary on the status of early intervention programs operating in the State for eligible children. The Department uses the information to assess the accomplishments of project goals and effective program management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Personnel Employed and Needed to Provide Special Education and Related Services for Children and Youth with Disabilities
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 11,484
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This collection will be used by State and local educational agencies to collect data on personnel employed and needed in the provision of special education and related services. The Department will use this information to report to Congress.

[FR Doc. 92-27040 Filed 11-6-92; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).
ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2)(i) it intends to renew on a noncompetitive basis a grant to the National Academy of Sciences (NAS) to support the Committee on DOE Radiation Epidemiological Research Programs. This Committee provides independent scientific advice to the DOE Office of Epidemiology and Health Surveillance on the current status and future direction of its research activities. The renewal award is to be in the amount of $178,000 to continue the project for a year. NAS was chartered by Congress more than 100 years ago to conduct scientific research for the Government. NAS, therefore, has a unique chartered responsibility and capability to reach consensus positions in the scientific community. Eligibility for this award is, therefore, restricted to NAS.

FOR FURTHER INFORMATION CONTACT: Tammy Green, EH-42, Office of Epidemiology & Health Surveillance, U.S. Department of Energy, Washington, DC 20585, (301) 903-5090.

Issued in Oak Ridge, TN, on October 29, 1992.

Don Sloan,

Acting Director, Procurement & Contracts Division, Field Office, Oak Ridge.

[FR Doc. 92-27143 Filed 11-6-92; 8:45 am]
BILLING CODE 6450-01-M

Alaska Power Administration

Snettisham Project Power Marketing Plan

AGENCY: Alaska Power Administration, Department of Energy.
ACTION: Final marketing plan and call for application for power.

SUMMARY: The final marketing plan for the sale of power and energy from the Snettisham Project is published herein together with a discussion of the issues raised during the public comment process. Alaska Power Administration (APA) published the Draft Marketing Plan—Snettisham Project in the **Federal Register** on August 11, 1992, (57 FR 35794) to start the process to establish new allocations of power and long-term power sales contracts for the Snettisham Project. The new contracts will replace contracts which have been in place since 1973 and which expire at the end of December 1993. The Marketing Plan and the new contracts are fully compatible with the Department of Energy legislative proposal on APA divestiture which was submitted to Congress in June 1992.

DATES: Applications for an allocation of both energy and associated capacity must be received in APA's Headquarters office by the close of business on December 30, 1992. See section II for further details.

ADDRESSES: Applications for an allocation should be submitted to Mr. Robert Cross, Alaska Power Administration, 2770 Sherwood Lane #2B, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Willis, Alaska Power Administration, 2770 Sherwood Lane #2B, Juneau, AK 99801, (907) 586-7405.

SUPPLEMENTARY INFORMATION:

I. Background and Remaining Process

APA published the Draft Marketing Plan—Snettisham Project in the **Federal Register** on August 11, 1992 (FR 57 35794). A public information and comment forum was held August 20, 1992, but no one other than APA representatives attended. Written comments were accepted until September 11, 1992. Two written comments were received, one specific and one general. A discussion of the comments is presented in section III.

APA has considered the comments received and is publishing herein the Final Marketing Plan—Snettisham Project. This **Federal Register** notice also formally invites requests for allocations of Snettisham power and energy in accordance with the plan.

Activities remaining in the process of establishing new allocations of power and long-term power sales contracts are:

1. Complete an Environmental Assessment of the action as required by Department of Energy NEPA guidelines.
2. Allocate power and energy in accordance with the plan.
3. Sign long-term power sales contracts with customers receiving allocations.

II. Application Procedures

APA formally invites requests for allocations of energy and associated capacity from the Snettisham Project from qualified applicants. Applicants should advise APA's Administrator in writing of their requests. Requests must be received at the APA Headquarters office at 2770 Sherwood Lane #2B, Juneau, AK 99801, by the close of business on December 30, 1992. Applicants must identify the energy (kWh) and capacity (kW) for each class of service desired. Requests must also be accompanied by a statement outlining the applicant's intended activities under Integrated Resource Planning or an equivalent process as described in section IV.F.

III. Discussion of Public Comments and Summary of Revisions

APA received two written comments on the Draft Marketing Plan.

1. Comment: APA should include the global environmental effects of electrical generation and internalization of the political and environmental costs of generation alternatives, in the Integrated Resource Plan (IRP) required in the marketing criteria.

Discussion: APA feels that it is appropriate to require preparation of an

IRP as a condition of receiving power from the Snettisham Project. This will ensure that both supply and demand side alternatives are considered in future planning. APA also feels that it is appropriate to keep the requirement for IRP general so as to allow the flexibility to tailor an IRP to the particular needs of the preparer.

2. Comment: APA's proposed schedule seems realistic, although the Alaska Public Utilities Commission will have to approve any new power sales agreement between a utility and APA.

Discussion: APA has the flexibility in its schedule to allow for this type of review.

The only revisions to the Draft Marketing Plan were editorial in nature.

IV. Final Marketing Plan—Snettisham Project

A. General

APA is establishing new allocation of power and long-term power sales contracts for the Snettisham Project. The new contracts will replace contracts which have been in place since 1973 and which expire at the end of December 1993.

The Snettisham Project authorization (Section 204 of the 1962 Flood Control Act, 76 Stat. 1194) establishes the general criteria for marketing project power and energy. The marketing plan will describe APA's implementation policies for these legislated marketing criteria.

APA also plans an Environmental Assessment on the marketing plan and allocations to be finalized before new contracts are agreed to. The Environmental Assessment will meet requirements of the Department of Energy's NEPA guidelines.

Presently, APA sells a small amount of power to the State of Alaska Department of Fish and Game (ADF&G) for its Snettisham Hatchery. These power sales are under a long-term agreement between APA and ADF&G. This plan and subsequent allocations will not alter availability of power for sale to ADF&G.

B. Background

APA markets power and energy from the Snettisham Project. The Long Lake and Crater Lake divisions of the Snettisham Project were authorized by Congress in 1962. Construction of the Long Lake phase began in 1967 and was completed in 1973. The original power sales contracts signed at that time had 20-year terms and expire at the end of 1993. The Juneau area had a surplus of hydroelectric energy until 1985 when area loads exceeded the hydro resource. Construction of the Crater Lake phase of the project began in 1984 with commercial power production beginning in 1991. With the completion of the Crater Lake phase, the Juneau area once again has a surplus of hydroelectric energy.

The Juneau area is electrically isolated and retail customers are served by a single utility, Alaska Electric Light and Power (AELP). About 80% of the area energy requirement comes from purchase of Snettisham energy with the remaining 20% provided by AELP's own generation. While AELP is the only utility customer purchasing Snettisham energy, APA also markets a small amount of energy to the State of Alaska for operation of a fish hatchery at Snettisham.

Studies have been made in the past of the feasibility of interconnecting the various load and generation centers in Southeast Alaska with themselves and ultimately with Canada to the north and south. These interties are technically feasible, but significant portions have not yet proven to be economically feasible.

An important consideration in the Juneau area electrical power market is the potential for the addition of relatively large industrial loads. A number of mining projects are in various stages of development in the Juneau area. The Green's Creek mine began operation in 1988 on Admiralty Island, and studies are currently proposed to determine the feasibility of connecting this project to the area power grid. Echo Bay Exploration is pursuing permits for development of two large mining projects in the area, one of which, the A–J mine, is located only four miles from downtown Juneau. Other mining projects are also being proposed which could conceivably be linked to the Juneau electrical system. The energy requirements for these potential mining loads would greatly exceed the present hydroelectric surplus.

In 1986, the Federal government formally proposed the sale of the Snettisham Project. A purchase agreement for Snettisham was negotiated and signed with the State of Alaska in 1989. The divestiture of this Federal project is awaiting Congressional approval.

The Marketing Plan and the subsequent power sales contracts will be compatible with the divestiture proposal. Under terms of the Snettisham Purchase Agreement, the new owners will take over APA's rights and obligations under the new power sales contracts when they acquire ownership of the project.

C. Objectives

The objectives of this plan are to establish the criteria and process for allocating power from APA's Snettisham Project in accordance with provisions set forth in the Snettisham Project authorizing legislation. Such provisions include instructions to market power so as to (1) encourage the most widespread use; (2) do so at lowest possible rates to consumers consistent with sound business principles; and (3) give preference to Federal agencies, public bodies, and cooperatives. An additional objective of this plan is to facilitate implementation of the divestiture if and when Congress approves the measure.

D. Marketable Resources

The entire output of Snettisham Project power and energy is available for allocation, less government camp loads, losses, and service to ADF&G. The energy production and generation capacity available for allocation is:

Firm energy, 275 gWh
Secondary energy, 50 gWh
Capacity, 72 mW

Firm energy is the energy available from the project in approximately 9 out of 10 years. In most years energy will be available over and above the firm amount. This energy is secondary or surplus energy. On the average, APA expects to have 50 gWh of secondary energy available, though in some years there will be more and in some years there will be less. In unusually dry years there will be no secondary energy at all.

APA proposes to offer allocations of firm energy, secondary energy, and capacity, but will consider proposals for other classes of service.

APA offers no commitment which would require APA to purchase energy or capacity.

E. Market Area and Allocation Policies

The market area for power from the Snettisham Project is the Juneau area, i.e. the AELP service area. Proposals have been advanced for interconnecting other communities in Southeast Alaska or large mining loads with the Juneau market area. The following section describes APA policy for allocating Snettisham power and energy in these circumstances.

1. Policy for Possible Service to Additional Southeast Alaska Communities

Power and energy in excess of the needs of the Juneau market area will be available for exports to other communities. No power will be allocated for such exports absent firm

plans to finance and build the necessary transmission facilities.

2. Policy for Preference in Sale of Power to Public Bodies and Cooperatives

In allocating power surplus to Juneau's needs, APA will give preference to public bodies and cooperatives who conduct utility-type operations.

3. Policy for Possible Service to Existing and Proposed Mining Development in the Juneau Vicinity

Power and energy in excess of the needs of the Juneau market area will be considered available to serve major industrial customers. APA prefers to serve such customers through AELP rather than as direct service customers of APA.

APA encourages such customers to work directly with AELP so that AELPL's request for allocation of Snettisham power and energy will reflect their needs. APA will consider requests for allocations from major industrial customers only if it is demonstrated that service through the utility is infeasible.

4. Policy to Allocate Power in the Event That Requests for Allocation Exceed the Supply

The mining developments, most notably the proposed A–J development and Green's Creek, including its expansion, could easily result in requests substantially exceeding the available supply. In that case, there will need to be determinations as to what part of and which of the proposed mining loads would receive Snettisham power and energy.

APA intends that such determinations be made as a part of the AELP process for deciding AELP's allocation request, that the determinations fully consider impacts to other classes of AELP customers, and that AELP's request for allocations demonstrates that proposed AELP service to one or more mining developments works to the benefits of other classes of AELP customers.

5. Policy to Allocate Power in the Event the Available Supply Exceeds Requests for Allocation of the Resource

If there is addition firm energy/capacity remaining after the initial allocations, APA will offer firm surplus energy for allocation in accordance with the marketing plan. If firm surplus energy is available, it will probably be a declining amount over time.

F. Integrated Resource Plans

Requests for allocations must be accompanied by a statement outlining the requestor's intended activities under Integrated Resource Planning (IRP) or an equivalent process. A requirement for developing and updating IRP or equivalent plans will be incorporated into the long-term power sales contracts. IRP or an equivalent process is one which gives equal consideration to supply and demand side alternatives and methods of funding the appropriate investments to assure high levels of efficiency in all energy uses.

G. Contract Arrangements

Entities receiving an allocation of Snettisham resources will be offered an electric service contract for the allocated resources based on this plan. Contracts will be for a period of up to 20 years and will include "take or pay" provisions or other arrangements subject to the integrity of the project and availability of the resource.

Delivery points will be on the Snettisham transmission system. Normal delivery will be made at Snettisham transmission voltages. Deliveries may continue to be made at subtransmission voltages at powerplant, substation, and tap locations where contractors already have systems operating at such lower voltage levels.

All costs for delivery of energy beyond the Snettisham transmission system will be the responsibility of the contractor.

H. Reallocations

Resources made available for marketing because an allocation has been reduced or withdrawn may be administratively reallocated by APS's Administrator without further public process.

Robert J. Cross,

Administrator.

[FR Doc. 92–27144 Filed 11–6–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF85–311–002]

Acme POSDEF Partners, L.P.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

November 2, 1992.

On October 23, 1992, Acme POSDEF Partners, L.P. (Applicant), of 2101 Webster Street, suite 1550, Oakland, California 94612, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in the City of Stockton, California. The facility consists of two circulating fluidized bed boilers and an extraction/condensing steam turbine generator. Extraction steam generated by the facility is sold to nearby industrial users for use in the manufacturing of pencil slats and fireplace logs, in the refining of sugar, and in food processing. The primary energy source is bituminous coal. The maximum net electric power production capacity of the facility is approximately 44 MW.

The certification of the facility was originally issued to Cogeneration National Corporation (CNC) on March 17, 1987 (38 FERC ¶ 62,259 (1987)). The instant recertification is requested by the Applicant to reflect the transfer of the project ownership from CNC to the Applicant. All other facility characteristics remain unchanged as described in the previous certification.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the Applicant. Protests will be considered by the Commission in eterming the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–27044 Filed 11–6–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP93–24–000, et al.]

Natural Gas Pipeline Co., of America, et al., Natural Gas Certificate Filings

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

1. Natural Gas Pipeline Co. of America

[Docket No. CP93–24–000]

October 30, 1992.

Take notice that on October 20, 1992, Natural Gas Pipeline Company of

America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP93-24-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a sale for resale of natural gas to Wheeler Gas Company (Wheeler) and associated facilities, located in Wheeler County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural proposes to abandon the sale to Wheeler, which is a division of High Plains Natural Gas Company (High Plains) in response to a request from High Plains in a letter dated June 2, 1992. It is stated that High Plains has made arrangements for alternate gas supplies to serve Wheeler, and that the sale and facilities are no longer needed. It is asserted that the latest agreement between Natural and Wheeler expired December 1, 1990. It is further asserted that Natural continued to serve Wheeler until May 13, 1992, at which time Wheeler disconnected its facilities from those of Natural. Natural states that the abandonment would have no impact on any customers other than Wheeler, and the abandonment is proposed because Wheeler has disconnected its facilities.

Comment date: November 20, 1992, in accordance with Standard Paragraph F at the end of the notice.

2. Northwest Pipeline Corp.

[Docket No. CP93-33-000]

October 30, 1992.

Take notice that on October 28, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP93-33-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to partially abandon its existing facilities at the Echo Lake Sales Tap in Snohomish County, Washington and to construct and operate ungraded replacement facilities at the Echo Lake Sales Tap in order to accommodate an anticipated increase in its firm delivery obligations to Washington Natural Gas Company (Washington Natural) at that point, under the authorization issued in Docket No. CP82-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Northwest's existing Echo Lake facilities at MilePost 1394 on Northwest's mainline consist of one-inch taps, one-inch regulator and associated piping with the capability of delivering up to approximately 138 MMBtu's per day, at a pressure of 150 psig, to the associated metering facilities owned and operated by Washington Natural at the site.

It is further stated that Washington Natural has requested that Northwest upgrade its pressure regulation facilities at the Echo Lake Sales Tap to allow delivery of at least 640 MMBtu's per day at that point under an existing firm Rate Schedule TF-1 transportation service agreement in order to accommodate the growth of Washington Natural's distribution requirements in the Echo Lake area.

To provide the requested additional delivery capacity at the Echo Lake Sales Tap, Northwest proposes to replace the existing one-inch regulator and associated piping with a new, upgraded one-inch regulator and piping which will have a design capacity of approximately 1,008 MMBtu's per day at 150 psig. It is estimated that the total cost of upgrading the Echo Lake regulation facilities is approximately $5,534, including the $100 cost of removing the old facilities. Under the terms of the facilities reimbursement provisions of Northwest's Rate Schedule TF-1, Northwest proposes to install and pay for the proposed, upgraded Echo Lake facilities, since the estimated revenues associated with the projected incremental load at this point will exceed the estimated incremental cost-of-service for the upgrade.

Comment date: December 14, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Natural Gas Pipeline Co. of America

[Docket No. CP93-28-000]

October 30, 1992.

Take notice that on October 28, 1992, Natural Gas Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP93-28-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to add three (3) new sales delivery points for the account of Iowa Electric Light and Power Company (Iowa Electric) under the blanket certificate issued in Docket No. CP82-402-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that it proposes to add three (3) new sales delivery points (in order to reassign volumes of sales gas to such points) in Poweshiek, Tama and Grundy Counties, Iowa for the account of Iowa Electric, and existing DMQ-1 customer of Natural. Natural also states the subject points are existing transportation delivery points to Iowa Electric. Natural further states that Iowa Electric is not requesting as increase in its total contract sales level, initial Iowa Electric will shift the required volumes from its currently certificated sales receipt points.

Comment date: December 14, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Co.

[Docket No. CP91-1618-004]

November 2, 1992.

Take notice that on October 19, 1992, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam, Houston, Texas 77252, filed in Docket No. CP91-1618-004 a petition to amend an order issued on December 27, 1991, in Docket No. CP91-1618-000 pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon in-place approximately 415 feet of pipeline on the Pittsfield Delivery segment of the Massachusetts Lateral Replacement, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Tennessee states that the Commission's order issued on December 27, 1991, in Docket No. CP91-1618-000 authorized, among other things, to replace approximately .54 miles or 4.5-inch pipeline on its Pittsburgh Delivery Line in Berkshire County, Massachusetts with 8-inch pipeline. Tennessee proposes to abandon in place approximately 415 feet of this 4.5-inch pipeline instead of removing it as originally planned due to the difficulty in complying with certain environmental requirements and safety concerns.

Comment date: November 23, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Northern Natural Gas Co.

[Docket No. CP93-31-000]

November 2, 1992.

Take notice that on October 27, 1992, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124-1000, filed in Docket No. CP93-31-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to upgrade an existing delivery point to accommodate increased natural gas deliveries to Peoples Natural Gas Company, Division of UtiliCorp United (Peoples) under its blanket certificate issued in Docket No.

CP82-401-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it requests authority to upgrade an existing delivery point to accommodate natural gas deliveries under Northern's currently effective rate schedule(s). Northern further states that Peoples has requested increased service for the 1992-1993 heating season due to the growth of residential and commercial markets served by Peoples in this area. Northern says that the estimated volumes proposed to be delivered to Peoples at the Pine City, Minnesota town border station (TBS) #1A is expected to result in an increase in Northern's peak day deliveries of 206 Mcf per day and 31,859 Mcf on an annual basis.

Northern indicates that it would relocate the TBS facilities about 200 feet from the existing location. Northern further indicates that this relocation is necessary due to access problems. Northern states that the existing location of the TBS is located in an area where a snow plow must be used in the winter months to gain access to the TBS. Northern says that the proposed location would facilitate easier access for operating and maintenance purposes. Peoples has stated that its current firm entitlement is sufficient to serve this increased load.

Northern states that the estimated cost to relocate and upgrade the delivery point would be $15,000. Peoples would make a contribution in aid of construction of the total amount.

Comment date: December 17, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-27048 Filed 11-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA93-1-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

November 3, 1992.

Take notice that on October 30, 1992, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

37th Revised Sheet No. 4

Alabama-Tennessee proposes that this filing be made effective January 1, 1993. According to Alabama-Tennessee, the instant filing represents its annual purchased gas cost adjustment required under § 154.305 of the Commission's Regulations.

Alabama-Tennessee states that this filing contains the rates and charges applicable to its jurisdictional business. Specifically, 37th Revised Sheet No. 4 reflects a net increase of $0.3918 in the demand component of Alabama-Tennessee's CD and G Rate Schedules; a net decrease of $0.4456 in the gas component of its CD and G Rates Schedules; a net decrease of $0.4256 in the gas component of its SG Rate Schedule; and a net decrease of $0.9413 in the gas component of its I Rate Schedule.

Alabama-Tennessee has requested such waivers of the Commission's Regulations that may be necessary to permit the tariff sheet to become effective as proposed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before November 19, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-27049 Filed 11-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-2-20-000 & TM93-5-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

November 3, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on October 29, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective December 1, 1992

16 Rev Sheet No. 21
16 Rev Sheet No. 22
12 Rev Sheet No. 25
16 Rev Sheet No. 26
16 Rev Sheet No. 27
16 Rev Sheet No. 28
16 Rev Sheet No. 29

Algonquin states that the revised tariff sheets listed above are being filed as part of Algonquin's regularly scheduled Quarterly Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment pursuant to sections 17 and 39, respectively, of the General Terms and Conditions of its FERC Gas Tariff. Algonquin further states that the demand sales rate contained herein reflects a reduction of $0.007 per MMBtu and the sales commodity rate reflects a decrease of $8.1462 per MMBtu from those rates contained in Algonquin's out-of-cycle Quarterly PGA as accepted on October 16, 1992 in Docket Nos. TQ92-5-20-000 *et. al.*

Algonquin also states that this filing is based upon the latest available rates from Algonquin's various suppliers and reflects the purchases and sales that are projected to be made during the three month period beginning December 1, 1992 as well as the underlying costs of standby and transportation and compression services from Texas Eastern Transmission Corporation and Transcontinental Gas Pipe Line Corporation.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-27045 Filed 11-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-14-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

November 3, 1992.

Take notice that on October 30, 1992, Algonquin Gas Transmission Company ("Algonquin"), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed primary and alternate tariff sheets reflecting proposed changes in its FERC Gas Tariff, pursuant to section 4 of the Natural Gas Act and part 154 of the Commission's Regulations under the Natural Gas Act. Algonquin requests that the Commission accept the primary tariff sheets to become effective on December 1, 1992.

Algonquin states that the primary tariff sheets reflect the implementation of restructured services under Order 636 and would increase annual revenues by approximately $25.7 million. The alternate tariff sheets reflect rates without Order 636 services in place and result in an increase in annual revenues of approximately $34.9 million. The Company asserts that the increased rates are required to provide adequate revenues to recover the test period cost of service, when applied to the related test period quantities.

Algonquin states that copies of its filing have been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 ad 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-27052 Filed 11-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 3, 1992.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on October 30, 1992 certain revised tariff sheets included in appendix A attached to the filing. Such sheets are proposed to be effective November 1, 1992.

ESNG states that the above referenced tariff sheets are being filed pursuant to § 154.308 of the Commission's regulations and §§ 21.2 and 21.4 of the General Terms and Conditions of ESNG's FERC Gas Tariff to reflect changes in ESNG's jurisdictional rates. The increased gas costs in the commodity rate of the instant filing result from adjusting ESNG's rates to reflect the impact of higher prices being paid to producers/suppliers under ESNG's market responsive gas supply contracts. The decreased gas costs in the demand charges and storage charges are due to updating ESNG's pipeline supplier demand rates.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-27055 Filed 11-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-2-24-000]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

November 3, 1992.

Take notice that Equitrans, Inc. (Equitrans) on October 30, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective December 1, 1992.

Forty-First Revised Sheet No. 10
Thirtieth Revised Sheet No. 34

Equitrans hereby submits its regularly scheduled Quarterly Purchased Gas Adjustment filing in accordance with §§ 154.308 and 154.304 of the Commission's Regulations and section

19 of Equitrans' FERC Gas Tariff, Original Volume No. 1.

The changes proposed in this filing to the purchase gas cost adjustment under Rate Schedule PLS is a decrease in the demand cost of $0.0432 per dekatherm (Dth) and a decrease in the commodity cost of $0.3004 per Dth. The purchase gas cost adjustment to Rate Schedule ISS is a decrease of $0.3335 per Dth.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-27051 Filed 11-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-3-25-000]

Mississippi River Transmission Corp; Rate Change Filing

November 3, 1992.

Take notice that on October 30, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing First Revised Eighty-Third Revised Sheet No. 4, and First Revised Forty-Second Revised Sheet No. 4.1 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective November 1, 1992. MRT states that the purpose of the instant filing is to reflect an out-of-cycle purchase gas cost adjustment (PGA).

MRT states that First Revised Eighty-Third Revised Sheet No. 4 and First Revised Forty-Second Revised Sheet No. 4.1 reflect a decrease of 52.57 cents per MMBtu in the commodity cost of purchased gas from PGA rates filed on September 29, 1992 to be effective October 1, 1992, in Docket No. TQ93-1-25-000. MRT also states that since the September 29, 1992 filing date, MRT has experienced changes in purchase and transportation costs for its system supply that could not have been reflected in that filing under current Commission regulations.

MRT states that a copy of the filing has been mailed to each of MRT's jurisdictional sales customers and the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-27047 Filed 11-6-92; 8:45 am]

BILLING CODE 6717-01-M

Mississippi River Transmission Corp.; Rate Change Filing

[Docket Nos. TQ93-2-25-000 and TM93-3-25-000

November 3 1992

Take notice that on October 30, 1992 Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

Tariff sheet	Effective date
2nd Rev. Eighty-Third Revised Sheet No. 4.	December 1, 1992.
2nd Rev. Forty-Second Revised Sheet No. 4.1.	December 1, 1992.
Fourteenth Revised Sheet No. 4A.1.	December 1, 1992.
Eleventh Revised Sheet No. 4A.4.	December 1, 1992.
Tenth Revised Sheet No. 4A.5.	December 1, 1992.
Sixth Revised Sheet No. 4A.6.	December 1, 1992.
Fifteenth Revised Sheet No. 4A.1.	January 1, 1993.
Twelfth Revised Sheet No. 4A.4.	January 1, 1993.
Eleventh Revised Sheet No. 4A.5.	January 1, 1993.
Seventh Revised Sheet No. 4A.6.	January 1, 1993.

MRT states that the instant filing reflects its quarterly purchased gas cost adjustment (PGA), submitted pursuant to § 154.308 of the Commission's Regulations and Paragraph 17.2 of MRT's FERC Gas Tariff, changes in fixed take-or-pay charges incurred from pipeline suppliers. MRT states that the impact of the instant filing on its Rate Schedule CD-1 rates is a decrease of 9.49 cents per MMBtu in the commodity charge from the rate levels established in MRT's last out-of-cycle PGA filed October 30, 1992 to be effective November 1, 1992.

MRT states that a copy of the revised tariff sheets is being mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Lois D. Cashell,

Secretary

[FR Doc. 92-27054 Filed 11-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ93-1-55-000 and TM93-2-55-000]

Questar Pipeline Co.; Rate Change

November 3, 1992.

Take notice that on October 30, 1992, Questar Pipeline Company tendered for filing and acceptance certain revised tariff sheets to its FERC Gas Tariff as follows:

	Proposed effective date
Original Volume No. 1:	
Twenty-Second Revised Sheet No. 12.	December 1, 1992
Twenty-Third Revised Sheet No. 12.	January 1, 1993
Original Volume No. 1-A:	
Ninth Revised Sheet No. 5.	January 1, 1993

	Proposed effective date
Fourth Revised Sheet No. 5A.	January 1, 1993
Original Volume No. 3: Tenth Revised Sheet No. 8.	January 1, 1993

Questar states that the purpose of this filing is to adjust the purchased gas cost under Questar's sale-for-resale Rate Schedule CD-1 effective December 1, 1992, and implement the Gas Research Institute's (GRI) charge authorized in Docket No. RP92-133-000 to be effective January 1, 1993.

Questar states that the Twenty-Second Revised Sheet No. 12 shows a commodity base cost of purchased gas as adjusted of $2.36220/Dth which is $0.46212/Dth lower than the currently effective rate of $2.82432/Dth. The demand base cost of purchased gas as adjusted decreased $0.00246/Dth, from $0.00246/Dth to $0.00000/Dth.

Questar states that the remaining tendered tariff sheets to be effective January 1, 1993, reflect the GRI funding rates of $0.01470/Dth for commodity and a $0.0800/Dth demand charge for 1993.

Questar states that a copy of the filing has been provided to Mountain Fuel Supply Company, its jurisdictional customers, the Utah Public Service Commission and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commisssion's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such protests should be filed on or before November 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-27056 Filed 11-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-15-000]

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

November 3, 1992.

Take notice that on October 30, 1992, Southern Natural Gas Company ("Southern") tendered for filing proposed changes in its FERC Gas Tariff on the tariff sheets listed on appendix A to the filing. The proposed tariff sheets reflect an increase in rates attributable to: (1) An increase in Southern's annual non-gas cost of service, (2) a loss of total throughput, and (3) a change in throughput mix. Southern requested the Commission allow the proposed tariff sheets to become effective December 1, 1992.

Southern states that it has employed the same Straight Fixed Variable methods of cost classification, allocation, and rate design in the development of its proposed rates that it proposed in its previous rate filing in Docket No. RP92-134, and in its restructuring compliance filing of October 1, 1992, in Docket No. RS92-10. These methods are consistent with the utilization of Southern's system and the competitive nature of the markets served by it. Docket No. RP92-134 has been consolidated with Docket No. RS92-10 for purposes of determining all issues other than rate design and cost of service. In an effort to promote efficiency and consistency for all parties affected by the filings, Southern has requested that the Commission also consolidate this proceeding with the proceedings in Docket Nos. RP92-134 and RS92-10.

Southern states that it has submitted in appendix B of its filing an alternative set of tariff sheets that indicate the appropriate level of Southern's rates following implementation of its restructuring plan if the cost of service and throughput proposed in this filing are utilized. If permitted by the Commission, Southern would move into effect the tariff sheets in appendix B when the restructuring plan in Docket No. RS92-10-000 is given effect.

Copies of Southern's filing were served upon all of Southern's jurisdictional purchasers, shippers, and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211). All such petitions or protests should be filed on or before November 10, 1992.

Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-27046 Filed 11-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-3-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

November 3, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing on October 30, 1992 certain revised tariff sheets to Third Revised Volume No. 1 of its FERC Gas Tariff included in appendix A attached to the filing. Such tariff sheets are proposed to be effective October 1, 1992.

TGPL states that the purpose of the filing is to track the decrease in the ACA unit charge included in the cost of certain storage and transportation services purchased by TGPL to render service to its customers under Rate Schedules LSS, SS-2, S-2, FT-NT and TGPL's Niagara Import Point Project-System Expansion (NIPPs-SE) firm transportation service. The tracking filing is being made pursuant to section 4 of TGPL's Rate Schedule LSS, section 4 of TGPL's Rate Schedule SS-2, section 26 of TGPL's General Terms and Conditions, section 4 of TGPL's Rate Schedule FT-NT, and sections 8.01(i) of TGPL's Rate Schedules X-314, X-315 and X-317.

Included in Appendices B through F attached to the filing are explanations of the ACA tracking changes and details regarding the computation of the charges under Rate Schedules LSS, SS-2, S-2, FT-NT and the NIPPs-SE service respectively.

TGPL states that copies of the filing are being mailed to each of its LSS, SS-2, S-2, FT-NT and NIPPs-SE customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-27050 Filed 11-6-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ93-1-56-000]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

November 3, 1992.

Take notice that Valero Interstate Transmission Company ("Vitco"), on October 30, 1992 tendered for filing the following tariff sheet as required by Orders 483 and 483-A containing changes in Purchased Gas Cost Rates pursuant to such provisions:

FERC Gas Tariff, First Revised Volume No. 2

7th Revised Sheet No. 6

Vitco states that this filing reflects changes in its purchased gas cost rates pursuant to the requirements of Orders 483 and 483-A. The change in rates to Rate Schedule S-3 includes an increase in purchased gas cost of $0.8516 per MMBtu as compared to the previously scheduled quarterly PGA filing.

The proposed effective date of the above filing is December 1, 1992. Vitco requests a waiver of any Commission order or regulations which would prohibit implementation by December 1, 1992.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 10, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-27053 Filed 11-6-92; 8:45 am]

BILLING CODE 6717-01-M

Southwestern Power Administration

Proposed Power Rates; Opportunities for Public Review and Comment

AGENCY: Southwestern Power Administration (Southwestern), Department of Energy.

ACTION: Notice.

SUMMARY: The Administrator, Southwestern, has prepared Current and Revised 1992 Power Repayment Studies for the Sam Rayburn Dam (Rayburn) project and the Robert Douglas Willis (Willis) project which indicate the need for rate adjustments at both projects to meet cost recovery criteria. These adjustments in annual revenues are needed primarily to more equitably distribute and recover Corps of Engineers' operation and maintenance expenses at the two hydropower projects. Those annual revenue adjustments are, for the most part, to more appropriately allocate the non-project specific personnel labor (NPSPL) costs between the two projects based on the generating capacity of the projects. The NPSPL costs are primarily operators' salaries related to the controlling of the operation of both projects' hydropower generation from one location, with Willis being remotely operated from Rayburn. Rayburn has a hydroelectric generating capacity of 52.0 megawatts (MW) while Willis has a hydroelectric generating capacity of 7.4 MW. This revised allocation would result in 87.5 percent of the NPSPL costs being allocated to Rayburn and the remaining 12.5 percent to Willis, rather than the 50-50 allocation that has been used since the Willis project came on-line December 1989. The proposed rate for Rayburn would increase annual revenue requirements approximately 11.0 percent from $1,810,368 to $2,009,664, beginning April 1, 1993. The proposed rate for the Willis project would decrease annual revenue requirements approximately 31.9 percent from $408,648 to $278,304, beginning April 1, 1993. The Administrator has developed proposed rate schedules for the Rayburn and Willis projects to recover the required revenues.

DATES: A Public Information Forum will be held December 17, 1992, in Tulsa, Oklahoma. A Public Comment Forum will be held January 14, 1993, in Tulsa, Oklahoma. Written comments are due on or before February 8, 1993.

ADDRESSES: Five copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Grisaffe, Director, Administration and Rates, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581-7419.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) was created by an Act of the U.S. Congress, Department of Energy Organization Act, Public Law 95-91, dated August 4, 1977, and Southwestern's power marketing activities were transferred from the Department of Interior to the DOE, effective October 1, 1977. Guidelines for preparation of power repayment studies are included in DOE Order No. RA 6120.2, Power Marketing Administration Financial Reporting. Procedures for Public Participation in Power and Transmission Rate Adjustments of the Power Marketing Administrations are found at title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR part 903).

Southwestern markets power from 24 multiple-purpose reservoir projects with power facilities constructed and operated by the U.S. Army Corps of Engineers (Corps). These projects are located in the States of Arkansas, Missouri, Oklahoma, and Texas. Southwestern's marketing area includes these states plus Kansas and Louisiana. Of the total, 22 projects comprise the Integrated System and are generally interconnected through Southwestern's transmission system and exchange agreements with other utilities. The power produced by the remaining two hydroelectric generating projects, Rayburn and Willis, is marketed by Southwestern under separate contracts through which two customers purchase the entire power output at each of the two projects. The Rayburn project, located on the Angelina River within the Neches River Basin, in eastern Texas, consists of two hydroelectric generating units with a total capacity of 52.0 MW. The Willis project located on the Neches River downstream from the Sam Rayburn Dam project, consists of two hydroelectric generating units with a total capacity of 7.4 MW. The two customers, Sam Rayburn Dam Electric Cooperative, Inc. (SRDEC) and the Sam Rayburn Municipal Power Agency (SRMPA), currently receive the entire output of the Rayburn and Willis projects, respectively. In the case of Willis, SRMPA, receives the entire output for a period of 50 years as a result of its non-federally funding the construction of the hydroelectric facilities at the project. SRDEC receives the entire electrical output of the Rayburn project through a contract that

provides for an isolated rate. These projects are not currently interconnected with Southwestern's Integrated System hydraulically, electrically or financially. A separate power repayment study is prepared for both projects and both have special rates based on their non-interconnected operations.

Following DOE Order No. RA 6120.2 guidelines, the Administrator, Southwestern, prepared a Current Power Repayment Study for both the Rayburn and Willis projects using existing rates.

The Rayburn Study indicated that the legal requirement to repay the power investment with interest will not be met without additional revenue. This revenue need results from increased annual operation and maintenance expenses projected by the Corps, increased costs due to the revision in the allocation of NPSPL costs between the Rayburn and Willis projects and the costs of the planned modification of the existing spillway at Rayburn for dam safety reasons. The Revised Power Repayment Study for Rayburn shows that additional annual revenue of $199,296 (an 11.0 percent increase), beginning April 1, 1993, is needed to satisfy repayment criteria. This would increase revenues received by Southwestern from the current $1,810,368 to $2,009,664 annually and satisfy the present financial criteria for repayment of the project.

A Current Power Repayment Study was also prepared for the Willis project which indicated that, as a result of the decreased costs associated with the revision in the allocation of NPSPL costs, a decrease in the existing annual rate would enable Southwestern to meet all cost recovery criteria requirements at the project. The Revised Power Repayment Study shows that a reduction in annual revenue of $130,344 (a 31.9 percent decrease), would provide sufficient revenues for repayment of the projected expenses within the required period. This would decrease revenues received from the Willis project customer from the current $408,648 to $278,304 annually, beginning April 1, 1993.

Opportunity is presented for customers and other interested parties to receive copies of the Rayburn study and its proposed rate schedule and the Willis study. If you desire a copy of the Power Repayment Study Data Package for either or both projects, submit your request to Mr. George C. Grisaffe at the address cited above.

A Public Information Forum will be held at 9:30 a.m., Thursday, December 17, 1992, in Southwestern's offices, room 1402, Williams Center Tower I, One West Third Street, Tulsa, Oklahoma, to explain to customers and interested parties the proposed rates and supporting studies. The Forum will be conducted by a chairman who will be responsible for orderly procedure. Questions concerning the rates, studies and information presented at the Forum may be submitted from interested persons and will be answered, to the extent possible, at the Forum. Questions not answered at the Forum will be answered in writing, except that questions involving voluminous data contained in Southwestern's records may best be answered by consultation and review of pertinent records at Southwestern's offices. Persons interested in attending the Public Information Forum should indicate in writing by Monday, December 14, 1992, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held.

A Public Comment Forum will be held at 9:30 a.m., Thursday, January 14, 1993, at the same location established for the Public Information Forum. At the Public Comment Forum, interested persons may submit written comments or make oral presentations of their views and comments. This Forum will also be conducted by a chairman who will be responsible for orderly procedure. Southwestern's representatives will be present, and they and the chairman may ask questions of the speakers. Persons interested in attending the Public Comment Forum should indicate in writing by Monday, January 11, 1993, their intent to appear at such Forum. Accordingly, if no one so indicates their intent to attend, no such Forum will be held. Persons interested in speaking at the Forum should submit a written request to the Administrator, Southwestern, (use same address as used for submitting comments) at least three (3) days before the Forum so that a list of speakers can be developed. The chairman my allow others to speak if time permits.

A transcript of each Forum will be made. Copies of the transcripts may be obtained from the transcribing service. Copies of all documents introduced will be available from Southwestern upon request, for a fee. Written comments on the proposed rates for either project are due on or before February 8, 1993. Five copies of the written comments should be submitted to the Administrator, Southwestern Power Administration, U.S. Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101.

Following review of the oral and written comments and the information gathered in the course of the proceedings, the Administrator will submit the amended rate proposals, and Power Repayment Studies in support of the proposed rates, to the DOE Assistant Secretary, Conservation and Renewable Energy for confirmation and approval on an interim basis, and to the Federal Energy Regulatory Commission (FERC) for confirmation and approval on a final basis. The FERC will allow the public an opportunity to provide written comments on the proposed rate increases before making a final decision.

Issued in Tulsa, Oklahoma, this 23rd day of October, 1992.

Dallas W. Cooper,

Acting Administrator, Southwestern Power Administration.

[FR Doc. 92-27147 Filed 11-6-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4531-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before December 9, 1992.

FOR FURTHER INFORMATION OR TO OBTAIN A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Environmental Education

Title: The President's Environmental Youth Awards (EPA No. 292.03; OMB No. 2090-0007).

Abstract: This ICR is a renewal of an existing collection in support of the President's Environmental Merit Awards Program, established in 1971 to recognize the achievements of students who make constructive environmental contributions to their communities. The program seeks to encourage awareness and understanding of environmental problems among the Nation's youth. It consists of two components: the regional certificate program and the National

awards competition. Throughout each year, youths may compete by completing the application with an adult sponsor and submitting it to the EPA Regional Office. The Regional Offices award certificates to all participants that have completed projects. The Regional Offices will also select the National Awardees, whose recognition will be administered by the EPA Headquarters in Washington, D.C..

The application will be used to gather specific information that identifies the applicant and the sponsor, and describes the applicant's project and the relevance of this project to solving an environmental problem.

Burden Statement: Public reporting burden for this collection of information is estimated to average 2.3 hours per response including time for reviewing instructions, searching existing data sources, gathering data, and completing and reviewing the application.

Respondents: Youths, kindergarten through grade twelve.

Estimated Number of Respondents: 750.

Estimated Number of Responses per Respondent: 1.

Frequency of Collection: On occasion.

Estimated Total Annual Burden on Respondents: 1725 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, 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 St., NW.,Washington, DC, 20503.

Dated: October 30, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-27126 Filed 11-6-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4532-2]

National Emission Standards for Hazardous Air Pollutants; Compliance Extensions for Early Reductions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of complete enforceable commitments received.

SUMMARY: This notice provides a list of companies that have submitted "complete" enforceable commitments to the EPA under the Early Reductions Provisions (section 112(i)(5)) of the Clean Air Act (CAA) as amended in 1990 The list covers commitments determined by the EPA to be complete through September 1992 and includes the name of each participating company, the associated emissions source location, and the EPA Regional Office which is the point of contact for further information. This is one of a series of notices of this type. The most recent notice listed five sources which have had commitments deemed complete by the EPA. The EPA will publish additional lists of complete submittals on a monthly basis, as needed.

FOR FURTHER INFORMATION CONTACT: David Beck (telephone: 919-541-5421), Rick Colyer (telephone: 919-541-5262), or Mark Morris (telephone: 919-541-5416), Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 for general information on the Early Reductions Program. For further information on specific submittals received under the Early Reductions Program contact the appropriate EPA Regional Office representative listed below.

Region I—Janet Beloin: (617) 565-2734
Region II—Umesh Dholakia or Harish Patel: (212) 264-6676
Region III—Jim Baker: (215) 597-3499
Region IV—Anthony Toney: (404) 347-2864
Region V—John Pavitt: (312) 886-6858
Region VI—Tom Driscoll: (214) 655-7549; or Tanya Murray: (214) 655-7547
Region VII—Carmen Torres-Ortega: (913) 551-7873
Region VIII—Cory Potash: (303) 293-1886
Region IX—Ken Bigos: (415) 744-1240
Region X—Chris Hall: (206) 553-1949

SUPPLEMENTARY INFORMATION: Under section 112(i)(5) of the Clean Air Act (CAA) as amended in 1990, an existing source of hazardous air pollutant emissions may obtain a 6-year extension of compliance with an emission standard promulgated under section 112(d) of the CAA, if the source achieves sufficient reductions of hazardous air pollutant emissions prior to certain dates. On June 13, 1991, the EPA published a proposed rule to implement this "Early Reductions" provision (56 FR 27338). A final rule will be issued shortly.

Sources choosing to participate in the Early Reductions Program must document base year emissions and post-reduction emissions to show that sufficient emission reductions have been achieved to qualify for a compliance extension. As a first step toward this demonstration, some sources may be required to submit an enforceable commitment containing base year emission information, or if not required, may voluntarily submit such emission information to the EPA for approval. As stated in the proposed Early Reductions rule, the EPA will review these submittals to verify emission information, and also will provide the opportunity for public review and comment. Following the review and comment process and after sources have had the chance to revise submittals (if necessary), the EPA will approve or disapprove the base year emissions.

To facilitate the public review process for program submittals, the proposed rule contains a commitment by the EPA to give monthly public notice of submittals received which have been determined to be complete and which are about to undergo technical review within the EPA. Members of the public wishing to obtain more information on a specific submittal than may contact the appropriate EPA Regional Office representative listed above.

Approximately seventy-four enforceable commitments have been received by the EPA, and ten have been determined to be complete to date. Some of the early reductions submittals received actually contain multiple enforceable commitments; that is, some companies have decided to divide their particular plant sites into more than one early reductions source. Each of these sources must achieve the required emissions reductions individually to qualify for a compliance extension. The purpose of today's notice is to add several commitments from Allied-Signal, Inc. to the previously published list of commitments that have been determined to be complete by the EPA under the Early Reductions Program. Since the last notice, the EPA has deemed complete two commitments submitted for an Allied-Signal plant in Ironton, Ohio, and three commitments for an Allied-Signal plant in Baton Rouge, Louisiana. As the remaining submittals are determined to be complete, they will appear in subsequent monthly notices.

At a later time (most likely within one to three months of today's date), the EPA Regional Offices will provide a formal opportunity for the public to comment on the submittals added to the list by today's notice. To do this, the Regional Office will publish a notice in the source's general area announcing that a copy of the source's submittal is available for public inspection and that comments will be received for a 30 day period.

The table below lists those companies that have made complete enforceable commitments or base year emission

submittals under the Early Reductions Program through September 30, 1992. These submittals are undergoing technical review within the EPA at this time.

TABLE 1.—COMPLETE ENFORCEABLE COMMITMENTS AS OF SEPTEMBER 30, 1992

Company	Location	EPA Region
1. Kalama Chemical, Inc.	Kalama, WA	X.
2. Amoco Chemical Co. (first source).	Texas City, TX	VI.
3. Amoco Chemical Co (second source).	Texas City, TX	VI.
4. Johnson & Johnson Medical, Inc.	Sherman, TX	VI.
5. PPG Industries	Lake Charles, LA	VI.
6. Allied-Signal (first source).	Baton Rouge, LA	VI.
7 Allied-Signal (second source).	Baton Rouge, LA	VI.
8. Allied-Signal (third source).	Baton Rouge, LA	VI.
9. Allied-Signal (first source).	Ironton, OH	V.
10. Allied-signal (second source).	Ironton, OH	V.

Dated: October 30, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-27124 Filed 11-6-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4532-5]

Renewal for the Management Advisory Group to the Assistant Administrator for Water

The U.S. Environmental Protection Agency (EPA) announces the renewal for the Management Advisory Group to the Assistant Administrator for Water following consultation with the Committee Management Secretariat, General Services Administration. EPA has determined that renewal of this advisory committee is in the public interest in connection with the performance of duties imposed on the Agency by law. The charter which continues this advisory committee for eight more months, until July 6, 1993, or unless otherwise sooner terminated, will be filed with the appropriate Congressional committees and the Library of Congress. The committee will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation of the Act.

FOR FURTHER INFORMATION, CONTACT: Michelle A. Hiller, Designated Federal Official (WH-556), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, 202-260-5554.

Dated: October 27, 1992.

Martha G. Prothro,

Deputy Assistant Administrator for Water.

[FR Doc. 92-27127 Filed 11-6-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-00127; FRL-4171-9]

Renewal of the Biotechnology Science Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA announces the renewal of the Biotechnology Science Advisory Committee (BSAC) following consultation with the Committee Management Secretariat, General Services Administration. EPA has determined that renewal of this advisory committee is in the public interest in connection with the performance of duties imposed on the Agency by law. The charter which continues this advisory committee for 2 more years, unless otherwise terminated, will be filed with the appropriate Congressional committees and the Library of Congress. The committee will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation of the Act.

FOR FURTHER INFORMATION CONTACT: Elizabeth Milewski, Executive Secretary, Biotechnology Science Advisory Committee, (TS-788), Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-627A, 401 M St., SW., Washington, DC 20460, (202) 260-6900.

Dated: October 31, 1992.

Linda J. Fisher,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 92-27129 Filed 11-6-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4532-4]

Management Advisory Group to the Assistant Administrator for Water; Open Meeting

Under Section (1)(a)(2) of Public Law 92-423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Management Advisory Group (MAG) to the Assistant Administrator for Water will be held at 12 p.m. on December 7, and 8:30 a.m. on December 8 and 9, 1992, at the Sheraton Grand Hotel, San Diego, California.

This meeting, a continuation from the last meeting held in September, will concentrate on finalizing recommendations and a final report to the Assistant Administrator for Water. The topics of discussion are ecosystem protection, nonpoint source water pollution prevention, and environmental education. The proposed agenda is predominantly working sessions for workgroups completing portions of the final report.

The meeting will be open to the public. The MAG encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to ten minutes. It is preferred that there be one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the MAG by telephone at (202) 260-5554. The petition should include the topic of the proposed statement and the petitioner's telephone number and should be received before December 1, 1992.

Any person who wishes to file a written statement can do so before or after a MAG meeting. Written statements received prior to the meeting will be distributed to the members before any final discussion or vote is completed. Statements received after a meeting will become part of the permanent meeting file and will be forwarded to the MAG members for their information.

Any member of the public wishing to attend the MAG meeting, present an oral statement, or submit a written statement, should contact Ms. Michelle Hiller, Designated Federal Official, U.S. Environmental Protection Agency, Office of Assistant Administrator for Water, 401 M Street, SW., WH-556, Washington, DC 20460 or at (202) 260-5554.

Dated: October 27, 1992.

Martha G. Prothro,

Deputy Assistant Administrator for Water.

[FR Doc. 92-27128 Filed 11-6-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPT-59313; FRL-4173-7]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-92-18. The test marketing conditions are described below.

EFFECTIVE DATES: (October 26, 1992). Written comments will be received until November 24, 1992.

ADDRESSES: Written comments, identified by the document control number "[OPPT-59313]" and the specific TME number "[TME-92-18]" should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202) 260-1737.

FOR FURTHER INFORMATION CONTACT: Edna Pleasants, New Chemicals Branch, Chemical Control Division (TS-794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 260-4142.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-92-18. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently, notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the Public Reading Room NE G004 at the above address between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME-92-18. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and the date of manufacture.
2. The applicant must maintain records of dates of the shipments to each customer and the quantities supplied in each shipment.
3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T-92-18

Date of Receipt: September 21, 1992.
Close of Review Period: November 5, 1992. The extended comment period will close on November 24, 1992.
Applicant: Kerley, Inc.
Chemical: (S) Calcium thiosulfate
Use: (S) Fertilizer for plants.
Production Volume: 1650 gallons.
Number of Customers: 15. .
Test Marketing Period: 100 days, commencing on first day of nonexempt commercial manufacture.
Risk Assessment: EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities do not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: October 26, 1992.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-27130 Filed 11-6-92; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 2, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None
Title: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (Report and Order, CC Docket No. 92-90)
Action: New collection
Respondents: Businesses or other for-profit (including small businesses)
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 30,000 recordkeepers, 31.2 hours average burden per recordkeeper, 936,000 hours total annual burden
Needs and Uses: The Telephone Consumer Protection Act of 1991, Public Law 102-243, December 20, 1991, adds section 227 to the Communications Act of recordkeeping requirement on telemarketers to maintain lists of telephone subscribers who do not wish to be contacted by telephone. Without such recordkeeping, the purpose of the statute (to protect the privacy of individuals from unwanted solicitations) cannot be achieved.

Staff familiar with the requirements have made the following estimates of the annual burden for recording do-not-call requests:

Calls per day	18,000,000
Percent of calls in which do-not-call request is made	×.05
Do-not-call requests per day	900,000
Burden hours per request	[1] ×.004
Burden hours per day	3,600

[1] 0.25 minute.

Recordkeeping days per year	×260
Total recordkeeping hours per year	936,000
Recordkeepers	÷30,000
Annual burden hours per recordkeeper	31.2

Federal Communications Commission.
Donna R. Searcy,
Secretary.

[FR Doc. 92-27089 Filed 11-6-92; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Advisory Board on Child Abuse and Neglect; Meeting

AGENCY: U.S. Advisory Board on Child Abuse and Neglect, Administration for Children and Families, ACF, Department of Health and Human Services, DHHS.

ACTION: Notice of the twelfth meeting of the U.S. Advisory Board on Child Abuse and Neglect in McLean, Virginia from 9 a.m. November 15, 1992 to 10 p.m., November 18, 1992.

SUMMARY: The U.S. Advisory Board on Child Abuse and Neglect will hold a meeting in McLean, Virginia on November 15, 1992 through November 18, 1992. This meeting is closed to the public except for Monday, November 16 (from 1:30 p.m. to 5:45 p.m.) and Tuesday, November 17 (from 8 a.m. to 12:45 p.m.) to protect the free exchange of internal views among the members and to avoid undue interference with the operation of the Board.

ADDRESSES: The meeting will be held at: Ritz Carlton Hotel, 1700 Tyson Boulevard, McLean, Virginia 22102.

FOR FURTHER INFORMATION CONTACT: Joan M. Williams, Special Projects Specialist, U.S. Advisory Board on Child Abuse and Neglect, Room 300E, Humphrey Building, Washington, DC 20201. (202) 690-8178.

SUPPLEMENTARY INFORMATION: During the closed portions of the meeting, the Board will discuss: the form, content, nature and scope of the 1992, 1993, and 1994 annual reports of the Board; special Board reports on child protective services reform and research; and Board governance and administrative issues. The Board will also begin the orientation of new members.

During the open portions of the meeting, the Advisory Board will: meet with the Inter-Agency Task Force on Child Abuse and Neglect to discuss matters of mutual concern and to hear a presentation by Arnold Shapiro, the producer of "Scared Silent". The Board will also receive a briefing on legislative developments; and receive an update on developments relevant to the Board within the Administration for Children and Families, the Secretary's Initiative on Child Abuse and Neglect, the Children's Bureau, and the National Center on Child Abuse and Neglect.

Dated: October 22, 1992.

Byron D. Metrikin-Gold,
Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 92-27133 Filed 11-6-92; 8:45 am]
BILLING CODE 4130-01-M

Centers for Disease Control

The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) of the Centers for Disease Control (CDC); Meeting

Name: Interagency Committee on Smoking and Health, HHS.

Time and Date: 9 a.m.-1 p.m., December 15, 1992.

Place: Washington Vista Hotel, 1400 M Street, NW., Washington, DC 20005

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: The Interagency Committee on Smoking and Health advises the Secretary, Department of Health and Human Services, and the Assistant Secretary for Health in the: (a) Coordination of all research and education programs and other activities within the Department and with other federal, state, local, and private agencies, and (b) establishment and maintenance of liaison with appropriate private entities, federal agencies, and state and local public health agencies with respect to smoking and health activities.

Matters To Be Discussed: The agenda will consist of a discussion on the issue of preventing tobacco use among youth. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of committee members may be obtained from Karen Deasy, Acting Executive Secretary, Interagency Committee on Smoking and Health, Office on Smoking and Health, NCCDPHP, CDC, 330 C Street, SW., room 1229, Washington, DC, telephone (202) 205-8500.

Dated: November 2, 1992.

Elvin Hilyer,
Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-27074 Filed 11-6-92; 8:45 am]
BILLING CODE 4160-18-M

Food and Drug Administration

In Vitro Testing of Topical Dermatologic Products; Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is holding a meeting on the scientific aspects of in vitro release of topical dermatologic products. The meeting is intended to inform interested persons about FDA's recommendations to pharmaceutical sponsors on methods to document quality control of topical dermatologic products and a procedure discussed in the guidance entitled "Interim Guidance: Topical Corticosteroids In Vivo Bioequivalence and In Vitro Release Methods." The meeting will provide an opportunity for FDA and industry to exchange views on this subject.

DATES: The meeting will be held Wednesday, December 16, 1992, between 9 a.m. and 3 p.m. Registration will be held between 8 a.m. and 9 a.m. on the same day of the meeting. Because space is limited, preregistration with the contact person before December 4, 1992, is recommended. There is no registration fee for this conference.

ADDRESSES: The meeting will be held in Conference rm. E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD. Copies of the "Interim Guidance: Topical Corticosteroids In Vivo Bioequivalence and In Vitro Release Methods" are available from the CDER Executive Secretariat Staff (HFD-8), Center for Drug Evaluation and Research, 7500 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Justina A. Molzon, Center for Drug Evaluation and Research (HFD-600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8365, 301-295-8183 (fax).

SUPPLEMENTARY INFORMATION: FDA's Office of Generic Drugs is holding a meeting on the scientific aspects of in vitro release of topical dermatologic products. The meeting will inform interested persons about FDA's recommendations to pharmaceutical sponsors on methods to document quality control of topical dermatologic products. Those attending the meeting will be able to observe the setup, operating procedure, and application of the in vitro drug release procedure mentioned in the guidance entitled "Interim Guidance: Topical Corticosteroids In Vivo Bioequivalence and In Vitro Release Methods," issued

by the Office of Generic Drugs on July 1, 1992. The meeting will provide an opportunity for FDA and industry to exchange views on this subject.

Because space is limited in the conference rm., preregistration with the contact person (address above) before December 4, 1992, is encouraged. To preregister, provide the contact person with company name, address, telephone number, facsimile number, affiliation (if applicable), the number of people attending, and the names and titles of the people who wish to attend.

Dated: November 3, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-27088 Filed 11-6-92; 8:45 am]

BILLING CODE 4160-01-F

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the Statement of organization, functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended most recently at 57 FR 41146, September 9, 1992) is amended to clarify the functions of the Office of Communications and Information Resources Management within the Bureau of Health Resources Development.

Under Section HB-20, Functions, amend the functional statement for the *Bureau of Health Resources Development (HBB),* by deleting the functional statement for the *Office of Communications and Information Resources Management (HBB14)* and enter the following: *Office of Communications and Information Resources Management (HBB14).* (1) Provides leadership in the development, review and implementation of policies and procedures for communications and information resources management and practices throughout BHRD; (2) advises Bureau management and program staff on sources and users of information and data related to BHRD programs; (3) develops and coordinates BHRD-wide plans and budgets for the management of information technology and services, including centralized and decentralized data processing, office automation, and telecommunications; (4) supports information and information systems needs of the Bureau, including all activities associated with purchase, maintenance and upgrades of BHRD hardware and software systems, including local area networks and electronic mail systems, and linkages with other networks inside and outside BHRD and with mainframe systems, as appropriate; (5) produces informational materials for BHRD and its programs; (6) coordinates information systems and communications policy with other Government units concerned with health services development and management; and (7) maintains relationships with public and private organizations, including States, local governments, and professional organizations, to share information of mutual interest.

This change is effective upon date of signature.

Dated: October 27, 1992.

Robert G. Harmon,

Administrator, Health Resources and Services Administration.

[FR Doc. 92-27099 Filed 11-6-92; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration; Statement of Organizations, Functions, and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration (HRSA) of the Statement of Organizations, Functions, and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended most recently at 57 FR 41146, September 9, 1992) is amended to reflect the transfer of the Freedom of Information Act activities from the Immediate Office of the Office of Operations and Management (OOM) to the Division of Management Policy, OOM/HRSA and clarification of the functions currently assigned to the Division of Management Policy.

Under Section HB-20, Functions, delete the functional statement for the *Division of Management Policy (HBA48)* in its entirety and insert the following:

Division of Management Policy (HBA48). Provides leadership and direction in the areas of management policies and procedures, and manpower management. Specifically: (1) Provides advice and guidance for the establishment or modification of organizational structures, functions, and delegations of authority; (2) conducts and coordinates the Agency's issuances, records, reports, forms, mail management, and distribution systems programs; (3) oversees and coordinates the intra- and inter-agency management agreement process; (4) conducts Agencywide management improvement programs; (5) conducts management and information studies and surveys; (6) plans, directs, and coordinates the Agency's management control program in compliance with the Federal Managers' Financial Integrity Act; (7) directs the implementation of Freedom of Information Act activities for the Agency; (8) serves as the focal point for activities pertaining to the integrity of the Agency's employees, grantees, contractors, and beneficiaries, and for the review, investigation, and resolution of allegations of impropriety, mismanagement of resources, abuse of authority, deviations from established managerial and administrative controls, violations of Standards of Conduct, or other forms of wrongdoing or mismanagement; and (9) oversees and coordinates the implementation of legislation, directives, and policies relating to the Privacy Act.

This transfer is effective upon date of signature.

Dated: October 27, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-27906 Filed 11-6-92; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

The Take Pride in America Advisory Board; Notice of Reestablishment

This notice is published in accordance section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is reestablishing the Take Pride in America Advisory Board.

The purpose of the Board is to advise the Secretary of the Interior on his role in plans and procedures designed to further motivate participation in the Take Pride in America program. The program is designed to focus national attention on the problems of land abuse and misuse, and on the opportunities for promoting voluntary participation by individuals, organizations and communities in caring for our natural and cultural resources.

The Board represents the interests of the program-related community, and will consist of no more than twenty-five voting members appointed by the Secretary to assure a balanced cross-sectional representation of public and private sector organizations. In addition, all fifty state Governors or their representatives serve as ex-officio non-voting members of the Board.

The Board functions solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The reestablished Charter will be filed under the Act, fifteen days from the date of publication of this notice.

Further information regarding the Board may be obtained from Vicki Barrios, Office of the Secretary, U.S. Department of the Interior, Washington, DC 20240. Telephone: 202–208–4644.

The Certification of Reestablishment is published below.

Cerification

I hereby certify that the reestablishment of the Take Pride in America Advisory Board is necessary and in the public interest in connection with the performance of duties on the Department of the Interior by those statutory authorities listed in The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.* (1988), as amended); 16 U.S.C. 4601 *et seq.* (1988), as amended; and in furtherance of the Secretary of the Interior's statutory responsibilities for administration of the lands and resources managed by the Department of the Interior. The Board assists the Secretary and the Department of the Interior by providing advice on activities to enhance the Take Pride in America program.

Dated: October 27, 1992.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 92–27062 Filed 11–6–92; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[OR–130–03–4210–04; GP3–028; WAOR 48183]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described public lands in Grant, Douglas and Okanogan Counties have been determined to be suitable for exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

	Acres
GRANT COUNTY	
T.23N., R.27E., Willamette Meridian: Section 12: SE¼SW¼, SW¼SE¼	80
Section 14: S½NE¼, NE¼SW¼, S½SW¼	200
Section 22: E½NE¼, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼	320
Section 24: N½NW¼	80
T.23N., R.28E., Willamette Meridian: Section 24: NW¼NW¼, SW¼SW¼	80
Section 26: N½NE¼	80
T.24N., R.28E., Willamette Meridian: Section 12: SE¼	160
T.22N., R.29E., Willamette Meridian: Section 12: SW¼SW¼	40
T.23N., R.29E., Willamette Meridian: Section 34: S½S½	160
T.24N., R.29E., Willamette Meridian: Section 20: SW¼	160
Section 30: Lots 1–4, E½W½, SE¼	446.04
DOUGLAS COUNTY	
T.29N., R.26E., Willamette Meridian: Section 2: NW¼SW¼	40
OKANOGAN COUNTY	
T.33N., R.26E., Willamette Meridian: Section 19: SE¼NW¼	40
Total	1886.04

In exchange for these lands, the Federal Government will acquire the following described private land in Klickitat County:

	Acres
T.5N., R.18E., Willamette Meridian: Section 27: All	640

The purpose of this exchange is to acquire the subject private land, which is within BLM's Rock Creek Management Area, by trading the above described 15 tracts of scattered and isolated public lands. The private land to be acquired has significant rare plant community, wildlife and recreation values. The acquisition of this land will consolidate an existing checkerboard public ownership pattern within the Rock Creek Management Area, aiding future public use of the lands by making access feasible. All of the public lands to be traded are outside designated BLM management emphasis areas and provide little public benefit. Because of their scattered nature, the disposal of the public lands will also eliminate about 25 miles of property line. This exchange is consistent with BLM's land use planning.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Spokane District Office, E. 4217 Main, Spokane, Washington 99202. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTAL INFORMATION: The publication of this notice in the **Federal Register** segregates the Federal lands described above from appropriation under the public land laws, including the mining laws, but not from exchange under the above cited statute, for 2 years or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

This exchange will be made subject to a reservation to the United States of all minerals, plus the right to construct ditches and canals. The patent for the public land will also be subject to all valid existing rights of record (e.g., rights-of-way). The conveyance of the private land will be made subject to an existing reservation of minerals. Lastly, the exchange will be subject to value equalization through acreage adjustments. Detailed information concerning these reservations as well as specific conditions of the exchange are available for review at the above address.

Dated: October 30, 1992.

Joseph K. Buesing,

District Manager.

[FR Doc. 92–27030 Filed 11–6–92; 8:45 am]

BILLING CODE 4310–33–M

[NM–060–03–4350–04–601]

Carlsbad Resource Area, NM; Supplementary Rules

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplementary rules.

SUMMARY: Notice is hereby given that effective November 13, 1992, the following described public lands within the Roswell District, Carlsbad Resource Area, will have the following Supplementary Rules enforced:

1. No weapons will be allowed within the described area.

2. No animal traps will be allowed within the described area.

The Coordinated Resource Management Plan, effective October 1, 1992, states the above management decisions. The purpose of the Supplementary Rules will be for the protection of humans and the wildlife within the Black River Management Area.

New Mexico Principal Meridian

T. 25 S., R. 24 E.,

Sec. 25—Those portions of the NW¼NW¼, SW¼NW¼, lying southerly and easterly of Eddy County Road 418.

T. 25., R. 24 E.,

Sec. 26—Those portion of the E SE¼SW¼, lying southerly and easterly of Eddy County Road 418.
T. 25., R. 24 E.,
Sec. 35—Those portions of the N½, SW¼, lying southerly and easterly of Eddy County Road 418. More particularly described by the cadastral survey that can be found at listed address.
T. 25 S., R. 24 E.,
Sec. 34—E½, SE¼
T. 26., R. 24 E.,
Sec. 2—W½NW¼, NW¼SW¼.
T. 26 S., R. 24 E.,
Sec. 3—E½NE¼, NE¼SE¼, S½SE¼.
T. 26 S., R. 24 E.,
Sec. 10—NE¼NE¼.

DATES: Effective November 13 1992.

ADDRESSES: The areas subjected to the Supplementary Rules are identified on maps available upon request from the following Bureau of Land Management offices: Roswell District Office, 1717 W. Second Street, P.O. Box 1397, Roswell, NM 88201; or Carlsbad Resource Area Office, 101 E. Mermod, P. O. Box 1778, Carlsbad, NM 88220.

FOR FURTHER INFORMATION CONTACT: Richard Manus, (505) 887-6544.

SUPPLEMENTARY INFORMATION: The authority for these Supplementary Rules is 43 CFR 8365.1-6. Penalties for any person failing to comply with this closure are a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months (43 CFR 8341.0-7 Penalties).

Dated: October 29, 1992.

Leslie M. Cone,

District Manager.

[FR Doc. 92-27031 Filed 11-6-92; 8:45 am]

BILLING CODE 4310-FB-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1032-0006), Washington, DC 20503, telephone 202-395-7340.

Title: Ferrous Metals Surveys.

OMB approval number: 1032-0006.

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption data on nonfuel mineral commodities. This information is published in Bureau of Mines publications including the Mineral Industry Surveys, Volumes I, II, and III of the Minerals Yearbook, and Mineral Commodity Summaries for use by private organizations and other Government agencies.

Bureau form number: 6-1066-MA ET AL (14 Forms).

Frequency: Monthly and Annual.

Description of respondents: Producers and Consumers of Ferrous Metals.

Annual responses: 7,061.

Annual burden hours: 3,653.

Bureau clearance officer: Alice J. Wissman, 202-501-9569.

Dated: October 15, 1992.

John A. Breslin,

Acting Director, Bureau of Mines.

[FR Doc. 92-27085 Filed 11-6-92; 8:45 am]

BILLING CODE 4310-53-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-201-63]

Notice of Commission Determination To Conduct a Portion of the Hearing in Camera

In the Matter of Extruded Rubber Thread.

AGENCY: International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: The Commission has unanimously determined to conduct a portion of its hearing scheduled for November 3, 1992, in camera. (See Commission rules 201.13 and 201.35(b)(3)). The remainder of the hearing will be open to the public. The Commission unanimously has determined that the 10-day advance notice of the change to a meeting was not possible. See Commission rule 201.35 (a) and (c)(1) (19 CFR 201.35 (a) and (c)(1)).

FOR FURTHER INFORMATION CONTACT: William W. Gearhart, Office of the General Counsel, International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3091. Hearing impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission believes that good cause exists in this investigation to hold a portion of the hearing in camera. The majority of the information collected by the Commission is confidential business information (CBI) because there are only two domestic producers of the article. In addition, adjustment plans submitted by the two firms contain considerable information that has been designated as CBI. In light of these facts, the Commission has determined that a full discussion of the domestic industry's financial condition and of much of the information that the Commission examines in assessing the adjustment plans and in considering the issue of remedy could take place only if at least part of the hearing is held in camera. In making this decision, the Commission nevertheless reaffirms its belief that wherever possible its business should be conducted in public.

The hearing will include the usual public presentations by domestic producers and respondents, with questions from the Commission. In addition, the hearing will include *in camera* sessions for questions from the Commission on CBI submitted by each of the two domestic producers and each respondent, as necessary. For any in camera session, the room will be cleared of all persons except for Commissioners, their staff assistants, Commission staff assigned to the investigation, staff present from the Office of the Secretary, and the Commission court reporter. See 19 CFR 201.35(b) (1) and (2). In addition, if a firm's CBI is to be discussed in the *in camera* session, personnel of that firm also may be granted access to the closed session. All others will be excluded. See 19 CFR 201.35(b) (1) and (2). All those planning to attend any part of the in camera portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Extruded Rubber Thread, Inv. No. TA-201-63, may be closed to the public to prevent the disclosure of confidential business information.

By order of the Commission.

Issued: November 3, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-27072 Filed 11-6-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-333]

Notice of Commission Determinations To Review and Vacate Portions of an Initial Determination, Not To Review the Remainder of the Initial Determination, and Requesting Submissions on the Issues of Remedy, the Public Interest, and Bonding; Issuance of Consent Order

In the Matter of Certain Woodworking Accessories.

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and vacate two portions (sections II.B. and II.D.) of the presiding administrative law judge's (ALJ's) initial determination (Order No. 34) in the above-captioned investigation. Section II.B. addresses whether the Commission previously determined that respondent Trend-Lines, Inc. (Trendlines) was a proper party in the investigation. Section II.D. terminates the investigation as to Trendlines on the basis of a consent order. Those two sections of the initial determination were reviewed and vacated, except that the summaries of the arguments of complainant Cantlin, Inc. and the Commission investigative attorney in section II.B. on the issue of whether Trendlines was a proper party to the investigation have been moved to section II.C. of the initial determination. The Commission has determined not to review the remainder of the ID, which terminates the investigation as to respondent Taiwan Zest Industrial Co., Ltd. on the basis of a consent order and terminates the investigation as to respondent Trendlines on the basis that Trendlines is not a proper party to the investigation.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Office of the General Counsel, International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone: (202) 205-3096. Hearing-impaired persons are advised that information on this investigation can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On November 25, 1991, Cantlin, Inc. (Cantlin) of Lincoln, MA, filed a complaint and a motion for temporary relief with the Commission alleging violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of certain woodworking accessories alleged to infringe all 18 claims of U.S. Letters Patent 4,805,505 (the '505 patent) owned by Cantlin. The Commission instituted an investigation into the allegations of Cantlin's complaint, provisionally accepted Cantlin's motion for temporary relief, and published a notice of investigation in the **Federal Register**. 57 FR 416 (January 6, 1992.) The noticed named Woodever Products Co., Ltd,. (Woodever), An Yun Industrial Co., Ltd. (An Yun), and Taiwan Zest Industrial Co., Ltd. (Taiwan Zest), all of Taiwan, and Trend-Lines, Inc. (Trendlines) of Malden, MA, as respondents.

The investigation was subsequently terminated as to respondent Woodever on the basis of a consent order. 57 FR 22828 (May 29, 1992).

Respondent An Yun was found in default (57 FR 20505, May 13, 1992), and complainant Cantlin has requested issuance of a limited exclusion order against An Yun pursuant to section 337(g)(1) (19 U.S.C. 1337(g)(1)) and Commission interim rule 210.25(c) (19 CFR 210.25(c)).

On April 1, 1992, Cantlin and respondent Taiwan Zest moved jointly for termination of the investigation as to Taiwan Zest on the basis of a consent order.

On January 27, 1992, Cantlin and respondent Trendlines jointly moved for termination of the investigations as to Trendlines on the basis of a consent order. However, a settlement agreement attached as an exhibit to the joint motion revealed that Cantlin and Trendlines had previously entered into an agreement on December 18, 1991 (the December 18 agreement). This agreement, which was entered into after Cantlin's complaint and motion for temporary relief were filed but before the Commission voted to institute an investigation of Cantlin's complaint and provisionally accept its motion for temporary relief, provided that Trendlines was not to import into or sell in the United States woodworking accessories that infringe any claims of the '505 patent, and recited that Trendlines had paid Cantlin a royalty for woodworking accessories that Trendlines had previously imported into the United States.

Upon learning of the December 18 agreement, the ALJ raised, and directed the parties to brief, *inter alia*, the issue of whether, in view of the agreement, Trendlines is a proper respondent in the investigation. Both Cantlin and the Commission investigative attorney filed the requested briefs.

On February 20, 1992, the ALJ issued an order (Order No. 16) finding, *inter alia*, that the terms of the December 18 agreement were material to the issue of whether Trendlines should have been named a respondent, and dismissing with prejudice Cantlin's motion for temporary relief.

On April 6, 1992, the Commission issued an order waiving the requirement of interim rule 210.24(e)(13) that the ALJ's decision on temporary relief be issued as an ID (which is subject to Commission review) rather than as an order (which is not). The Commission's order was silent on the issue of whether Trendlines is a proper party to the investigation.

On September 30, 1992, the ALJ issued an ID (Order No. 34) terminating Taiwan Zest from the investigation on the basis of a proposed consent order, and terminating Trendlines from the investigation on the ground that Trendlines, in view of the December 18 agreement, is not a proper party to the investigation. The ALJ also made an alternative finding as to Trendlines, viz., that if Trendlines is a proper party to the investigation, then Trendlines is terminated from the investigation on the basis of a proposed consent order.

On October 13, 1992, complainant Cantlin and the Commission investigation attorney filed petitions for review of the ID. No government agency comments were received.

In connection with final disposition of this investigation as to defaulting respondent An Yun, the Commission may issue an order that could result in the exclusion of infringing articles originating with An Yun from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered.

If the Commission contemplates issuance of limited relief against An Yun, it must consider the effect of that relief upon the public interest. The factors that the Commission will consider include the effect that limited exclusion order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles that are like or directly competitive with those that are subject to the investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submission that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the Untied States under a bond in an amount determined by the Commission

and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond that should be imposed.

WRITTEN SUBMISSIONS: The parties to this investigation, interested government agencies, and any other persons are invited to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are requested to submit a proposed limited exclusion order for the Commission's consideration. Any written submissions must be filed by November 16, 1992. Reply submission must be filed by November 23, 1992.

ADDITIONAL INFORMATION: Persons submitting written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Acting Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the office of the Secretary.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and sections 210.25 and 210.53 through 210.56 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.25 and 210.53-.56).

By order of the Commission.

Issued: November 3, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-27073 Filed 11-6-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 442X)]

CSX Transportation, Inc.; Abandonment Exemption in Somerset County, PA

Applicant has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon 7.45 miles of rail line in Somerset County, PA, between milepost 192.98 at Sand Patch and milepost 199.0 at Blue Lick and between mileposts 0.0 and 1.43 near Blue Lick.

Applicant has certified that: (1) No local traffic has moved over the line for at least two years; (2) there is no overhead traffic on the line; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the two-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 9, 1992, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 19, 1992.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 30, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by November 13, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission Building, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927-6248. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 2, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-27078 Filed 11-6-92; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements so long as it retains jurisdiction to do so.

[Ex Parte No. 394 (Sub-No. 11)]

Cost Ratio for Recyclables; 1993 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Notice of rate caps and initiation of second annual compliance proceeding.

SUMMARY: The Commission has calculated proposed 1993 revenue-to-variable cost (R/VC) ratios as ceilings for rates on nonferrous recyclables under 49 U.S.C. 10731(e). The R/VC ratios were calculated in accordance with established procedures using the Uniform Railroad Costing System (URCS). Because URCS develops different variability percentages for different railroads the final rules adopted at 49 CFR part 1145, in Ex Parte 394 (Sub-No. 3), Cost Ratios for Recyclables—Compliance Procedures.

allow separate R/VC ratio ceilings for individual railroads to apply in the context of monitoring compliance. The proposed national average R/VC ratio is 141.9 percent. Individual and regional R/VC ratios are proposed. In addition, the Commission is initiating the second annual compliance proceeding in accordance with rules adopted in Ex Parte No. 394 (Sub-No. 3), supra, including the schedule for completing the proceeding.

EFFECTIVE DATE: November 30, 1992, unless, within that time, comments are received challenging the accuracy of the ratios, in which case a further decision will be issued.

FOR FURTHER INFORMATION CONTACT: William T. Bono (202) 927-5720, (TDD for hearing impaired (202) 927-5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5721).

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10321(a), 10731, 5 U.S.C. 553.

Decided: November 2, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-27077 Filed 11-6-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention; Proposed Comprehensive Plan for Fiscal Year 1993

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Proposed Comprehensive Plan for Fiscal Year 1993.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing for public comment this Notice of its Proposed Comprehensive Plan for Fiscal Year 1993.

DATES: Comments must be submitted on or before December 21, 1992.

ADDRESSES: Comments may be mailed to Gerald (Jerry) P. Regier, Administrator (Designate), Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Marilyn Silver, Information Dissemination Unit, (202) 307-0751.

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the Office of Justice Programs in the U.S. Department of Justice. Pursuant to the provisions of Section 204(b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5614(b)(5)(A) (hereinafter called the JJDP Act), the Administrator (Designate) of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing for public comment a Proposed Comprehensive Plan describing the program activities which OJJDP intends to carry out during Fiscal Year 1993. The Proposed Comprehensive Plan includes activities specified in Part C and Part D of title II of the JJDP Act (42 U.S.C. 5651-5665a and 42 U.S.C. 5667-5667a). Taking into consideration comments received on this Proposed Comprehensive Plan, the Administrator (Designate) will develop and publish a Final Comprehensive Plan describing the particular program activities which OJJDP intends to fund during Fiscal Year 1993, using, in whole or in part, funds appropriated under Parts C and D of title II of said Act.

The 1984 Amendments to the JJDP Act established in OJJDP a Missing and Exploited Children's Program (title IV of the JJDP Act, also called the Missing Children's Assistance Act). Programs and activities proposed for funding under the Missing and Exploited Children's Program are not included in this Proposed Comprehensive Plan for Fiscal Year 1993. The Fiscal Year 1993 Missing Children's proposed program priorities will be published in the **Federal Register** for public comment as required by Section 406(a) of the JJDP Act, 42 U.S.C. 5776(a).

The actual solicitation of grant applications under the Final Comprehensive Plan will be published separately, at a later date, in the **Federal Register**. No proposals, concept papers, or other forms of application should be submitted at this time.

Introduction

The National Commission on Children final report, "Beyond Rhetoric: A New American Agenda for Children and Families," chronicles the need to strengthen opportunities for children to develop their potential. These needs include improved educational opportunity and achievement, strong and supportive families, improved value development, and child and family protection and services.

The Report points out in Chapter 6, "Supporting the Transition to Adulthood," "that most young people emerge from adolescence healthy, hopeful, and able to meet the challenges of adult life." This is extremely encouraging; however, we continue to be concerned about those in our youth population, who continue to engage in high-risk behaviors, victimize themselves and others and threaten their futures.

In the area of delinquency, crime and violence, almost 2,500 minors were arrested for murder in 1991, nearly a 160 percent increase since 1982 (Crime in the U.S. 1991, Federal Bureau of Investigation (FBI), p. 218). In 1991, 2.3 million juveniles were arrested for delinquent offenses, a number that jumped 23 percent since 1982 (Crime in the U.S. 1991, FBI, p. 223). Over one million of the 1991 arrests were for violent crimes and serious property offenses. Between 1982 and 1991, juvenile arrests for murder increased 93 percent; rape, 24 percent; and aggravated assault, 72 percent (Crime in the U.S. 1991, FBI, p. 217). In addition, nearly 1.2 million juveniles are referred annually to juvenile courts for delinquent offenses. (Juvenile Court Statistics: 1989, National Center for Juvenile Justice, p. 13). Participation in youth gangs is escalating and the rate of violent offenses for gang members is estimated to be three times as high as for non-gang delinquents (Irving Spergel, et al., Youth Gangs: Problem and Response, 1992).

These alarming statistics contributed to Attorney General William P. Barr's recommendations pertaining to effective deterrence and punishment of violent youthful offenders. (See Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice, U.S. Department of Justice, July 1992).

OJJDP's Fiscal Year 1993 Program Plan is designed to reduce levels of serious, violent, and chronic juvenile crime through a range of prevention, intervention, and secure confinement sanctions and treatment strategies. Many of the initiatives in the plan incorporate the goals and objectives of the Weed and Seed strategy initiated by the Department of Justice.

The Weed and Seed strategy addresses serious and violent crime through effective law enforcement, tough but fair sanctions, community revitalization, and prevention, education, and treatment programs. The first phase, "Weeding," is accomplished by utilizing the resources of the criminal justice system to remove and incapacitate violent criminals and drug traffickers from targeted neighborhoods, including the violent juvenile offender. The second phase, "Seeding," revitalizes the community by providing a broad range of prevention, intervention, and treatment services along with meaningful economic opportunities for community residents. Community oriented policing serves as a bridge between the "Weed" and the "Seed" activities. (See "Operation Weed and Seed: Reclaiming America's Neighborhoods," U.S. Department of Justice, 1992).

The Weed and Seed strategy encourages the establishment of a broad range of basic program services for at-risk youths in order to develop each youth's full potential. Through the Coordinating Council on Juvenile Justice and Delinquency Prevention and in conjunction with the Executive Office for Weed and Seed, the Attorney General and OJJDP have encouraged Federal agencies with program responsibilities for youths to redirect existing program resources to serve youths at the greatest risk of delinquency. OJJDP will focus its program resources on implementing a broad range of prevention, intervention, and treatment programs for youths who have come into contact with the juvenile justice system by committing criminal acts. These programs will stress accountability, immediate and effective intervention, and tough but fair sanctions for criminally involved youths. These programs also aim to protect the community from serious, violent, and chronic juvenile offenders.

OJJDP's "graduated sanctions" program approach, when coordinated with the provision of basic services and primary (all youths) and secondary (youths at greatest risk) delinquency prevention programming, is designed to interrupt the cycle of at-risk behavior, escalating delinquent conduct, and adult criminal careers. In conjunction with other Federal, State, and local resources, the Weed and Seed sites will provide a laboratory for OJJDP to test and demonstrate the extent to which this approach can contribute to the revitalization of our Nation's urban centers.

In implementing the F.Y. 1993 program plan, OJJDP will continue the process of developing, testing, and demonstrating the graduated sanctions concept throughout its programs while also maintaining an emphasis on Weed and Seed sites.

- For new competitive programs to be funded at the State or local level, Weed and Seed sites will be the funding target, will be given a competitive preference in the award of funds, or will receive a priority in the receipt of program services funded at the State level.
- For new programs that will provide funds to national organizations, preference will be given to applicants who propose to provide services to eligible Weed and Seed Sites requesting such services.
- For continuation national project recipients, OJJDP has already focused a variety of program resources on Weed and Seed Sites and will continue this emphasis throughout Fiscal Year 1993. These activities are noted under the various program descriptions and, where commitments are in place for Fiscal Year 1993, they are described.
- For other continuation awards OJJDP will negotiate with grantees and task contractors to identify and ensure the provision of appropriate technical assistance, training, information, and direct program services to Weed and Seed Sites.

Through this process, a broad spectrum of valuable program resources will be focused on each Weed and Seed community's youths in a coordinated and effective manner. At the same time, OJJDP will continue to serve a broad variety of critical program needs that assist State and local governments, private nonprofit agencies, and practitioners to reduce delinquency and improve the operation of the juvenile justice system.

Fiscal Year 1993 Program Planning Activities

The OJJDP program planning process for Fiscal Year 1993 is coordinated with the Assistant Attorney General and the four other Program Bureau components of the Office of Justice Programs (OJP). The program planning process involves the following steps:

- Internal review of existing programs by OJJDP staff;
- Internal review of proposed programs by other Department of Justice components;
- Review of information and data from OJJDP grantees and contractors;
- Review of information contained in State comprehensive plans;
- Review of comments made by youth services providers, juvenile justice practitioners, and researchers;
- Consideration of suggestions made by juvenile justice policy makers concerning State and local needs; and
- Consideration of all comments received during the period of public comment on the Proposed Comprehensive Plan.

Discretionary Program Activities

Discretionary Grant Continuation Policy

OJJDP has listed in the following pages those projects currently funded in whole or in part with Part C and Part D funds and eligible for continuation funding in Fiscal Year 1993. Continuation funding consideration for an additional project period for previously funded discretionary grant programs will be based upon several factors, including:

- The extent to which the project responds to the applicable requirements of the JJDP Act;
- Responsiveness to OJJDP and Department of Justice Fiscal Year 1993 program priorities;
- Compliance with performance requirements of prior grant years;
- Compliance with fiscal and regulatory requirements;
- Compliance with any special conditions of award; and
- The availability of funds.

Continuation funding for an additional new budget period within an existing project period depends upon grantee compliance with established conditions of eligibility for additional budget period funding and achievement of the prior year's objectives.

With the exception of Part D of the JJDP Act (42 U.S.C. 5667–5667a) and training programs funded under Section 244 of the JJDP Act (42 U.S.C. 5654), all programs recommended for continuation funding for an additional project period must be found to be of outstanding merit through a peer review process in order to be eligible for an award without further competition. Training programs otherwise eligible for continuation award without competition will require a written determination by the Administrator that the applicant is uniquely qualified to provide the proposed training services and that other qualified sources are not capable of providing such services.

New and Continuation Programs

OJJDP continuation programs are arranged in accordance with the OJP program plan focus areas:

—Weed and Seed Initiatives.
—Violent Crime and Gangs.
—Victims.
—Research and Evaluation.
—Statistics, Information Systems, and Technology.
—Community Policing and Innovative Law Enforcement.
—Crime and Drug Abuse Prevention.
—Intermediate Sanctions, Drug Testing, and Offender Accountability.
—Enhanced Prosecution, Adjudication, and Corrections.
—Multi-jurisdictional Task Forces and Complex and Financial Investigations.

The following are brief summaries of each of the proposed new and continuation programs planned for Fiscal Year 1993. Although the continuation programs are listed under particular focus areas, many could also be listed in an additional focus area, particularly where they provide support to programs in Weed and Seed Sites. New or Continuation funded programs with a Weed and Seed focus or priority are denoted (W&S) after the program title. The specific program priorities proposed within each category are subject to change with regard to their priority status, amount, sites for implementation, and other descriptive data and information based on public comment, grantee performance, application quality, fund availability, and other factors.

A number of programs contained in this document are being funded at the direction of Congress. An asterisk (*) identifies these congressionally identified programs.

OJJDP has limited appropriations available for new programs in Fiscal Year 1993. New programs are therefore being proposed without funding levels for the purpose of first receiving public comment on the concept presented. These new programs will then be considered for funding to the extent that funds are available. Continuation programs may be funded up to the funding levels indicated for each program.

New Programs

Accountability-Based Community Intervention Program (W&S)

The Accountability-Based Community (ABC) Intervention Program is intended to be implemented in Weed and Seed Sites as a demonstration program. Its goal is to assist targeted youths in developing their full potential.

The ABC Intervention Program is a program strategy for community youths who have become involved in delinquency, particularly those likely to become chronic or serious offenders. It is not designed to provide residential services for serious and violent juvenile offenders.

This program is designed to provide different levels of accountability and responsibility contingent upon the behavior and prior delinquency of juveniles. In addition, intensive services would be provided to enhance life skills, treat chemical dependency, and provide educational services. Linkages to family and community social institutions are essential program elements.

Operated under public authority, the ABC Intervention Program would incorporate graduated sanctions, principles of accountability and responsibility, as well as treatment and rehabilitation services, in a comprehensive model. The program would provide a range of services so that each case plan could be tailored to the individual needs of each participant.

An ABC Intervention Program would consist of three program component levels and be administered by local judicial, probation and parole, or correctional agencies in cooperation with private nonprofit community-based organizations. Level A: Day treatment or other correctional service program(s) available through or housed at a Community Corrections Center, and providing intensive services for up to six month. Level B: Residential assignment to the Community Correctional Center, a group home, or other non-secure residential option for three to twelve months, followed by aftercare services under Level A. Level C: Residential assignment to a boot camp or secure community-based treatment facility for up to six months, again followed by aftercare services under Level A. Program components under Levels A and B might include restitution, victim mediation, and community service.

Aftercare will be a formal component for all residential placements, actively involving the family and the community in supporting and reintegrating the juvenile into the community.

Serious, Violent, and Chronic Offender Program Development

The major objectives of this program development project are to develop target group criteria for each of seven strategies to comprehensively address serious, violent, and chronic juvenile offenders, to develop comprehensive program designs for implementation in Weed and Seed Sites, and to develop a plan for testing and demonstrating the comprehensive program models in Weed and Seed Sites. A comprehensive model will be developed for each of the following strategies: (1) Support and assistance to families and core social institutions, including development of a Youth Leadership and Service Program design; (2) delinquency prevention programs and services for at-risk youths, including youths who have had contact with the juvenile justice system; (3) immediate intervention for first-time and minor offenders; (4) a broad range of intermediate sanctions for serious and repeat offenders; (5) small secure community-based facilities; (6) training schools, reformatories, and other congregate care facilities; and (7) waiver or transfer to the criminal justice system, including the availability of juvenile records in criminal proceedings. Each of the seven strategies to be targeted for implementation in the Weed and Seed Sites will include: Target group selection criteria and program components or elements described in relation to their appropriateness for high-risk youths and serious, violent, and chronic juvenile offenders. An implementation manual will be produced for use in Weed and Seed Sites and other interested jurisdictions.

Court-Ordered Community Service for Non-Violent Juvenile Offenders (W&S)

Court-ordered community service is one type of intermediate sanctions. Through the development and implementation of court-ordered community service, the juvenile learns that his or her actions have consequences, and that he or she must take responsibility for those actions in order to break the cycle of delinquency and future crime. This program emphasizes an immediate and appropriate response to delinquent conduct in order to instill values and discipline in the juvenile. The program also allows the community to observe firsthand the responsiveness of the juvenile justice system, and the responsibility of the juvenile. This program will develop demonstration models in Weed and Seed Sites.

Crime-Free-Youth Zones (W&S)

This program has two goals: The establishment of crime-free youths and crime-free zones for youths in Weed and Seed Sites. The first goal will be met by actively involving youths, as leaders, in preventing delinquency and youth victimization, including those who have had contact with the juvenile justice system. Crime-free zones for youths include geographical areas where youths congregate with their peers, such as at school recreation areas, libraries, and in commercial areas.

Teen Centers or Safe Haven locations in Weed and Seed Sites would give participating youth leaders a place to

meet and work; and to establish "Youth Zoning Boards" in each community to serve as the youth planning and action organization. These Boards would provide a forum to discuss and document how young people's lives are affected by crime, school, recreation or employment opportunities, neighborhood conditions, alcohol, drugs, gangs, etc., and to develop and propose innovative solutions to youth crime and victimization problems. Youth Zoning Boards would be responsible for two objectives. First, proactive youth activities would be identified that will serve to make youths and zones crime-free. These might include posting signs, youth crime watches, and distributing program information to prevent victimization. Second, "Youth Zoning Boards" would plan and implement long-term activities in structuring an appropriate program strategy. These activities would be designed to make areas where teens congregate crime-free and help youths avoid involvement in drugs and crime. Youth Zoning Boards would facilitate implementation of appropriate Crime-Free-Youth Zone programs and activities.

In most Weed and Seed Sites, particularly high crime areas, youths must be motivated to become actively involved in anti-crime efforts. The needed impetus could come from music or sports stars enlisted to promote Crime-Free-Youth Zones. Public service advertising, backed by a toll-free number, would be another potential means to boost involvement on the part of youths.

Dissemination of "User Friendly" Information on Violent Youth Behavior and Television Viewing

This program will support an OJJDP fellowship for purposes of developing "user friendly" materials and information from the most reliable data available on the relationship between violent youth behavior and their experiences with viewing violence on television. These materials would then be disseminated through organizations and groups working with youths, parents, teachers, youth workers, and others involved with youth programming.

Gang Suppression and Intervention Program (W&S)

OJJDP sponsored an in-depth study to determine promising approaches to the suppression of gang activity and intervention in the lives of gang-involved youths. This study was conducted at the University of Chicago which based its model development on the research supported assumptions that youth gangs, with their extreme violence and drug trafficking, are a function mainly of two interacting conditions—poverty and social disorganization. In response to the survey findings and literature review, the University of Chicago developed models for each component of the system that must be mobilized to deal with gangs (police, prosecution, judges, probation, corrections, parole, schools, employment, community-based, agencies and a range of grass-roots organizations). Each has a specific mission set in the overall context of community mobilization. For example, law enforcement (suppression) related agencies are urged to concentrate their resources on serious and violent gang members to hold them more accountable. Community-based and grass-roots agencies are encouraged to develop programmatic approaches to provide increased opportunities for youths. Under each of these models, agencies must work together in a community mobilization effort, with common goals and objectives, in order to combat gang crime and violence. OJJDP would consider funding up to four sites in Fiscal Year 1993 to implement and test comprehensive models of gang suppression and intervention. Weed and Seed Sites would receive a priority in competing for these funds.

OJJDP National Juvenile Justice Training and Technical Assistance Consortium

In order to improve OJJDP-supported training and technical assistance and to maximize the benefits of these resources, the Office proposes to issue a Request for Proposal (RFP) to establish a National Juvenile Justice Training and Technical Assistance Consortium. The Consortium will centralize field coordination of all OJJDP training and technical assistance programs. OJJDP will task the contractor to review current training programs and identify additional training needs in the field. An early product of the effort will be a published catalogue of existing training and technical assistance programs, including course descriptions, training organizations, instructors, and schedules. The Consortium will also establish quality control measures to support uniformity in quality of training content and trainer qualifications. The program will address accreditation and certification of OJJDP sponsored training, such as university credits or professional certification. The Consortium will maintain a computerized registry of participants in OJJDP-sponsored training and beneficiaries of technical assistance. The Consortium will also produce training manuals and other reference materials, provide for quality control of technical assistance and training materials published by OJJDP grantees and contractors, and develop and assist with the maintenance of a library of juvenile justice training references, curricula, and resource materials in coordination with OJJDP's Information Clearinghouse contractor. Other equally important functions will be development of training programs in specialized areas, development and implementation of a high-quality curriculum for training and certifying juvenile justice trainers and, pursuant to recommendations regarding distance training and telecommunications technology, facilitate use of distance training and technical assistance by OJJDP's training and technical assistance grantees.

Prevention of Delinquency Through Child-Centered Community-Based Policing (W&S)

The purpose of this project is to replicate, in a selected number of Weed and Seed Sites, the child-centered community based policing model developed by the Yale Child Development Center and the New Haven Police Department. The model was developed in response to the increasing number of young children who were perpetrators, victims, or witnesses of aggression and violence. The program attempts to change the "atmosphere" of police departments in relation to children and to increase the competence of police officers in their varied interactions with children and families. Essentially, the program attempts to reorient police officers in their interactions with children in order to optimize the psychological roles which they can play as providers of a sense of security, positive authority, and models for identification. The program has three major components: The training of all incoming police recruits in the principles of child and adolescent development; clinical fellowships for veteran officers who have field supervisory roles; and a 24-hour consultation service for officers responding to calls in which children are either the direct victims or witnesses of violence.

The program's goal is to prevent youths who witness violence or who are victims of violence from identification with violent role models and from adaptation of violence as appropriate and reasonable modes of functioning. OJJDP, in coordination with other OJP agencies, will solicit applications among the designated Weed and Seed Sites to

develop and implement the New Haven Child Development and Community-Based Policing Model where police departments and mental health or human services agencies evidence a strong commitment to the principles and the design of the model. Funds will also be provided to the New Haven Agencies to serve as host site for purposes of providing technical assistance.

Training for Juvenile Detention Center Care Givers

Enhanced training of detention center care givers is needed to improve the administration of juvenile detention. The forthcoming results of the "Conditions of Confinement" OJJDP study document this need, particularly in such areas as education, health care, overcrowding reduction, gangs, and drugs. In addition, this award would facilitate training detention professionals regarding new curriculum material in the Desktop Guide to Detention, currently being prepared, through the development and use of curricula designed specifically for line detention center staff. Funds would be made available to enable line detention staff to develop, deliver, and participate in regional training sessions providing basic, in-service training for detention center care givers.

Training and Technical Assistance in Drug Testing, Community Protection, Accountability, and Competency Development (W&S)

This program is designed to improve the effectiveness of juvenile justice system handling of drug-involved youths. It will be implemented in "Weed and Seed" Sites and will provide training and technical assistance for the development of drug identification, testing, and substance abuse control programs at these demonstration sites. This approach enables existing juvenile correctional programs to improve community protection, to hold youths accountable for their offenses, and to enhance offender competency. This program will utilize drug identification/testing results to guide appropriate agency interventions leading to the reduction of drug offenses, abuse, and dependency among youths exposed to drug recognition and/or chemical testing procedures. Such interventions would be expected to include intensive supervision, electronic surveillance, temporary detention, or other correctional sanctions.

*Violence Study—Causes and Correlates (W&S)**

OJJDP plans to support additional analyses of data collected under its Program of Research on the Causes and Correlates of Delinquency, conducted at the State University of New York at Albany, the University of Pittsburgh, and the University of Colorado. The draft final report, "Urban Delinquency and Substance Abuse," is under review. To utilize the collected data more fully, additional analyses needs to be performed. These analyses are intended to benefit directly the serious, violent, and chronic offender program development OJJDP plans to sponsor under the proposed project entitled, "Chronic, Serious and Violent Offender Program Development." Topics for analyses would be determined by program development requirements. For example, development of risk assessment instruments would benefit from more specific analyses regarding risk factors and pathways to chronic, serious, or violent offending. This program will be implemented by the current grantees listed above. The grantees will carry out a comprehensive planning effort, including an in-depth analysis of data bases, and critically assess the Causes and Correlates Program design, methods, survey instruments, and data collection procedures for adaptation to three new sites, viz. Washington, DC, Los Angeles, CA, and Milwaukee, WI. No additional applications will be solicited in Fiscal Year 1993.

Youth Leadership and Service (W&S)

This program is intended to provide an innovative delinquency prevention component in Weed and Seed Sites. The target is youths who have not yet entered the juvenile justice system or who have been involved in minor or nonviolent delinquent activity.

Primary responsibility for instilling moral values in the next generation rests with the family. Other core social institutions—the school, religious institutions, and community organizations—have an important role to play in developing capable, mature, and responsible youths. These societal institutions can assist children with the opportunity and support to mature into productive law-abiding citizens. The decline in inculcating positive values has contributed significantly to delinquent behavior. Opportunities for teaching positive values must be increased. Therefore, the major goal of this program is to assist elementary, junior high, and high school students to learn such positive individual traits as discipline, character, self-respect, responsibility, teamwork, healthy lifestyles, and good citizenship. A three-tiered program will be developed. All youths, from kindergarten through grade 12, can be included in the program with an emphasis on at-risk youths.

The major objectives are to provide opportunities that promote learning skills; social skills; self-discipline, responsibility, and good judgment; acceptable and expected standards of behavior. Also, the program will teach stress reduction at home, school, and in the neighborhood; teach avoidance of destructive behaviors and influences; and provide opportunities to utilize various communication skills.

A common program strategy at the 6–8 and 9–12 grade level would entail the use of older students to serve as role models for younger ones. These programs would be carried out in schools and in summer camps. Effective program components would include challenging and practical activities, positive feedback, and immediate and frequent skill sessions. Strong youth participation and support can be gained by building into the program such peer-provided components as tutoring, counseling, and mediation.

Leadership may be drawn from the community, from retired military or law enforcement personnel, or other sources.

The following two new programs were identified by Congress under the Fiscal Year 1993 appropriation for OJJDP.

*Juvenile Gangs Prevention and Treatment Programs**

$1,200,000

These potential new grants and continuation programs will support locally-based gang prevention programs in the areas of training and educational opportunities to reduce drug dependency and gang involvement. Programs will be designed to: (1) Reduce participation of juveniles in drug-related activities, (2) reduce juvenile involvement in gang-related activities, and (3) promote the involvement of juveniles in lawful activities.

Programs will address methods to: (1) Reduce delinquency and dropout rates. (2) provide educational opportunities for at-risk youths, (3) develop mentoring relationships between at-risk youths and responsible youths, (4) educate at-risk youths on mandatory penalties for drug crimes, and (5) address the problems of rural gangs. Programs specifically identified by Congress for funding consideration under this program are: (a) New Community Corporation in Newark, (b) San Francisco State University and the San Francisco Conservation Corps, (c) St. Louis, MO, Gang Program, (d) Ontario, OR, Gang Program, and (e) Sports Museum of New England.

OJJDP is currently funding a number of continuation programs that may be continued under this earmark. These projects, described under Continuations, are as follows: (1) Targeted Outreach with a Gang Prevention and Intervention Component, (2) Strategic Intervention for High Risk Youths, (3) Satellite Prep School Program and Early Elementary Schools for Privatized Public Housing, and (4) Reaching At-Risk Youths in Public Housing.

*National Network of Children's Advocacy Centers**

$250,000

This effort will support the National Network of Children's Advocacy Centers through the development and implementation of training, technical assistance, and information sharing programs. The network links together local Children's Advocacy Center programs whose purpose is to provide multidisciplinary coordination in the investigation and prosecution of child abuse cases. Leaders in this effort are the National Children's Advocacy Center in Huntsville, AL, the University of Oklahoma's Justice Center in Tulsa, OK, and the National Children's Advocacy Center in Honolulu, HI

Continuation

Weed and Seed Initiatives

Serious Habitual Offender Comprehensive Action Program (SHOCAP) (W&S)

$600,000

SHOCAP is an information and case management program involving police, probation, prosecution, social services, school, and corrections authorities. The program focuses attention on juveniles who repeatedly commit serious crimes, with particular attention given to appropriate sentencing dispositions. Training and technical assistance will continue to be provided to 20 existing SHOCAP jurisdictions. In addition, OJJDP will support the development of the SHOCAP model within Weed and Seed Sites. The SHOCAP training and technical assistance provider also serves as a clearinghouse for information on the SHOCAP model, to which all jurisdictions may have access. This program will be implemented by the current grantee, Public Administration Service. No additional applications will be solicited in Fiscal Year 1993.

Violent Crime and Gangs

National Youth Gang Clearinghouse

$339,512

This contract provides funding for OJJDP's National Youth Gang Clearinghouse. The Clearinghouse (1) gathers and disseminates current information on model programs for combating violent juvenile gangs; (2) gathers and disseminates current statistical and descriptive information on violent juvenile gangs; and (3) assists in the coordination of Federal, State, and local gang program development and training and technical assistance efforts by providing information to the field on relevant programs and activities. This program will continue to be administered by the current contractor, Digital Systems Research, Inc. No additional applications will be solicited in Fiscal Year 1993.

Targeted Outreach with a Gang Prevention and Intervention Component (W&S)

$400,000

This program is designed to enable local Boys and Girls Clubs to prevent youths from entering gangs and to intervene with gang members in the early stages of gang involvement to divert them away from gangs and toward more constructive programs. The National Office of Boys and Girls Clubs will provide training and technical assistance to the 57 existing sites and add 20 new gang prevention and 4 intervention sites. This program will give preference to official Weed and Seed Sites that meet the Boys and Girls Clubs' selection criteria. The program will be implemented by the current grantee, Boys and Girls Clubs of America. No additional applications will be solicited in Fiscal Year 1993.

Youth Gang Intervention Training (W&S)

$350,000

The Gang and Drug POLICY (Police, Prosecution, Probation, Operations Leading to Improved Children and Youth Services) Training Program helps local jurisdictions develop a comprehensive strategy for combating gangs and drugs. The objectives of this training program are: (1) To provide a process for community leaders to recognize the benefits of cooperatively developing strategies to address the problems resulting from gang and drug activities; (2) to promote an awareness and recognition of (a) the problems of gangs and drugs, (b) justice system practices, (c) behavior patterns of gangs and gang members, and (d) current system practices and demonstration projects; (3) to provide strategies and techniques for public and private interagency partnerships dealing with community gang and drug related problems; (4) to clarify and document the legal roles, responsibilities, and issues relating to an interagency approach to the prevention, intervention, and suppression of these illegal activities of youth gangs; (5) to encourage leadership and innovation in the management and resolution of gang and drug problems; and (6) to develop or improve the response capacity to gang and drug issues through an effective interagency model which matches resources to demands. This program has provided training in official Weed and Seed Sites upon request and will continue to do so during Fiscal Year 1993. This program will continue to be implemented under the current interagency agreement with the Federal Law Enforcement Center in Fiscal Year 1993.

Victims

*Advocacy for Abused and Neglected Children**

$2,000,000

The National Court Appointed Special Advocates Association (NCASAA) provides training and technical assistance to local and statewide programs; assists in program development; advocates the best interest of abused and neglected children; publicizes the Court Appointed Special Advocate (CASA) concept which helps recruit volunteers; develops management systems and standards to support and improve local CASA operations; provides a resource library and resource services; develops cooperative relationships with other national and regional organizations; and performs a variety of related services in furtherance of its goal of assuring that every child who needs one has a CASA. There are now 520 CASA programs in 49 States, with 28,000 volunteers. There are 12 statewide programs mandated and State-funded, and 24 State associations and networks offering support services to their State's program. This program will be implemented by the current grantee (NCASAA) under separate assistance awards of $1 million each, one to provide technical assistance and training services and one to support the expansions of CASA programs in both new and existing jurisdictions. No additional applications will be solicited in Fiscal Year 1993.

*Improving the Juvenile and Family Courts' Handling of Child Abuse and Neglect Cases**

$500,000

The purpose of this project is to develop new, model approaches and programs to allow juvenile and family courts to improve handling of child abuse and neglect cases. The National Council of Juvenile and Family Court Judges has developed model programs to assist State courts in providing training and technical assistance to judicial personnel, attorneys, and other key people in juvenile and family courts. New model programs will be designed to help state court systems develop more effective procedures for determining whether child service agencies have made "reasonable efforts" to prevent placement of children in foster care and for reuniting families thereafter. Procedures for sharing information among health professionals, social workers, law enforcement personnel, prosecutors, defense attorneys, and juvenile and family court personnel will also be strengthened. This project will continue to be implemented by the current grantee, The National Council of Family and Juvenile Court Judges. No additional applications will be solicited in Fiscal Year 1993.

*Permanent Families for Abused and Neglected Children**

$225,000

This is a national project to prevent unnecessary foster care placement of abused and neglected children; to reunify the families of children already in care; and to ensure permanent adoptive homes when reunification is impossible. The purpose of this project is to ensure that foster care is utilized only as a last resort and a temporary solution for children. Accordingly, the project is designed to ensure that government's responsibility to children in foster care is duly acknowledged by all appropriate disciplines. The project will continue to call upon judges, social service personnel, citizen volunteers, attorneys, and others to recognize and resolve the problems of children in foster care. Project activities include national training programs for judges, social service personnel, citizen volunteers, and others in the Reasonable Efforts Provision of 42 U.S.C. 671(a)(15); training in selected Lead States; and development of model questions to guide risk assessment. This program will be implemented by the current grantee, The National Council of Family and Juvenile Court Judges. No additional applications will be solicited in Fiscal Year 1993.

Research and Evaluations

Independent Evaluations

$640,000

OJJDP awarded a contract in 1991 to conduct independent third party evaluations of selected OJJDP-funded programs. Projects to be examined in Fiscal Year 1993 include: (1) Satellite Pre-School Program (W&S); (2) Law Related Education Programs (W&S); (3) Horizons Plus; (4) Gang and Drug Training and Technical Assistance; and (5) Intensive Community-Based Aftercare Program.

This contract focuses on the efficacy, cost-effectiveness, and impact of OJJDP's discretionary programs. Assessment data will be made available to all concerned. The following criteria are considered in selecting programs for evaluation: (1) Continuations in order of number of years of funding and total expenditures; (2) new action programs being tested to serve as possible models; and (3) programs being considered for continuation. This program will be implemented by the current contractor, Caliber Associates. No additional applications will be solicited in Fiscal Year 1993.

Statistics, Information Systems, and Technology

Children in Custody Census

$300,000

This is a collaborative interagency program between the U.S. Bureau of the Census and OJJDP. All, or a major portion, of the funding will be provided by OJJDP for the biennial census of public and private juvenile detention and correctional facilities conducted by the Census Bureau. The census describes the subject facilities in terms of their resident population as well as programs and physical characteristics. This program will be implemented under an interagency agreement with the U.S. Census Bureau. No additional applications will be solicited in Fiscal Year 1993.

Juvenile Justice Clearinghouse

$814,714

The Clearinghouse provides support services to OJJDP in preparing the Office's publications; collecting, synthesizing, and disseminating information on all aspects of juvenile delinquency; and preparing specialized responses to information requests from the juvenile justice field. The clearinghouse maintains a toll-free number for information requests. This program will be implemented by the current contractor, Aspen Systems, Inc. No additional applications will be solicited in Fiscal Year 1993.

*National Coalition of State Juvenile Justice Advisory Groups**

$600,000

The National Coalition of State Juvenile Justice Advisory Groups was established in 1983 as an organization to support and facilitate the purposes and functions of state juvenile justice advisory groups. In 1984, Congress selected the National Coalition to review Federal policies regarding juvenile justice and delinquency prevention, prepare and submit an Annual Report and recommendations to the President and Congress, and provide advice to the OJJDP Administrator. The Coalition is also authorized to develop an Information Center of Juvenile Justice Prevention Programs, to conduct an annual conference, and to disseminate information, data, standards, advanced techniques, and program models. No additional applications will be solicited in Fiscal Year 1993.

Juvenile Justice Data Resources

$55,000

This is an interagency agreement between OJJDP and the University of Michigan. This program addresses the need to enhance the availability of juvenile justice data sets and technical assistance and training materials, continue the feasibility testing, analyze juvenile corrections data, and prepare reports. This program will be implemented under an interagency agreement with the University of Michigan. No additional applications will be solicited in Fiscal Year 1993.

Juvenile Justice Statistics and Systems Development

$300,000

The purpose of this program is to improve national and State and local statistics on juvenile justice as well as decision making and management information systems (MIS) within the juvenile justice system. The project is divided into two tracks, the National Statistics Track (NST) and Systems Development Track (SDT). The NST helps to formulate a comprehensive National Juvenile Justice Statistics program which will include a series of regular reports on the extent and nature of juvenile offending and victimization and the justice system's response to the same. A major product will be a Report to the Nation on Juvenile Crime and

Victimization. The SDT will assess juvenile justice agencies' decision making, needs, and capabilities to generate and use information; develop models for decision making and related MIS; and develop and provide training and technical assistance to promote the adoption of model systems in test sites. This program will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1993.

Juveniles Taken Into Custody (JTIC): Interagency Agreement

$150,000

The U.S. Bureau of the Census is working with OJJDP to develop a national comprehensive statistical reporting system that is responsive to the information requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and to the needs of the juvenile justice field for data on juvenile custody populations in order to assist State legislatures and juvenile justice professionals in planning and policy-making decisions. The Census Bureau acts as the data collection agent for the JTIC program. This program will be implemented under an interagency agreement with the U.S. Census Bureau. No additional applications will be solicited in Fiscal Year 1993.

Juveniles Taken Into Custody: Contract

$450,000

The purpose of this program is to develop a national comprehensive statistical reporting system that is responsive to the information requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, and is also responsive to the needs of the juvenile justice field for relevant and timely data on juvenile custody populations and the requirements of State legislatures and juvenile justice professionals for comprehensive planning and informed policy decisions. This is a continuation of the Juveniles Taken into Custody Research Program, which will be competitively bid this year.

National Juvenile Court Data Archive

$615,000

This program collects, processes, analyzes, and disseminates available data concerning the nation's juvenile courts. The Archive collects automated data and published reports from juvenile courts throughout the nation. Using the automated data, the Archive produces comprehensive reports on the activities of the juvenile courts. These reports examine referrals, offenses, intake, and dispositions as well as specialized topics such as minorities in juvenile courts or specific offense categories. The Archive also provides assistance to jurisdictions in analyzing their juvenile court data. This program will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1993.

Community Policing and Innovative Law Enforcement

Juvenile Justice Training for Law Enforcement Personnel

$288,000

This project provides technical assistance and training for Federal, State, and local law enforcement agencies to promote a better understanding of the juvenile justice system. Three training programs are offered through this project. Police Operations Leading to Improved Children and Youth Services (POLICY) helps mid-level managers develop management strategies which integrate juvenile services into mainstream law enforcement operations and demonstrates step-by-step methods to improve policy productivity in the juvenile justice area. The Child Abuse and Exploitation Investigative Techniques program provides law enforcement officers with state-of-the-art approaches for building a case against individuals charges with child abuse, sexual exploitation, or the abduction of children. The Managing Juvenile Operations program provides a series of training approaches for police executives which demonstrate simple, yet effective, methods to increase departmental efficiency and effectiveness by integrating juvenile services into the mainstream of police activity.

This program will continue in Fiscal Year 1993 under an interagency agreement with the Federal Law Enforcement Training Center. No additional applications will be solicited in Fiscal Year 1993.

Crime and Drug Abuse Prevention

The Congress of National Black Churches: National Anti-Drug Abuse Program (W&S)

$200,000

The overall plan for this program calls for the development and implementation of a national public awareness and mobilization strategy to address the problem of drug abuse in targeted communities across the United States. The goals of the national mobilization strategy are to summon, focus, and coordinate leadership. The Department of Justice, other Federal agencies and organizations will support this effort and join forces to help mobilize groups of residents to combat community drug abuse and drug-related criminal activities. The program is currently operating in 20 cities. This award will provide funding to expand the program into 10 to 15 additional cities participating in the Department of Justice Weed and Seed initiative. This program will be implemented by the current grantee, The Congress of National Black Churches. No additional applications will be solicited in Fiscal Year 1993.

Drug Abuse Prevention—Technical Assistance Voucher Project (W&S)

$200,000

The major focus of this program is to provide support to community groups in their efforts to reclaim their communities, to drive out criminal activity, vandalism, and other anti-social behavior, and replace those undesirable activities with healthy, safe, and economically secure environments at the neighborhood and community levels. The project will provide technical assistance vouchers to neighborhood groups to establish or strengthen youth programs and activities which combat violence and reduce delinquency. This method of delivery allows these neighborhood groups to secure technical assistance inexpensively from sources which are familiar with their programs and their community characteristics. This program will be implemented by the National Center for Neighborhood Enterprise. Qualified applicants serving Weed and Seed Sites will receive a preference in the award of vouchers. No additional applications will be solicited in Fiscal Year 1993.

Effective Strategies in the Extension Service Network, Phase III

$75,000

This is a collaborative interagency program between the OJJDP, the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation, and the Extension Service of the Department of Agriculture. OJJDP and NHTSA are providing the funding and the Extension Service is providing in-kind services. The purpose of this program is to establish community collaborations led by juvenile court judges and extension professionals with training and technical assistance provided by the

Extension Service network. These collaborations will focus on youths' alcohol and other drug abuse, including impaired driving and other delinquent behavior. During Phase II, a national training and technical assistance center, a Center for Action, was established in partnership with the National Council of Juvenile and Family Court Judges. This program will be implemented by the current grantee, The National 4–H Council. No additional applications will be solicited in Fiscal Year 1993.

Intensive Community-Based Aftercare Program

$200,000

This initiative is designed to develop a Juvenile Aftercare Program Model which can be tested in the Juvenile Justice system. Under this initiative, an assessment of various aftercare programs was performed, a prototype model with policies and procedures was developed, and a training and technical assistance package was developed for use in formal training and testing of the curriculum. This next stage of funding will provide training and technical assistance for seven States that were selected after a national competition, viz., North Carolina, New Jersey, Texas, Colorado, Nevada, Pennsylvania, and Michigan. This initiative will be implemented by the current grantee, Johns Hopkins University. No additional applications will be solicited in Fiscal Year 1993.

*Law-Related Education (LRE) (W&S)**

$3,200,000

The Law-Related Education National Training and Dissemination Program currently involves five national LRE projects and programs which operate in 48 States and will support Weed and Seed Sites where appropriate. The purpose of this program is to provide training and materials to State and local school jurisdictions to encourage and guide them in establishing LRE delinquency prevention programs in the curricula of kindergarten through grade 12 and in juvenile justice settings. Grantees will be encouraged to place emphasis on drug abuse prevention programs in primary, middle, and secondary schools in minority urban communities. The major components of the program are: Coordination and management, training and technical assistance, preliminary assistance to future sites, public information, program development, and assessment. This program will be implemented by the current grantees, the American Bar Association, the Center for Civic Education, the Constitutional Rights Foundation, the National Institute for Citizen Education in the Law, the Phi Alpha Delta Legal Fraternity, and other qualified organizations. Additional applications will be solicited for 20 percent of these funds ($640,000) in Fiscal Year 1993.

Native American Alternative Community-Based Program

$400,000

This is designed as a collaborative interagency program between OJJDP and other public and private organizations having interests in Indian Affairs. The purpose of this program is to develop community-based alternative programs for Native American youths who have been adjudicated delinquent and to develop a re-retry program for Native American delinquents returning from institutional placement. The project sites are Red Lake Band of Chippewa Indians, the Navajo Nation, Gila River Indian Community, and Pueblo of Jemez. A multi-component design will be developed which will integrate the critical elements of the OJJDP Intensive Supervision and Community-Based Aftercare programs with cultural elements that have traditionally been utilized by Native Americans to control and rehabilitate offending youths. A training and technical assistance provider, the National Indian Justice Center, was selected to provide the sites with training and technical assistance. No new applications will be solicited in Fiscal Year 1993.

Partnership Plan, Phase V (Cities in Schools)

$300,000

This program is a continuation of a national school dropout prevention model that was developed and is implemented by Cities in Schools, Inc. (CIS). CIS provides training and technical assistance to States and local communities to enable them to adapt and implement the CIS model. The model focuses social, employment, mental health, drug prevention, entrepreneurship, and other resources on high-risk youths and their families at the school level. Where CIS State organizations are established, they will assume primary responsibility for local program replication during "Partnership Plan, Phase V." This program is jointly funded by OJJDP and the U.S. Departments of Labor, Health and Human Services, and Commerce. Under this award, CIS is committed to establishing a traditional CIS program in at least one school within the target neighborhood in each of the ten Weed and Seed Sites where CIS has or is implementing an operational CIS program network. This project will be implemented by the current grantee, Cities in Schools, Inc. No additional applications will be solicited in Fiscal Year 1993.

Professional Development for Youth Workers

$200,000

The primary purpose of this program is to establish and promote professional development of youths and juvenile justice system providers through a formal training program. The program will be designed to include an inventory of existing training programs and their effectiveness, a needs assessment survey of training, the development of several curriculum areas, the design of a dissemination strategy, and an implementation plan for the second year of a two-year program. The overall goal of the program will be to enhance professionalism for youth workers who have responsibility for treating and caring for our nation's troubled youths. The Academy for Educational Development, Inc., initially funded in Fiscal Year 1992, will continue to implement this program in Fiscal Year 1993.

Reaching At-Risk Youths in Public Housing (W&S)

$300,000

This is a collaborative interagency program between OJJDP, the Bureau of Justice Assistance, and the Department of Housing and Urban Development to establish Boys and Girls Clubs in public housing across the nation. HUD's Fiscal Year 1993 funding level commitment for this program is not determined. The dollar amount for this program represents OJJDP's contribution. These programs are designed to provide needed services to high-risk youths who live in public housing, thereby preventing their involvement in youth crime, drug abuse, and gangs. This program will support all official Weed and Seed Sites, provided there is a viable Boys and Girls Club structure and cooperation from the local Public Housing Authority. The program will be implemented by the current grantee, Boys and Girls Clubs of America. No additional applications will be solicited in Fiscal Year 1993.

Satellite Prep School Program and Early Elementary Schools for Privatized Public Housing (W&S)

$625,000

This is a continuation demonstration program, in which OJJDP supported the

establishment of an early elementary school program in the Ida B. Wells Public Housing Development in Chicago, IL. This program is a collaborative effort between OJJDP, the Chicago Housing Authority (CHA), and the Westside Preparatory School and Training Institute (WSP) to establish a Prep School on the premises of the Ida B. Wells Housing Development for kindergarten to fourth grade children living in this public housing development.

The Wells Prep School opened with kindergarten and first grade students on September 14, 1992. The Prep School has been established and operates as an early intervention educational model based upon the Marva Collins Westside Preparatory School educational philosophy, curriculum, and teaching techniques. The Westside Preparatory School, a private institution located in Chicago's inner city, has had dramatic success in raising the academic achievement level of low-income minority children. The Ida B. Wells Housing Development is the Weed and Seed location for the City of Chicago, IL. The Wells Prep School is one of the primary "Seeding" projects in this site. Fiscal Year 1993 funds will be used to continue the operation and management of the school. Awards will be made to existing grantees. No additional applications will be solicited in Fiscal Year 1993.

School Safety

$200,000

This is a collaborative interagency program between OJJDP and Department of Education. The purpose of this program is to provide training and technical assistance on school safety to elementary and secondary schools, as well as to identify methods to diminish crime, violence, and illegal drug use in schools and on school campuses, with special emphasis on gang-related crime. The National School Safety Center (NSSC) maintains a library and clearinghouse with specialized information; provides research on school safety issues; and develops publications and training programs. These funds will focus on prevention of drug abuse and violence in schools and establish school safety trained personnel on the State level to provide technical assistance to localities. The Department of Education is supporting this transition to State level representatives with a transfer of $1,000,000 of Fiscal Year 1992 funds for expenditure in Fiscal Year 1993. This program will be implemented by the current grantee, the National School Safety Center at Pepperdine University. No additional applications will be solicited in Fiscal Year 1993.

Strategic Intervention for High Risk Youths (W&S)

$350,000

OJJDP, the Bureau of Justice Assistance (BJA) of the Office of Justice Programs, and the Center of Addiction and Substance Abuse (Center) of Columbia University have undertaken a joint effort to help communities rescue their high risk pre-adolescents from the interrelated threats of crime and drugs. The program tests a specific intervention strategy for reducing and controlling illegal drugs and related crime in the target neighborhood and fosters healthy development among youths from drug and crime-ridden neighborhoods. Multi-service, multi-disciplinary neighborhood-based programs are being established which will provide a range of opportunities and diverse services for pre-adolescents and their families who are at high risk for involvement in illegal drugs and crime. Simultaneously, the criminal and juvenile justice systems are targeting resources to reduce illegal drug use and crime in the neighborhoods where these young people reside.

The Center has received funding from the Ford Foundation, the Pew Charitable Trusts, and the Rockefeller Foundation for this effort, which has been matched by OJJDP and BJA. Based on proposals submitted, five communities were selected to receive funds in Fiscal Year 1992 to implement programs over a three-year period: Seattle, WA; Memphis, TN; Bridgeport, CT; Austin, TX; and Savannah, GA. Foundation and government funding of between $500,000 and $1 million was allocated per community. This program will be implemented by the current grantee in the five communities, including Seattle, which is a Weed and Seed Site.

Teens, Crime and Community: Teens in Action in the 90s (W&S)*

$400,000

This is a national scope continuation program between OJJDP, the National Crime Prevention Council (NCPC), and the National Institute for Citizen Education in the Law (NICEL). The Teens in Action in the 90s is a special application of the Teens, Crime and the Community program. The Teens, Crime and Community program operates on two premises: 1) Teens are disproportionately victims of crimes, and 2) teens can contribute substantially to making their schools and communities better, via a wide range of activities. With the Fiscal Year 1993 award, the national partners through the National Teens, Crime and the Community Program Center, will move to harness the energies of young people toward constructive activities, and reduce crime and violence. The partners will enlarge the Program Center to serve as a formal clearinghouse for information and materials dissemination and to provide technical assistance and training to communities in establishing the program, especially those in the Weed and Seed locations. This program will be implemented by the current grantees listed above. No additional applications will be solicited in Fiscal Year 1993.

Intermediate Sanctions, Drug Testing, and Offender Accountability

Boot Camp for Juvenile Offenders: Constructive Intervention and Early Support (W&S)

$750,000—OJJDP; $750,000—BJA

This initiative, which is jointly supported by OJJDP and BJA, provides boot camps for adjudicated nonviolent, juvenile offenders who are under 18 years of age. Each juvenile admitted to the program proceeds through four phases: Selection, intensive training, preparedness, and accountability. The program relies heavily on studies that support rehabilitation and character development within an ordered, highly regimented environment. It incorporates design elements from the military as well as a strong "challenge" component. This initiative will be implemented by the current grantees, Boys and Girls Clubs of Greater Mobile, Mobile, AL; Cuyahuga County Juvenile Court, Cleveland, OH; and Colorado Division of Youth Services, Denver, CO. (Denver is a Weed and Seed Site.) No additional applications will be solicited in Fiscal Year 1993.

Community Strengthening Initiative (W&S)

$200,000

This is a national scope continuation demonstration program effort, in which the National Coalition of Hispanic Health and Human Services Organizations (COSSMHO) will build upon the work completed in "Proyecto Esperanza/Project Hope," and its "Family Strengthening Initiative" both previously funded by the OJJDP. These two major initiatives were successfully implemented in 20 Hispanic communities over the course of the last several years. The "Community Strengthening Initiative" will

incorporate elements of the Department of Justice Weed and Seed Program and will continue to build on the family strengthening approach. Hispanic parents and family members will assume leadership roles in their communities to fight against drugs, gangs, and crime. The community strengthening initiative will work with local communities to develop projects which will build and strengthen leadership at the community level.

The work will be conducted in nine Weed and Seed Sites with large Hispanic communities. The demonstration sites will be selected in order to reflect the regional and ethnic diversity found in the Hispanic population. This program will be implemented by the current grantee listed above. No additional applications will be solicited in Fiscal Year 1993.

Delay in the Imposition of Sanctions

$100,000

This project is a continuation of the research undertaken to study the delays in the delivery of sanctions to juveniles in the juvenile court system. If there are delays in the processing of juvenile court cases, the study will address the problems created by these delays and make realistic recommendations on how to correct the problems.

This will be the second year of funding. Phase I was funded in Fiscal Year 1992, which entailed determining the extent to which processing delays occurred and their reasons. Phase I also identified points in juvenile court case processing most susceptible to delays.

This announcement implements Phase II as an intensive site study which will involve evaluating the effect case processing delays have on a juvenile court's effectiveness and efficiency in handling delinquency cases, including the effect on the juveniles themselves. Phase II will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1993.

Drug Testing Guidelines

Training and Technical Assistance Curriculum for Drug Identification, Screening, and Testing in the Juvenile Justice System

$100,000

The purpose of this project is to develop and present comprehensive training and technical assistance in drug identification, screening, and testing, which will assist juvenile justice system policy makers and program staff in onsite drug recognition and testing program implementation and improve accountability of offenders using drugs. This program will be implemented by the current grantee, the American Probation and Parole Association. No additional applications will be solicited in Fiscal Year 1993.

Enhancing Enforcement Strategies for Juvenile Impaired Driving Due to Drug and Alcohol Abuse

$75,000

This is a collaborative interagency program between OJJDP and the National Highway Traffic Safety Administration (NHTSA). NHTSA's funding level commitment for this program is not yet final. The dollar amount of this program represents only OJJDP's portion. The purpose of this program is to combat the problem of youths involved in delinquent drinking and driving offenses by combining increased use of the arrest sanction and adopting uniform procedures for handling juvenile "driving under the influence" (DUI) arrestees. The result sought is an overall reduction in the incidence of drug- and alcohol-related accidents, injuries, and fatalities. During Phase I of the program, the project developed a system-wide enforcement model which unites key criminal justice agency components—police, prosecutors, judges, and probation officers—into one comprehensive DUI enforcement program. In this second phase of the project, the model will be demonstrated in up to five sites. These sites will receive a variety of technical assistance services. This program will be implemented by the current grantee, the Police Executive Research Forum. No additional applications will be solicited in Fiscal Year 1993.

Juvenile Restitution

$100,000

OJJDP plans to continue to support a juvenile restitution training and technical assistance program. The project design is based on practitioner recommendations for current needs in the field. OJJDP initiated a survey on how best to expand and institutionalize restitution as a viable juvenile justice disposition. In addition to the survey, a working group was convened to help map out the future course of OJJDP's support for optimum development of the various components of restitution. These components will include community service, victim reparation, victim-offender mediation, offender employment and supervision, employment development, and possible new program elements designed to establish restitution as a major aspect in our efforts to improve the juvenile justice system. This project will be guided by the need for community protection and offender competency development and accountability. The Division of Applied Research of Florida Atlantic University was competitively selected in Fiscal Year 1992 to implement this project. No additional applications will be solicited in Fiscal Year 1993.

Testing Juvenile Detainees for Illegal Drug Use

$100,000

The intent of this program is to assess, develop, test, and disseminate information on new and innovative approaches to test for illegal drug use among juvenile detainees. The purpose is also to improve resource allocation and treatment services for youths in detention facilities and offender accountability by developing more accurate and complete information on the use and control of illegal drugs. Drug testing is technical and complex. OJJDP has recognized this and embarked on an initiative to provide guidance, training, and technical assistance to the juvenile detention field in this area.

This program will be implemented by the current grantee, American Correctional Association. No additional applications will be solicited in Fiscal Year 1993.

Enhanced Prosecution, Adjudication, and Corrections

Training and Technical Assistance for Juvenile Detention and Corrections, (The James E. Gould Memorial Program)

$250,000

This project will continue to provide technical assistance and training to juvenile correctional and detention agencies. The program will also provide a national forum on juvenile corrections and detention, hold workshops on selected key issues, provide on-site technical assistance, hold a National Juvenile Day Treatment Conference, and continue efforts on literacy education and general networking. The project will emphasize intermediate sanctions for non-violent juveniles involved in drug-related offenses and illegal activities. This program will be implemented by the current grantee, The American Correctional Association. No additional applications will be solicited in Fiscal Year 1993.

Improvement in Correctional Education for Juvenile Offenders

$200,000

The purpose of this program is to assist juvenile corrections administrators in planning and implementing educational services for detained and incarcerated juvenile offenders. An assessment of various correctional education programs has been performed and documented. This next stage will provide funds to analyze the correctional education programs at six to eight juvenile correctional institutions and to develop specialized training and technical assistance materials to assist each site. This program will be implemented by the current grantee, the National Office of Social Responsibility. No additional applications will be solicited in Fiscal Year 1993.

Improving Conditions of Confinement: Training for Juvenile Corrections Staff

$525,000

This is a collaborative interagency program between OJJDP and the National Institute of Corrections (NIC). OJJDP will continue the development of a comprehensive training program for juvenile corrections and detention staff through an interagency agreement with NIC. The program is designed to offer a core curriculum for juvenile corrections and detention administrators and mid-level management personnel in such areas as leadership development, management, training of trainers, legal issues, cultural diversity, gang activity, juvenile offenders, and overcrowding. The training will be conducted at the NIC Academy and issued-oriented training will be presented regionally. This program will be implemented in Fiscal Year 1993 under the existing interagency agreement with NIC.

Improving Literacy Skills of Institutionalized Juvenile Delinquents

$250,000

This is a competitively awarded program funding two grants: Mississippi University for Women ($125,000), and The Nellie Thomas Institute of Learning ($125,000). Many juvenile delinquents in correctional institutions have a serious need to develop basic reading and writing skills. This program will improve the literacy levels of juvenile residents in these facilities while creating a national network of trained reading teachers and volunteers available to juvenile correctional facilities. The program will include training and follow-up technical assistance on methods, and a curriculum for use by the staff of detention and corrections facilities. This program will be implemented by the current grantees, The Mississippi University for Women, and The Nellie Thomas Institute of Learning. No additional applications will be solicited in Fiscal Year 1993.

Insular Area Support

$356,000

The purpose of this program is to provide supplemental financial support to the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands (Palau), and the Commonwealth of the Northern Mariana Islands. These funds are to be available to address the special needs and problems of juvenile delinquency in the insular areas, as specified by Section 261 of the JJDP Act.

Juvenile Corrections Industries Ventures Program

$75,000

The purpose of this program is to assist juvenile corrections agencies in establishing joint ventures with private businesses and industries in order to provide new opportunities for the vocational training of juvenile offenders. The grantee has performed an assessment of corrections industries ventures programs, developed a policy and procedures manual, and produced training and technical assistance materials. The grantee is now in the process of providing training and technical assistance to eight juvenile corrections agencies to assist in implementing the corrections ventures models. This program will be implemented by the current grantee, The National Office for Social Responsibility (NOSR). No additional applications will be solicited in Fiscal Year 1993.

*Juvenile Court Training**

$1,100,270

The primary purpose of this project is to allow the National Council of Juvenile and Family Court Judges to continue and refine the training presently offered and to provide technical assistance. The training objectives are to supplement law school curricula, provide judges with current information on developments in juvenile and family case law, and make available options for sentencing and treatment. Specifically, emphasis will be placed in the areas of drug testing, gangs and violence, and intermediate sanctions. This project will provide foundation training both to newly elected or appointed judges and to experienced judges who have been recently assigned to the juvenile or family court bench. This program will be implemented by the current grantee, The National Council of Juvenile and Family Court Judges. No additional applications will be solicited in Fiscal Year 1993.

OJJDP Technical Assistance Support Contract

$758,679

The purpose of this project is to provide technical assistance and support to OJJDP, the National Institute for Juvenile Justice and Delinquency Prevention, OJJDP grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention on all program development, evaluation, training, and research activities. This program will be implemented by the current contractor, Aspen Systems Inc. No additional applications will be solicited in Fiscal Year 1993.

A Study to Evaluate Conditions in Juvenile Detention and Correctional Facilities

$100,000

This project is a continuation of the research undertaken to study the conditions under which juveniles are held in juvenile detention and correctional facilities across the country. The study collected an extensive amount of valuable information from 1,000 juvenile facilities on such topics as life, health and safety issues, education and treatment programs, security and control measures, juvenile rights, physical plant, staffing ratios, etc. The first report presented the results of a primarily descriptive analysis of the facilities' conformance to nationally recognized standards and made recommendations for improvements. To utilize the collected data more fully, additional analysis needs to be performed.

This phase of the project will support additional data analysis and dissemination of the study findings, including the production of special topical reports or bulletins; briefings of Congress and State legislatures and policy makers; and presentation of the findings at national, regional, and state forums of advocacy and service organizations. This program will be implemented by the current grantee, Abt Associates. No additional applications will be solicited in Fiscal Year 1993.

*Technical Assistance to the Juvenile Courts**

$392,993

The National Center for Juvenile Justice (NCJJ), the current grantee, is the

research division of the National Council of Juvenile and Family Court Judges. The four types of technical assistance available under this grant are: (1) Information resources, (2) on-site consultation, (3) off-site consultation, and (4) cross-site consultation. Emphasis will be placed on intermediate sanctions for handling juveniles involved in drug-related offenses and for gang activities. In addition, the project will examine appropriate use of juvenile records in adult court proceedings, including an examination of state laws and practices. This program will be implemented by the current grantee, the National Center for Juvenile Justice. No additional applications will be solicited in Fiscal Year 1993.

Program to Reduce Minority Institutionalization, (The Deborah Ann Wysinger Memorial Program)

$1,200,000

Section 223(a)(23) of the JJDP Act requires that States "address efforts to reduce the proportion of juveniles detained or confined in secure detention facilities, secure correctional facilities, jails, and lockups who are members of minority groups if such proportion exceeds the proportion such groups represent in the general population." Section 261(a)(7) authorizes the Administrator to award Special Emphasis discretionary funds for this purpose.

In Fiscal Year 1992 five demonstration grants were awarded to develop, test, and disseminate information on programs designed to reduce the number of juveniles detained or confined in secure detention facilities, secure correctional facilities, or jails and lockups, who are members of ethnic and minority groups with special needs.

The purpose of the program is to help jurisdictions identify whether minorities are severely impacted, and if so, the extent and nature of that representation in the juvenile justice system (Phase I). This will then lead to the development of effective programs for responding to the problem from police arrest through disposition (Phase II). The five funded grantees eligible for Phase II awards in Fiscal Year 1993 are: Iowa Department of Human Rights; Arizona's Governor's Office for Children; North Carolina Department of Human Resources; Oregon Community Children and Youth Services; and Florida Department of Health and Rehabilitation. Portland State University will continue to provide technical assistance support to the five sites. No additional applications will be solicited in Fiscal Year 1993.

Gerald (Jerry) P. Regier,

Administrator (Designate), Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 92-27075 Filed 11-6-92; 8:45 am]

BILLING CODE 4410-18-M

Bureau of Justice Assistance; FY 1993 Discretionary Grant Program Plan Summary

AGENCY: Office of Justice Programs, Bureau of Justice Assistance.

ACTION: Public announcement of the Fiscal Year (FY) 1993 Discretionary Program Plan Summary, enumerating grants to be awarded by the Bureau of Justice Assistance in accordance with the Anti-Drug Abuse Act of 1988, and of the future availability of the FY 1993 Discretionary Grant Application Kit.

SUMMARY: The Bureau of Justice Assistance (BJA) is publishing this notice of the FY 1993 Discretionary Program Plan Summary and of the future availability of an FY 1993 Discretionary Grant Application Kit (hereafter referred to as the "Application Kit") for interested applicants. This summary briefly describes the program areas that are being considered for funding by BJA. A separate Program Plan will be published soon by BJA. The Application Kit will specifically solicit applications for competitive programs via expanded program descriptions in each area.

DATES: All proposals responding to the competitive programs must be submitted on the application forms, to be found in the Application Kit, and postmarked by the specific dates given for each program listed in the Application Kit. It is anticipated that the Application Kit will be available in December 1992. Application format, substance, and due dates for noncompetitive programs will be individually determined.

ADDRESSES: All proposals and correspondence must be mailed or otherwise sent to: Central Control Desk, Bureau of Justice Assistance, 633 Indiana Avenue, NW., room 1044, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Richard H. Ward, Acting Director, Discretionary Grants Program Division, Bureau of Justice Assistance, at the above address. Telephone (202) 514-5947. (This is not a toll-free number.) To obtain Application Kits, interested applicants should call or write to the Bureau of Justice Assistance Clearinghouse (1-800-688-4252) at the National Criminal Justice Reference Service (NCJRS), Box 6000, Rockville, MD 20850.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided.

Authority. This action is authorized under sec. 402 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3742(2).

Introduction

The Edward Byrne Memorial State and Local Law Enforcement Assistance Programs are administered by the Bureau of Justice Assistance (BJA), a component of the Office of Justice Programs (OJP) in the United States Department of Justice.

This Discretionary Grant Program is designed to increase the range of effective programs, practices, and strategies available to enhance the capabilities of State and local criminal justice practitioners in their efforts to control drugs and crime and improve the criminal justice system. This is accomplished through demonstration programs, evaluations of new practices and technologies, the transfer of program models, and the provision of technical assistance and training.

All potential grant applicants are reminded that the States are awarded the vast majority of BJA funding for innovative projects through the Formula Grant Program, under which a prescribed portion of the formula funds must be passed through to local governments. States and local governments should consider funding opportunities through the Formula Grant Program.

Some of the programs described in this plan are competitive. A separate solicitation for Fiscal Year 1993 BJA Discretionary Grant competitive programs will be published that will describe application and eligibility requirements. Awards will be made to organizations and agencies that offer the greatest potential for achieving the objectives outlined in the description of the program. Selections are made on the basis of the information contained in the applications received. Anticipated award amounts are noted but are subject to change for reasons that include changing needs and availability of funds.

BJA will issue invitations to applicants for noncompetitive and continuation programs on an individual basis. In some cases, dollar amounts are specifically identified in this document. In other cases, estimates will be included in the letter of solicitation.

OJP components, including BJA, the Bureau of Justice Statistics, the National

Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime, operate as a coordinated unit, supporting a common mission in providing leadership through innovation in the administration of justice in keeping with the priorities of the Administration, the Department, and Congress. In selecting grantees and providing services, priority may be given to "Weed and Seed" sites, whenever appropriate. Products developed under other programs will be made available to Weed and Seed sites. The soon-to-be published Program Plan description will address Weed and Seed activities in further detail.

BJA programs in this plan are consistent with the OJP Program Plan focus areas, which are:

Community Policing and Innovative Law Enforcement
Crime and Drug Abuse Prevention
Enhanced Prosecution, Adjudication, and Corrections
Intermediate Sanctions, Drug Testing, and Offender Accountability
Multijurisdictional Task Forces and Complex Financial Investigations
Research and Evaluation
Statistics, Information Systems, and Technology
Victims
Violent Crimes and Gangs

Competitive Programs

Regional Drug Prosecution Program—$500,000

This regional drug prosecution unit (RDPU) program will provide funding for up to two new demonstration sites to be competitively selected. The purpose of this federally funded program is to demonstrate an RDPU operating under the combined authority of several (a minimum of two and as many as six) local prosecutors (organized as a policy board) and composed of experienced drug prosecutors and investigative personnel representing local and county enforcement agencies.

Multijurisdictional RDPU's are currently thought to have the potential to develop longer term investigations that focus on mid-to-upper-level local narcotics distributors, effectively filling the gap between local "street-sweeps" and high-level urban traffickers with direct access to international narcotics sources. The regional, prosecutor-led approach should also offer an important enhancement to the effectiveness of rural and suburban horizontal task forces.

The majority of local prosecutors have become responsible for the dual roles of directing the vigorous enforcement of drug abuse laws to reduce supply, and leading community efforts to discourage drug abuse in an effort to reduce demand. BJA is sponsoring this demonstration effort to create a prototype that unites contiguous prosecutorial jurisdictions designed to reduce both supply and demand in the participating communities. This approach fosters reciprocal and cooperative efforts among State and local law enforcement agencies and strengthens statewide forfeiture provisions. The purpose is to demonstrate that:

Prosecutor-led multijurisdictional law enforcement task forces become more effective with active prosecutor participation;

Sophisticated networks of region-wide, mid-level narcotics traffickers are comprehensively targeted through the combined efforts of multiple prosecutorial jurisdictions;

Prosecution policies and priorities are defined for the benefit of the region; and

State forfeiture provisions would be strengthened.

Financial Investigations and Money Laundering Prosecution Demonstration Program $600,000

This competitive program will provide support for up to three State Attorneys General and up to two local prosecutor offices to demonstrate the prototype money laundering prosecution units developed by the National Association of Attorneys General. The program demonstrates that effective statewide investigation and dedicated prosecutorial resources in these complex financial areas often require long-term commitment of a statewide prosecutorial authority. The State must have existing statutory and necessary regulatory authority to enable this prototype to become fully operational. This means that the State needs a money laundering statute, a financial reporting statute similar to the Federal Bank Secrecy Act, a nonbank financial institutions reporting statute (particularly for currency exchange businesses in those States having international borders). In addition, a Memorandum of Understanding for information-sharing with the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) must be established. If the State does not have these statutes and regulations authorized by the time of application, consideration will be given to those States which have such legislation and regulations pending before their State legislatures. Additional consideration will be given to qualified applicants who utilize a post-seizure analysis team within their office, are authorized to convene a statewide Grand Jury and are the designated FinCEN coordinator for the State. If the applicant is not the designated FinCEN coordinator for the State, the applicant must confirm that the office either has or will establish a close working relationship with the State-designated FinCEN coordinator.

Corrections Options Grant Program $9,000,000

The purpose of this program is to provide assistance to the States for the design, development, and implementation of innovative sanctions and, when appropriate, alternatives to traditional modes of incarceration, including offender education, training, work, skill development, and release programs. The program operates under the authority established by title XVIII of the Crime Control Act of 1990, and provides grants to both public agencies and private nonprofit organizations.

Congress identified $9,000,000 from BJA FY 1993 discretionary funds to carry out three distinct sets of correctional options program activities.

(I) $6,000,000 is available to support grants to public agencies for the development of comprehensive correctional options programs.

A limited competitive solicitation will be issued to the eligible organizations that applied in FY 1992 under the Corrections Options Program, and two projects identified in the Appropriations Act.

The correctional options programs are designed to include the following general purposes as set forth in section 515.

To provide more appropriate intervention for youthful offenders who are not career criminals;

To provide the degree of security and discipline appropriate for the offender involved;

To provide diagnosis, treatment and services (including counseling, substance abuse treatment, education, job training and placement assistance while under correctional supervision, and linkage to similar outside services), that will assist the offender to pursue a course of lawful and productive conduct after release from legal restraint;

To assist in reducing criminal recidivism by offenders who receive punishment through such options;

To reduce the cost of correctional services and facilities; and

To provide work that promotes development of industrial and service skills in connection with a correctional option.

(II) $1,500,000 is available to support grants to private nonprofit organizations

for the development of correctional options programs, training and technical assistance.

A competitive solicitation will be issued. Nonprofit applicants seeking funding must address the general purposes for correctional options programs, detailed above. Proposals will be considered for: (1) Conducting educational and training programs for criminal justice personnel, (2) providing technical assistance to State and local units of government, and (3) carrying out demonstration projects which, in view of previous research or experience, are likely to be a success in more than one jurisdiction, and, which have the potential for developing or testing various innovative sanctions and alternatives to traditional modes of incarceration and offender release programs.

Proposals by the Organization for Total Person Development, Inc., of Des Moines, Iowa, to develop working models and management tools for the entire justice system, and the Treatment Alternatives to Street Crime (TASC) proposal from the State of Washington to improve drug testing services, will be considered for funding under the competitive announcement. BJA will also consider a continuation demonstration, training and technical assistance proposal from the VERA Institute in the use of structured fines as an intermediate sanction. Also, BJA will consider a continuation proposal from the National Consortium of Treatment Alternatives to Street Crime programs together with SEARCH Inc., to provide training and technical assistance in case management for community-based programs.

(III) $1,500,000 is available to support grants to public agencies for the development of correctional boot camp prisons.

A competitive solicitation will be issued to invite applications from public agencies to implement boot camp programs. Applicants seeking funding should focus on adjudicated youthful offenders as defined by appropriate State statute. Proposed correctional boot camps should provide a special emphasis on the general purpose areas for correctional options programs, detailed above.

BJA will also consider continuing its support for the program "Boot Camps for Juvenile Offenders: Intervention and Early Support." This effort is a cooperative program involving BJA, the National Institute of Justice (NIJ) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

Comprehensive Gang Initiative $1,300,000

The purpose of this program is to develop and demonstrate comprehensive strategies for preventing and controlling gang drug trafficking and related violent crime. This initiative focuses on Federal, State and local law enforcement and prosecutorial agencies working in concert with their communities to target the leadership of entrepreneurial street gangs involved in drug trafficking and related violence.

The Police Executive Research Forum (PERF) and COSMOS Corporation have conducted a national assessment of promising prevention and control strategies. The assessment includes case studies in El Paso, Texas; Evanston, Illinois; Lakewood, Colorado; and San Bernardino, California.

Based on the assessment, PERF is developing model prevention and control strategies that apply a problem-solving approach to gang drug trafficking. The model strategies will assist communities with needs assessments as well as with the identification of jurisdiction and neighborhood specific gang problems. Solutions that can be tailored to the specific problems of particular jurisdictions are a critical component of the model strategies.

In Fiscal Year 1993, BJA will conduct a national competition to identify up to four sites to implement and evaluate the model strategies developed by PERF. It is anticipated that approximately $200,000 will be available to each demonstration site. The demonstration sites will receive technical assistance from PERF.

In order to be competitive, demonstration site applications should identify innovative approaches and address issues of community engagement and problem-solving capabilities.

Statewide Intelligence System Program $750,000

Many States are beginning to construct systems for gathering, storing, and disseminating intelligence on a statewide basis. These systems vary in configuration, complexity, focus, and control. To facilitate this State-level intelligence need, BJA will initiate a Statewide Intelligence Systems (SIS) Program within the larger framework of the Organized Crime Narcotics Trafficking Enforcement (OCN) Program. The SIS program will adopt the OCN control group approach to shared management of program implementation, including program goals, objectives, and operations.

The Regional Intelligence Sharing Systems (RISS) Program receives BJA funds to support intelligence systems for State and local law enforcement. As such, the RISS Program will facilitate the development and evolution of statewide OCN model intelligence sharing systems so they can be interfaced with RISS in an independent, but mutually beneficial, capacity. Sites funded under this program would serve as State-level intelligence repositories, which would be compatible with the respective RISS programs.

The SIS Model Projects must each establish a Control Group representing participating agencies. Control Group members must have an equal vote, and all major decisions must be unanimous.

The SIS Model Projects must be automated, or alternatively, must propose to use the SIS Model grant funds to achieve automation. The SIS Model Projects must comply with 28 CFR part 23 (Criminal Intelligence Systems Operating Policies), and must coordinate with the RISS project serving the State in order to eliminate duplication of effort.

Two sites would be initially funded on a competitive basis, and would serve as the foundation for a model transferrable to other States. Approximately $750,000 in FY 1993 funds will be available for the implementation of this program.

Community-Oriented Policing—Demonstration $800,000

Under a separate solicitation, to be available by the end of March, BJA will announce a demonstration program involving a comprehensive model community-oriented policing initiative.

Noncompetitive, Continuation Programs, And Congressional Suggestions

Community Policing and Innovative Law Enforcement

Operation Weed and Seed—Demonstration—$12,350,000 (est).

Funds have been appropriated to the United States Department of Justice, Executive Office of Weed and Seed (EOWS) to continue phase II of the Weed and Seed strategy at current sites and approved new sites. EOWS will transfer funds to the BJA to administer grant awards. This initiative is designed to weed out crime from targeted neighborhoods and then to seed them with a wide range of crime-and drug-prevention programs, along with human services to prevent crime from recurring. Operation Weed and Seed is a community-based, comprehensive, multi-agency approach to combat violent crime, illicit drug trafficking and

use, and gang activity in high-crime neighborhoods. Success of the program depends on coordinated efforts by law enforcement, community groups, social service agencies, government and the private sector, working together, to revitalize distressed neighborhoods. The program strategy includes the following elements: Coordinated law enforcement, community policing, prevention, intervention and treatment, and neighborhood restoration and revitalization. Nineteen (19) cities have received funding as pilot demonstration sites to implement Weed and Seed: Atlanta, Georgia; Charleston, South Carolina; Chelsea, Massachusetts; Chicago, Illinois; Denver, Colorado; Fort Worth, Texas; Kansas City, Missouri; Los Angeles, California; Madison, Wisconsin; Omaha, Nebraska; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; Richmond, Virginia; San Antonio, Texas; San Diego, California; Santa Ana, California; Seattle, Washington; Trenton, New Jersey; Washington, DC; Wilmington, Delaware; and an award to Los Angeles, California, is pending.

National Law Enforcement Policy Center—$250,000

The purpose of this program is to develop and disseminate model policies for use by State and local law enforcement agencies. In addition to the promulgation of more model policies that address community policing during Fiscal Year 1993, the International Association of Chiefs of Police (IACP), the current grantee, anticipates conducting four regional training sessions on policy development and implementation, with particular emphasis on those policies that affect drug enforcement, violent crime, and civil disorder.

Community Policing Model Development: Training and Technical Assistance—$400,000

The purpose of this program, which will be coordinated with the National Institute of Justice (NIJ), is to develop a comprehensive model of Community Oriented Policing and to provide training and technical assistance based on the model to demonstration sites participating in BJA's Community-Oriented Policing Initiatives.

Neighborhood Oriented Policing—$2,000,000

Congress has identified not less than $2,000,000 in funding for Neighborhood Oriented Policing Projects not associated with the Weed and Seed program, to fund ongoing demonstration projects to their conclusion and to expand successful projects to new locations. Congress encourages BJA to continue utilizing the expertise developed by national organizations, such as the following:

Eisenhower Foundation: Neighborhood Crime and Drug Abuse Prevention Program

This program will continue to demonstrate strategies to resolve problems directly associated with crime, violence, and illicit drug use in high-crime, impoverished neighborhoods through police-community partnerships involving other service providers, businesses, community organizations, and citizens, including youth.

National Crime Prevention Council: Community Drug Abuse Prevent Initiatives

The purpose of the program is to assess, document, and distribute policy and program strategies and provide training and technical assistance in crime-, violence-and drug-demand reduction to citizens, organizations, and local, State and Federal policymakers.

National Training and Information Center: Communities in Action to Prevent Drug Abuse

The purpose of this program is to provide training and technical assistance for the development and implementation of cost-effective, community-based, anti-crime and illicit drug control strategies to communities in the following communities: Denver, Colorado; Hartford, Connecticut; Atlanta, Georgia; Des Moines, Iowa; Waterloo, Iowa; Rock Island, Illinois; Boston, Massachusetts; Muskegon Heights, Michigan; Syracuse, New York; Cincinnati, Ohio; and Cleveland, Ohio.

The National Association of Town Watch: Crime-and Drug-Prevention Campaign

The purpose of this program is to provide information, materials, and technical assistance for the development of both neighborhood partnerships and cost-effective, innovative, community-based demonstrations to reduce crime, violence, and substance abuse.

Innovative Neighborhood-Oriented Policing in Rural Jurisdictions

This program is designed to develop and demonstrate a prototype for neighborhood-oriented policing in rural jurisdictions. This program re-orients police work from strictly response-driven incident-handling toward a more comprehensive attack on community conditions that are linked with crime and illicit drugs. The following three demonstration sites will be eligible to receive supplemental funding in Fiscal Year 1993: Richmond, Maine, Fort Pierce, Florida; and Caldwell, Idaho.

BJA will also examine the following proposals identified by Congress:

Portland, Oregon, Community Policing
King County, New York, District Attorney, Community-Based Prosecution
Prince George's County Community-Oriented Policing Program and Technical Assistance to the City of Baltimore, Maryland

Drug-Impacted Small Jurisdictions—$250,000

The purpose of this program is to develop and demonstrate effective drug prevention and control strategies that address drug trafficking and other drug-related crime problems in jurisdictions (or combinations of jurisdictions) with populations of 50,000 or less. A comprehensive drug prevention and control program prototype has been designed based on the experiences of four BJA demonstration sites, as well as an assessment of promising strategies in nondemonstration sites. This program is supported by a training and technical assistance grant to the Institute for Law and Justice (ILJ), which will be supplemented in Fiscal Year 1993 in order to assist Fort Myers, Florida, and Pittsfield, Massachusetts, with implementation and testing of the prototype. Following the evaluation of these sites, ILJ will refine the prototype and disseminate model strategies for small jurisdictions.

State and Local Training and Technical Assistance—$750,000

The major purposes of the program are to: (1) Support the development and enhancement of comprehensive State strategies; (2) promote and facilitate the implementation of programs developed under BJA discretionary initiatives; and (3) provide technical assistance to States and local jurisdictions. This continuation program is being implemented through a competitive one-year contract with a BJA option to supplement the contract for an additional two years.

Crime and Drug Abuse Prevention

Drug Abuse Resistance Education (DARE) Training Centers—$1,200,000

The goals of this program, which will be implemented by the five BJA-funded DARE Regional Training Centers during FY 1993, are: (1) To train police officers to teach skills to children that help them resist pressure to use drugs; and (2) to provide technical assistance to State training centers and to accredit those

centers that are qualified as DARE Training Centers.

National Citizens' Crime Prevention Campaign—$2,800,000

The purpose of this program, implemented by the National Crime Prevention Council (NCPC), is to promote the development of efficient and cost-effective community crime- and drug-prevention initiatives at the local, State and National levels. The campaign teaches the public these crime- and drug-prevention behaviors; helps build safer and more caring communities; motivates citizens to take positive actions to protect themselves, their families and communities; and fosters working partnerships between law enforcement agencies and other members of the community to create an environment less conducive to crime and drug abuse.

Boys and Girls Clubs Demonstration—$2,500,000

The goal of this program is to promote the establishment of Boys and Girls Clubs in public housing communities nationwide. BJA will provide resources to the Boys and Girls Clubs of America to establish new clubs in public housing communities where none presently exist and implement program enhancement models in existing clubs to demonstrate that this program meets the complex needs of children and families for whom public housing is home.

Wings of Hope Anti-Drug Program: Weed and Seed—$750,000

The Wings of Hope Anti-Drug Program involves coalition building and community partnerships, including law enforcement agencies, churches, businesses, schools, residents and other public and private agencies in a multifaceted effort to combat crime and illicit drugs. The grantee, the Southern Christian Leadership Conference, proposes to expand the program to provide additional training and technical assistance to Weed and Seed pilot demonstrations.

Neighborhood Mobilization: Weed and Seed—$200,000

Based on a process developed in Philadelphia by Herman Wrice, this program provides training and technical assistance to the Weed and Seed demonstration sites to assist neighborhood residents in assuming a more active role in both the weeding and seeding activities. The Department of Housing and Urban Development (HUD) will transfer funds to BJA to support this initiative.

Atlanta, Georgia, Safe Haven Multi-Service Educational Centers: Weed and Seed—$200,000

The Atlanta Safe Haven program will be designed to bring together education, community services, law enforcement, health, recreation, and other groups to provide alternative and support activities for at-risk youth and other community residents. The Atlanta Safe Haven program will work closely with Cities in Schools, Inc., which is administering a joint demonstration project for the Department of Justice, and the Department of Education and Housing and Urban Development to support implementation of Safe Haven Multi-service Educational Centers in Weed and Seed target communities.

Florida Business Alliance Program: Weed and Seed—$96,550

The Florida Chamber of Commerce in Tallahassee, Florida, has developed a Business Alliance program that works in partnership with local businesses to establish drug-free workplace assistance programs and to enlist their support for local community redevelopment efforts. BJA has provided funds to the Florida Chamber of Commerce to provide training to five sites in Florida for development of the Business Alliance program.

Strategic Intervention for High-Risk Youth—$150,000

This is a joint venture with the Center for Addiction and Substance Abuse (CASA), the Annie Casey Foundation, the Ford Foundation, the Rockefeller Foundation, the Pew Charitable Trusts and coordinated with the Office of Juvenile Justice and Delinquency Prevention. The program tests a variety of intervention strategies for preventing and controlling illegal drugs and related crime and fostering healthy development among youth from drug- and crime-ridden neighborhoods. BJA's Fiscal Year 1993 funds will support training and technical assistance efforts in support of demonstration sites in Austin, Texas; Bridgeport, Connecticut; Memphis, Tennessee; and Seattle, Washington. Savannah, Georgia, may be added as a demonstration site in FY 1993.

Wings of Hope Anti-Drug Program (SCLC)—Atlanta—$225,000

The purpose of this comprehensive, church-based prevention program, implemented by the Southern Christian Leadership Conference in Atlanta, Georgia, is to demonstrate the effectiveness of partnerships and coalitions in the development and implementation of innovation community-based strategies to reduce crime, violence, and the demand for illicit drugs. This program will continue to provide assistance to the Weed and Seed communities of Thomasville Heights and Inglewood.

BJA will also examine the following proposals at the suggestion of Congress:

Columbia University Center on Addiction and Substance Abuse: High-Risk Youth Anti-Drug Program

Hawaii: No Hope In Dope

Enhanced Prosecution, Adjudication, and Corrections

Model State Drug Control Statutes—$350,000

This program, which is being implemented by the American Prosecutors Research Institute (APRI), will continue to facilitate the adoption and implementation of model comprehensive drug control statutes which strengthen the States' investigation, apprehension, prosecution and punishment capabilities in dealing with drug offenders and organizations trafficking in illegal drugs and narcotics.

Court Performance Standards—Phase III: Training and Technical Assistance—$250,000 (est.)

The purpose of this program is to enhance performance of large-jurisdiction courts to meet the increasing numbers of illicit drug trafficking and drug-related violence cases being referred for adjudication. This will be accomplished by providing training and technical assistance to courts to help them meet court performance standards developed by the National Center for State courts (NCSC). During phase III in FY 1993, the NCSC will continue to provide training and technical assistance to demonstration sites, evaluate the impact of implementing the Trial Court Performance Standards, and implement a national marketing strategy.

South Carolina: Model State Grand Jury—$500,000

The purpose of this project is to continue to demonstrate the South Carolina Grand Jury Project's operations and to assist in replicating this Statewide Project in other States. This program will be implemented by the South Carolina State Attorney General's Office.

Local Drug Prosecution

Innovative Projects and Assessments—$650,000 (est.)

Directed toward prosecutors who try drug-related cases, this program is designed to provide State and local prosecutors with new and innovative approaches to improve local investigation and prosecution of drug offenses as well as to organize community resources for a comprehensive strategy to eliminate illegal drugs. Implemented by the American Prosecutors Research Institute (APRI) in FY 1993, this strategy will be the primary Weed and Seed technical assistance resource available to local prosecutors.

Statewide Training for Local Prosecutors—$150,000 (est.)

This program, implemented by the American Prosecutors Research Institute (APRI), provides for national dissemination of a training curriculum with technical support to each State to provide advanced comprehensive training to local prosecutors assigned full-time to drug units and task forces.

Federal Alternatives to State Trial (FAST)—$150,000

The purpose of this program is to demonstrate the potential benefits of transferring selected State drug trafficking and gun cases to the Federal system utilizing Philadelphia Assistant District Attorneys cross-designated as Assistant U.S. Attorneys to develop and prosecute these cases in Federal Court. This program will be implemented by the current grantee, the Philadelphia District Attorney's Office.

Domestic Assistant Response Team (D.A.R.T.)—$200,000

This program will continue BJA's support for Phase II of this comprehensive domestic violence intervention and prosecution program. This project coordinates law enforcement, victim assistance, and social services to spouses and their children in the early stages of physical and emotional abuse between cohabitating partners. The grantee of this initiative is the Philadelphia District Attorney's Office.

Private Sector Prison Industry Enhancement (PIE) Certification: Technical Assistance and Training Program—$100,000

The purpose of this project is to continue to provide technical assistance and training to currently certified agencies, interested organizations, and applicants for the Private Sector Prison Industry Enhancement (PIE) Certification Program. The PIE program provides exemption from Federal constraints on the marketability of prisoner-made goods by permitting the sale of these products in interstate commerce. Up to 50 non-Federal prison industry programs may be certified for this exemption when their operation has been determined by the BJA Director to meet statutory and guideline requirements.

Multijurisdictional Task Forces and Complex Financial Investigations

Washington, D.C. Metropolitan Area Drug Enforcement Task Force (MATF)—$2,000,000

The purpose of this continuation program, administered by the host agency, the Arlington County, Virginia, Police Department, is to demonstrate, through coordinated planning, administration and operations, the ability of Federal, State, and local law enforcement agencies to suppress illicit narcotics and drug trafficking and the violence associated with it in a major metropolitan area. Grant funds support only State and local efforts. The Washington, D.C., Drug Enforcement Administration Field Division is responsible for managing operations. For activities authorized by Public Law 100-690, $2,000,000 shall be transferred to BJA for the MATF activities.

State and Local Participation in Federal Task Forces—$16,000,000

State and local law enforcement agencies are participating in Federal drug enforcement and organized crime task forces.

Assistance will be provided to the State and local participating agencies in the form of overtime payments made available through cooperative agreements with the Federal agencies. As directed by the FY 1993 Appropriations Act, BJA will distribute $10,700,000 to the Drug Enforcement Administration (DEA) and $5,300,000 to the Office of the Deputy Attorney General, Organized Crime and Drug Enforcement Task Force section, for overtime payments.

Organized Crime Narcotics (OCN) Program—$2,600,000

The OCN Program was initiated by BJA to demonstrate the effectiveness of law enforcement agencies working together under a shared management concept to attack multijurisdictional criminal conspiracies involving narcotics.

Organized Crime Narcotics (OCN) Trafficking Enforcement Program—New Directions

The Organized Crime Narcotics (OCN) Program demonstrates the effectiveness of law enforcement agencies working together under a shared management concept to attack multi-jurisdictional criminal conspiracies involving narcotics, using a management control group to establish operating policies and procedures, and to rank order enforcement targets and allocate and direct joint resources. Fiscal Year 1993 funds will be used to award up to 10 projects, which will expand the OCN concept to concentrate on new initiatives.

Organized Crime Narcotics (OCN) Statewide Integrated Resources Model

The purpose of this continuation program is to demonstrate the effectiveness of coordinated, multijurisdictional investigations and prosecutions involving Federal, State and local enforcement agencies against organized narcotics trafficking. Existing projects, located in the Arizona Attorney General's Office and the Florida Department of Law Enforcement, will continue a multi-agency response to commonly shared major drug crimes throughout each of their regional areas.

Organized Crime Narcotics (OCN)—Center for Task Force Training (CenTF)

The Center for Task Force Training (CenTF) provides for the delivery of specialized training to multijurisdictional narcotics task force commanders in the area of management and command of task force investigations and prosecutions. Training provided will address such specialized areas of multijurisdictional enforcement expertise as jurisdictional differences, varying authorities and disciplines, case control, use of computer technology for task force commander management and operational activities, target selection, and task force establishment. The Institute for Intergovernmental Research (IIR) will be invited to submit an application for continuation of this program in Fiscal Year 1993.

Organized Crime Narcotics (OCN) Training and Technical Assistance

The purpose of this project is to provide dedicated training and technical assistance in support of the OCN demonstration efforts represented by the OCN—New Directions, OCN—Statewide Intelligence Sharing, and the OCN—Statewide Integrated Resources

Model (SIRM) programs. The Institute for Intergovernmental Research (IIR), will be invited to submit an application for continuation of this program in Fiscal Year 1993.

Financial Investigations (FINVEST)—$3,150,000

The Financial Investigations Program is a demonstration effort to develop and implement centrally coordinated multijurisdictional financial investigative activities directed toward removing the profit incentive from drug traffickers. The program involves detecting and identifying hidden assets acquired with the proceeds from drug trafficking, tracing narcotics-related financial transactions, identifying criminal financial structures and money laundering schemes, and asset forfeiture administration.

Financial Investigations Demonstration (FINVEST)

The Financial Investigations Program is designed to demonstrate the effectiveness of coordinated multijurisdictional financial investigations and prosecutions, using the shared management concept, in attacking the profit motive of illegal narcotics trafficking at the State and local levels. Fiscal Year 1993 funds will provide for noncompetitive continuation of the twelve current demonstration projects.

Financial Investigations (FINVEST) Training and Technical Assistance

The purpose of this program is to provide dedicated training and technical assistance in support of the FINVEST demonstration efforts in twelve current sites. The Institute for Intergovernmental Research (IIR) will be invited to submit an application for continuation of the program in Fiscal Year 1993.

Financial Investigation and Money Laundering—Training and Technical Assistance

The National Association of Attorneys General (NAAG) will develop legislative and enforcement tools necessary to prevent the laundering of drug funds and, where necessary, to assist in the investigation and prosecution of money laundering cases. This program will provide State Attorneys General with technical assistance to implement the model financial investigations and money laundering units that can be documented for future replication.

Regional Prosecution Program—$500,000

The purpose of this program is to demonstrate a formal interjurisdictional, prosecutor-led task force focused on the investigation and prosecution of illegal drug manufacturing and distribution organizations operating within their contiguous jurisdictional boundaries. This program will provide funding to continue the American Prosecutors Research Institute's technical assistance support to the two active demonstration projects and up to two new demonstration sites to be selected under the program announcement.

Asset Forfeiture Training for Prosecutors and for Training Financial Investigators—$175,000

This program is designed to train State and local prosecutors and selected local law enforcement officers in implementing effective State forfeiture statutes. The training will address the key provisions of these statutes: civil (*in rem*) administrative and criminal forfeiture procedures, substitute asset provisions, money laundering provisions, and property management procedures. Training will be provided in eight to 10 additional States. In addition, the dissemination to appropriate law enforcement and prosecuting agencies of existing documentation describing the "Asset Forfeiture Case Management and Tracking System," developed by the New York County District Attorney's Office (a previous grantee), will now be included in the program activities. This program will be implemented by the America Prosecutor's Research Institute (APRI).

COMMAND

Congress suggested that BJA examine a proposal by the District Attorney of Los Angeles and the COMMAND organization.

Research and Evaluation

BJA—State Reporting and Evaluation Program—$500,000 (est.)

Section 501(c) of the Act requires that programs funded with formula grant funds contain an evaluation component. Section 522 requires each State to provide BJA with a summary of its grant activities and an assessment of the impact of these programs on the needs identified in its statewide drug strategy. The BJA Director is required to submit to Congress an annual report which contains BJA evaluation results of programs and projects and State strategy implementation. This program will continue to be implemented by the Justice Research Statistics Association (JRSA).

Evaluation of Discretionary and Formula Grant Programs

The purpose of this program is to evaluate BJA's Formula and Discretionary Grant Programs and to identify and disseminate information to States and local jurisdictions on what works. Consistent with the Act, BJA will support evaluations of selected discretionary and formula grants, with priority given to the Weed and Seed strategy. Remaining Fiscal Year 1992 funds set aside for evaluation are available to the National Institute of Justice for the Fiscal Year 1993 efforts.

Statistics, Information Systems, and Technology

Bureau of Justice Assistance (BJA) Clearinghouse—$800,000 (est.)

The BJA Clearinghouse, in operation since 1990, serves as an information and dissemination source for BJA programs and documents. The Clearinghouse reference staff responds to requests from criminal justice policymakers, practitioners, and others who need documents or information. In addition, the Clearinghouse serves as a referral point for more extensive technical information. This program will continue to be implemented via a competitively awarded contract to Aspen Systems, Inc.

Operational Systems Support Training and Technical Assistance (SEARCH)—$650,000

The purpose of this continuation program, implemented by SEARCH: The National Consortium for Justice Information and Statistics, is to conduct outreach training to improve the general understanding of microcomputer automation and to provide criminal justice practitioners with information and demonstrations of specific criminal justice applications. It is designed to provide short-term technical assistance in order to address the specific needs of criminal justice agencies and to provide long-term technical assistance to individual States (or agencies within States) which are not predominantly automated or which need assistance in their adoption of criminal justice automation.

The purpose of this program is to upgrade the capacity to improve criminal history records information.

State Criminal History Record Improvement (CHRI) Program—$1,944,637

BJA and the Bureau of Justice Statistics (BJS) will continue to assist the States in improving the accuracy, completeness, and timeliness of criminal history record information residing at centralized State repositories and providing such information to the Federal Bureau of Investigation (FBI)

according to developed voluntary reporting standards. These improvements are designed to serve the entire criminal justice system by ensuring more accurate and comprehensive criminal history record information and by making it possible to identify convicted felons for such purposes as determining noneligibility for firearms purchases. A primary focus of this continuation program is to assist States in improving disposition reporting of criminal cases. Through the Attorney General's Criminal History Record Improvement (CHRI) program, BJS will complete its award of $27 million over a 3-year period to the States with funds from BJA. As identified by Congress, $500,000 in additional funds will be made available for grants to specified States for additional improvement of their statewide criminal history record information systems. These funds, along with amounts mandated for this purpose from each State's formula grant allocation, will allow these States to begin automation of their criminal records.

Additional Proposals for Information Systems Programs

Should BJA allocate additional funds for criminal information systems, Congress has requested reviews of the following proposals:

St. Louis City Police Department Information System
Commonwealth of Kentucky State Police 911 System
City of Chicago Automated Fingerprint Identification System (AFIS)

Victims—$125,000

In coordination with the Office for Victims of Crime, funds from the previous Fiscal Year will support several programs to improve system response to victims of crime. Victims issues will be given priority in other program areas whenever appropriate.

Jack A. Nadol,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 92-27070 Filed 11-6-92; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Federal Advisory Committee on International Exhibition; Renewal

In accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Services Administration regulations issued pursuant thereto (41 CFR part 101-6), and under the authority of section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended [20 U.S.C. 959(a)(4)], notice is hereby given that renewal of the Federal Advisory Committee on International Exhibitions has been approved by the Chairman of the National Endowment for the Arts for a period of two years from the date this Charter is filed. This committee will make recommendations on the selection of significant, contemporary American visual art, for presentation internationally in the context of major exhibitions, including multinational festivals, periodic exhibitions, and other major cultural events. The committee will also advise on the significance of participation by the United States Government in both existing and new exhibition opportunities and venues outside the United States.

The committee will report its recommendations to the Chairman the Arts Endowment, for transmittal by the Chairman or the Chairman's designee to the Director of the United States Information Agency (USIA) or the Director's designee.

The function of this advisory committee cannot be performed by the USIA, the Arts Endowment, an existing advisory committee or other means, such as public hearing. Neither agency nor any existing advisory committee possesses sufficient expertise regarding major international art exhibition venues or breadth of representation to offer such advice. Other means, such as public hearings, are not suitable for obtaining the necessary advice. Therefore, the renewal and use of this advisory committee is in the public interest.

This charter has been filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and over the USIA and with the Library of Congress.

Yvonne Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92-27029 Filed 11-6-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-206]

Southern California Edison Co.; San Onofre Nuclear Generating Station Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License No. DPR-13 issued to Southern California Edison Company (the licensee), for operation of San Onofre Nuclear Generating Station Unit 1 located in San Diego County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow exemptions to the leak rate testing requirements of 10 CFR 50.54(o) and all leak rate testing delineated in appendix J, title 10 of the Code of Federal Regulations, part 50. Permanent shutdown and defueling of the San Onofre, Unit 1, reactor following the current fuel cycle, Cycle 11, is proposed by the licensee. Upon permanent shutdown, maintaining containment integrity will no longer be necessary to assure that the leakage of radioactivity will not exceed the allowable value specified in the Technical Specifications.

The proposed action is in accordance with the licensee's application for exemption dated October 1, 1992.

The Need for the Proposed Action

The proposed exemption is required in order for the licensee to avoid incurring unnecessary expense, radiation exposure, or delay to the planned defueling schedule.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed exemption, and concludes that the proposed changes do not involve a modification to plant equipment or to methods of operation, but do permit the elimination of unnecessary testing. The proposed action affects a plant component's surveillance requirements only. Therefore, the proposed exemption does not increase the probability or consequences of accidents; no changes are being made in the types of any effluents that may be released offsite; and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed exemption involves a plant component's surveillance requirements only. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be deny the requested exemption. This denial would not reduce environmental impacts of plant operation and would result in unnecessary expense, unnecessary radiation exposure to operating personnel and delay.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Environmental Assessment related to the conversion of the Provisional Operating License to a Full Term Operating License granted to the Southern California Edison Company for San Onofre Unit 1 dated September 16, 1991.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application for exemption dated October 1, 1992, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room at the Main Library, University of California, Post Office Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 30th day of October, 1992.

For the Nuclear Regulatory Commission.

Harry Rood,

Acting Director, Project Directorate V, Division of Reactor Project III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-27093 Filed 11-6-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 48th meeting on Thursday and Friday, November 19 and 20, 1992, 8:30 a.m. until 6 p.m., room P-110, 7920 Norfolk Avenue, Bethesda, MD. Notice of this meeting was published in the **Federal Register** on Monday, October 26, 1992 (57 FR 48530).

The entire meeting will be open to public attendance, with the exception of portions that may be closed, in the case of item G, to protect information provided in confidence by a foreign source [5 U.S.C. 552b(c)(4) and 10 CFR 9.104(a)(4)] and, in the case of item K, information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)].

The agenda for the subject meeting shall be as follows:

A. Prepare a response to a supplemental request from Chairman Selin on a systems analysis approach to reviewing the overall high-level waste program.

B. Discuss with a representative of the Connecticut Department of Health Services the role and perspectives of a State Department of Health regarding the siting of a LLW disposal facility.

C. Review a staff technical position on fault avoidance.

D. Receive a briefing on a national profile of mixed wastes.

E. Receive a briefing on the current status of enhanced participatory rulemaking related to residual levels of radionuclides acceptable following decontamination of facilities.

F. Consider potential impacts that different waste forms could have on repository performance.

G. Meet with the Director General of the British Nuclear Forum to discuss items of mutual interest (Open/Closed). Portions of this session may be closed as necessary to discuss information provided in confidence by a foreign source.

H. Discuss the use of the collective does concept in high-level waste repository licensing.

I. Discuss waste related issues, including the implications of the new energy legislation as it relates to high level radioactive waste.

J. Hear a Working Group Chairman's report on the ACNW Working Group on the Impact of Long-Range Climate Change In the Area of the Southern Basin and Range.

K. Discuss administrative matters related to Committee activities and items that were not completed at previous meetings as time and availability of information permit, including nominations for ACNW Officers for calendar year 1993 (Open/Closed). Portions of this session may be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92-463 that it is necessary to close portions of this meeting (item G above) to discuss information provided in confidence by a foreign source per 5 U.S.C. 552(c)(4), 10 CFR 9.104(a)(4) and (item K above)

information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c0(6).

Dated: November 4, 1992.

John C. Hoyle,

Advisory Committee Management Officer

[FR Doc. 92-27092 Filed 11-6-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-49, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3 located in New London County, Connecticut.

The proposed amendment would revise the Technical Specifications to increase the surveillance test interval for the 4 KV bus undervoltage scheme so that associated logic and alarm relays are actuated once per 18 months rather than monthly.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 9, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06460. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499, attorney for the licensee.

Nontimely filings and petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 30, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L

Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 2d day of November 1992.

For the Nuclear Regulatory Commission

Guy S. Vissing,

Acting Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-27094 Filed 11-6-92; 8:45 am]

BILLING CODE 7590-01-M

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

[Docket No. 50-423]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-49, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3 located in New London County, Connecticut.

The proposed amendment would revise the Technical Specifications to extend the required surveillance testing for the emergency diesel generators on a one-time basis so that they are required to be tested by the 1993 refueling outage, but no later than September 30, 1993, rather than by December 25, 1992, which is now required.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 9, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Request for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714.(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no

significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 22, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 2d day of November 1992.

For the Nuclear Regulatory Commission.

Guy S. Vissing,

Acting Director, Project Directorate 1-4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-27095 Filed 11-6-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-275-OLA-2; 50-323-OLA-2; ASLBP No. 92-669-03-OLA-2 (Construction Period Recovery)]

Atomic Safety and Licensing Board; Prehearing Conference

In the Matter of Pacific Gas and Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2) Facility Operating Licenses No. DPR-80 and DPR-82

November 2, 1992.

Notice is hereby given that, in accordance with the Atomic Safety and Licensing Board's Memorandum and Order (Filing Schedules and Prehearing Conference), dated September 24, 1992 (LBP-92-27), a prehearing conference in this proceeding involving the proposed extensions of the operating licenses for the Diablo Canyon Nuclear Power Plant, Units 1 and 2, to recover or recapture the period of construction of the reactors, will commence at 9:30 a.m. on Thursday, December 10, 1992, at the City Hall Council Chambers, 990 Palm St., San Luis Obispo, California 93401. The conference will continue, to the extent necessary, on Friday, December 11, 1992, beginning at 9 a.m.

Among matters to be considered at the conference are the revised intervention petition filed on October 26, 1992 by Mothers for Peace, Inc., including the standing of the petitioner and the delineation of the key issues or contentions in the proceeding, and, as necessary, schedules for discovery and for further prehearing conferences and the evidentiary hearing, and such other matters as may aid in the orderly disposition of the proceeding. Parties or the petitioner for intervention who wish to submit a proposed agenda for the conference specifying matters they wish to have discussed are invited (although not required) to do so. Such a proposed agenda should reach the Board and parties/petitioner no later than Friday, December 4, 1992.

In accordance with 10 CFR 2.715(a), the Board will hear oral limited appearance statements at this prehearing conference. Any person not a party to the proceeding or a petitioner for intervention will be permitted to make such a statement, either orally or in writing, setting forth his or her position on the issues. These statements do not constitute testimony or evidence but may help the Board and/or parties in their deliberations on the extent of the issues to be considered.

Oral limited appearance statements will be heard from 7 p.m. to 9 p.m. on Thursday, December 10, 1992 (or such lesser time as is necessary to accommodate speakers who are present). (To the extent that the Board is apprised of a need to accomodate further speakers, it will do so at the beginning of any session that maybe necessary on Friday morning, December 11, 1992.) The number of persons making oral statements and the time allotted for each statement may be limited depending on the number of persons present at the designated time. (Normally, each oral statement may extend for up to five (5) minutes.) Written statements may be submitted at any time. Written statements, and requests for oral statements, should be submitted to the Office of the Secretary, Docketing and Service Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of such statement or request should also be served on the Chairman of this Licensing Board.

Documents relating to this application are on file at the Local Public Document Room, located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407, as well as at the Commission's Public Document Room, The Gelman Building, 2120 L St., NW., Washington, DC 20037.

Bethesda, Maryland.
November 2, 1992.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 92-27087 Filed 11-6-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

[Issuance of Policy Letter 92-4]

Procurement of Environmentally-Sound and Energy-Efficient Products and Services

AGENCY: Executive Office of the President, Office of Management and Budget, Office of Federal Procurement Policy (OFPP).

ACTION: Final Issuance of OFPP Policy Letter 92-4.

SUMMARY: Policy Letter 92-4 establishes Executive branch policies for the acquisition and use of environmentally-sound, energy-efficient products and services. The Policy Letter also provides guidance to be followed by Executive agencies in implementing Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) and Executive Order 12780, October 31, 1991, Federal Agency Recycling, and the Council on Federal Recycling and Procurement Policy.

FOR FURTHER INFORMATION CONTACT: Charles W. Clark, OFPP, Office of Management and Budget, Washington, DC 20503, (202) 395-6805.

SUPPLEMENTARY INFORMATION: A draft of Policy Letter 92-4 was published in the **Federal Register** for review and public comment on March 24, 1992 (57 FR 10194). Comments were received in response to the **Federal Register** notice from 19 Government and 10 private organizations. All comments were reviewed and, where warranted, changes have been made in the final Policy Letter. The main issues and concerns raised during the comment period are summarized below:

1. *Definitions.* Both Government and private organizations requested that definitions of several key terms be provided in the Policy Letter. These comments were accommodated by adding definitions of the following terms: post-consumer waste, recycled materials, environmentally-sound, cost-effective procurement preference program, and preference.

2. *Applicability to State and Local Governments.* Several Federal agencies recommended that RCRA requirements for state and local government activities be provided in OMB Circular No. A-102 rather than in Policy Letter 92-4. OFPP concurred and deleted from the Policy Letter the reference to "procuring agency" which included state and local governments.

3. *Certification Requirements.* Numerous comments were received regarding the requirement to have vendors provide certification of the amount of "recovered material" or "post-consumer" waste contained in a product. These comments ranged from stating that the requirement to have vendors certify minimum content was useless to requesting that standard certifications be developed and included in the Federal Acquisition Regulation (FAR). The Policy Letter was modified to limit the circumstances under which certifications are required. The Policy Letter now requires that certifications be obtained in only two circumstances:

a. Pursuant to Paragraph 7.a.(6) where contracts are awarded wholly or in part on the basis of recovered content requirements, and

b. For items covered by the Environmental Protection Agency (EPA) guidelines pursuant to Paragraph 7.c.(1)(c).

Where contracts (whether for guideline or non-guideline items) require minimum amounts of recovered materials or post-consumer waste, the contractor/vendor will be required to certify compliance in providing the item to the Government. Absent specific statutory requirements, false certifications on recovered material content standards should be treated similar to other false certifications. Product and material substitution problems are not limited to contracts for items containing recovered material.

4. *Verification of Certifications.* Several agencies commented that content certifications and certifications pertaining to the amount of recovered materials used in a contract cannot be verified, at least cost-effectively. Verification procedures are required by RCRA, Section 6002(i)(2)(c) and are included in the Policy Letter in Paragraph 7.c.(1)(c) for items covered by the EPA guidelines. RCRA states that such procedures shall be "reasonable." Accordingly, agencies have some flexibility in selecting verification procedures, and over time, competition in the marketplace coupled with good contract administration practices should work to validate most certifications.

5. *Incompatibility with the Federal Property Administrative Services Act of 1949.* One agency stated that provisions in the Policy Letter requiring agencies to give preference in their procurements to items containing "recovered materials" were inconsistent with the Federal Property Administrative Services Act (FPASA) (41 U.S.C. 253(a)). The FPASA requires solicitations to include product descriptions that "include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the Executive agency or as authorized by law." It is OFPP's opinion that items covered by the EPA guidelines are "required by law" to be given a preference. Accordingly, preferences for such items are not incompatible with the FPASA. Contract awards for products not covered by the EPA guidelines should be made on the basis of open competition, and awards to products containing recycled materials should be made only where the products compete favorably on a price and performance basis with other products.

6. *Special Requirements for Paper.* The Joint Committee on Printing (JCP) stated that section 7.d.(5) of the proposed Policy Letter (the section dealing with affirmative procurement programs) was inconsistent with existing procurement law. The JCP interpreted the proposed provision to mean that contract awards should be made solely on the basis of recovered material content without consideration of price. Other agencies also commented on this provision, and section 7.d.(5) has been revised to indicate that contract award should be made on the basis of "price and other factors." The JCP also provided other language that has been incorporated into Paragraph 7.b. of the final Policy Letter. The JCP recommended also that agencies not be required to develop affirmative procurement programs for paper and printed products. This suggestion was not adopted as RCRA requires that each agency develop an affirmative procurement program for the items covered by the EPA guidelines (CFR 248–250 and 252 and 253). There is no provision for waiving this requirement.

7. *$10,000 Threshold.* RCRA, Section (6002(a)), requires that agencies' affirmative procurement programs apply to purchases of guideline items costing $10,000 or more, or where the quantity of such items, or functionally-equivalent items, acquired in the course of the preceding year was $10,000 or more. Several agencies suggested that the $10,000 threshold be increased to $25,000 to correspond to the small purchase threshold. These agencies are concerned that applying RCRA to small purchases will negate the efficiencies achieved through the use of the Government's "credit card program." OFPP agrees that the RCRA threshold should be raised to coincide with the small purchase threshold. However, increasing the threshold requires a statutory change and it cannot be accomplished by this Policy Letter. The $10,000 threshold applies only to the items covered by the EPA guidelines and it should not inhibit the use of the credit card as a means of paying for most items.

8. *Price-Content Requirements Trade-Off.* Comments were received that contracting officers could not make trade-offs between price and recovered material content requirements, particularly in sealed bidding situations. The Policy Letter has been changed to accommodate these concerns. In sealed bidding situations, award should be made to the lowest responsive, responsible bidder.

9. *Competititon.* Several agencies recommended that the statutory reference provided at RCRA, Section 6002(c), regarding the necessity of maintaining a satisfactory level of competition be added to the Policy Letter. This suggestion has been adopted at Paragraph 7.c.(2)(d) of the Policy Letter.

10. *Paper Standards.* Two comments suggested that the Policy Letter adopt the recycled paper definitions, standards, measurement and labeling guidelines recently issued by the Recycling Advisory Council (RAC). OFPP does not agree or disagree with the use of the RAC standards. In commenting on the Policy Letter, however, the JCP noted that it and not OFPP had the legal authority for formulating content and other standards relative to paper. Accordingly, if the RAC definitions and standards are to be adopted, they must be adopted by the JCP, the General Services Administration (GSA), or other appropriate standard-setting body.

11. *Coordination With Private Standard-Setting Bodies.* Several private concerns noted that it was very important that uniform Federal standards be established and that each agency should not be establishing its own standards for paper and other products. OFPP agrees with this and included a provision in the Policy Letter that requires agencies to coordinate with the private sector, and utilize private sector standard setting bodies in developing product standards pursuant to the provisions of OMB Circular No. A–119. This policy is set forth in paragraph 7.a.(5).

12 *Minimum Content Standards.* One private sector firm noted that it was not appropriate for OFPP to promote nor require minimum content standards for products to be acquired by the Government. This organization indicated that such content standards would disrupt normal market operations and favor suppliers that have access to recycled materials over suppliers who are dependent on open market sources for the acquisition of such materials

OFPP agrees that it should not establish minimum content requirements for the large body of items not presently covered by the EPA guidelines. However, EPA was tasked, pursuant to RCRA, to identify items where market conditions are such that recycled content requirements are appropriate.

13. *Price Preferences.* Several comments suggested that the only way a preference program would work would be for OFPP to provide a price preference (10 percent was most frequently suggested) for products containing recycled materials over products that did not contain recycled materials. OFPP cannot accept the recommendation as there is no legal mandate for such preference.

14. *Life Cycle Cost Analysis.* Several organizations in commenting on the Policy Letter indicated that the Government should make better use of life cycle cost analysis. These organizations suggested that product longevity and the reusability or recyclability of products be considered in initial purchase decisions. The Policy Letter supports the use of life cycle costing and an environmentally-sound product is defined as a product or service that is less harmful to the environment to *use, maintain,* and *dispose of* than a competing product or service. In addition, OFPP issued a memorandum on life cycle costing in September 1991. The memorandum explained that factors such as energy conservation, material recycling and reduction of the waste stream required more emphasis in agency acquisition plans and suggested that agencies take advantage of existing life cycle cost training.

15. *Needs Determination.* Several agencies suggested that the decision to acquire environmentally-sound products is a decision that must be made by the user of the product and not by the procurement office. These agencies stated that the Policy Letter should be reoriented to target "requisitioners" rather than the buyers. Other agencies suggested that is was not appropriate to put "requirements determination" provisions in the FAR. OFPP understands the necessity of keeping the FAR focused on the procurement process. However, the FAR currently places many "non-procurement" requirements on agency heads and the RCRA specifically tasks OFPP with responsibility for coordinating the RCRA policy with other policies for Federal procurement. The best place to coordinate such policy is in the FAR. Preference programs for labor surplus areas, small and disadvantaged businesses, and purchase of domestic products are all carried out through the procurement process pursuant to provisions in the FAR.

16. *Scope.* Several agencies commented that the Policy Letter was not clear as to whether it applied only to items covered by EPA guidelines or to all products and services. The Policy Letter is intended to apply to all products and services. However, there are differing requirements for the guideline items than for other items. Agencies should follow the requirements in Paragraph 7.a. for all products and services. The provisions of 7.b. should be followed by all agencies for paper, and the provisions in paragraph 7.c. should be followed for the guideline items.

17. *Construction Projects.* Several agencies stated that it was very difficult to collect data on recovered materials used in construction projects. They suggested that guidance be provided in the Policy Letter to detail how agencies should collect such data. OFPP agrees that it is necessary to develop guidance with regard to the collection of data under construction projects. This guidance will be addressed by one of the working groups now being established to further the implementation of Executive Order 12780.

18. *Remanufactured Products.* Several comments suggested that the requirement to use "remanufactured" products be added to the Policy Letter. This suggestion was adopted by adding "remanufactured" products to Paragraph 7.a.(4). It is noted that FAR 10.010 already provides for the use of "reconditioned material" by the Government.

19. *Evaluation Factors.* Some agencies commented that energy efficiency and environmental factors could not be considered in the award of contracts, particularly for sealed bids. Paragraphs 6.a. and b. of the Policy Letter have been clarified to indicate that energy and environmental considerations be considered, along with estimated cost and other relevant factors, in the development of purchase requests, invitations for bids, and solicitation for offers. In addition, the Policy Letter provides that where cost and other factors are equal, preference be given to energy-efficient, environmentally-sound products.

20. *Subcontractors.* The question of whether subcontractors would be required to submit content certifications was raised in several comments. OFPP's view is that it is up to the prime contractor to oversee subcontractors, and certifications required under the contract will be made by the prime contractor and not the subcontractors.

21. *Reporting Requirements.* Most Federal agencies requested that the reporting requirements for affirmative procurement programs be developed and only minimum, essential data be collected. OFPP agrees with this suggestion. The specific data elements to be reported to OFPP and EPA pursuant to Executive Order 12780 and RCRA will be developed and coordinated through the Federal Recycling Council.

22. *Pollution Prevention.* One comment suggested that the Policy Letter address pollution prevention, particularly pollution generated in the manufacture of an item; e.g., virgin vs. recycled paper; chlorine bleach vs. hydrogen bleach; vegetable ink vs. petroleum ink; single-sided copying vs. dual-sided copying, and the use of water soluble glues and bindings. While each of these practices have merit, the Policy Letter is not intended to dictate manufacturing nor copying practices. The suggestions were considered to be outside the scope of the Policy Letter.

23. *Energy Efficiency.* One comment stated that the Policy Letter should specifically mention "solar energy" and "water efficiency devices." This suggestion was adopted, in part, by adding a reference to "water efficiency devices" in Paragraph 7.a.(4) of the Policy Letter. Solar energy was no included as the purpose of the Policy Letter is not to promote specific technologies.

24. *Newsprint.* A comment was received that the Policy Letter should mention the benefits of using newsprint particularly for short-life documents. The Policy Letter does this. A new paragraph was added at 7.b.(4) to provide for the use of lower-grade papers for short-life documents.

25. *Paperwork Approval.* Several agencies asked whether each agency must obtain approval to collect certifications or whether this would be done by one agency. OFPP's view is that each agency should request appropriate paperwork clearances on an interim basis. However, in the long run, it would appear appropriate for GSA to obtain this clearance on the Government-wide basis similar to other paperwork requirements associated with the FAR.

Dated: November 2, 1992.

Allan V. Burman,

Administrator.

POLICY LETTER NO. 92–4

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Procurement of Environmentally-Sound and Energy-Efficient Products and Services

1. *Purpose.* This Policy Letter provides Executive branch policies for the acquisition and use of environmentally-sound, energy-efficient products and services.

2. *Supersession Information.* The Policy Letter supersedes and cancels OFPP Policy Letter 76–1, *Federal Procurement Policy Concerning Energy Conservation,* dated August 6, 1976; Supplement No. 1 to Policy Letter 76–1, dated July 2, 1980, and OFPP Policy Letter 77–1, *Procurement of Products that Contain Recycled Material,* dated February 2, 1977.

3. *Authority.* The Policy Letter is issued pursuant to section 6(a) of the Office of Federal Procurement Policy (OFPP) Act, as amended, 41 U.S.C. 405, and section 6002 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6962. RCRA, section 6002 requires OFPP to issue coordinated policies to maximize Federal use of recovered material.

4. *Definitions.*

a. *Executive Agency.* Means an Executive department, and an independent establishment within the meaning of 5 U.S.C. 101, 102, 103(1) and 104(1), respectively.

b. *Recovered Material.* Means waste material and by-products which have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903(19)).

c. *Post-Consumer Waste.* Means a material or product that has served its intended use and has been discarded for disposal after passing through the hands of a final user. Post-consumer waste is a part of the broader category "recycled material" (40 CFR 247.101(e)).

d. *Recycled Materials.* Means a material that can be utilized in place of a raw or virgin material in manufacturing a product and consists of materials derived from post-consumer waste, industrial scrap, material derived from agricultural waste and other items, all of which can be used in the manufacture of new products (40 CFR 247.101(g)).

e. *Environmentally-Sound.* Means a product or service that minimizes damage to the environment and is less harmful to the environment to use, maintain and dispose of in comparison to a competing product or service.

f. *Cost-Effective Procurement Preference Program.* Means a program that favors, where price and other factors are equal, the procurement of products and services that are more environmentally-sound or energy-efficient than other competing products and services.

g. *Preference.* Means when two products or services are equal in performance characteristics and price, the Government in making purchasing decisions, will favor the product that is more environmentally-sound or energy-efficient.

5. *Background.* In its day-to-day operations, the Federal Government has the opportunity and obligation to be environmentally and energy conscious in its selection and use of needed products and services. The Government, as the largest single consumer in the nation, has many opportunities to conserve and make more efficient use of energy and other resources. Leveraging the Government's $190 billion annual purchasing program toward more energy-efficient and environmentally-sound practices will not only benefit the nation by reducing the cost of Government, but will help make the Government a model consumer.

6. *Policy.* It is the policy of the Federal Government that Executive agencies implement cost-effective procurement preference programs favoring the purchase of environmentally-sound, energy-efficient products and services.

a. *Energy Efficiency.* Executive agencies shall consider energy conservation and efficiency factors in the procurement of property and services, pursuant to the Energy Policy and Conservation Act, 42 U.S.C. 6201, *et seq.*; section 3 of Executive Order 11912, as amended, April 13, 1976, and section 5 of Executive Order 12759, April 17, 1991. Energy conservation and efficiency data will be considered, along with estimated cost and other relevant factors, in the development of purchase requests, invitations for bids and solicitations for offers. In addition, with respect to the procurement of consumer products, as defined under Part B, Title III of the Energy Policy and Conservation Act, agencies shall consider energy use/efficiency labels (42 U.S.C. 6294) and prescribed energy efficiency standards (42 U.S.C. 6295) in making purchasing decisions.

b. *Environmental Conservation.* Executive agencies shall give preference in their procurement programs to practices and products that conserve natural resources and protect the environment, pursuant to the Resource Conservation and Recovery Act as amended, 42 U.S.C. 6962 and Executive Order 12780, October 31, 1991. Environmental factors will be considered, along with estimated costs and other relevant factors, in the development of purchase requests, invitations for bids, and solicitation for offers.

7. *Responsibilities.*

a. *Heads of Executive Agencies.* In implementing the policies in Paragraph 6, above, Executive agencies shall:

(1) Identify and procure needed products and services that, all factors considered, are environmentally-sound and energy-efficient;

(2) Procure products, including packaging, that contain the highest percentage of recovered materials, and where applicable, post-consumer waste, consistent with performance requirements, availability, price reasonableness and cost effectiveness;

(3) Employ life cycle cost analysis, whenever feasible and appropriate, to assist in making product and service selections;

(4) Use product descriptions and specifications that reflect cost-effective use of recycled products, recovered materials, water efficiency devices, remanufactured products and energy-efficient products, materials and practices;

(5) Work with private standard setting organizations and participate, pursuant to OMB Circular No. A–119, in the development of voluntary standards and specifications defining environmentally-sound, energy-efficient products, practices and services;

(6) Require vendors to certify the percentage of recovered materials used, when contracts are awarded wholly or in part on the basis of utilization of recovered materials;

(7) Assure, when drafting or reviewing specifications for required items, that the specifications (a) do not exclude the use of recovered materials; (b) do not unnecessarily require the item to be manufactured from virgin materials; and (c) require the use of recovered materials and environmentally-sound components to the maximum extent practicable without jeopardizing the intended end use of the item; and

(8) Arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery. Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuel derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

b. *Special Requirements for Paper.* In implementing the policy in Paragraph 6.b. for paper and paper products acquired through the General Services Administration (GSA) or the Government Printing Office (GPO), Executive agencies shall:

(1) Designate that the paper and paper products identified in the "GSA Recycled Products Guide" or the "GSA Supply Catalog" be provided, where practicable, when ordering paper from GSA.

(2) Provide information to the Joint Committee on Printing and the Government Printing Office regarding the highest practicable percentages of recovered materials (including post-consumer recovered material) allowable in the various paper requirements of the agency subject to reasonable price, performance and availability limitations.

(3) Specify in paper orders, placed through either the Government Printing Office or the General Services Administration, or printed product orders, placed through the Government Printing Office, the highest minimum content paper specifications standard (including post-consumer recovered material standards) developed by the Joint Committee on Printing and the Government Printing Office for the intended use, subject to reasonable price, performance and availability limitations.

(4) Refrain from specifying coated papers, brand name papers, and other specialty or fancy grades of paper for products with a limited useful life such as annual reports, catalogues, training materials and telephone directories. Newsprint containing recycled content should be considered for many limited life documents.

(Note: Copies of the GSA "Recycled Products Guide" or the "GSA Supply Catalog" may be obtained by contacting the GSA Centralized Mailing List Service in Fort Worth, TX 76115: Commercial (817) 334–5215 or Autovan 739–7369).

c. *Affirmative Procurement Programs.* In addition to the responsibilities in subparagraph a. and b. above, Executive agencies must take the following actions:

(1) Develop agency specific affirmative procurement programs for each of the items covered by guidelines developed by the Environmental Protection Agency pursuant to subsection 6002(e) of RCRA (see 40 CFR 248–250, 252 and 253). These programs, as a minimum, must comply with RCRA subsection 6002(i) and must:

(a) state a preference for the procurement of the item covered by the guideline;

(b) promote the cost-effective procurement of the covered item;

(c) require estimates of the total amount of the recovered item used in a contract, certification of the minimum amount actually used, where appropriate, and procedures for verifying the estimates and certifications;

(d) provide for the annual review and monitoring of the effectiveness of the program; and

(e) include one of the following options, or a substantially equivalent alternative, to insure that contracts for items covered by the guidelines are awarded, unless waivers are granted pursuant to paragraph (2) below, on the basis of:

• Case-by-case procurement, open competition between products made of virgin materials and products containing recovered materials; preference to be given to the latter, or

• Minimum-content standards, which identify the minimum content of recovered materials that an item must contain to be considered for award.

(2) Base decisions to waive, or not to procure, guideline items composed of the highest percentages of recovered materials practicable on a determination that such items:

(a) Are not reasonably available within the time required;

(b) Fail to meet the performance standards set forth in applicable specifications or fail to meet the reasonable performance standards of the procuring agencies;

(c) Are only available at an unreasonable price, or

(d) Are not available from a sufficient number of sources to maintain a satisfactory level of competition.

(Note: Any determination under (2)(b), above, shall be made on the basis of National Institute of Standards and Technology guidelines when the items being procured are covered by such guidelines.)

(3) The responsibilities specified in c.(1) and (2) above, apply only to purchases of guideline items costing $10,000 or more or where the quantity of such items, or of functionally-equivalent items, acquired in the course of the preceding year was $10,000 or more.

(4) Compliance with RCRA, Section 6002, can also be waived where such compliance would be inconsistent with actions taken pursuant to guidelines for the management of solid waste promulgated by EPA under RCRA, Section 6907.

8. *Federal Acquisition Regulation (FAR) Councils.* The Defense Acquisition Regulatory Council and the Civilian Agency Acquisition Council Shall conduct a thorough review of the relevant parts of the FAR to (1) assure that no unintended encumbrances to the acquisition of environmentally-sound, energy-efficient products and services are contained therein, and (2) that the procurement policies established by this Policy Letter and fully reflected in the FAR within 210 days of the effective date of this Policy Letter.

9. *Reporting Requirements.* In accordance with Section 502, Executive Order 12780 and subsection 6002(i) of RCRA, each Executive agency shall review annually the effectiveness of its affirmative procurement program and shall provide a report regarding its findings to the Environmental Protection Agency and to the OFPP beginning with a report covering Fiscal Year 1992. Such report shall be transmitted by December 15 each year. Reports required by this paragraph may be made available to the public.

10. *Effective Date.* This Policy Letter is effective 30 days after the date of issuance. While full implementation of these policies must await needed change to the FAR, it is expected that agencies will take all appropriate actions in the interim to implement those aspects of the policy that are not dependent upon regulatory change.

11. *Federal Acquisition Regulatory Council.* Pursuant to sections 6(a) and 25(f) of the OFPP Act, as amended, 41 U.S.C. 401 *et seq.*, the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 210 days from the date this Policy Letter is published in the *Federal Register.* The 210 day period is considered a "timely manner" as prescribed in 41 U.S.C. 405(b).

12. *Information.* Questions or inquiries about this Policy Letter should be directed to Linda Mesaros or Cyndi Vallina, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC 20503, telephone (202) 395–3501.

Allan V. Burman,

Administrator.

[FR Doc. 92–27037 Filed 11–6–92; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Amended notice of meeting.

SUMMARY: The President's Council of Advisors on Science and Technology will meet on November 12–13, 1992, in the Conference Room, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC, as announced in 57 FR 48406–48407 (October 23, 1992). All information in this previous **Federal Register** Notice will remain the same with the exception of the status and agenda items of the Thursday afternoon and Friday morning session.

Agenda: On Thursday afternoon, November 12, beginning at 1 p.m. and continuing until 4:30 p.m., there will be three substantive agenda items to be discussed in closed session. Dr. Walter Massey will discuss the National Science Board Commission on the Future of the National Sciences Foundation. Dr. Bernadine Healy will discuss the National Institutes of Health Strategic Plan. Dr. William Raub will discuss Office of Management and Budget Circular A–21. This is an addition of two agenda items and a change of the closed session from Friday morning, November 13, to Thursday afternoon, November 12. This session will be closed to the public, pursuant to title 5, U.S. Code, sections 552b(c) (2), (4), (6) and (9)(B).

The agenda for Friday morning, November 13, 1992, will consist of the topics originally scheduled for Thursday afternoon, November 12. This session will be open to the public.

Parties requiring further information should contact Dr. Alicia K. Dustira, (202) 395–4692.

Dated: November 2, 1992.

Philip W. Bolus,

Special Assistant and Counsel, Office of Science and Technology Policy.

[FR Doc. 92–27123 Filed 11–6–92; 8:45 am]

BILLING CODE 3170–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31388; File No. SR–NYSE–92–16]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Changes Relating to Implementation of a Signature Guarantee Program

October 30, 1992.

I. Introduction

On June 22, 1992, the New York Stock Exchange, Inc. ("NYSE") filed a proposed rule change with the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] concerning

[1] 15 U.S.C. 78s(b).

implementation of a signature guarantee program.[2] On July 29, 1992, notice of the proposed rule change was published in the **Federal Register** to solicit comments from interested persons.[3] No comments were received. As discussed below, the Commission is granting approval of the proposal.

II. Description of the Proposal

A. Introduction

The NYSE is proposing to convert its existing signature service program ("Service") to a signature guarantee program ("Program") was contemplated by Rule 17Ad–15.[4] The Program will use medallion imprints in place of signatures in effecting assignments, powers of substitution, signature guarantees and other certifications and guarantees incident to the transfer, payment, exchange, purchase or delivery of certificates representing securities (including, but not limited to, erasure guarantees, one-and-the-same guarantees and situs certifications). The proposed rule change also effects the consolidation and restatement of certain NYSE rules relating to the guarantee, transfer and delivery of securities, the elimination of certain unnecessary or obsolete rules and the amendment of certain cross-references altered by the changes. Implementation of the NYSE's proposal requires amendments to NYSE Rules 196, 199, 200, 201, 204, 205, 209 and 210 as well as the rescission of NYSE Rules 208 and 211.

B. Signature Service Program

Currently, the NYSE maintains an extensive file of sample authorized signatures provided by member organizations and makes these samples available to transfer agents in order to facilitate compliance with transfer agents' requirements for verification of signatures on guarantees made by NYSE member organizations. A member organization may guarantee registered securities by either manual or facsimile authorized signature in conjunction with an imprint of the name of the member organization. NYSE procedures require that a member organization wishing to effect appointments under the Service must adopt board of director resolutions authorizing individuals within the organization to assign registered securities, to guarantee signatures and to make any other certifications and guarantees necessary to the transfer of securities. Because the current NYSE Service may not qualify as a "signature guarantee program" under Rule 17Ad–15,[5] the NYSE is revising the Service to meet those requirements.

C. NYSE's Signature Guarantee Program

The NYSE's Program can be divided into three component areas of technology, insurance, and administration, which are described below.

1. Technology

Imprints will be affixed to documents through the use of either a machine or hand stamped medallion. Each medallion will bear the Program participant's unique Financial Institution Numbering System (FINS) number as well as a unique 5-digit number selected by the Program participant. These controls will facilitate both tracing and termination of a medallion's use. A medallion may also bear the internal signature of a Program participant employee for further security (such a signature is not required, and is for purposes of a Program participant's internal controls only).

Although Program participants will pay vendors directly for Program equipment purchased from such vendors, the equipment order form must first be sent to the NYSE. The NYSE will forward the form to the vendor once it has determined that the entity ordering the equipment is duly enrolled in the Program. The NYSE has selected Standard Register as the equipment vendor, and it has been instructed by the NYSE to fill only those orders forward to them in this manner.[6]

2. Insurance

The proposal will require a Program participant to have a surety bond written by a U.S. Treasury Department listed surety underwriter with a Moody's rating of "A" or better. A Program participant may choose, depending on the number and dollar amount of securities requiring the participant's guarantee, either $1 million or $2 million of surety bond coverage. The NYSE also has acquired $10 million of blanket insurance coverage for the benefit of transfer agents and other financial institutions that rely on an NYSE medallion.

Program participants must also sign an indemnity agreement in which they agree to indemnify and hold harmless transfer agents and issuers against any and all claims, losses, liabilities, damages and expenses arising out of or in connection with the transfer, payment, exchange, purchase or delivery of securities in reliance upon the imprint, or an impression or imprint purporting to be the imprint. In addition, the Program participant agrees to hold the surety harmless from any and all claims, losses, liabilities, damages and expenses. The Program participant may not assert as a defense against any claim of indemnity any law, ordinance or regulation of any jurisdiction outlawing or prohibiting the use of the imprint, or assert any defense that the imprint was unauthorized or *ultra vires*, or affixed without authority, or any other defense.

3. Administration

The Program will be administered by the NYSE through its Securities Operations Department. The Securities Operations Department, and its predecessors, have been administering the NYSE's existing Service for over 30 years. The Securities Operations Department will oversee substantially all aspects of the administration of the Program including processing all documents necessary to enroll in the Program, acting as liaison with Program participants and the transfer agent community, collecting requisite fees for administrative expenses and blanket bond coverage, answering questions by applicants and Program participants, and monitoring Program compliance.

Each Program participant will be required to implement various controls and follow Program procedures. Program participants will be obligated to maintain medallions in safekeeping

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[2] NYSE's proposed rule change was filed as File No. SR–NYSE–92–16 on June 22, 1992. Subsequently, on July 21, 1992, NYSE filed Amendment 1 to SR–NYSE–92–16 that (1) corrected language contained in one of NYSE's revised rules, and (2) provided information regarding operational procedures relating to its signature guarantee program.

[3] Securities Exchange Act Release No. 30950 (July 29, 1992), 57 FR 33538.

[4] 17 CFR 240.17Ad–15 (1992). Rule 17Ad–15 requires transfer agents to establish written standards that do not treat eligible guarantor institutions inequitably. Transfer agents are specifically allowed to provide in their standards that eligible guarantor institutions must participate in a signature guarantee program in order to have their signature guarantees accepted.

[5] For purposes of Rule 17Ad–15, a signature guarantee program means a program, the terms and conditions of which the transfer agent reasonably determines will facilitate the equitable treatment of eligible guarantor institutions and will promote the prompt, accurate and safe transfer of securities by providing adequate protection to the transfer agent against risk of financial loss in the event persons have no recourse against the eligible guarantor institution and adequate protection to the transfer agent against the issuance of unauthorized guarantees.

[6] Standard Register is a maker of signature facsimile equipment and other similar equipment and is also the vendor for the Securities Transfer Agents Medallion Program ("STAMP"). In addition, many securities firms already have signature facsimile equipment from Standard Register. Thus, many firms will not need to buy a new machine, but merely a medallion plate that can be used on their existing Standard Register facsimile machines.

and to employ them only in accordance with sound business practices. Pursuant to the NYSE's signature guarantee Program agreement, each Program participant also consents that the NYSE may obtain injunctive relief against the Program participant for its failure to comply with that agreement or any Program procedures. The NYSE will also have access to a current list of transfer agents who will be kept informed of changes in participant status. Finally, the NYSE will maintain a telephone number that Program participants may call in the event of any problems.

Program participants will pay an annual fee of $300, of which approximately $175 will be applicable to the cost of the blanket insurance policy and approximately $125 will be applicable to administrative costs. In addition, the annual cost of the requisite surety bond is $2,200 for a $1,000,000 bond limit and $4,200 for a $2,000,000 bond limit, depending upon which bond limit the Program participant chooses. The equipment costs will vary according to the needs of the Program participant. Hand stamps cost $15 per participant, with a minimum order of two stamps. The cost for one imprint plate is $125; the cost of a stock transfer signature machine and imprint plate is $1,500. The smallest or least active Program participants will only need one or more hand stamps. The equipment costs for mid-sized to large Program participants will vary from a few hundred to a few thousand dollars depending on whether they have existing compatible equipment and the number of branches needing signature guarantee equipment.

III. Discussion

Section 6(b)(5) of the Act requires, among other things, that the rules of a national securities exchange be designed to foster coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in, securities and to protect investors and the public interest.[7] In enacting section 17A of the Act, Congress found that the prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.[8] The Commission believes that the proposal furthers these goals.

Section 17A(d)(5) of the Act requires that a registered transfer agent not, directly or indirectly, engage in any activity in connection with the guarantee or a signature of an endorser of a security, including the acceptance or rejection of such guarantee, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or to facilitate the equitable treatment of financial institutions which issue such guarantees.[9] The Commission believes that the proposal is consistent with these requirements.

By implementing its Program, NYSE will greatly streamline the signature guarantee process by eliminating the need for the cumbersome signature card system that it has heretofore been using. In addition, the presence of surety bond coverage in all securities transfers effected by Program participants will provide additional financial protection to transfer agents and other financial institutions that rely on a Program participant's signature guarantee in those situations where the guarantor fails to meet its obligations. Finally, the NYSE Program has build into it numerous safeguards and controls to ensure the integrity of the Program. Thus, the Commission believes that by codifying appropriate means for effecting signature guarantees, assignments, powers of substitution and other certifications and guarantees incidental to securities transactions, NYSE's proposed rule change will foster coordination and will facilitate the prompt and accurate clearance and settlement of transactions in securities.[10]

Although the problem is not unique to the NYSE Program, the Commission is concerned that transfer agents may reject a signature guarantee because the transfer exceeds the dollar value of a guarantor's surety bond. It is the Commission's understanding that the Securities Transfer Association's ("STA") Board of Directors has adopted a policy position recommending that transfer agents accept guarantees from Program participants with surety coverage of $2 million or more when the transfer exceeds the value of the surety bond.[11] In addition, most large transfers of securities are effected by the major guarantor institutions whose signature guarantees have traditionally been accepted by transfer agents without the presence of any surety bond. Thus, while the Commission recognizes the potential effect on the securities markets should such rejections occur, the Commission believes that the STA policy statement should minimize such rejections from major guarantor institutions. While widespread rejections of signature guarantees from guarantors with less than $2 million of surety bond coverage could cause disruption of financial markets, the Commission expects such rejection to be minimal and thus should not have a significant effect on securities markets.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NYSE-92-16) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Jonathan G. Katz,

Secretary.

[FR Doc. 92-27111 Filed 11-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31397; File No. SR-PSE-92-12]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Filing of Amendment to and Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Listing and Trading of Index Options on the Wilshire Small Cap Index

November 3, 1992.

I. Introduction

On July 21, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to list and trade index options

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78q-1(a)(1)(A).

[9] 15 U.S.C. 78q-1(d)(5). Under this authority, the Commission adopted 17 CFR 240.17Ad-15 (1992).

[10] The Commission takes no position with respect to whether this proposal meets the standards set forth for a signature guarantee program in Rule 17Ad-15(g)(3). The determination guarantee program set forth under Rule 17Ad-15 is left to the transfer agents. The Commission, however, notes that transfer agents must evaluate each signature guarantee program individually and may not reject a signature guarantee from a guarantor institution in a signature guarantee program unless the transfer agent determines that the particular program does not meet the requirements set forth in Rule 18Ad-15 under the Act.

[11] Letter from Andrew M. Massa, President, STA, to STA Members and all registered transfer agents (July 13, 1992).

[12] 17 CFR 200.20-2(a)(12) (1990).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

on the Wilshire Small Cap Index ("Wilshire Index" or "Index"). On August 31, 1992, the PSE filed Amendment No. 1 ("Amendment No 1") to the proposal to provide for certain standards to be used in conjunction with the maintenance of the Index, as described below. This order approves the PSE's proposal

The proposed rule change was noticed for comment in Securities Exchange Act Release No 31043 (August 14, 1992), 57 FR 38078. No comments were received on the proposed rule change.

II. Description of the Proposal

A. Introduction

The Exchange is proposing to list and trade options on the Wilshire Index, which was developed by Wilshire Associates, Inc. ("Wilshire"), a provider of analytical and consulting services to the investment management and retirement fund industries. The Index is market capitalization-weighted [3] and is designed to reflect the characteristics and market performance of small stocks generally. It is composed of 250 domestic stocks, which have a median market capitalization of $404 million. Options on the Index will have European-style [4] exercise and will be cash-settled.

The Index is derived from the Wilshire Next 1750 ("Next 1750"), which, according to the PSE, is widely viewed by some institutional investors as the benchmark for the small-capitalization universe. The Next 1750 is derived from the Wilshire Top 2500 ("Top 2500"), an Index comprised of the largest 2500 securities in the all-inclusive Wilshire 5000 ("Wilshire 5000"). (Nearly 98 percent of the Wilshire 5000's market value is included in the Top 2500.) The Next 1750 consists of the bottom 1750 stocks of the top 2500 and provides a substantially different performance profile than the large company portion of that universe, the Wilshire Top 750 ("Wilshire Top 750").

The Index is designed to capture the essential return profile and fundamental characteristics of the Wilshire Next 1750, while at the same time having a lower turnover in component stocks and consisting of, on average, more liquid stocks in comparison to the Wilshire Next 1750. The PSE believes that options on the Index could provide an effective means for hedging the risks associated with holding portfolios of small-capitalization stocks and a low-cost means of altering the composition of an equity portfolio.

B. Index Composition

The Index is composed of 250 stocks selected by Wilshire based on a process using a "stratified" sampling of certain stocks in the Wilshire Next 1750.[5] Currently the Index is comprised of stocks from the following nine economic sectors: Capital Goods (6.9%), Consumer Durables (3.7%), Consumer Non-Durables (27%), Energy (4.9%), Financials (17.7%), Material & Services (20.2%), Technology (11.1%), Transportation (2.0%), and Utilities (6.4%). The Index has a high degree of correlation with other well-known benchmarks of the small-cap sector, including the Wilshire Next 1750 Index (99.7%) and the Russell 2000 Index (99.05%).

The 250 component stocks are listed for trading on the New York Stock Exchange ("NYSE") (138 stocks), the American Stock Exchange ("Amex") (13 stocks), and the National Association of Securities Dealers ("NASD") NASDAQ system (99 stocks). Currently, all of the NASDAQ issues included in the Index are National Market Systems ("NMS") securities.[6] If an NMS issue becomes a non-NMS security, it will not be replaced. As of July 1, 1992, 115 securities, amounting to 52 percent of the market capitalization of the Index, met the Exchange's initial options listing standards set forth in PSE Rule 3.6.[7]

As of July 1, 1992, the market capitalizations of the individual stocks in the Index ranged from a high of $726 million to a low of $81 million, with the median being $404 million. The market capitalization of all the stocks in the Index was $104 billion.[8] The total number of shares outstanding for the stocks in the Index ranged from a high of 250.4 million shares to a low of 6.3 million shares. The price per share of the stocks in the Index, as of July 1, 1992, ranged from a high of $67.88 to a low of $1.75. In addition, the average daily trading volume of the stocks in the Index, for the six-month period ending July 1, 1992, ranged from a high of 1.1 million shares to a low of 1,600 shares, with the median being 63,000 shares. Lastly no one stock comprised more than .70% of the Index's total value and the percentage weighting of the ten largest issues in the Index accounted for 6.87% of the Index's value. The percentage weighting of the lowest weighted stock was 0.08% of the Index and the percentage weighting of the ten smallest issue in the Index accounted for 1.05% of the Index's value.[9]

Wilshire will update the Index annually at the end of June, when the Wilshire 5000, the Wilshire Top 2500, the Wilshire Next 1750 and the Wilshire Top 750 Indexes are updated. Changes made to the composition of the Wilshire Next 1750 during its annual recapitalization may result in corresponding changes to the Index. If a stock ceases to trade as a result of a merger, acquisition or other event whereby the company ceases to exist as a going concern, it will be removed from the Index and replaced at the end of the quarter. In addition, quarterly replacements will be made to ensure the Index meets the maintenance criteria, as discussed below.

In order to ensure that the Index does not contain a large number of thinly-capitalized, low-priced securities with small public floats and low trading volumes, Wilshire will select and maintain the Index according to the following market and economic criteria.[10] First, at any given time as a result of any restructuring of the Index composition, at least 45% of the market capitalization of the Index must be accounted for by stocks that meet the PSE's initial options listings standards.[11] Second, at any given time, no more than seven percent of the total market capitalization of the Index may consist of stocks with an average daily

[3] The calculation of a market capitalization-weighted index involves taking the summation of the product of the price of each stock in the index and the shares outstanding for each issue. In contrast, the calculation of a price-weighted index involves taking the summation of the prices of the stocks in the index.

[4] A European-style option only can be exercised during a limited period of time before the option expires.

[5] The following stocks in the Wilshire Next 1750 Index are excluded from consideration for inclusion in the Index: (1) Stocks in the top decile of the Wilshire Next 1750 (by market capitalizations); (2) stocks in the bottom two deciles of the Wilshire Next 1750; and (3) stocks in the bottom 25% of the Wilshire Next 1750, as measured by average daily trading volume over the preceding six month period. The exclusions help to minimize turnover in the Index due to stocks entering or leaving the Wilshire Next 1750 and ensure that the stocks in the Index are liquid.

[6] Real-time last sale reporting recently has been extended to all securities traded over NASDAQ. However, NASDAQ/NMS securities, among other things, are subject to higher listing standards.

[7] The PSE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an individual equity option must, among other things, meet the following requirements: (1) The public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. See PSE Rule 3.6.

[8] See Exhibit B to PSE Proposal.

[9] *Id.*

[10] See *supra* note 5.

[11] See Amendment No. 1. See also note 7 *supra*.

trading volume of less than 10,000 shares. In addition, at the time of annual rebalancing, no more than five percent of the total market capitalization of the Index may consist of stocks with an average trading volume of less than 10,000 shares per day. Third, no stock may be added to the Index if it has a six-month average daily trading volume of less than 5,000 shares, and no stock will remain in the Index if its six-month average trading volume is less than 3,000 shares per day. Fourth, no more than five percent of the total market capitalization of the Index may consist of stocks with a market capitalization of less than $150 million. Fifth, no more than 2.5 percent of the total market capitalization of the Index may consist of stocks having a price less than $3, and stocks in the Index with a price less than $3 must have a minimum market capitalization of $100 million.[12] Sixth, at no time will more than four percent of the Index consist of non-NMS securities.[13] If the Index fails to meet any of the above criteria, at the next quarterly rebalancing Wilshire will add or delete securities to the Index to bring it into compliance with the above standards.

C. Index Calculation

The Index is calculated using the last sale prices of the stocks comprising the Index. However, if a component stock is not open for trading, the most recently traded price will be used in the Index calculation. The Index will be calculated every 15 seconds throughout the trading day by Bridge Data Services and will be disseminated by the Options Price Reporting Authority to wire services, quote vendors and the financial media.

The Index value will be calculated by adding the market values of the component stocks, which are derived by multiplying the price of the stock by its shares outstanding, to arrive at total market capitalization changes. This value will then be divided by another number termed the index "divisor." In order to provide continuity for the Index's value, the divisor will be adjusted to reflect such events as changes in the number of common shares outstanding for component stocks, company additions or deletions, corporate restructurings and other capitalization changes. The Index multiplier will be $100 so that each point of the Index value will represent $100.

D. Index Option Trading

The proposed Index options will be cash-settled and feature European-style exercise. Trading in the Index options will be governed by PSE Rule 7 (Index Options). The Index options will trade from 6:30 a.m. to 1:15 p.m. Pacific Time. The Exchange intends to list put and call options having up to four consecutive near-term expiration months plus five additional further-term expiration months in the March cycle, extending into successive years.

The Exchange intends to introduce Index option series with up to one year in duration at five-point strike price intervals and, for longer-term options, strike prices with as wide as twenty-five or fifty point intervals. However, if the value of the Index falls below 200, the Exchange will use strike prices at 2½ point intervals. Position limits for the Index options will be set at no more than 25,000 contracts on the same side of the market, provided that no more than 15,000 of such contracts are in series in the nearest expiration month. For customer orders up to 20 contracts, the Exchange will use the Auto-Ex feature of POETS, the PSE's automated order routing and execution system. In all other respects, Exchange policies and rules applicable to the Index options will be the same as current rules applicable to other index options that trade on the Exchange.

The options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Accordingly, since options on the Index, as discussed below, will settle based upon opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

E. Settlement of Index Options

The Index value for purposes of settling outstanding Index options contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component stocks in their primary market on the last trading day prior to expiration. In the case of securities traded through the NASDAQ–NMS system, the first reported sale price will be used. Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the settlement value for the options. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component stock for the purpose of determining the settlement value of the Index, the PSE will wait until the end of the trading day on expiration Friday.

F. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in options on the Index. These procedures include complete access to trading activity in the underlying securities. In addition, the Intermarket Surveillance Group Agreement ("ISG Agreement"), dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[14]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[15] The Commission finds that the trading of options on the Index will permit investors to participate in the price movements of the 250 securities on which the Index is based. The Commission also believes that the trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission believes Wilshire Index options will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of stocks in the small-capitalization range of U.S. equity securities. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of Wilshire Index options will serve to protect investors, promote the public interest, and contribute to the

[12] See Amendment No. 1

[13] *Id.*

[14] ISG was formed on July 14, 1983, among other things, to coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. The primary markets for the underlying securities in the Index are all members of ISG. See Intermarket Surveillance Group Agreements, July 14, 1983. The participation of exchanges within the ISG and their sharing of surveillance information is governed by the ISG agreement. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by the ISG members on January 29, 1990. See Second Amendment to Intermarket Surveillance Group Agreement, January 29, 1990.

[15] 15 U.S.C. 78f(b)(5) (1988).

maintenance of fair and orderly markets.[16]

The trading of Wilshire Index options, however, raises several issues, including issues related to index design, customer protection, surveillance and market impact. For the reasons discussed below, the Commission believes that the PSE has adequately addressed these issues.

A. Index Design and Structure

The Commission finds that it is appropriate and consistent with the Act to classify the Index as broad-based, and, thus, to permit Exchange rules applicable to the trading of broad-based index options to apply to the Index options. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the U.S. equities market, in general, and small-capitalization securities, in particular. First, the Index consists of 250 relatively actively traded,[17] small-capitalized domestic securities. Second, the total capitalization of the Index, as of July 1, 1992, was $104 billion, with the market capitalizations of the individual stocks in the Index ranging from a high of $726 million to a low of $81 million, with a median value of $404 million. Third, the Index includes stocks of companies from a broad range of industries and no industry segment comprises more than 27% of the Index's total value.[18] Fourth, as of July 1, 1992, no single stock comprised more than .70% of the Index's total value and the percentage weighting of the 10 largest issues in the Index accounted for only 6.87% of the Index's value.[19] Fifth, the Index selection and maintenance criteria will serve to ensure that the Index maintains its broad representative sample of stocks in the small-capitalization range of U.S. equity securities. Accordingly, the Commission believes it is appropriate to classify the Index as broad-based.

The Commission also believes that the general broad diversification, capitalizations and relatively liquid markets of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, as discussed above, the Index represents a broad cross-section of domestic small-capitalized stocks, with no single industry group or stock dominating the Index. Second, the majority of the stocks that comprise the Index are relatively actively traded.[20] Third, the Commission believes that the Index selection and maintenance criteria developed by Wilshire will serve to ensure that the Index will not be dominated by low-priced stocks with small capitalizations, floats, and trading volumes.[21] Fourth, the Exchange has proposed reasonable position and exercise limits for the Index options that will serve to minimize potential manipulation and other market impact concerns. Accordingly, the Commission believes it is unlikely that attempted manipulations of the prices of the Index components would affect significantly the Index's value.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public comments must be in place before the trading of sophisticated financial instruments, such as index options, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options will be subject to the same regulatory regime as the other standardized options currently traded on the PSE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Index options.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the PSE, Amex, NASD and NYSE, along with other U.S. securities exchanges, are members of the ISG, which provides for the exchange of all necessary surveillance information.[22]

D. Market Impact

The Commission believes that the listing and trading of Wilshire Index options on the PSE will not adversely impact the underlying securities markets. First, as described above, the Index is broad-based and comprised of 250 stocks with no one stock or industry group dominating the Index. Second, as noted above, the stocks contained in the Index have relatively large capitalizations and are relatively actively traded. Third, existing PSE stock index options rules and surveillance procedures will apply to Wilshire Index options. Fourth, the Exchange has established reasonable position and exercise limits for the Wilshire Index options that will serve to minimize potential manipulation and market impact concerns. Fifth, the risk

[16] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options or warrants on the Wilshire Small Cap Index will provide investors with a hedging vehicle that should reflect the overall movement of the small-capitalization stock universe. The Commission also believes that these options and warrants will provide investors with a means by which to make investment decisions in the small-capitalization equity market, allowing them to establish positions or increase existing positions in small-capitalized stocks in a cost effective manner.

[17] The overwhelming majority of the stocks are relatively actively traded, as the median average daily trading volume is 63,600 shares for the components. However, the Commission notes that the median average daily trading volume of 63,600 shares does not include the most actively traded U.S. stocks. Under the circumstances, a median average daily trading volume of 63,600 shares may not be sufficient to demonstrate that an index's component stocks are actively traded. For example, an index purportedly representing high capitalization stocks might not be deemed to have actively traded stocks if the component stocks' median average daily trading volume was only 63,600 shares. With regard to a small capitalization index, where almost by their nature the most active stocks will likely not be included, a median average daily trading volume less than that for existing broad based indexes could be acceptable, depending upon the index's other features. For the Wilshire Index, the median average daily trading volume is acceptable given the large number of component stocks and the inclusion of criteria designed to exclude inactively traded stocks.

[18] See Section II.B. *supra*.

[19] See *supra* note 9.

[20] See *supra* note 17.

[21] Currently, 52% of the Index is accounted for by stocks meeting the options listing standards. The Commission notes that under the Index maintenance criteria at least 45% of the capitalization of the Index must be accounted for by stocks that are options-eligible. As a general matter, for broad-based index options, the Commission would prefer that at least 50% of the index continue to be options-eligible. Nevertheless, given the broad diversity of the Wilshire Index and the other selection and maintenance criteria, the Commission believes a 45% standard will not render the Index readily susceptible to manipulation. See also note 5 *supra*.

[22] See supra note 14.

to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States. Lastly, the Commission believes that settling expiring Wilshire Index options based on the opening prices of component securities is reasonable and consistent with the Act because it may contribute to the orderly unwinding of Index options positions upon expiration.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of notice of filing thereof in the **Federal Register**. First, the Amendment provides for certain standards to be used in conjunction with the maintenance of the Index. The Commission believes that these modifications strengthen the integrity of the Index and do not raise new issues. Moreover, the Commission finds that these modifications to the proposal are designed to further reduce the likelihood that the Index could be readily susceptible to manipulation. Second, the amendment provides that replacements to the Index will be made on a quarterly basis instead of an annual basis. The Commission believes that this amendment will serve to ensure the continuity of the Index and does not raise any new or unique regulatory issues. Third, the amendment provides that customer orders of 20 contracts or less in Index options will be eligible for automatic execution through the Auto-Ex feature of POETS. The Commission believes that this amendment will help afford investors prompt executions of their orders. Accordingly, the Commission believes the amendment raises no new or unique regulatory issues. Therefore, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the PSE's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the Exchange's proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-92-12 and should be submitted by November 30, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [23] that the proposed rule change (File No. SR-PSE-92-12) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-27112 Filed 11-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19070; 812-7926]

The Reserve Fund, et al.; Notice of Application

November 2, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Reserve Management Company, Inc., (the "Adviser"); Resrv Partners, Inc. (the "Distributor"); The Reserve Fund, Reserve Tax-Exempt Trust, Reserve New York Tax-Exempt Trust, Reserve Institutional Trust, and any open-end management investment company to be established, advised, or managed in the future by the Adviser or distributed by the Distributor (the "Funds").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of sections 18(f)(1), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek a conditional order under section 6(c) of the Act to permit the Funds to issue and sell separate classes of shares representing interests in the same investment portfolio, which classes would be identical in all respects, except for class designation, voting rights, exchange privileges, and the allocation of certain expenses.

FILING DATES: The application was filed on May 21, 1992 and amended on September 24, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 30, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20459. Applicants, 810 Seventh Avenue, 35th Floor, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272-2511, or C. David Messman, Branch Chief, (202) 272-3018 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund is a Massachusetts business trust and is registered under the Act as an open-end management investment company. Each Fund is a money market fund. The Reserve Fund consists of four separate series: the Primary Portfolio, the U.S. Government Portfolio, the U.S. Treasury Portfolio, and the Federal Government Securities Portfolio, each investing in a diversified portfolio of U.S. dollar-denominated short-term money market instruments. Reserve Tax-Exempt Trust consists of three separate series: The Interstate Portfolio, the Connecticut Portfolio, and the Massachusetts Portfolio, each investing in a portfolio of municipal securities. Reserve New York Tax-Exempt Trust consists of one series, the New York Portfolio, which invests solely in municipal obligations the interest from which is exempt from Federal, New York State, and local income taxes. Reserve Institutional Trust also consists of one series, the Institutional Government Securities Portfolio. Each such series is referred to individually and collectively as a "Series."

2. Resrv Partners, Inc. is the distributor of each Fund and Reserve Management Company, Inc., serves as

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[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30-3(a)(12) (1990).

the investment adviser to each of the Funds.

3. Each Fund has adopted a distribution plan pursuant to rule 12b–1 under the Act ("12b–1 Plan"), except Reserve Institutional Trust, which has no 12b–1 Plan. Pursuant to the 12b–1 Plans, each Fund is authorized to pay securities dealers and financial institutions that have entered into an agreement with the Distributor a monthly fee for distribution services. Payments made under the 12b–1 Plans of each Fund cannot exceed annually 0.20% of the average net asset value of shareholder accounts as to which the securities dealer or financial institution has rendered distribution services.

4. Applicants propose to establish a multiple distribution arrangement (the "Multi-Class System"). The Funds, except Reserve Institutional Trust, will issue shares in each of their series in at least three separate classes. The currently outstanding shares of each such Series will be designated Class A shares and will continue to be subject to the 12b–1 Plans currently in effect. Class B shares of these Series will be offered with no 12b–1 Plan. Class C shares will be offered with a modified 12b–1 Plan (the "Modified 12b–1 Plan") requiring holders to pay an additional distribution fee. Reserve Institutional Trust will issue shares in at least two separate classes. Its existing shares would be designated Class A shares, and would be offered without a 12b–1 Plan, and its Class B shares would be offered with a 12b–1 Plan.

5. Under the Modified 12b–1 Plan, securities dealers and financial institutions would provide services that would augment services provided by the Adviser, Distributor, custodian, or third-party securities dealer or financial institution pursuant to the existing 12b–1 Plan. The services that would be provided under the Modified 12b–1 Plan would include: Establishing and maintaining customer accounts and records, aggregating and processing purchase and redemption requests from customers, placing net purchases and redemption orders, providing periodic statements to their customers, arranging bank wires, answering customer inquirers concerning their investments in the Funds, performing subaccounting functions, processing dividend payments from the Funds on behalf of customers and forwarding certain shareholder communications from the Fund (such as proxies, shareholder reports, and dividend, distribution, and tax notices) to their customers.

6. In addition to expenses incurred under a 12b–1 Plan, each class of shares will bear certain expenses specifically attributable to the particular class as set forth in Condition 1 *infra* ("Class Expenses"). The determination of which Class Expenses will be allocated to a particular class and any subsequent changes thereto will be determined by a Fund's board to trustees in the manner described in Condition 3 *infra*.

7. Dividends paid to each class in a Series would be declared and paid on the same business days and at the same times, and, except as noted below, would be determined in the same manner and paid in the same amounts. Because of 12b–1 Plan payments and Class Expenses that would be borne by a class of shares, the net income (and resulting dividends) payable to such class would be lower than the net income of a class not making such 12b–1 Plan payments or paying such Class Expenses.

8. Each class of shares may be exchanged only for shares of the same class in another Series. For example, Class A shares of the Primary Portfolio may be exchanged only for Class A shares of the U.S. Government Portfolio.

Applicants' Legal Analysis

1. Applicants seek an exemption, under section 6(c) of the Act, from sections 18(f)(1), 18(g), and 18(i) to the extent that the Multi-Class System may: (a) Result in a "senior security," as defined in section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1); and (b) may violate the equal voting rights provisions of section 18(i) of the Act.

2. Section 18 is intended to prevent investment companies from issuing excessive amounts of senior securities and thereby increasing unduly the speculative character of their junior securities, or from operating without adequate assets or reserves. The proposed arrangement does not involve borrowing and will not increase the speculative character of the shares because all shares will participate *pro rata* in all of the Series' income and expenses with the exception of Class Expenses and 12b–1 Plan payments. Further, since all shares will be redeemable at all times, no class of shares in a Series will have any preference or priority over any other class in the Series in the usual sense (that is, no class will have distribution or liquidation preferences with respect to particular assets and no class will be protected by any reserve or other account).

3. The proposed allocation of expenses and voting rights is equitable and would not discriminate against any group of shareholders. Investors purchasing shares offered in connection with a 12b–1 Plan would bear the costs associated with services rendered pursuant to the 12b–1 Plan and would possess exclusive shareholder voting rights with respect to matters affecting such 12b–1 Plan. Investors purchasing shares offered without a 12b–1 Plan would not bear such expenses or possess such voting rights.

4. Under the Multi-Class System, the Funds would be able to provide certain services for specific investors. Such investors would, in turn, enjoy not only the benefits of such specifically tailored services, but also the investment safety and stability resulting from their ability to invest in an investment portfolio designed for a wider class of investors than a Series offered to a smaller, distinct group. In addition, holders of such shares may be relieved of some of the fixed costs associated with open-end management investment companies since such costs potentially would be spread over a larger number of shares than with a fund offered to a narrow group.

Applicants' Conditions

If the requested order is granted, applicants agree to the following conditions: [1]

1. The classes will each represent interests in the same portfolio of investments of a Series, and be identical in all respects except for certain differences related to: (a) The method of financing certain Class Expenses, which are limited to: (i) Printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses and proxies to current shareholders attributable to a specific class; (ii) Blue Sky registration fees incurred by a class of shares; (iii) the expense of administrative personnel and services as required to support the shareholders of a specific class; (iv) litigation or other legal expenses relating solely to one class of shares; and (v) trustees' fees incurred as a result of issues relating to one class of shares; (b) expenses assessed to a class resulting from 12b–1 Plan payments; (c) the related voting rights as to matters exclusively affecting one class of shares; (d) exchange privileges; and (e) class designation. Any additional incremental expenses not specifically identified above which

[1] One of the conditions in the application (condition 6), which relates to shareholder approval of 12b–1 Plans, is no longer required for exemptive relief permitting multiple classes of shares. Any order issued granting such relief will not be subject to this condition. The conditions in this notice have been renumbered to reflect the deletion of the condition.

are subsequently identified and determined to be properly allocated to one class of shares shall not be allocated until approved by the SEC.

2. The Funds' trustees, including a majority of the non-interested trustees, will approve the offering of different classes of shares of a Series prior to the implementation of the Multi-Class System. The minutes of the trustees' meetings regarding their deliberations with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the trustees' determination that the proposed Multi-Class System is in the best interests of both a Series and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of a Fund's trustees, including a majority of the non-interested trustees. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the trustees, and the trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Fund's trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Funds for the existence of any material conflicts among the interests of the classes of shares. The trustees, including a majority of the non-interested trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Funds' Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, such Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. The Distributor will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Series to agree to conform to such standards.

6. The Funds' trustees will receive quarterly and annual statements concerning 12b–1 Plan expenditures complying with that of rule 12b–1(b)(3)(ii), as it may be amended from time to time. In the statements, only expenditures properly attributable to a particular class will be used to justify any fee charged to that class. Expenditures not related to a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the non-interested trustees in the exercise of their fiduciary duties.

7. Dividends paid by a Fund with respect to a class of shares in a Series will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Fund with respect to each other class of shares in the same Series, except that Class Expenses and payments made pursuant to a 12b–1 Plan or will be allocated exclusively to that class.

8. The methodology and procedures for calculating the net asset value and dividend distribution of the various classes and the allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which was attached to the application as Exhibit D, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The Expert's reports shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The Expert's work papers with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the SEC staff upon the written request to the Funds for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert will be a "Special Purpose" report on the "Design of a System" and ongoing reports would be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in Statement of Auditing Standards No. 44 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividend/distributions of the various classes and the proper allocation of expenses among the classes and this representation has been concurred with by the Expert in the initial report referred to in Condition 8 above and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the ongoing reports referred to in that condition. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

10. The prospectus of each class will contain a statement to the effect that any person entitled to receive compensation for selling Series shares may receive different compensation with respect to one particular class of shares over another in the Series.

11. The conditions pursuant to which an exemptive order requested by this application may be granted and the duties and responsibilities of the trustees of the Funds with respect to the Multi-Class System described in this application will be set forth in guidelines which will be furnished to the Funds' trustees.

12. Each Series will disclose the respective expenses, performance data, distribution arrangements, service, fees, sales load, deferred sales loads, and exchange privileges, if any, applicable to each class of shares in such Series in every prospectus pertaining to such Series, regardless of whether all classes of shares are offered through each prospectus. The Funds will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report pertaining to such Series. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Series, it will also disclose the respective expenses and/or performance data applicable to all classes of shares of such Series. The information provided by applicants for publication in any newspaper or similar listing of a Series's net asset value and public offering price will present each class of shares separately.

13. Applicants acknowledge that the grant of the exemptive order requested by this application does not imply SEC approval, authorization or acquiescence in any particular level of Class Expenses or payments made pursuant to a 12b–1 Plan in reliance on the exemptive order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-27113 Filed 11-6-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-19072; 812-7984]

Tyler Cabot Mortgage Securities Fund, Inc., et al.; Notice of Application

November 2, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Tyler Cabot Mortgage Securities Fund, Inc. ("Tyler Cabot"), Capstead Mortgage Corporation ("Capstead"), Tyler Cabot Securities Advisers, Inc. ("Tyler Cabot Advisers"), Capstead Advisers, Inc. ("Capstead Advisers"), and Lomas Mortgage USA, Inc. ("Lomas USA").

RELEVANT ACT SECTIONS: Order requested pursuant to section 17(b) granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 17(b) of the Act granting an exemption from section 17(a) to permit Tyler Cabot to merge with and into Capstead. Under the terms of the merger agreement, each share of Tyler Cabot's common stock ("Tyler Cabot Common Stock") would be converted into the right to receive one share of Capstead's newly-issued $1.26 Series B Cumulative Convertible Preferred Stock ("Series B Preferred Stock").

FILING DATE: The application was filed on July 10, 1992, and amended on September 22, 1992, October 14, 1992, and October 26, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 30, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 2001 Bryan Tower, Suite 3300, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504-2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Tyler Cabot is a diversified closed-end management investment company incorporated in Maryland and registered under the Act. Tyler Cabot invests primarily in high quality mortgage-backed securities issued or guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation. It also invests in collateralized mortgage obligations, residual interests in collateral sold to secure collateralized mortgage obligations, and options. Tyler Cabot Common Stock is listed on the New York Stock Exchange.

2. Capstead is a real estate investment trust incorporated in Maryland. It invests primarily in first-lien, long-term mortgage loans secured by single-family residences. It earns additional income from its residual interests in collateral pledged to secure collateralized mortgage obligations issued by its special-purpose finance subsidiaries. Capstead's common stock ("Capstead Common Stock") is listed on the New York Stock Exchange.

3. Mr. Ronn K. Lytle serves both as the President of Capstead, and as the Chairman and Chief Executive Officer of Tyler Cabot. He also is a director of both companies.

4. Tyler Cabot Advisers, formerly Lomas Securities Advisers, Inc., is the investment adviser to Tyler Cabot. Capstead Advisers is the investment adviser to Capstead and, subject to the supervision of Capstead's board of directors, administers Capstead's daily operations. Both Tyler Cabot Advisers and Capstead Advisers are wholly-owned subsidiaries of Lomas USA, which is a wholly-owned subsidiary of Lomas Financial Corporation ("Lomas Financial").

5. Subject to various regulatory approvals and the approval of the stockholders of each of Tyler Cabot and Capstead, Tyler Cabot proposes to merge with and into Capstead pursuant to the terms of an agreement and plan of merger (the "Merger Agreement").

6. The initial terms of the proposed transaction were presented to the board of directors of Tyler Cabot by Mr. Lytle, acting in his capacity as President of Capstead, at a regularly scheduled meeting held on May 19, 1992. On June 11, 1992, a committee composed of three members of Tyler Cabot's five-member board of directors (the "Tyler Cabot Committee") was appointed to review the fairness of the proposed transaction to Tyler Cabot's shareholders. Two of the members of the Tyler Cabot Committee are not "interested" persons. Mr. Michael Cornwall, one of the "non-interested" directors, has over thirty years of experience in commercial banking and the savings and loan industry, most recently as President and Chief Operating Officer of Guaranty Federal Savings Bank. Mr. William R. Smith, the other non-interested director, has served as President of Smith Capital Management, Inc. for over five years. Ms. Harriet E. Miers, the third director of the Tyler Cabot Committee, is a practicing attorney and has been a shareholder of the law firm of Locke Purnell Rain Harrell for more than five years.[1] Ms. Miers is the President of the Texas Bar Association and previously served as a member of the Dallas City Council. At this meeting, as well as at subsequent meetings during which the proposed merger was discussed, the non-interested directors were represented by separate legal counsel.

7. At the commencement of the initial meeting of the Tyler Cabot Committee held on June 11, 1992 to consider the initial proposal put forward by Capstead's senior management, Mr. Lytle distributed materials to accompany his oral presentation, including a description of Capstead, the recent operating results of the two companies, certain historical and projected pro-forma financial information giving effect to the proposed transaction, Capstead's proposal with respect to terms of the proposed preferred stock, and a preliminary draft letter of intent. In addition, the materials included projected income statement data for Tyler Cabot indicating that Tyler Cabot's monthly dividend rate of $.105 probably would be reduced to within the range of $.090 to $.095 per share beginning in November 1992 if the merger was not effected.

[1] Ms. Miers may be considered an interested director because her law firm performs legal services for Lomas Financial.

8. After Mr. Lytle and the members of the Tyler Cabot Committee discussed the materials distributed by Mr. Lytle, Mr. Lytle was excused from the meeting. The Tyler Cabot Committee then considered the proposed retention of Merrill Lynch & Co. ("Merrill Lynch") as the exclusive financial adviser to Tyler Cabot in the merger. Merrill Lynch was the underwriter for each of Tyler Cabot's and Capstead's initial public offerings, and maintains ongoing relationships with both institutions. The Tyler Cabot Committee questioned representatives of Merrill Lynch as to both the history of Merrill Lynch's prior institutional relationship with Capstead, as well as the contact that the Merrill Lynch investment bankers who were advising Tyler Cabot on the proposed transaction would have with the Merrill Lynch bankers who had responsibility for previous transactions involving Tyler Cabot and Capstead. The Tyler Cabot Committee was advised of the scope and nature of Merrill Lynch's institutional dealings with both Tyler Cabot and Capstead. After the representatives of Merrill Lynch were excused, the Tyler Cabot Committee discussed whether to approve the retention of Merrill Lynch pursuant to the terms of an engagement letter between Tyler Cabot and Merrill Lynch previously negotiated by Mr. Lytle and Tyler Cabot's outside counsel. Mr. Lytle was then invited to join the Tyler Cabot Committee to discuss the fee structure negotiated and reflected in the engagement letter. After Mr. Lytle was excused again, the Tyler Cabot Committee unanimously approved the engagement of Merrill Lynch pursuant to the terms of the engagement letter.

9. The Tyler Cabot Committee rejected Capstead's initial proposal, but instructed Merrill Lynch to continue negotiations in connection with the proposed transaction. On June 16, 1992, the Tyler Cabot Committee, representatives of Merrill Lynch, Tyler Cabot's outside counsel, and counsel for the independent directors met to review the status of the negotiations. At the commencement of the meeting, Mr. Lytle summarized the revised Capstead proposal and thereafter was excused from the meeting. Merrill Lynch distributed materials setting forth its preliminary valuation analysis of the revised Capstead proposal. The Tyler Cabot Committee discussed with Merrill Lynch the dividend rate and alternative formulations of the ratio proposed to convert the Capstead Series B Preferred Stock that Tyler Cabot's shareholders would receive as a result of the merger into Capstead Common Stock. In addition, the Tyler Cabot Committee discussed with Merrill Lynch the relative significance of each component of the formulas in ascribing an overall value to the proposed Capstead Series B Preferred Stock. The Tyler Cabot Committee instructed Merrill Lynch to conduct further negotiations with Capstead regarding the conversion ratio.

10. After discussions between Merrill Lynch, Mr. Lytle, and a representative of PaineWebber Incorporated, Capstead's financial adviser in the transaction, Merrill Lynch advised the Tyler Cabot Committee that Capstead had agreed to revised terms of the Series B Preferred Stock, including a revised conversion ratio. Further negotiations resulted in a revised proposal. The Tyler Cabot Committee reviewed the proposal with Merrill Lynch and Tyler Cabot's outside counsel, determined that it was in the best interests of Tyler Cabot's shareholders to pursue a transaction with Capstead, and recommended the execution and delivery of a non-binding letter of intent incorporating the terms of the merger as presented to it.

11. On July 8, 1992, the Tyler Cabot Committee met with representatives of Merrill Lynch, Tyler Cabot's outside counsel, and counsel for the non-interested directors. Copies of a proposed draft of a Merger Agreement were distributed to the Tyler Cabot Committee. Merrill Lynch and outside counsel summarized the terms of the proposed transaction that had resulted from negotiations conducted after the execution of the non-binding letter of intent. Merrill Lynch then delivered an oral presentation, accompanied by written materials it distributed at the meeting, with respect to its opinion that the proposed consideration to be received by Tyler Cabot's shareholders was fair from a financial viewpoint. Merrill Lynch then delivered its written opinion to the Tyler Cabot Committee and was excused from the meeting. After conferring with Tyler Cabot's outside counsel and separate counsel for the independent directors, the Tyler Cabot Committee unanimously approved the proposed transaction and recommended approval by the full board of directors on July 8, 1992. The full board convened immediately thereafter and approved the proposed merger.

12. As finally negotiated, the terms of the proposed transaction provide that each share of Tyler Cabot Common Stock outstanding immediately prior to the effective date of the merger will be converted into the right to receive one share of Capstead's newly issued $1.26 Series B Preferred Stock. Series B Preferred Stock will be convertible into Capstead Common Stock at any time based upon a conversion ratio determined by dividing the liquidation preference of the Series B Preferred Stock by the lesser of (a) $42.00 [2] and (b) the average closing price of Capstead Common Stock for the fifteen consecutive trading days commencing on the twentieth trading day immediately prior to the special stockholders' meeting of both Tyler Cabot and Capstead to vote upon the proposed transaction (the "Special Stockholders' Meeting"). The liquidation preference of Series B Preferred Stock is fixed as the greater of (a) $11.38,[3] and (b) the net asset value per share of Tyler Cabot Common Stock as of the close of the fifth trading day immediately prior to the Special Stockholders' Meeting. Holders of Series B Preferred Stock will be entitled to receive, when, as, and if declared by Capstead's board of directors, cumulative preferential cash dividends at the rate of $1.26 per annum payable monthly in arrears. The Series B Preferred Stock may be redeemed by Capstead at any time after five years from the date of issuance at a price of $12.50 per share.

13. As part of its analysis of the fairness of the proposed transaction, the Tyler Cabot Committee considered the following factors in determining that the merger would be fair to Tyler Cabot's shareholders: (a) The historical and current financial conditions and operations of Tyler Cabot and Capstead; (b) a comparison of the future prospects of Tyler Cabot with those of the combined entity resulting from the merger, including the likelihood that the dividend on Tyler Cabot Common Stock would be lower than the dividend rate on the Series B Preferred Stock; (c) the increased risk of investment of Tyler Cabot's shareholders as a result of the proposed transaction; [4] (d) historical

[2] The $42.00 amount was negotiated by the parties as an average trading price for Capstead that ensured Series B Preferred Shareholders of receiving an assured minimum of Capstead's equity on a fully diluted basis.

[3] The $11.38 amount was negotiated on the basis of discounting $12.50, the approximate market price of Tyler Cabot Common Stock at the time that the merger was initially proposed to Tyler Cabot's board of directors, by a conversion premium band of 10% to 15% and taking into account Tyler Cabot's $11.10 net asset value at the time.

[4] Although at least 80% of Tyler Cabot's assets must be invested in securities that are rated AAA or issued or guaranteed by the U.S. government, its agencies or instrumentalities, Capstead primarily invests in Jumbo Mortgage Loans, which typically are not rated and are subject to substantially greater risk of default than AAA-rated securities.

and current market values and dividends for the common stock of both companies; (e) the proposed terms of the Series B Preferred Stock compared to the dividend prospects of Tyler Cabot Common Stock; (f) the fact that Capstead would reimburse Tyler Cabot's fees and expenses in relation to the proposed transaction if the transaction was abandoned for reasons related to Tyler Cabot's entering into, or agreeing to enter into, a transaction with a third-party bidder; (g) the preliminary valuation analysis of the Series B Preferred Stock prepared by Tyler Cabot's financial adviser; (h) the limited number of potential third-party bidders and the low probability that any potential third-party bidder could offer more favorable terms than Capstead; [5] (i) the fact that no dilution of the interests of existing holders of Tyler Cabot Common Stock would occur; and (j) the lack of adverse tax consequences from the proposed transaction. In making its fairness evaluation, the Tyler Cabot Committee also took into account Merrill Lynch's fairness opinion, which concluded that the proposed consideration to be received by Tyler Cabot's shareholders in the merger was fair.

14. The board of directors of Capstead has determined that the proposed transaction is in the best interests of, and is fair to, Capstead's shareholders, and has approved the terms of the Merger Agreement. The Capstead board views the proposed transaction as a cost-effective means of obtaining additional capital, and increasing its future earnings and dividends.

15. A joint proxy statement/prospectus will be sent to the shareholders of Tyler Cabot and Capstead describing the proposed merger, the investment objectives and policies of both companies, any proposed modifications to the investment objectives, and any other relevant information about the proposed merger. The proposed merger will be consummated upon final approval of the shareholders of Tyler Cabot and Capstead. Following approval of the merger by the requisite vote of the shareholders of Tyler Cabot and Capstead, Capstead intends to apply to the SEC to terminate the registration of Tyler Cabot Common Stock.

[5] Merrill Lynch discussed with the Tyler Cabot Committee telephone contacts with potential third-party bidders that it had in its normal course of business during the period from the execution of a letter of intent to the execution of the Merger Agreement. None of such institutions expressed an interest in formulating a proposal to pursue a transaction with Tyler Cabot.

Applicant's Legal Analysis

1. Section 17(a)(1) prohibits the sale of securities or other property to a registered investment company by an affiliated person of such company. Section 17(a)(2) prohibits the purchase of securities or other property from a registered investment company by an affiliated person of the company. Tyler Cabot Advisers and Capstead Advisers are under "common control" within the meaning of section 2(a)(9) of the Act. As a result, Tyler Cabot is an "affiliated person" of Capstead within the meaning of section 2(a)(3) of the Act. In addition, the President of Capstead also is the Chairman and Chief Executive Officer of Tyler Cabot, and serves as a director of both companies. Because of these affiliations, section 17(a) of the Act prohibits the proposed transaction.

2. Rule 17a–8 exempts from the prohibitions of section 17(a) mergers, consolidations, and purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions enumerated in the rule are satisfied. Although rule 17a–8 only applies to mergers of affiliated registered investment companies,[6] applicants state that, consistent with the rule, the Tyler Cabot Committee and the full board of directors of Tyler Cabot have determined that participation in the transaction is in the best interests of Tyler Cabot, and the interests of existing shareholders of Tyler Cabot will not be diluted as a result of effecting the transaction.

3. Section 17(b) provides that any person may file an application for an order exempting a proposed transaction and the SEC shall grant such order if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

4. Applicants contend that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching by any person. The respective boards of directors of Tyler Cabot and Capstead have found that participation in the proposed transaction, as contemplated in the Merger Agreement, is fair and in the best interests of each company's respective shareholders. Applicants assert that the Tyler Cabot Committee, with the assistance of Tyler Cabot's financial and legal advisers, conducted an arm's length negotiation with Capstead before recommending the merger. In concluding that the standards of section 17(b) have been met, the Tyler Cabot Committee noted that although Tyler Cabot's shareholders would face increased investment risk as a result of the business and investment risks associated with the Series B Preferred Stock, the increased risk would be offset by other factors, such as the fact that Capstead's earnings would be applied to pay dividends on the Series B Preferred Stock and on its Series A Preferred Stock before making any dividend payments on its Common Stock. In addition, applicants assert that the sales prices for both Tyler Cabot Common Stock and Capstead Common Stock have increased between June 16, 1992, the last full trading prior to the public announcement that a letter of intent was signed, and October 12, 1992, and that the increase in Tyler Cabot Common Stock after the announcement of the signing of the letter of intent directly correlates to shareholders' expectations that the merger will preserve the dividend stream associated with the Tyler Cabot Common Stock prior to November 1992. Applicants further assert that the proposed transaction will be consistent with the policies of each company, and is consistent with the general purposes of the Act.

5. Subsequent to the merger, if approved, Capstead will continue as an operating company exempt from the provisions of the Act. Capstead represents that it will be excluded from regulation under the Act by virtue of the exclusions provided under sections 3(c)(5)(C) and 3(c)(6) of the Act.

[6] Investment Company Act Release No. 10886 n. 14 (Oct. 3, 1979) (noting that transactions involving any other type of entity, including investment companies that are not registered under the Act, would fall beyond the purview of the rule).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–27114 Filed 11–6–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1717]

United States Organization for the International Telegraph and Telephone Consultative Committee Study Group D; Meetings

The U.S. Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee Study Group D will meet on December 9 through 11, 1992 and on December 16, 1992.

The December 9–11 meeting will be held at the IBM executive briefing center, 3405 West Dr. Martin Luther King Blvd., Tampa, Florida, from 9 a.m. to 5 p.m. on December 9 & 10, and from 9 to 12 p.m. on December 11. Members of the public may attend the meeting and join in the discussion subject to the instructions of the Chair. Access to the Florida meeting site is controlled, and anyone interested in attending should notify Ms. Ella Gardner, at the MITRE Corporation, Phone 703–883–5826, no later than December 4, 1992.

The December 16, 1992 meeting will be held in room 1517, U.S. Department of State at 10 a.m.

The Agenda of the December 9–11 meeting will include examination of the issue of the issue of Registration of Management Domains in the context of the CCITT X.400 Recommendation. The subcommittee examining the registration of Message Handling Systems, Management Domains (MHS MD) names has considered criteria and proposed operating requirements for registrars of MHS MD names used within the U.S. The Subcommittee now invites proposals to operate the register of MHS MD names in the U.S.

To qualify for designation as the MHS MD national registration authority in the U.S., an organization should demonstrate that, it is a legal entity; it has been in existence for no less than five years; it enjoys a sound financial structure; it has employees or advisory committees who are technically competent in the relevant subject of the standard at issue; it agrees to function in its capacity as a U.S. registration agent for a minimum of ten years; it has sufficient equipment resources (e.g., hardware, software) and communications facilities (e.g., postal street address, telephone, telex, facsimile, electronic mail); if it operates with a fee structure, this structure shall be primarily for the purpose of cost recovery and agreed with the U.S. Joint Registration Authority; and that it agrees to abide by the "Operating Requirements for the Registrars of MHS Management Domain Names used within the U.S.

If you are interested in applying to be the Registration Agent for MHS MD Names or would like to comment on the above proposed criteria; please submit a letter of intent or comments by December 1, 1992, to: Dr. Ella P. Gardner, Chair, MHS MD Subcommittee, The MITRE Corporation, 7525 Colshire Drive, McLean, VA 22102–3481; with a copy to: Gary M. Fereno, Chairman: U.S. Study Group D, Room 6317, Department of State, Washington, DC 20520–6317.

Analysis of the responses received in the form of final proposals will form a major part of the agenda of the Study Group D meeting to be held in Tampa, Florida, December 9–11, 1992. The agenda of the meeting will include analysis, evaluations, and recommendations on choosing a Registration authority, finalization of behavioral guidelines for participants in a voluntary U.S. MHS backbone network, and any other matter within the purview of Study Group D.

The Agenda of the December 16, 1992 meeting will include the review of U.S. contributions for the meetings of Study Group XVII, review of final draft proposals of the MHS–MD Subcommittee, and to consider any other business within the scope of Study Group D. The Meetings will also consider proposals for the work program questions to be studied during the next four year plenary period.

Members of the general public may attend the meetings and join in the discussion, subject to the instructions of the Chair. Admittance of public members will limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should so advise the Office of Gary Fereno, Department of State, (202) 647–0201, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Dated: October 21, 1992.

Earl Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT, National Committee.

[FR Doc. 92–27086 Filed 11–6–92; 8:45 am]

BILLING CODE 4710–45–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Current Indexes Identifying Matters Made Available Under the Freedom of Information Act

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice.

SUMMARY: Pursuant to the Freedom of Information Act, the Thrift Depositor Protection Oversight Board is publishing notice of an order determining that publication of current indexes providing identifying information for the public as to certain matters would be unnecessary and impracticable.

EFFECTIVE DATE: November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Lawrence Hayes, telephone (202) 789–9681.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, the Thrift Depositor Protection Oversight Board (Board) is publishing a final rule establishing procedures to implement the Freedom of Information Act, 5 U.S.C. 552. Pursuant to 5 U.S.C. 552(a)(2), the Board is required to publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated by the Board and required by 5 U.S.C. 552(a)(2) to be made available or published, unless the Board determines by order published in the **Federal Register** that the publication would be unnecessary and impracticable. The matters required by 5 U.S.C. 552(a)(2) to be made available or published are: final opinions and orders made in the adjudication of cases; statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**; and administrative staff manuals and instructions to staff that affect a member of the public.

The Board does not issue opinions or orders in the adjudication of cases. The Board's unpublished statements of policy and interpretations and its administrative staff manuals and instructions to staff that affect a member of the public are not significant in

volume. Accordingly, the Board has determined by resolution that the publication of current indexes providing identifying information for the public as to such matters would be unnecessary and impracticable and has directed publication of such order and determination in the **Federal Register**.

The Board shall provide copies of such indexes on request at a cost not to exceed the direct cost of duplication.

Dated: October 29, 1992.

Peter H. Monroe,

President.

[FR Doc. 92-26934 Filed 11-6-92; 8:45 am]

BILLING CODE 2222-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 48217]

Application of Morris Air Service, Inc., for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 92-11-6).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Morris Air Service, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than November 18, 1992.

ADDRESSES: Objections and answers to objections should be filed in docket 48217 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2340.

Dated: November 3, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-27122 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-62-M

Aviation Proceedings; Agreements Filed During the Week Ending October 30, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of the date of filing.

Docket Number: 48443.

Date filed: October 28, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC12 Reso/P 1437 dated Sept. 25, 1992.

North Atlantic-Israel Resos r-1 to r-16

r-1—022	r-9—073jj
r-2—044L	r-10—073s
r-3—054L	r-11—075l
r-4—064L	r-12—075p
r-5—064y	r-13—087ff
r-6—071k	r-14—092kk
r-7—084kk	r-15—092o
r-8—071n	r-16—311k

Proposed Effective Date: January 1, 1993.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-27060 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 30, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (see 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48439.

Date filed: October 27, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 24, 1992.

Description: Application of Mid Pacific Air Corporation, pursuant to Section 401 of the Act and subpart Q of the Regulations, authorizing it to provide scheduled foreign air transportation of property and mail between points in the United States and Bermuda.

Docket Number: 48444

Date filed: October 28, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 25, 1992.

Description: Application of USAir, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity so as to authorize USAir to provide scheduled foreign air transportation on a nonstop basis between Tampa, Florida and Nassau, Bahamas.

Docket Number: 48477.

Date filed: October 30, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 27, 1992.

Description: Application of Aero Transcolombiana De Carga Ltda., pursuant to section 402 of the Act and subpart Q of the Regulations, for a foreign air carrier permit authorizing it to engage in foreign air transportation of cargo and mail between a point or points in the Republic of Colombia and Miami, Florida, ATC also seeks authority to engage in cargo charter air transportation as authorized by part 212 of DOT Regulations.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-27059 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Proposed Advisory Circular 91-53A, Noise Abatement Departure Profiles

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed advisory circular; extension of comment period; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) is proposing to issue an advisory circular (AC) designed to provide standard guidelines for noise abatement departure profiles for all civil turbojet airplanes with a maximum certificated gross takeoff weight of more than 75,000 pounds operating within the United States. The proposed AC was originally published in the **Federal Register** on August 7, 1992 with the initial comment period closing on October 1, 1992. However, because of a delay in the conclusion of the validation test at John Wayne Airport until October 31, 1992, the comment period is hereby reopened until December 15, 1992.

The proposed AC would cancel AC 91-53, Noise Abatement Departure Profile, dated October 17, 1978. The proposal reflects FAA's continuing effort

to enhance safety of flight operations through standardization and reduce airplane noise. To achieve this objective, the FAA proposes a means, but not the only means, of avoiding proliferation of noise abatement departure profiles tailored for unique airport/community environments while providing noise relief to communities.

THE PROPOSAL: The proposed AC recommends two standard noise abatement departure profiles for all turbojet airplanes, one designed to reduce noise over communities near the airport and the other to provide noise reduction benefits to communities located farther away. It recommends that airplane operators select one of these two procedures for each noise sensitive departure, replacing the variety of procedures now planned or in use. It also recognizes the important role of airport proprietors in determining the most beneficial procedure.

DATES: The comment period is being extended from October 1, 1992 to December 15, 1992.

ADDRESSES: Send comments and requests for copies and supporting noise analysis documentation on this proposed AC to: Federal Aviation Administration, Attn: Technical Programs Division, AFS-400, 800 Independence Ave., SW., Washington, DC 20591. Comments and supporting documentation may be inspected at the above address between 8:30 a.m. and 4:30 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Wesley Te Winkle, Flight Standards Service, at the above address: telephone (202) 267-3728.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed AC by submitting such written data, views, or arguments, and by commenting on possible environmental, energy, or economic impacts of this AC. Comments should identify AC 91-53A and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Flight Standards staff before issuing the final AC.

Issued in Washington, DC on November 3, 1992.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 92-27121 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

National Recreational Trails Advisory Committee; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces the first meeting of the National Recreational Trails Advisory Committee, authorized by the Symms National Recreational Trails Act of 1991 (section 1303 of the Intermodal Surface Transportation Efficiency Act of 1991; Pub. L. 102-240, 105 Stat. 1914, 2068). The focus of the meeting will be to consider utilization of funds to be allocated by States from the National Recreational Trails Funding Program, establish and review criteria for trail-side and trail-head facilities that qualify for funding under this program, and make recommendations for changes in Federal policy to advance the purposes of the Symms National Recreational Trails Act. Other issues will include review of multi-use trail planning and management criteria, review and development of trail conflict resolution strategies, and review and development of trail use safety information.

DATES: The meeting will be December 2, 1992, from 9 a.m. to 4:30 p.m. e.t., and December 3, 1992 from 9 a.m. to 2 p.m. The meeting is open to the public.

ADDRESSES: The meeting will be held in room 4200 of the Nassif Building, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Christopher B. Douwes, Federal Highway Administration, Intermodal Planning Division, HEP-50, (202) 366-5013; or John K. Kraybill, Office of the Chief Counsel, HCC-31, (202) 366-1367; 400 Seventh St., SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

Authority: Section 1303, Public Law 102-240, 105 Stat. 1914, 2068; 23 U.S.C. 315; 49 CFR 1.48.

Issued on November 2, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-27065 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-22-M

Scenic Byways Advisory Committee; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces the first meeting of the Scenic Byways Advisory Committee. The focus of the meeting will be to develop and make recommendations regarding minimum criteria and standards for use by State and Federal agencies in designating highways as scenic byways and all-American roads for the purpose of a national scenic byways program as authorized by section 1047(a)(3) of the Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102-240, 105 Stat. 1914, 1996.

DATES: December 1, 1992, 9 a.m. to 4 p.m., e.t. This meeting is open to the public.

ADDRESSES: Nassif Building, 400 Seventh Street SW., room 4200, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Johnson, Federal Highway Administration, Intermodal Planning Division, HEP-50, room 3301, 400 Seventh, Street SW., Washington, DC 20590, (202) 366-2071. Office hours are from 7:15 a.m. to 3:45 p.m., e.t., Monday through Friday, except legal Federal holidays.

Authority: 23 U.S.C. 315; 49 CFR 1.48; Sec. 1047, Pub. L. 102-240, 105 Stat. 1914, 1996.

Issued on: November 2, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-27083 Filed 11-6-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 2, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0029.

Form Number: IRS Forms 941, 941E, 941-SS, Schedule A (Form 941), Schedule B (Form 941).

Type of Review: Revision.

Title: Employer's Quarterly Federal Tax Return; Quarterly Return of Withheld Federal Income Tax and Medicare Tax; Employer's Quarterly Federal Tax Return—American Samoa, Guam, The Commonwealth of the Northern Mariana Islands, and the Virgin Islands; Records of Federal Backup Withholding Tax Liability; Employer's Record of Federal Tax Liability.

Description: Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. Form 941E is used primarily by state and local governments to report withheld income and Medicare taxes only. Form 941–SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule A is used by payers who elect to report backup withholding tax liability. Schedule B is used by employers to record their employment tax liability.

Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 12,580,208.

Estimated Burden Hours Per Respondents/Recordkeeper:

Form	Recordkeeping	Learning about law or the form	Preparing the form	Copying, assembling, and sending form to the IRS
941	9 hours, 49 minutes	22 minutes	1 hour, 28 minutes	16 minutes.
941E	8 hours, 22 minutes	28 minutes	1 hour, 33 minutes	16 minutes.
941–SS	7 hours, 10 minutes		7 minutes	
Sch. A	2 hours, 38 minutes		2 minutes	
Sch. B	2 hours, 38 minutes		2 minutes	

Frequency of Response: Quarterly.

Estimated Total Reporting/ Recordkeeping Burden: 320,571,438 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–27042 Filed 11–6–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

November 2, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0797.

Regulation ID Number: LR–209–74 Final (T.D. 8179).

Type of Review: Extension.

Title: Organizations Under Common Control; Eighty Percent Control Test for a Brother-Sister Controlled Group.

Description: The Income Tax Regulations relating to the definition of a brother-sister controlled group of corporations or businesses are amended to reflect a recent Supreme Court decision. Amendments will apply retroactively. However, taxapyers may elect prospective effect in certain circumstances.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 2.

Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.

Frequency of Response: Other (one-time election).

Estimated Total Reporting Burden: 3 hours.

OMB Number: 1545–0800.

Regulation ID Number: Reg. 601.601.

Type of Review: Extension.

Title: Rules and Regulations.

Description: Persons wishing to speak at a public hearing on a proposed rule must submit written comments and an outline within prescribed time limits, for use in preparing agendas and allocating time. Persons interested in the issuance, amendment, or repeal of a rule may submit a petition for this. IRS considers the petitions in its deliberations.

Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 600.

Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 900 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–27043 Filed 11–6–92; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy; Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on November 13 in room 600, 301 4th Street SW., Washington, DC from 10 a.m.–12 noon.

At 10 a.m. the Commission will meet with Mr. Barry Fulton, Acting Associate Director, Bureau of Educational and Cultural Affairs, USIA, to discuss educational and cultural affairs. At 11 a.m., the Commission will meet with Ms. Jodie Lewinsohn, Director, Office of East Asian and Pacific Affairs, USIA, to discuss issues in East Asia.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619–4468 for further information.

Dated: November 4, 1992.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 92–27138 Filed 11–6–92; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Meeting

In accordance with Public Law 92–463, the Department of Veterans Affairs gives notice of a meeting of the Scientific Review and Evaluation Board for Rehabilitation Research and Development. This meeting will convene at the Vista International Hotel, 1400 "M" Street NW., Washington, DC January 12 through January 15, 1993. The session on January 12, 1993, is scheduled to begin at 6:30 p.m. and end at 9:30 p.m. The sessions on January 13, 14, 15, 1993, are scheduled to begin at 8 a.m. and end at 5 p.m. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service, regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) for the January 12 session for the discussion of administrative matters, the general status of the program, and the administrative details of the review process. On January 13–15, 1993, the meeting is closed during which the Board will be reviewing research and development applications.

This review involves oral comments, discussion of site visits, staff and consultant critiques of proposed research protocols; and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Disclosure would also reveal research proposals and research underway which could lead to the loss of these projects to third parties and thereby frustrate future agency research efforts.

Thus, the closing is in accordance with 5 U.S.C. 522b (c)(6), and (c)(9)(b) and the determination of the Acting Secretary of the Department of Veterans Affairs under sections 10(d) of Public Law 92–463 as amended by section 5(c) of Public Law 94–409.

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Ms. Victoria Mongiardo, Program Analyst, Rehabilitation Research and Development Service, Department of Veterans Affairs, 103 South Gay Street, Baltimore, Maryland 21202 (Phone: 410–962–2563) at least five days before the meeting.

Dated: October 29, 1992.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92–27039 Filed 11–6–92; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 217
Monday, November 9, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Monday, November 16, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–27215 Filed 11–5–92; 11:37 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, November 24, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–27216 Filed 11–5–92; 11:37 am]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Monday, November 16, 1992.

PLACE: 2033 K St. N.W., Washington, DC, Lower Lobby Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Application for designation as a contract market in National Catastrophe Insurance futures and options/Chicago Board of Trade.

Application for designation as a contract market in Eastern Catastrophe Insurance futures and options/Chicago Board of Trade.

Application for designation as a contract market in Midwestern Catastrophe Insurance futures and options/Chicago Board of Trade.

Application for designation as a contract market in Western Catastrophe Insurance futures and options/Chicago Board of Trade.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92–27304 Filed 11–5–92; 3:47 pm]
BILLING CODE 6351–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 3:30 p.m., Tuesday, November 3, 1992.

The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTER CONSIDERED: Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 4, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92–27212 Filed 11–5–92; 11:35 am]
BILLING CODE 6210–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:30 a.m., Thursday, November 12, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 5, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92–27213 Filed 11–5–92; 8:45 am]
BILLING CODE 6210–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD:

TIME AND DATE: 1:30 p.m., November 16, 1992.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the last meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Investment policy review.
4. Review of KPMG Peat Marwick audit reports:

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan System Enhancements and Software Change Controls at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Account Maintenance and Participant Support Subsystems at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

"Pension and Welfare Benefits Administration Review of the Thrift Savings Plan C and F Fund Investment Management Operations at Wells Fargo Institutional Trust Company and Wells Fargo Nikko Investment Advisors."

5. Ethics briefing.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523–5660.

Dated: November 3, 1992.

Francis X. Cavanaugh,
Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 92–27173 Filed 11–5–92; 8:57 am]
BILLING CODE 6760–01–M

NATIONAL SCIENCE BOARD

DATE AND TIME:

November 19, 1992, 2:00 p.m. Closed Session

November 20, 1992, 8:30 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, November 19, 1992—Closed Session: 2:00 p.m.–3:00 p.m.

2:00 p.m.—Minutes of October 1992 Meeting
2:05 p.m.—Future NSF Budgets
2:30 p.m.—Grants & Contracts (Drs. Baker and Powell)

Friday, November 20, 1992—Open Session 8:30 a.m.–11:00 a.m.

8:30a.m.—Chairman's Report
8:45 a.m.—Minutes of October 1992 Meeting
8:50 a.m.—Director's Report
9:00 a.m.—Presentation of Commission Report
11:00 a.m.—Other Business

Marta Cehelsky,

Executive Officer.

[FR Doc. 92-27214 Filed 11-5-92; 8:45 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 9, 1992.

Closed meetings will be held on Tuesday, November 10, 1992, at 2:30 p.m. and on Thursday, November 12, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. 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 closed meetings.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 10, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceeding of an enforcement nature.
Settlement of injunctive action.
Opinions.

The subject matter of the closed meeting scheduled for Thursday, November 12, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding 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 for postponed, please contact: Walter Stahr at (202) 272–2000.

Dated: November 4 1992

Jonathan G. Katz,

Secretary.

[FR Doc. 92-27238 Filed 11-5-92; 2:39 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 57, No. 217
Monday, November 9, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 92-ASO-1]

Amend Controlling Agency for Restricted Areas R-5306A, R-5306C, R-5306D, R-5306E, Cherry Point, NC

Correction

In rule document 92-24904 appearing on page 46979 in the issue of Wednesday, October 14, 1992, in the first column, in the **SUMMARY**, in the fourth line "Maring"should read "Marine".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 26930; Amendment No. 121-231]

[RIN 212-AE 51]

Aircraft Ground Deicing and Anti-Icing Program

Correction

In rule document 92-23652 beginning on page 44924 in the issue of Tuesday, September 29, 1992, make the following correction:

On page 44932, in the first column, in the fifth paragraph, in the second line "an" should read "any".

BILLING CODE 1505-01-D

Monday
November 9, 1992

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Block Grants; State Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-92-1482; FR-1877-F-03]

RIN 2506-AA84

Community Development Block Grants; State Program

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

ACTION: Final rule.

SUMMARY: This final rule revises HUD's regulations governing the state administration of Community Development Block Grant nonentitlement funds to incorporate certain provisions of the Housing and Community Development Act of 1974 made by the Housing and Urban-Rural Recovery Act of 1983, the Housing and Community Development Act of 1987, and the Cranston-Gonzalez National Affordable Housing Act of 1990. The rule makes additional changes designed to clarify and reorganize the regulations.

EFFECTIVE DATE: December 9, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Kennedy or Linda Thompson, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1322. The TDD number is (202) 708-2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

Sections 570.490 (Recordkeeping requirements) and 570.491 (Performance and evaluation reports) contain references to general recordkeeping and reporting requirements, stating that the content of records to be kept for the program and the performance and evaluation report "shall be as jointly agreed upon by HUD and the states." Several commenters misinterpreted this phrase to mean that HUD will negotiate with each individual state regarding recordkeeping and performance and evaluation report contents. Rather, the format and content of the records and report will be developed after consultation with national associations of state and local governments and would be based on joint agreement with states. The Department developed model recordkeeping and performance and evaluation reporting in cooperation with eight national associations of state and local governments in 1984. These recordkeeping and reporting requirements have been followed by states since 1985.

The final rule also contains several references to state and local documentation requirements concerning such areas as the overall benefit requirement, conformance to the method of distribution, and citizen participation. Similar to the general recordkeeping and reporting requirements, these documentation requirements will be developed after consultation with the states and will be jointly agreed upon. The sections containing the documentation requirements are listed below.

§ 570.484(b)
§ 570.485(a)(1)(ii)(C)
§ 570.485(c)

The information collection requirements developed as a result of the consultation with states will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. 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**.

Background

Title I of the Housing and Community Development Act of 1974 (the Act) governs HUD's Community Development Block Grant (CDBG) Program. 24 CFR part 570 of HUD's regulations describes the policies and procedures applicable to the program. Subpart I of part 570 governs the state administration of Community Development Block Grant nonentitlement funds (State Program).

The proposed rule (**Federal Register**, Vol. 55, No. 247, December 24, 1990) set out three basic reasons for revising the current regulations for the State Program. The first involved making regulatory changes based on statutory amendments. The Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-121, approved November 30, 1983) (1983 Amendments), the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (1987 Amendments), and the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. 101-625, approved November 28, 1990) (NAHA), made several significant revisions to the Act. HUD has published final rules (see 53 FR 34416, September 6, 1988) and proposed rules (see 55 FR 11556, March 28, 1990) implementing these statutory changes for CDBG programs, except the state program. This final rule revises subpart I to incorporate the 1983 and 1987 amendments and implements several portions of the NAHA. The rule makes additional changes designed to clarify HUD's interpretation of the statute and to reorganize subpart I.

Second, numerous policy memoranda regarding specific issues in the State Program have accumulated over the years, as HUD has responded to specific state questions and issued non-binding guidance. States have complained (and HUD agrees) that these memoranda and issuances, totaling more than 300, are an inefficient and confusing means of providing non-binding guidance for this program. The principles for many of these memoranda have been codified in this rule. All prior memoranda are superseded. The Department will propose policy changes that will be binding and universally applied through the rule revision process.

The third issue identified in the proposed rule involves the effectiveness of HUD oversight of this program. In 1988, the HUD Inspector General (IG) issued a report that identified specific projects that had fallen short of providing the benefits to low and moderate income persons that had been expected. The IG concluded that more regulation of this program and better guidance was needed to provide effective oversight. Specifically, the IG recommended further regulation in the areas of program requirements, more timely use of funds, additional program monitoring and clarification of program income policy. Although HUD disagreed with some of the IG's conclusions, HUD subsequently classified the lack of regulation in this program as a "material weakness" that must be addressed. HUD addresses the concerns raised in this final rule.

In summary, this rulemaking has three goals: Updating the rules to incorporate specific statutory changes; clarifying and condensing as needed HUD's numerous policy memoranda; and responding to the IG's concerns as discussed in the 1988 report. HUD has developed the final rule to provide maximum feasible deference to the states, consistent with effective program administration.

General Comments

The preamble of the proposed rule instructed commenters to address specific provisions of the rule, and to present each comment in the context of

one of six regulatory alternatives. HUD intended to adopt one, or a mix, of these regulatory alternatives for each provision at the final rule stage, after fully considering all of the evidence in the public record. Decisions in the final rule as to how these six options were to be applied have been based on differences between small cities and large entitlement cities that justify differing requirements; evidence of mismanagement by the states; the need for accountability; program benefits; and federalism and other Administration priorities.

The alternative most frequently chosen by commenters, Alternative F, stated that the proposed rule is overly burdensome and regulates in areas that exceed statutory requirements or legitimate policy concerns. As instructed, many commenters tied this alternative to specific provisions of the rule. However, many stated that Alternative F should be applied to the entire rule, since they believed the rule in general to be overly burdensome, that it does not take into account the needs of smaller cities, and that it does not provide states with maximum feasible deference to interpret the statute.

The specific comments centered on several issues that the commenters believed exceed statutory requirements or legitimate policy concerns. HUD believes that many of these concerns have merit, and revisions to certain provisions of the proposed rule have been made which will afford greater deference to states. In revising these sections, the Department believes that it has eliminated many of the areas that were referred to as "overly burdensome," leaving only provisions that were not objectionable to most states, that provide deference to states in keeping with the principles of "federalism", or that are needed to ensure accountability. The final rule text, as a result of these revisions, not only addresses comments on specific provisions, but should satisfy concerns that the entire rule exceeds statutory requirements or legitimate policy concerns. Several issues raised by the comments are discussed below.

In addition to the several "Alternative F" comments, HUD received many "Alternative A" comments, specifying areas of the rule that commenters believed required additional regulation beyond that provided in the proposed text. Relatively few comments addressed Alternatives C (regulation needed only for areas of significant State mismanagement), D (flexible waiver provision), and E (state decisions on implementation, with prior HUD review or approval). Alternative B was specifically addressed in several cases; however, because of its nature, it is difficult to compare this alternative with the others.

In accordance with Executive Order 12612 on Federalism, and to understand more fully states' comments on the proposed rule, HUD consulted with the Council of State Community Development Agencies during the process of revising the proposed rule. The Department also consulted with the Council for Low-Income Community Development, which, in many areas, took substantially different positions than did the states. HUD believed that consulting with both groups would allow the Department more adequately to balance the needs of states and the intended beneficiaries of the program.

Legal Considerations Bearing on the Alternatives

Section 106(d)(6), added by the 1983 Amendments, provides that any activities conducted with amounts received by a unit of general local government under that subsection shall be subject to the applicable provisions of that title and other Federal law in the same manner and to the same extent as activities conducted with amounts received by a unit of general local government under subsection (a).

In the proposed rule, HUD stated that a strict interpretation of this section would require HUD to subject the CDBG State-Administered, HUD-Administered Small Cities, and HUD-Administered Entitlement Programs to the same regulatory requirements concerning activities. HUD indicated that other, less strict interpretations of this section may be equally valid. The proposed rule requested public comment on these interpretations.

HUD does not believe that the Department must have one regulation that applies to all three programs. HUD believes that separate regulations are needed for the State Program that recognize the role and responsibilities of the states. Most commenters agreed that separate regulations are needed for the State Program. Where appropriate, the final rule recognizes the role and responsibilities of the state, and recognizes differences in the programs, i.e., differences between an entitlement program for large local government and a nonentitlement program for small local governments.

National Affordable Housing Act

The National Affordable Housing Act was approved in November of 1990. The final rule reflects the provision of the Act that changed the overall benefit requirement from 60 percent to 70 percent (§ 570.484), a provision that required little regulatory elaboration.

Several provisions of the National Affordable Housing Act required no regulatory elaboration. The provisions are:

Sec. 906—Protection of individuals engaging in nonviolent civil rights demonstrations.

Sec. 907(b)—New homeownership assistance added as an eligible activity.

Sec. 908—15 percent statewide cap on public services.

Sec. 912—Prohibition against discrimination on the basis of religion.

Other sections of the National Affordable Housing Act affecting the State CDBG Program require regulatory elaboration. HUD chose not to delay publication of the proposed rule in order to develop rules for public comment for those sections of NAHA, and therefore these provisions have not been addressed in the final rule. They are:

Sec. 907(a)—Assistance to for-profit entities for economic development projects.

Sec. 922—Community development plans.

Section 919 of the NAHA expanded the Section 108 loan guarantee authority to states. A final rule for this provision was issued on November 6, 1991. States may pledge their nonentitlement grants as security for guaranteed obligations issued by units of general local government in nonentitlement areas. Accordingly, minor changes were incorporated in the final rule at §§ 570.481, 570.484, and 570.485 to accommodate the Section 108 rule.

Section 955 of the NAHA exempts volunteers from Davis-Bacon and HUD-determined prevailing wage requirements by amending section 110 of the Act. An interim rule for this provision was recently issued.

Discussion of Specific Comments

The Department received 45 public comments addressing more than 400 issues. Twenty-three letters were received from States, eight from public interest groups, four from cities and towns, and the remaining comments from the Congress and regional and administrative organizations. Comments, and the Department's responses, are discussed below by section. Several sections from the proposed rule have been re-numbered, as indicated.

Section 570.480—General

Several commenters suggested that HUD replace the language at proposed § 570.482(b)(3) on maximum feasible deference with language from the previous rule (24 CFR 570.489), which emphasizes maximum feasible deference to the states in the interpretation and implementation of congressional intent and policy. To accommodate the wishes of the commenters and in the interest of federalism, HUD has strengthened the maximum feasible deference language by incorporating much of the language from the previous rule—now located in the final rule at § 570.480(c). However, a few changes have been made to clarify that deference to states must consider the requirements of this rule.

In accordance with the principles of federalism, the Department has deleted one of the requirements for a waiver that was included in the proposed rule at § 570.480(b). A waiver of a regulatory requirement that is not required by law may be obtained if it can be determined that the application of the requirement would adversely affect the purposes of the Act. The requirement need not also result in undue hardship, as was proposed.

A new § 570.480(d) has been added regarding policy memoranda issued by HUD. HUD received several comments regarding the policy memoranda. Commenters stated that HUD should not continue to issue policy memorandum after the rule is published. Some commenters allowed for exceptions for documents such as annual operating instructions, performance and evaluation report instruction, and the like, but added that all memoranda and letters issued before the adoption of this final rule should be declared null and void. Many commenters argued that HUD should develop new policy and interpretations of the statute only by proposing an amendment to the rule and subjecting the proposed policy change to public comment.

The Department agrees that the issuance of policy memoranda should be minimized. Regardless of the detail of a regulation, however, commenters noted that there will undoubtedly be questions arising regarding specific issues and circumstances that cannot be answered in the regulatory text. The Department is bound to provide its position, both in response to state questions and to questions from HUD's field staff. Accordingly, some memoranda and letters regarding HUD's interpretation of the applicable requirements for specific situations may be necessary. While not binding or universally applicable in a regulatory sense, they must be respected as the authoritative position of the Department on the matter at issue. Section 570.480(d) clarifies that these memoranda shall apply only to a specific case or issue at a specific point in time and shall not be generally applicable to the state program.

Several memoranda previously issued annually on administrative procedures, such as operating and performance and evaluation report instructions, may continue to be distributed in the future. The Department will propose policy changes that will be binding and universally applied through the rule revision process.

Section 570.481—Definitions

A new section containing definitions is being added to subpart I. HUD intends to include in this section only the definitions that are not included in the statute and are fundamental to understanding the rest of the rule. Although several definitions that were included in the proposed rule have been deleted since they are defined in the Act, states and localities will be expected to follow the statutory definitions of these terms.

Clarification has been added to § 570.481 regarding terms that are not defined in the subpart. HUD will defer to a state's definition of these terms, provided that the state's definitions are explicit, reasonable, and not plainly inconsistent with the Act. For states seeking guidance on definitions of "household" and "special assessment", the Department provides the following:

Household: All the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any group of related or unrelated persons who share living arrangements.

Special assessment: The recovery of the capital costs of a public improvement such as streets, water or sewer facilities, curbs or gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of such public improvement, or a one-time charge made as a condition of access to a public improvement. The term does not relate to taxes, or to the establishment of the value of real estate for the purpose of levying real estate, property or ad valorem taxes, and does not include periodic charges based on the use of public improvements such as water and sewer user, charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

The definition of "program income" has been moved to § 570.489(e).

(Proposed) Section 570.482—Primary and National Objective; State Responsibilities

This section has been deleted because it was not believed to be necessary. Principles involving the subject matter are implemented in other sections.

Section 570.482—Eligible Activities

This section, which was previously § 570.483 in the proposed rule, has been substantially reduced. It no longer contains a list of eligible activities, but rather refers to section 105(a) of the Act for a list of the activities eligible to be assisted with CDBG funds. Section 105(a) of the Act lists the only activities which may be assisted with CDBG funds and, in some cases, specific limitations to the eligibility of such activities. The section does contain information on special assessments under the CDBG program, since the statutory language on this activity is confusing. The eligibility of special assessments in connection with public improvements that were initially assisted with CDBG funds, and those that were not, are discussed. HUD intends to publish regulations with respect to the requirements of section 105(a)(17) at a later date.

Section 570.483—Addressing National Objectives

This section, previously § 570.484 in the proposed rule, describes the criteria used to determine whether an eligible activity addresses one or more of the national objectives listed at section 104(b)(3) of the Act. While this section describes the criteria that HUD expects states to meet to address the national objectives, states wishing to propose a different approach may request a waiver of these criteria from the Department, pursuant to § 570.480(b).

Area Benefit Activities

Under the final rule, an activity the benefits of which are available to all residents of a particular area would meet the requirement if at least 51 percent of the residents of the area are low and moderate income persons. To establish that 51 percent of the residents of an area are low and moderate income persons, the proposed rule would have permitted the unit of general local government, at the discretion of the state, to use HUD-provided census data indicating the percentage of low and moderate income persons in defined areas, or other data agreed to by HUD and the States in the consultation process.

Several commenters want HUD to delete "other data agreed to by HUD and the state" and to substitute "statistically reliable surveys" in proposed § 570.484(b)(1)(i). Commenters want states to establish the guidelines for "Statistically reliable surveys".

The Department is in basic agreement with this comment. HUD does not believe that it is necessary for HUD and each state or locality to come to an agreement on survey suitability. States should be able to establish guidelines for data. HUD has added to the rule, at § 570.483(b)(1)(i), that units of general local government may use either HUD-provided data or survey data that is methodologically sound. If HUD, during a review, found data guidelines established by states not meeting generally accepted standards of statistical reliability and not being methodologically sound, then HUD may question the state's basis of complying with the national objective.

Job Creation or Retention Activities

This section describes the circumstances under which activities designed to create or retain jobs may be considered to meet the objective of benefit to low- and moderate-income persons. Changes were made to the organization of this section to clarify the national objective requirements for job creation and retention.

Several comments were received with respect to the tracking of employment resulting from the acquisition, development or improvement of a real property (e.g., business incubators or industrial parks) or the provision of public improvements to allow a specific business to expand or begin operation. Each comment stressed that localities should not be held accountable for meeting the 51 percent low/mod benefit standard for all employment which results from the CDBG-funded activity. Commenters would like to see the low/mod benefit requirement apply to only those businesses that are known at the time the assistance is provided.

The principal complaints against the proposed policy are:

(1) The Administrative burden associated with job tracking after the activity is completed;

(2) The discouraging effect that the low/mod requirement has upon businesses wishing to locate on the assisted property; and

(3) The possibility of repayment of grant funds if the aggregate low/mod employment level falls below 51 percent.

The Department recognizes that it may be burdensome to track all employment that may result from CDBG-funded public improvements particularly when the time period for the tracking is undefined. To reduce that burden, the rule includes two options for examining low- and moderate-income benefit for public improvements that create or retain jobs. One focuses on the time over which employment must be monitored and the other focuses on the CDBG cost per job assisted.

In cases where CDBG funds are used to provide public improvements (e.g., water, sewer, roads) and the benefit to low- and moderate-income persons is to be achieved through job creation or retention, the rule directs that the unit of general local government receiving the CDBG grant develop an assessment which identifies any businesses located or expected to locate in the area to be served by the public improvement. The assessment is required to identify and delineate businesses and jobs which may be created or retained as a result of the public improvement and to include them in the analysis of whether the activity ultimately would meet the national objective. The assessment must project all jobs that could be expected to be created or retained in the three-year period after the completion of the public improvement.

Generally, in cases where CDBG funds are used for public improvements and the low- and moderate-income benefit is to be achieved through job creation or retention, the jobs to be considered for purposes of meeting the national objective shall be all jobs created or retained by the business (or businesses) identified in the local government's assessment as well as any other businesses which locate in the area and make use of the public improvement within a period of three years after the completion of the public improvement. Jobs created by businesses that locate in the area as a result of the public improvement at any time during the three-year period will be considered for purposes of meeting the national objective. HUD's intention is to hold the State accountable for all jobs created or retained during a defined period, and three years has been selected as a reasonable period over which to examine benefit to low- and moderate-income persons from such activities.

However, HUD recognizes that certain public improvements have the potential to create or retain large numbers of jobs, and that the relative cost of the project in terms of the CDBG assistance is very low. To ease the burden of employment tracking that recognizes CDBG cost per job as a factor in determining which jobs are to be examined for purposes of meeting the low- and moderate-income benefit national objective. The jobs to be considered may be limited to those created or retained by any business(es) identified in the assessment provided the cost of the public improvement is less than $3,000 per job. Businesses that may later locate or expand as a result of the CDBG-assisted public improvement need not be considered in meeting the national objective.

The Department believes that this approach will remove some of the administrative burden of job tracking by limiting the number of jobs that need to be tracked. It should also lessen the discouraging effect that the requirement has on businesses wishing to locate on the assisted property.

Additional Provisions

Proposed § 570.484(e)(1) addressed the requirements for public improvement activities undertaken for the purpose of creating or retaining jobs. The proposed rule stated that the activity must meet the area benefit requirement of proposed § 570.484(b)(1) as well as the job creation requirement of proposed § 570.484(b)(4) in order to qualify as benefiting low- and moderate-income persons, if the activity is undertaken in a primarily residential area.

The Department received many comments on this section. The commenters claimed that where the goal is job creation, the national objective of benefiting low- and moderate-income persons is met by that job creation activity and that localities should not be held to two criteria.

HUD believes that there is a statutory basis for this provision (section 105(c)(1)). Further, the Department wants to prevent a substantial misuse of CDBG funds where the preponderance of benefit from infrastructure improvements is to upper income individuals. HUD believes that a public improvement that is clearly designed to serve a primarily residential area should meet the area benefit requirements of proposed § 570.484(b)(1), regardless of the fact that the activity may have been undertaken for the purposes of creating or retaining jobs. Therefore, HUD has modified its position to require the area benefit criteria to be met in any case where the public improvement is clearly designed to serve a primarily residential area, whether or not the requirements of proposed § 570.484(b)(4) are met. However, where there is some benefit to a residential area, if the state can demonstrate that the improvement was not clearly designed for the purpose of residential service but rather for an economic development purpose, the dual requirement need not be met.

Section 570.485—State Submission and State Citizen Participation Requirements

This section, which was previously proposed § 570.486, discussed the final statement, state certifications, and state citizen participation requirements.

Several commenters described the proposed §§ 486(a)(1)(B) and (C), on requirements for the method of distribution, as too prescriptive, exceeding statutory requirements. Some commenters suggested that detailed criteria on the state's method of distribution should be included in a handbook, rather than the final statement.

HUD disagrees with this comment. Although the Department has eliminated some of the language in § 570.485(a)(1)(B) and (C), HUD believes it is extremely important that units of general local government are adequately informed of the actual means by which selections are to be made. An association of local governments argued that a very detailed method of distribution is "critically important" to units of general local government, and is necessary if localities are to have meaningful participation, as provided for in the citizen participation requirements.

Also, HUD needs to know the actual criteria in order to meet its statutory review responsibility of insuring that the state has distributed funds in accordance with its method of distribution.

In addition, the Congress passed the Department of Housing and Urban Development Reform Act (Pub. L. 101–235, approved December 15, 1989), which addressed accountability in the provision of HUD assistance. While the Reform Act does not specifically address the provision of assistance by states to units of general local government, the rule adopts the spirit of the basic principles of the Reform Act by requiring disclosure of all criteria used to distribute funds that originated from the Department.

One commenter recommended that the Department require the state certifications to be submitted once during the state's participation in the program, rather than annually.

HUD agrees that submitting the same certifications to HUD each year is a paperwork burden. The Department will require that states annually make four certifications, and make the remaining statutorily-required certifications once during their participation in the State CDBG Program. The listing of statutorily-required certifications has been deleted.

Section 570.486—Local Government Requirements

This section, which was previously § 570.487 in the proposed rule, contained certifications of local governments, citizen participation requirements, and other local government requirements. In the interest of federalism, much has been deleted from this section, including the local certifications. Statutory provisions are of course still applicable.

Citizen Participation Requirements of a Unit of Local Government

One commenter wanted HUD to require a minimum of one public hearing for citizens at the local level, rather than a minimum of two, as in the proposed rule. The Department has decided to retain the proposed language, and to require a minimum of two public hearings. Section 104(a) of the Act, on which this requirement is based, contains the term "public hearings", and requires that localities cover their community development and housing needs, the development of proposed activities, and a review of program performance. It would be impossible for a locality that had not previously received a CDBG grant to review its program performance in the initial public hearing.

On the opposite end, one commenter suggested that HUD require a minimum of three public hearings. Localities are free to hold as many public hearings as they determine to be necessary. For the reason stated above, the Department will require at least two.

In response to comments, HUD will allow the state to decide what information local governments will be required to furnish to citizens (see § 570.486(a)(3)), as long as the information includes that specified in § 570.486(a)(3)(i)–(iv).

Activities Serving Beneficiaries Outside the Jurisdiction of the Unit of General Local Government

HUD received several comments to this section, opposing the proposed requirement that at least 51 percent of the beneficiaries of an activity must reside in the locality that receives the grant. In rural areas, commenters argued, this requirement would discourage the development of public infrastructure projects. One commenter provided the example of a water line that was funded by one locality, but that would provide benefits to residents of an adjacent jurisdiction. Often, the commenter stated, water projects are justified at certain density levels and may warrant being extended beyond the boundaries of the funded locality. A majority of beneficiaries may reside outside of these boundaries.

HUD agrees with the comment. If the locality receiving the grant is willing to implement the activity and be responsible for meeting the statutory requirements, the majority of the beneficiaries should not have to reside in that locality. HUD does not want to discourage worthwhile projects. The locality must certify that it is meeting its needs by carrying out the activity.

However, there may be instances where an activity carried out by a nonentitlement jurisdiction also benefits residents of an adjacent entitlement jurisdiction. The Department believes that, where an entitlement jurisdiction benefits from an activity carried out by a nonentitlement jurisdiction, a majority of the beneficiaries of the activity should reside in nonentitlement areas. If a substantial majority of beneficiaries resides in the entitlement jurisdiction, that jurisdiction should pay a proportional cost of the activity. States are cautioned to avoid funding projects where the clear intent of the project is to use nonentitled funds to benefit an entitled jurisdiction. Should abuses occur, HUD would be forced to propose restrictive regulatory provisions.

Section 570.487—Other Applicable Laws and Related Program Requirements

The Department has deleted most of the laws that were contained in this section (§ 570.488 in the proposed rule) that were applicable to the State program, for the purpose of reducing the size of the rule. The statutes and executive orders that were deleted are title VI of the Civil Rights Act of 1964, The Fair Housing Act, Executive Order 11063, section 109 of the Act, labor standards, environmental standards, executive orders regarding the use of minority and women's business firms, and executive orders and statutes on employment and contracting. Non-binding guidance regarding these laws will be provided to states in training sessions within 12 months. This section only includes requirements on affirmatively further fair housing and lead-based paint.

The section also states that there are certain statutes or executive orders not referred to in the Act that may be applicable to CDBG activities by their own terms, and that are administered or enforced by governmental officials, departments or agencies other than HUD.

Affirmatively Further Fair Housing

Section 104(c) of the Act, added by the 1983 Amendments, requires the state to

certify to the satisfaction of the Secretary that it will affirmatively further fair housing. Section 106(d)(5) of the Act, also added by the 1983 Amendments, states that no funds may be distributed by the state to any unit of general local government unless the locality certifies that it will affirmatively further fair housing. Proposed § 570.488(c) contained the certification requirements for states and localities, and also contained several "safe harbor" actions that states and localities could take to be considered to have met the certification.

The steps listed in the proposed rule were suggested actions, and would not prohibit the state or locality from choosing to undertake other actions affirmatively to further fair housing. However, several commenters interpreted the proposed language to be required actions for state and localities, and complained that these steps are excessively prescriptive and burdensome, especially for small localities. For those commenters that understood the proposed language to be suggested steps, many argued that HUD monitors may misunderstand the language to be requirements, and may hold states and localities responsible for meeting them. Many suggested that states and localities should simply make the certification, and decide themselves what actions to take to affirmatively further fair housing.

HUD has chosen to retain the language in the proposed rule on state actions to affirmatively further fair housing, with slight changes to the "safe harbor" suggested actions. HUD emphasizes that these actions listed are suggestions, and states may take other appropriate actions that would fulfill the intent of the statute.

The Department has revised the language at § 570.487(b)(2)(ii) on local government actions to affirmatively further fair housing. Rather than list suggested actions in the regulations, the state will work with units of general local government to develop their own proposed actions to affirmatively further fair housing, for state review and approval. If the locality carries out the state-approved actions, the state will consider the locality to have met its certification.

States are required to certify that they are affirmatively furthering fair housing when they submit their Comprehensive Housing Affordability Strategy (CHAS), and a similar certification must be required of any unit of general local government to which the state allocates HUD funds (see 56 FR 4480, February 4, 1991). The Department will publish a separate proposed rule on this CHAS certification, which may propose requirements for both states and localities on affirmatively furthering fair housing. Until such a CHAS rule becomes final, states and localities are expected to make the certifications at § 570.487(b)(1) and to take steps to carry out the certifications.

Lead-Based Paint

Some commenters contended that the lead-based paint requirements contained in the proposed rule are too detailed and costly and may limit the ability of locals to effectively rehabilitate substandard housing.

In the interest of federalism, the Department has deleted much of the language in this section regarding lead-based paint requirements. States will devise and implement a program for the prohibition of the use of lead-based paint, the notification of the hazards of lead-based paint, and the abatement of lead-based paint for CDBG-assisted property. The extent and scope of the program shall be determined by the state, but the Department expects states to take action to abate lead-based paint. The notification and abatement procedures must fulfill the objectives of and must not be inconsistent with the Lead-Based Paint Poisoning Prevention Act. States may develop their own abatement procedures as they see necessary but may, of course, follow the Department's guidance on lead-based paint elimination that is contained at 24 CFR part 35. HUD expects states to begin implementing their notification and abatement program as soon as possible but not later than twelve months after the date of this regulation.

The dangers of lead-based paint are so clear that the Department believes that it would be irresponsible not to include some notification and abatement requirements. Even within the context of federalism, HUD believes that this requirement is warranted. HUD is aware of the cost and difficulty of abatement procedures, and therefore will let the states decide on the most appropriate method for their individual state. HUD will endeavor to provide technical assistance where needed.

Revisions to the Department's regulations regarding abatement procedures at 24 CFR part 35, Subpart C may be forthcoming.

Section 570.488 Displacement, Relocation, Acquisition, and Replacement of Housing

Section 570.496a of the existing subpart I is redesignated, without amendment, as § 570.488 (§ 570.489 in the proposed rule).

Section 570.489—Program Administrative Requirements

Administrative and Planning Costs

The proposed rule included language to implement section 106(d)(3)(A) of the Act, which discusses state responsibilities for administration of CDBG funds.

The proposed rule established the accounting period for administrative costs to coincide with the period covered by the annual performance and evaluation report.

Eight comments were received regarding the period for calculating the administrative cost cap. Each comment expressed the view that equating the accounting period with the period encompassed by the annual performance and evaluation report is too restrictive, and urged that current practices with respect to administrative cost accounting be retained.

In response to these comments, HUD has constructed a provision which provides states with two approaches in accounting for administrative costs. One approach, a cumulative accounting of administrative costs since state assumption of the program, essentially codifies current practice in this area. The other approach would permit states to develop and implement their own accounting process which provides sufficient information to demonstrate that the requirements of section 489(a) are met.

For purposes of clarity, the rule also sets out when certain funds became eligible to be used for administrative costs. This is critical for calculating the base amount from which administrative costs may be drawn, regardless of the accounting option chosen by the state.

Pre-Agreement Costs

A few commenters suggested that HUD remove the requirement that states give written authorization before pre-agreement costs are incurred. HUD has removed this requirement, and wants to stress that states have the option to allow localities to incur costs for CDBG activities before the establishment of a formal grant with the state. States are not required to allow the reimbursement of pre-agreement costs, or to allow them without preauthorization.

Consultants

The Department has deleted proposed § 570.490(c) on consultants, however, certain statutory provisions do apply.

Program Income

Paragraph (g) addresses the treatment of program income by both the state and

localities, based on section 104(j) of the Act. This section has also been revised to include the definition of program income, which has been moved from proposed § 570.481.

Four commenters requested a change in the definition of "program income". One commenter requested that the definition exclude income returned to a subrecipient, since these amounts may be insignificant after deducting operating costs. Another suggested that the definition exclude income generated by the use of program income, as does, the commenter claimed, the definition in the Common Rule (24 CFR part 85).

HUD does not believe that program income generated from subrecipients is insignificant, collectively, and wants to avoid creating a loophole that would enable states to circumvent what HUD believes is the intent of the Congress. Regarding income generated from the use of program income, the Department does not wish to exclude this from its definition, because the exclusion would pose an excessive risk of misuse of program funds. To exclude income generated from program income would remove potentially large amounts of funds from program requirements in states that approve the use of grants to recipients for large "interim" loans that are quickly repaid.

HUD did not adopt the exact definition of "program income" included in the Common Rule. HUD chose, rather, to adopt some of the "principles" of the Common Rule definition, taking into account the language of past HUD policy. The definition in the Common Rule could be interpreted as excluding some kinds of income generated from the use of program income. However, the Department believes the exclusion would be inappropriate, because HUD wishes to assure that funds generated as a result of CDBG funds should benefit low and moderate income persons, except where there is no ongoing relationship between the state and the unit of general local government.

Several commenters complained about the administrative burden that is placed on states and small localities in tracking program income and assuring that it is spent in accordance with the Act. Localities are discouraged from applying for funds because of the tracking requirements. For these reasons, commenters suggested that:

(1) Program income received by a locality after closeout of the grant that generated the program income should not be subject to the Act. (Some commenters wanted all forms of program income to be exempt from title I, and others specifically mentioned either program income used to continue the activity or program income received with an ongoing grant.)

(2) The definition of program income should exclude program income received by a subrecipient and income generated from the use of program income.

HUD disagrees with the first comment. The Department has not adopted this recommendation because it believes that the statute at section 104(j) requires that income be considered as program income as long as the unit of general local government is participating in the CDBG program. Notwithstanding that the grant that generated the income may be closed out, as long as the community has continuously participated in the program through other grants, the income is program income. It is for this reason that HUD has not adopted the principle of 24 CFR part 85 which limits program income to that income earned during the "grant period" (the time between the effective date of the award and the ending date of the award reflected in the final financial report).

With regard to the second comment, the Department chose not to accept this recommendation because of its potential for abuse. To exclude subrecipient income would create a loophole that would create pressure to provide assistance through subrecipients solely for the purpose of avoiding restrictions on the use of program income. As stated above, to exclude income generated from program income would remove potentially large amounts of funds from program requirements in states that approve the use of grants for large "interim" loans that are quickly repaid. Also, excluding income generated from program income would create additional complications in tracking what program income was covered by CDBG requirements, by introducing source of income on top of the standard based on when the program income was generated.

The Department agrees, however, that the program income tracking requirements in the proposed rule would be burdensome. To mitigate this burden, the Department has modified the definition of program income to exclude amounts less than $10,000 collected and retained by local governments in a single year. The $10,000 threshold level was determined, after discussion with states, as an amount which balances the need for program accountability with administratively reasonable limits. Amounts above $10,000 are thought to be sufficiently large to warrant the application of program requirements and justify the staff costs required to track and account for such funds.

Procurement

States shall follow their own procurement policies and procedures. However, cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. This prohibition reflects a basic restriction on contracting located in 24 CFR part 85. These methods of contracting provide incentives to contractors to inflate costs, and are prohibited based on a Comptroller General's report. Entitlement jurisdictions are also prohibited from using these methods.

Conflict of Interest

Some commenters requested that the entire section on conflict of interest be removed. The Department has retained this section in order to minimize the potential for fraud, waste, and mismanagement. HUD has determined that many states do not have conflict of interest provisions that apply to non-procurement cases, and believes that this section is needed. An exception provision is included at §§ 570.489(h)(4) and (5).

Change of Use of Real Property

In the proposed rule, this provision provided that a unit of general local government may not change the use of a property which was assisted using more than $25,000 of CDBG funds until five years after closeout of the related grant unless certain specified conditions are met.

The "$25,000" figure was chosen, in part, because it has been used in other federal statutes and regulations as a reasonable threshold for exemption of certain federal requirements. One use of this threshold is found at 24 CFR part 85, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments." This regulation requires less proscriptive procedures to be followed by grantees for small purchase procurement (less than $25,000), and more formal procedures (e.g., sealed bids, competitive proposals) for procurement greater than $25,000.

HUD has chosen to use this small purchase procurement threshold, currently at $25,000, as the threshold which triggers certain requirements regarding the change of use of real property in section 489(j). However, the small purchase procurement threshold may be revised periodically. When this figure changes, the threshold at section 489(j) will change accordingly. Therefore, the Department has deleted the $25,000 figure that was used in the

proposed rule, and has replaced it with "the threshold for small purchase procurement (24 CFR 85.36, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments")."

Section 570.490—Recordkeeping Requirements (Section 570.491 in the Proposed Rule)

The final rule provides that HUD will consult again with national associations of states and local governments to establish specific recordkeeping requirements, which will be agreed upon by HUD and the states. Recordkeeping requirements will be the minimum necessary to establish compliance with the CDBG statute and other applicable laws. These recordkeeping requirements would be modified as necessary, using consultation, for the prudent administration of the state program.

HUD received a few comments on the requirement that states and localities keep records on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. Commenters stated that it is too burdensome to collect this type of data for unsuccessful applicants of programs.

This type of data is required by section 562 of the Housing and Community Development Act of 1987 and by section 808(e)(6) of the Fair Housing Act. HUD cannot waive the requirement. However, commenters may have misunderstood the scope of this requirement. The statutory language requires states and localities to collect data on those individuals and households applying for direct assistance (such as housing rehabilitation grants or loans, economic development or homeownership assistance) whether successful or not in obtaining CDBG funding. HUD does not expect localities to collect information on applicants for indirect assistance, e.g., area benefit or some limited-clientele activities, such as architectural barrier removal. Area data such as census information is acceptable for these activities. Another apparent misunderstanding concerned at what level the requirement applies. It applies at the local level when individuals apply for assistance, not when localities apply to the state.

The purpose of the data collection is to report this information on the Performance and Evaluation Report (see § 570.491), to enable HUD to satisfy statutorily mandated reporting requirements. Section 562 requires HUD to assess the extent of compliance with fair housing requirements by collecting, not less than annually, data on the racial and ethnic characteristics of persons eligible for, assisted or otherwise benefiting under CDBG and other programs. Section 808(e)(6) requires HUD to report annually to the Congress, and to make available to the public, data on the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are participants, beneficiaries, or potential beneficiaries of CDBG and other program assistance.

Section 570.491—Performance and Evaluation Reports (Section 570.492 in the Proposed Rule)

Similar to § 570.490 on recordkeeping requirements, civil rights data will have to be reported on the Performance and Evaluation Report (PER). HUD received many comments on the reporting of civil rights data of applicants to CDBG-funded programs, stating again that the reporting of this data is an excessive paperwork burden. The reporting of this data, which was previously optional, is required, based on the statutes cited in the discussion on recordkeeping, above, and cannot be waived by HUD. The PER will provide HUD with necessary data to meet its own reporting requirements for the State CDBG Program.

In response to comments, HUD has removed the requirement that a PER for a given annual grant must be submitted until the state has completed all of its audits of units of general local government. HUD would not want unnecessarily to extend the submission period for the PER. However, states remain responsible for ensuring that audits are completed in accordance with § 570.489(m). (HUD also clarifies, in response to suggestions by several commenters, that the report must be submitted no later than September 30.)

Section 570.494—Timely Distribution of Funds by States (Section 570.495 in the Proposed Rule)

Under the Act, HUD must determine whether states have distributed funds to units of general local government in a timely manner. Proposed § 570.495 would have established three standards for timely distributions. These standards reflected HUD's preliminary determinations concerning the amount of time required for states to select quality programs and to complete the distribution process.

Many commenters suggested that HUD change its requirement that 75 percent of the state's annual grant be "placed under contract" with units of general local government within 12 months of the state's agreement with HUD. Less burdensome, the commenters contended, would be to have the funds "obligated" to units of local government, rather than "placed under contract".

To allow states more flexibility in the area of distributing grant monies, HUD will accept the commenters' suggestion and will change "placed under contract" to "obligated and announced to". In addition, HUD will eliminate the 12-month reporting requirement. The 15-month reporting requirement, however, will continue to be in effect.

Two commenters suggested that the distribution of economic development set-aside funds be given a more lenient timely distribution requirement when such a set-aside exceeds 40 percent of a state's grant. The requirement recommended was to place 51 percent of the grant under contract within 12 months, and 80 percent within 15 months. Commenters claim that many states prefer gradually to distribute economic development funds, in keeping with the sporadic demand for the funds. Rather than have one distribution period for these funds during a year, many states have multiple funding rounds, which may preclude them from meeting the timely distribution requirement.

The Department does not believe it can accept this recommendation. Since states receive annual appropriations, it is not unreasonable to expect the funds to be distributed on a yearly basis. States that initially set aside a significant amount of their annual grants for economic development projects should provide for the transfer of those funds to other significant activities if insufficient demand causes money to be left undistributed at the end of a year. (Since HUD is changing its position on funds "placed under contract" to "obligated and announced", this situation should be less of a problem.)

HUD will review to determine whether recaptured funds and program income received by the state are obligated to units of general local government in an expeditious manner. Although there is no set period of time for obligating these funds, HUD urges their rapid obligation, and expects the state to take into account the amount of recaptured funds in several past years in designing and managing the overall obligation of funds. HUD will review performance on a case-by-case basis.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environment Policy Act of 1969. The Finding of No Significant

Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Department has prepared and submitted to OMB a Regulatory Flexibility Analysis that assesses the nature and extent of the burden imposed by the proposed State CDBG Program rule upon small entities. In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule does not affect the amount of funds provided in the CDBG program, but rather modifies and updates the program administration and procedural requirements to comport with legislation. In addition, the final rule has been modified to limit the regulatory burden on small entities.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the rule may have a significant impact on family formation, maintenance, or well-being, since the community development activities that may be funded under the program may have an overall beneficial impact on families. However, the objectives of the program and the methods of distribution of the funds are left to the state after consultation with local governments and citizens. In light of the amount of discretion left to the states, HUD does not believe that there is a need for review under the Executive Order.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the proposed rule has federalism implications, since the Congress has mandated under the 1974 Act that states be given the option under the State Program of administering the Block Grant program for nonentitlement areas. HUD's interpretation of the 1974 Act, as amended by the 1987 Act, raises federalism implications concerning the division of local, state, and federal responsibilities under the State CDBG Program, and the level of Federal oversight vis-a-vis state discretion. As a result, certain provisions of the rule have a direct impact on states, on the relationship between the Federal Government and the states, and on the distribution of power and responsibility among the various levels of government.

The Department has prepared and submitted to OMB a Federalism Assessment that addresses the federalism implications raised by the proposed rule. The Assessment identified the provisions of the proposed rule that had federalism implications, and classified those provisions into (1) those that rely on the states to establish requirements for local governments, (2) those that provide maximum feasible deference to the states, and (3) those that have notable federalism implications.

In drafting the final rule, HUD has revised several sections of the proposed rule. It has been suggested that the Department develop a second Federalism Assessment to reflect the changes that have been made to the proposed rule.

The Department has determined that a further Federalism Assessment is not needed. This determination is based on a review of the **Federal Register** Notice (Aug. 22, 1988, Vol. 53, No. 162) which implements the Federalism Executive Order for the policy formulation and implementation functions of HUD. Specifically, this conclusion is based on a review of the Notice at II.B.(2)(i) on "Limitations upon compliance with the Order" which gives examples of when further analysis of a proposed regulation is redundant.

One such example is "(A) where the Order was complied with at an earlier stage in the policy development process and the policy proposal in question is the same; or (B) it has been changed, but without significantly altering its 'federalism implications', or changing its purpose to such an extent that a new look at the proposal's relationship to the Order would be warranted." This example can be applied to the State rule, where a Federalism Assessment had already been developed early in the policy development process. In developing the final rule, the Department revised certain provisions, but did not add provisions that have notable federalism implications. To the contrary, HUD has substantially revised one of the provisions that were identified in the Assessment to have notable federalism implications. The revised section on "Timely distribution of funds by states" no longer contains three standards for determining whether distribution is timely, but rather two standards. After meeting with the states' public interest group, HUD also strengthened the rule's language on providing maximum feasible deference to states in the interpretation and implementation of congressional intent and policy, subject to the requirements of the rule. The Department also has provided deference to states in several areas of the rule by eliminating much of the proscriptive language.

As an example of when further analysis of a rule is redundant, the Notice includes "moving a rule from proposed to final, where the proposal's 'federalism implications' were assessed at the proposed rule stage * * *. In these cases, HUD will review the initial work under the Order, and determine whether another round of review under the Order is necessary."

HUD has reviewed the initial Assessment and, because of the revisions made to the proposed rule that increased deference to the states, the Department has determined that another round of review under the Order is unnecessary.

The rule was listed as item number 1208 on the Department's Semiannual Agenda of Regulations published April 27, 1992 (57 FR 16804, 16836) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.228.

List of Subjects for 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—housing and community development, Grant programs—education, Guam, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands, Small cities, Student aid.

Accordingly, for the reasons set forth in the preamble, part 570 of title 24 of the Code of Federal Regulations, is amended to read as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR part 570 is revised to read as set forth below, and any authority citation following any subpart or section in part 570 is removed.

Authority: 42 U.S.C. 3535(d) and 5300–5320.

2. Subpart I of part 570 is amended by adding §§ 570.480 through 570.487; by removing § 570.488 and redesignating § 570.496a as new § 570.488; by revising §§ 570.489 through 570.496; and by removing §§ 570.497 through 570.499a as follows:

Subpart I—State Community Development Block Grant Program

§ 570.480 General.

(a) This subpart describes policies and procedures applicable to states that elect to receive Community Development Block Grant funds for distribution to units of general local government in the state's nonentitlement areas under the Housing and Community Development Act of 1974. Other subparts of part 570 are not applicable to the State CDBG Program.

(b) HUD may waive any requirement of this subpart not required by law where application of the requirement would adversely affect the purposes of the Act.

(c) In exercising the Secretary's obligation and responsibility to review a state's performance, the Secretary will give maximum feasible deference to the state's interpretation of the statutory requirements and the requirements of this regulation, provided that these interpretations are not plainly inconsistent with the Act and the Secretary's obligation to enforce compliance with the intent of the Congress as declared in the Act. The Secretary will not determine that a state has failed to carry out its certifications in compliance with requirements of the Act (and this regulation) unless the Secretary finds that procedures and requirements adopted by the state are insufficient to afford reasonable assurance that activities undertaken by units of general local government were not plainly inappropriate to meeting the primary objectives of the Act, this regulation, and the state's community development objectives.

(d) Administrative action taken by the Secretary that is not explicitly and fully part of this regulation shall only apply to a specific case or issue at a specific time, and shall not be generally applicable to the state-administered CDBG program.

§ 570.481 Definitions.

(a) Except for terms defined in applicable statutes or this subpart, the Secretary will defer to a state's definitions, provided that these definitions are explicit, reasonable and not plainly inconsistent with the Act. As used in this subpart, the following terms shall have the meaning indicated:

(1) *Act* means title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*).

(2) *CDBG funds* means Community Development Block Grant funds, in the form of grants under this subpart and program income, and loans guaranteed by the state under section 108 of the Act.

(3) *HUD* means the Department of Housing and Urban Development.

(b) Reserved.

§ 570.482 Eligible activities.

(a) *General.* The choice of activities on which block grant funds are expended represents the determination by state and local participants, developed in accordance with the state's program design and procedures, as to which approach or approaches will best serve these interests. The eligible activities are listed at section 105(a) of the Act.

(b) *Special assessments under the CDBG program.* The following policies relate to special assessments under the CDBG program:

(1) *Public improvements initially assisted with CDBG funds.* Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

(i) Special assessments to recover the *CDBG funds* may be made only against properties owned and occupied by persons *not* of low and moderate income. These assessments constitute program income.

(ii) Special assessments to recover the *non-CDBG* portion may be made, provided that CDBG funds are used to pay the special assessment in behalf of all properties owned and occupied by low and moderate income persons; except that CDBG funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate income persons if, when permitted by the state, the unit of general local government certifies that it does not have sufficient CDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.

(2) *Public improvements not initially assisted with CDBG funds.* CDBG funds may be used to pay special assessments levied against property when this form of assessment is used to recover the capital cost of eligible public improvements initially financed solely from sources other than CDBG funds. The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments, provided that:

(i) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this subpart, including labor, environmental and citizen participation requirements;

(ii) The installation of the public improvement meets a criterion for national objectives. (See § 570.483(b)(1), (c), and (d).)

(iii) The requirements of § 570.482(b)(1)(ii) are met.

§ 570.483 Addressing national objectives.

(a) *General.* The following criteria shall be used to determine whether a CDBG assisted activity complies with one or more of the national objectives as required to section 104(b)(3) of the Act. (HUD is willing to consider a waiver of these requirements in accordance with § 570.480(b)).

(b) *Activities benefiting low and moderate income persons.* An activity will be considered to address the objective of benefiting low and moderate income persons if it meets one of the criteria in paragraph (b) of this section, unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. The activities, when taken as a whole, must not benefit moderate income persons to the exclusion of low income persons:

(1) *Area benefit activities.* (i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. Units of general local government may, at the discretion of the state, use either HUD-provided data comparing census data with appropriate low and moderate income levels or survey data that is methodologically sound. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(ii) An activity, where the assistance is to a public improvement that provides

benefits to all the residents of an area, that is limited to paying special assessments levied against residential properties owned and occupied by persons of low and moderate income.

(iii)(A) An activity to develop, establish and operate (not to exceed two years after establishment), a uniform emergency telephone number system serving an area having less than 51 percent of low and moderate income residents, when the system has not been made operational before the receipt of CDBG funds, provided a prior written determination is obtained from HUD. HUD's determination will be based upon certifications by the State that:

(*1*) The system will contribute significantly to the safety of the residents of the area. The unit of general local government must provide the state a list of jurisdictions and unincorporated areas to be served by the system and a list of the emergency services that will participate in the emergency telephone number system;

(*2*) At least 51 percent of the use of the system will be by low and moderate income persons. The state's certification may be based upon information which identifies the total number of calls actually received over the preceding twelve-month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, enumeration districts, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. In analyzing this data to meet the requirements of this section, the state will assume that the distribution of income among callers generally reflects the income characteristics of the general population residing in the same geographic area where the callers reside. Alternatively, the state's certification may be based upon other data, agreed to by HUD and the state, which shows that over the preceding twelve-month period the users of all the services to be included in the emergency telephone number system consisted of at least 51 percent low and moderate income persons.

(*3*) Other federal funds received by the unit of general local government are insufficient or unavailable for a uniform emergency telephone number system. The unit of general local government must submit a statement explaining whether the problem is caused by the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the unit of general local government.

(*4*) The percentage of the total costs of the system paid for by CDBG funds does not exceed the percentage of low and moderate income persons in the service area of the system. The unit of general local government must include a description of the boundaries of the service area of the system; the census tracts or enumeration districts within the boundaries; the total number of persons and the total number of low and moderate income persons in each census tract or enumeration district, and the percentage of low and moderate income persons in the service area; and the total cost of the system.

(B) The certifications of the state must be submitted along with a brief statement describing the factual basis upon which the certifications were made.

(2) *Limited clientele activities.* (i) An activity which benefits a limited clientele, at least 51 percent of whom are low and moderate income persons. The following kinds of activities may not qualify under paragraph (b)(2) of this section:

(A) Activities, the benefits of which are available to all the residents of an area;

(B) Activities involving the acquisition, construction or rehabilitation of property for housing; or

(C) Activities where the benefit to low and moderate income persons to be considered is the creation or retention of jobs.

(ii) To qualify under paragraph (b)(2) of this section, the activity must meet one or the following tests:

(A) It must benefit a clientele who are generally presumed to be principally low and moderate income persons. The following groups are presumed by HUD to meet this criterion: abused children, battered spouses, elderly persons, handicapped persons, homeless persons, illiterate persons and migrant farm workers; or

(B) It must require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit; or

(C) It must have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or

(D) It must be of such a nature, and be in such a location, that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(iii) A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped person to publicly owned and privately owned non-residential buildings, facilities and improvements, and the common areas of residential structures containing more than one dwelling unit.

(3) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property, conversion of non-residential structures, and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The unit of general local government shall adopt and make public its standards for determining "affordable rents" for this purpose. The following shall also qualify under this criterion:

(i) When less than 51 percent of the units in a structure will be occupied by low and moderate income households, CDBG assistance may be provided in the following limited circumstances:

(A) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project; and

(B) Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and

(C) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.

(ii) Where CDBG funds are used to assist rehabilitation delivery services or in direct support of the unit of general local government's Rental Rehabilitation Program authorized under 24 CFR part 511, the funds shall be considered to benefit low and moderate income persons where not less than 51 percent of the units assisted, or to be assisted,

by the Rental Rehabilitation Program overall are for low and moderate income persons.

(4) *Job creation or retention activities.* (i) An activity designed to create permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate income persons. For an activity that creates jobs, the unit of general local government must document that at least 51 percent of the jobs will be held by, or will be made available to low and moderate income persons.

(ii) For an activity that retains jobs, the unit of general local government must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that it will be filled by, or that steps will be taken to ensure that it is made available to, a low or moderate income person upon turnover.

(iii) Jobs will be considered to be available to low and moderate income persons for these purposes only if:

(A) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

(B) The unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

(iv) As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except:

(A) In certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property, provided the businesses are not otherwise assisted by CDBG funds.

(B) Where CDBG funds are used to pay for the staff and overhead costs of a subrecipient specified in section 105(a)(15) of the Act making loans to businesses from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one-year period.

(C) In any case where CDBG funds are used for public improvement (e.g., water, sewer and road) and the national objective is to be met by job creation or retention as a result of the public improvement, the requirement shall be met as follows:

(*1*) The assistance must be reasonable in relation to the number of jobs expected to be created or retained by the affected business(es) within three years from the completion of the public improvement. Before CDBG assistance is provided for such an activity, the unit of general local government shall develop an assessment which identifies the businesses located or expected to locate in the area to be served by the public improvement. The assessment shall include for each identified business a projection of the number of jobs to be created or retained as a result of the public improvement; and

(*2*) The jobs to be considered for purposes of meeting the requirement shall be all jobs created or retained as a result of the public improvement by the business(es) identified in the assessment as well as any other business that locates in the area within a period of three years following the completion of the activity; except that, in any case where the amount of CDBG assistance provided for the public improvement in relation to the number of jobs projected to be created or retained by the business(es) identified in the assessment is such that the amount per job does not exceed $3,000, jobs created by businesses not identified in the assessment need not be considered.

(5) *Planning-only activities.* An activity involving planning (when such activity is the only activity for which the grant to the unit of general local government is given, or if the planning activity is unrelated to any other activity assisted by the grant) if it can be documented that at least 51 percent of the persons who would benefit from implementation of the plan are low and moderate income persons. Any such planning activity for an area or a community composed of persons of whom at least 51 percent are low and moderate income shall be considered to meet this national objective.

(c) *Activities which aid in the prevention or elimination of slums or blight.* Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(1) *Activities to address slums or blight on an area basis.* An activity will be considered to address prevention or elimination of slums or blight in an area if the state can determine that:

(i) The area, delineated by the unit of general local government, meets a definition of a slum, blighted, deteriorated or deteriorating area under state or local law;

(ii) Throughout the area there is a substantial number of deteriorated or deteriorating buildings or the public improvements are in a general state of deterioration;

(iii) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is also undertaken. The State shall ensure that the unit of general local government has developed minimum standards for building quality which may take into account local conditions.

(iv) The state keeps records sufficient to document its findings that a project meets the national objective of prevention or elimination of slums and blight.

(2) *Activities to address slums or blight on a spot basis.* Acquisition, clearance, relocation, historic preservation and building rehabilitation activities which eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area will meet this objective. Under this criterion, rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.

(3) *Planning only activities.* An activity involving planning (when the activity is the only activity for which the grant to the unit of general local government is given, or the planning activity is unrelated to any other activity assisted by the grant) if the plans are for a slum or blighted area, or if all elements of the planning are necessary for and related to an activity which, if funded, would meet one of the other criteria of elimination of slums or blight.

(d) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the unit of general local government certifies, and the state determines, that the activity is designed

to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the unit of general local government is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became urgent within 18 months preceding the certification by the unit of general local government.

(e) *Additional criteria.* (1) In any case where the activity undertaken is a public improvement and the activity is clearly designed to serve a primarily residential area, the activity must meet the requirements of paragraph (b)(1) of this section whether or not the requirements of paragraph (b)(4) of this section are met in order to qualify as benefiting low and moderate income persons.

(2) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a "change of use" under § 570.489(j).

(3) Where the assisted activity is relocation assistance that the unit of general local government is required to provide, the relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary, the unit of general local government may qualify the assistance either on the basis of the national objective addressed by the displacing activity or, if the relocation assistance is to low and moderate income persons, on the basis of the national objective of benefiting low and moderate income persons.

(f) *Planning and administrative costs.* CDBG funds expended for eligible planning and administrative costs by units of general local government in conjunction with other CDBG assisted activities will be considered to address the national objectives.

§ 570.484 Overall benefit to low and moderate income persons.

(a) *General.* The State must certify that, in the aggregate, not less than 70 percent of the CDBG funds received by the state during a period specified by the state, not to exceed three years, will be used for activities that benefit persons of low and moderate income. The period selected and certified to by the state shall be designated by fiscal year of annual grants, and shall be for one, two or three consecutive annual grants. The period shall be in effect until all included funds are expended. No CDBG funds may be included in more than one period selected, and all CDBG funds received must be included in a selected period.

(b) *Computation of 70 percent benefit.* Determination that a state has carried out its certification under paragraph (a) of this section requires evidence that not less than 70 percent of the aggregate of the designated annual grant(s), any funds reallocated by HUD to the state, any distributed program income and any guaranteed loan funds under the provisions of subpart M of this part covered in the method of distribution in the final statement or statements for the designated annual grant year or years have been expended for activities meeting criteria as provided in § 570.483(b) for activities benefiting low and moderate income persons. In calculating the percentage of funds expended for such activities:

(1) All CDBG funds included in the period selected and certified to by the state shall be accounted for, except for funds used by the State, or by the units of general local government, for program administration, or for planning activities other than those which must meet a national objective under § 570.483 (b)(5) or (c)(3).

(2) Any funds expended by a state for the purpose of repayment of loans guaranteed under the provisions of subpart M of this part shall be excepted from inclusion in this calculation.

(3) Except as provided in paragraph (b)(4) of this section, CDBG funds expended for an eligible activity meeting the criteria for activities benefiting low and moderate income persons shall count in their entirety towards meeting the 70 percent benefit to persons of low and moderate income requirement.

(4) Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under § 570.483(b)(3) shall be counted for this purpose, but shall be limited to an amount determined by multiplying the total cost (including CDBG and non-CDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons, except that the amount counted shall not exceed the amount of CDBG funds provided.

§ 570.485 State submissions and state citizen participation requirements.

(a) *Final statement and annual certifications.* On or before March 31st of each year, the state shall submit the following to HUD (except that the HUD Field Office may extend this deadline by 60 days based on good cause provided by the state):

(1) *Final statement.* A final statement that consists of the following components:

(i) The state's community development objectives; and

(ii) The method by which the state will distribute CDBG funds to units of general local government.

(A) The method of distribution shall cover the following:

(*1*) The annual grant;

(*2*) Any funds recaptured by the state from units of general local government that will be distributed to other units of general local government from previous annual grants, if the redistribution is to be governed by a method of distribution other than that originally described in the final statement covering such funds;

(*3*) Any funds that are reallocated to the state by HUD at the time the annual grant is awarded;

(*4*) Any program income that is distributed by the state during the period beginning with the date upon which HUD awards the annual grant to the state and ending with the following year's grant award date; and

(*5*) If applicable, the state's intent to aid nonentitlement units of general local government in applying for guaranteed loan funds under subpart M of this part.

(B) The method of distribution shall contain a description of all criteria used to select applications for funding, including the relative importance of the criteria, if the relative importance has been developed, a description of how CDBG funds will be allocated among all funding categories, any threshold factors and grant size limits. The method of distribution must provide sufficient information so that units of general local government will know the state's criteria for selecting applications for funding and will be able to comment on the proposed method of distribution and to prepare responsive applications. If the state intends to aid nonentitlement units of general local government in applying for guaranteed loan funds under subpart M of this part, it must,

consistent with paragraph (a)(1) of this section, describe available guarantee amounts and how applications will be selected for assistance. Comparative "first in," formula or other distribution methods may be used. Incorporation by reference of other documents describing the method of distribution is not sufficient.

(C) *Documentation.* The state must document that it followed its method of distribution for each unit of general local government that applies.

(2) *Certifications by the governor or other authorized state official.* (i) The governor or other authorized state official shall annually certify to HUD that:

(A) The method of distribution with respect to housing activities is consistent with the state's Comprehensive Housing Affordability Strategy;

(B) The state has developed the method of distribution so as to give maximum feasible priority to activities which will benefit low and moderate income families or aid in the prevention or elimination of slums or blight, and the method of distribution may also include activities which the state certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs, except that the aggregate use of CDBG funds received during a period specified by the state of not more than three years, shall principally benefit persons of low and moderate income in a manner that ensures that not less than 70 percent of the funds are used for activities that benefit low and moderate income persons during the specified period.

(C) The state will make the certification in appendix C to part 24 of this title, regarding the Drug-Free Workplace Act.

(D) The certifications submitted in the previous year remain in effect with respect to the state's implementation of its program for the subject grant.

(ii) The governor or other authorized state official shall make additional certification to HUD as indicated in the Act. These certifications shall be made once during the state's participation in the State CDBG program.

(b) *Acceptance of certifications.* In the absence of independent evidence (which may, but need to be, derived from performance reviews and audits performed by HUD under § 570.493) which tends to challenge in a substantial manner the certifications made by the state, the certification will be satisfactory to HUD if made in compliance with the requirements of this section. If such independent evidence is available to HUD, however, HUD shall share the evidence with the state and may require that further information or assurances be submitted by the state to the extent that HUD considers warranted or necessary in order to find the state's certifications satisfactory.

(c) *Citizen participation requirements of a state.* (1) To receive its grant, the state must:

(ii) Have a written plan that describes the citizen participation requirements (specified in § 570.486(a)) for units of general local government and explains how the requirements must be met.

(ii) Consult with local elected officials from among units of general local government in determining the state's Method of Distribution in its final statement.

(iii) Furnish citizens and units of general local government information concerning the amount of CDBG funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the state for minimizing displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced as a result of such activities;

(iv) Hold one or more public hearings to obtain the views of citizens on community development and housing needs;

(v) Publish a proposed statement in such a manner to afford affected citizens and units of general local government an opportunity to examine its content, and to submit comments on the proposed statement and on the community development performance of the State, and consider comments received;

(vi) Provide citizens, and units of general local government with reasonable and timely access to records regarding the proposed and the past use of CDBG funds; and

(vii) Make the final statement available to the public at the time it is submitted to HUD.

(2) Participation by citizens and involvement of units of general local government does not restrict the responsibility or authority of the state for the development of its CDBG program and overall administration of CDBG funds received by the State for distribution.

(d) *Failure to make submission.* The state's failure to make the submission required by paragraph (a) of this section within the prescribed deadline constitutes the state's election not to receive and distribute amounts allocated for its nonentitlement areas for the applicable fiscal year. Funds will be either:

(1) Administered by HUD pursuant to subpart F of this part if the state has not administered the program in any previous fiscal year; or

(2) Reallocated to all states in the succeeding fiscal year according to the formula of section 106(d) of the Act, if the state administered the program in any previous year.

(e) *Amendments.* A state shall amend its final statement if the method of distribution contained in the final statement submitted to HUD to be changed. The state shall determine the necessary changes, prepare the proposed amendment, provide citizens and units of general local government with reasonable notice of and an opportunity to comment on the proposed amendment, consider comments received, make the final statement available to the public at the time it is submitted to HUD, and submit to HUD the amended final statement before the state may implement changes embodied in the amendment.

§ 570.486 Local government requirements.

(a) *Citizen participation requirements of a unit of general local government.* Each unit of general local government shall meet the following requirements as required by the state at § 570.485(c)(1)(i).

(1) Provide for and encourage citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas and areas in which CDBG funds are proposed to be used;

(2) Ensure that citizens will be given reasonable and timely access to local meetings, information, and records relating to the unit of local government's proposed and actual use of CDBG funds;

(3) Furnish citizens information, including but not limited to:

(i) The amount of CDBG funds expected to be made available for the current fiscal year (including the grant and anticipated program income);

(ii) The range of activities that may be undertaken with the CDBG funds;

(iii) The estimated amount of the CDBG funds proposed to be used for activities that will meet the national objective of benefit to low and moderate income persons; and

(iv) The proposed CDBG activities likely to result in displacement and the unit of general local government's antidisplacement and relocation plans required under § 570.488.

(4) Provide technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals in accordance with the procedures developed by the state. Such assistance need not include providing funds to such groups;

(5) Provide for a minimum of two public hearings, each at a different stage of the program, for the purpose of obtaining citizens' views and responding to proposals and questions. Together the hearings must cover community development and housing needs, development of proposed activities and a review of program performance. The public hearings to cover community development and housing needs must be held before submission of an application to the state. There must be reasonable notice of the hearings and they must be held at times and locations convenient to potential or actual beneficiaries, with accommodations for the handicapped. Public hearings shall be conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate;

(6) Provide citizens with reasonable advance notice of, and opportunity to comment on, proposed activities in an application to the state and, for grants already made, activities which are proposed to be added, deleted or substantially changed from the unit of general local government's application to the state. Substantially changed means changes made in terms of purpose, scope, location or beneficiaries as defined by criteria established by the state.

(7) Provide citizens the address, phone number, and times for submitting complaints and grievances, and provide timely written answers to written complaints and grievances, within 15 working days where practicable.

(b) *Activities serving beneficiaries outside the jurisdiction of the unit of general local government.*

CDBG-funded activities may serve beneficiaries outside the jurisdiction of the unit of general local government that receives the grant, provided the unit of general local government determines that the activity is meeting its needs in accordance with section 106(d)(2)(D) of the Act.

§ 570.487 Other applicable laws and related program requirements.

(a) *General.* Certain statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. Certain statutes or executive orders that may be applicable to activities assisted under the Act by their own terms are administered or enforced by governmental officials, departments or agencies other than HUD. Paragraphs (d) and (c) of this section contain two of the requirements expressly made applicable to CDBG activities by the Act itself.

(b) *Affirmatively furthering fair housing.* (1) *Certification requirements.* The Act requires the state to certify to the satisfaction of HUD that it will affirmatively further fair housing. The act also requires each unit of general local government to certify that it will affirmatively further fair housing.

(2) *State and local actions.* (i) *States.* In reviewing a state's actions to carry out its responsibilities to affirmatively further fair housing, absent independent evidence to the contrary, HUD will consider that a State has taken such actions in accordance with its certification if the State has taken the following steps:

(A) Conducted training and actively provided educational material and activities to the participating units of general local government on federal and state fair housing laws and procedures; such training may have included technical assistance to units of general local government on conducting a local analysis of impediments to fair housing choice. The term "fair housing choice" means the ability of persons, regardless of race, color, religion, sex, handicap, familial status or national origin, of similar income levels to have available to them the same housing choices;

(B) Analyzed relevant state-level data on impediments to fair housing choice, as well as the results of any local analysis, to determine Statewide nonentitlement area impediments and has taken action either Statewide or with units of general local government to overcome any impediments;

(C) Worked actively with existing state entities (public or non-profit) whose goal is to further fair housing.

(ii) *Local governments.* Units of general local government shall develop proposed actions to affirmatively further fair housing at the local level, for state review and approval. The state will consider the locality to have met its certification to affirmatively further fair housing if the locality has carried out the state-approved actions.

(c) *Lead-Based Paint Poisoning Prevention Act.* States shall devise, adopt and carry out procedures with respect to CDBG assistance that fulfill the objectives and requirements of section 302 of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4831(b) (LBPPPA), which directs the Secretary to establish procedures to eliminate as far as practicable the hazards of lead poisoning due to the presence of lead-based paint in any existing housing assisted under a program administered by the Department. Such procedures shall apply to all such housing constructed or substantially rehabilitated prior to 1978, shall include appropriate measures to abate as far as practicable immediate lead-based paint hazards, and shall provide for assured notification to purchasers and tenants of such housing of the hazards of lead-based paint, of the symptoms and treatment of lead-based paint poisoning, and of the importance and availability of maintenance and removal techniques for eliminating such hazards. The specific procedures are to be developed at the discretion of the state, provided they fulfill the objectives of and are not inconsistent with the LBPPPA. Furthermore, pursuant to section 401(b) of the LBPPPA, states shall establish procedures that prohibit the use of lead-based paint in residential structures rehabilitated or constructed with CDBG assistance. The requirements of this paragraph (c) shall take effect as soon as possible, but not later than twelve months after the publication of this rule and shall apply to covered housing assisted under this subpart.

§ 570.489 Program administrative requirements.

(a) *Administrative and planning costs.* (1) *State administrative costs.* (i) The state is responsible for the administration of all CDBG funds. The state shall pay from its own resources all administrative costs incurred by the state in carrying out its responsibilities under this subpart, except that the state may use CDBG funds to pay such costs in an amount not to exceed $100,000 plus 50 percent of such costs in excess of $100,000. States are therefore required to match such costs in excess of $100,000 on a dollar for dollar basis. The amount of CDBG funds used to pay such costs in excess of $100,000 shall not exceed 2 percent of the aggregate of the state's annual grant, program income received by units of general local government (whether retained by the unit of general local government or paid to the State) and funds reallocated by HUD to the state.

(ii) For determining the amount of CDBG funds available in past years for administrative costs incurred by the state, the following schedule applies:

(A) $100,000 per annual grant beginning with FY 1984 allocations:

(B) Two percent of program income returned by units of general local government to the State after August 21, 1985; and

(C) Two percent of program income received by units of general local government after February 11, 1991.

(iii) The state has the option of selecting its approach for demonstrating compliance with this requirement. Regardless of the approach selected by the state, the state will be required to pay its 50 percent of administrative costs in excess of $100,000 in the same amount and at the same time at which it draws CDBG funds for such costs after the expenditure of the $100,000. Any state for which it is determined that matching costs contributions are in arrears on the use of CDBG funds for administrative costs will be required to bring matching cost expenditures up to the level of CDBG expenditures for such costs within one year of the effective date of this subpart. A state grant may not be closed out if the state's matching cost contribution is not at least equal to the amount of CDBG funds in excess of $100,000 expended for administration. Funds from any year's grant may be used to pay administrative costs associated with any other year's grant. The two approaches are:

(A) Cumulative accounting of administrative costs incurred by the state since its assumption of the Program. Under this approach, the state will identify, for each grant it has received, the CDBG funds eligible to be used for administrative costs as well as the maximum amount of matching funds which the state is required to pay. The amounts will then be aggregated for all grants received. The state must keep records demonstrating the actual amount of CDBG funds from each grant received which was used for administrative costs as well as matching amounts paid by the state. These amounts will also be aggregated for all grants received. The state will be considered to be in compliance with the requirement if the aggregate of actual amounts spent for administrative costs does not exceed the maximum amount allowable and the amount which the state has paid in matching funds is at least equal to the amount of CDBG funds in excess of $100,000 (for each applicable allocation) drawn for administrative purposes. Any administrative amounts associated with a particular state grant shall be deducted from the aggregate totals upon closeout of that state grant.

(B) An accounting process developed and implemented by the state which provides sufficient information to demonstrate that the requirements of this subsection are met.

(2) The state may not charge fees of any entity for processing or considering any application for CDBG fund, or for carrying out its responsibilities under this subpart.

(3) The state and its funded units of general local government shall not expend for planning, management and administrative costs more than 20 percent of the aggregate amount of the annual grant, plus program income and funds reallocated by HUD to the State which are distributed during the time the final Statement for the annual grant is in effect. Administrative costs are those described at § 570.489(a)(1) for states, and for units of general local government those described at sections 105(a)(12) and (a)(13) of the Act.

(b) *Reimbursement of pre-agreement costs.* The state may permit, in accordance with such procedures as the State may establish, a unit of local government to incur costs for CDBG activities before the establishment of a formal grant relationship between the State and the unit of general local government and to charge these pre-agreement costs to the grant, provided that the activities are eligible and undertaken in accordance with the requirements of this subpart and 24 CFR part 58.

(c) *Federal grant payments.* (1) *Payments.* The state shall be paid in advance in accordance with Treasury Circular 1075 (31 CFR part 205). The State shall use procedures to minimize the time elapsing between the transfer of grant funds and disbursement of funds by the State to units of general local government. Units of general local government shall also use procedures to minimize the time elapsing between the transfer of funds by the State and disbursement for CDBG activities.

(2) *Interest on advances.* Interest earned by units of general local government on grant funds before disbursement of the funds for activities is not program income and must be returned to the Treasury, except that the unit of general local government may keep interest amounts of up $100 per year for administrative expenses. However, the state shall not be held accountable for interest earned on grants for which payments are made in accordance with paragraph (c)(1) of this section pending disbursement for CDBG activities.

(d) *Fiscal controls and accounting procedures.* (1) A state shall have fiscal and administrative requirements for expending and accounting for all funds received under this subpart. These requirements must be available for Federal inspection and must:

(i) Be sufficiently specific to ensure that funds received under this subpart are used in compliance with all applicable statutory and regulatory provisions:

(ii) Ensure that funds received under this subpart are only spent for reasonable and necessary costs of operating programs under this subpart; and

(iii) Ensure that funds received under this subpart are not used for general expenses required to carry out other responsibilities of state and local governments.

(2) A state may satisfy this requirement by:

(i) Using fiscal and administrative requirements applicable to the use of its own funds;

(ii) Adopting new fiscal and administrative requirements; or

(iii) Applying the provisions in 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

(e) *Program income.* (1) For the purpose of this subpart, "program income" is defined as gross income received by a state, a unit of general local government or a subrecipient of a unit of general local government that was generated from the use of CDBG funds, except that program income does not include the total amount of funds which is less than $10,000 received in a single year that is retained by a unit of general local government and its subrecipients. When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds: A single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited, to the following:

(i) Proceeds from the disposition by sale or long term lease of real property purchased or improved with CDBG funds;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the unit of general local government or a subrecipient of a unit of general local government with CDBG funds; less the costs incidental to the generation of the income;

(iv) Gross income from the use or rental of real property owned by the unit of general local government or a subrecipient of a unit of general local

government, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds;

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from the sale of obligations secured by loans made with CDBG funds;

(viii) Interest earned on funds held in a revolving fund account;

(ix) Interest earned on program income pending disposition of the income;

(x) Funds collected through special assessments made against properties owned and occupied by households *not* of low and moderate income, where the special assessments are used to recover all or part of the CDBG portion of a public improvement; and

(xi) Gross income paid to a unit of general local government or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

(2) The state may permit the unit of general local government which receives or will receive program income to retain the program income, subject to the requirements of paragraph (e)(2)(ii) of this section, or the state may require the unit of general local government to pay the program income to the state. The state, however, must permit the unit of general local government to retain the program income if the program income will be used to continue the activity from which the program income was derived. The state will determine when an activity will be considered to be continued.

(i) *Program income paid to the state.* Program income that is paid to the state is treated as additional CDBG funds subject to the requirements of this subpart and must be distributed to units of general local government in accordance with the method of distribution in the state's final Statement. To the maximum extent feasible, program income shall be distributed before the state makes additional withdrawals from the Treasury, except as provided in paragraph (f) of this section.

(ii) *Program income retained by a unit of general local government.* (A) Program income that is received and retained by the unit of general local government before closeout of the grant that generated the program income is treated as additional CDBG funds and is subject to all applicable requirements of this subpart.

(B) Program income that is received and retained by the unit of general local government after closeout of the grant that generated the program income is not subject to the requirements of this subpart, except:

(*1*) If the unit of general local government has another ongoing CDBG grant from the state at the time of closeout, the program income continues to be subject to the requirements of this subpart as long as there is an ongoing grant; and

(*2*) If program income is used to continue the activity that generated the program income, the requirements of this subpart apply to the program income as long as the unit of general local government uses the program income to continue the activity;

(*3*) The state may extend the period of applicability of the requirements of this subpart.

(C) The state shall require units of general local government, to the maximum extent feasible, to disburse program income that is subject to the requirements of this subpart before requesting additional funds from the state for activities, except as provided in paragraph (f) of this section.

(f) *Revolving funds.* (1) The state may permit units of general local government to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.

(2) The state may establish a revolving fund to distribute funds to units of general local government to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government which could be funded from the revolving fund.

(3) A revolving fund established by either the State or unit of general local government shall not be directly funded or capitalized with grant funds.

(g) *Procurement.* When procuring property or services to be paid for in whole or in part with CDBG funds, the state shall follow its procurement policies and procedures. The state shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the state. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by § 570.489(h).) The state shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, executive orders and implementing regulations.

(h) *Conflict of interest.* (1) *Applicability.* (i) In the procurement of supplies, equipment, construction, and services by the States, units of local general governments, and subrecipients, the conflict of interest provisions in paragraph (g) of this section shall apply.

(ii) In all cases not governed by paragraph (g) of this section, this paragraph (h) shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with CDBG funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.

(2) *Conflicts prohibited.* Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph (h)(3) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this subpart or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(3) *Persons covered.* The conflict of interest provisions for paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving CDBG funds.

(4) *Exceptions: Thresholds requirements.* Upon written request by the State, an exception to the provisions of paragraph (h)(2) of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the state may be granted by HUD on a case-by-case basis. In all other cases, the state may grant such an exception upon written request of the unit of general local government provided the state shall fully document its determination in compliance with all requirements of paragraph (h)(4) of this section including the state's position with respect to each factor at paragraph (h)(5) of this section and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the state or unit of general local government as appropriate. An exception may be considered only after the state or unit of general local government, as appropriate, has provided the following:

(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the attorney for the state or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate state or local law.

(5) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the requirements of paragraph (h)(4) of this section have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (h)(3) of this section;

(vi) Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

(i) *Closeout of grants to units of general local government.* The State shall establish requirements for timely closeout of grants to units of general local government and shall take action to ensure the timely closeout of such grants.

(j) *Change of use of real property.* The standards described in this section apply to real property within the unit of general local government's control (including activities undertaken by subrecipients) which was acquired or improved in whole or in part using CDBG funds in excess of the threshold for small purchase procurement (24 CFR 85.36, "Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments"). These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of the unit of general local government's grant.

(1) A unit of general local governments may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, unless the unit of general local government provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:

(i) The new use of the property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or

(ii) The requirements in paragraph (j)(2) of this section are met.

(2) If the unit of general local government determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (j)(1) of this section, it may retain or dispose of the property for the changed use if the unit of general local government's CDBG program is reimbursed or the state's CDBG program is reimbursed, at the discretion of the state. The reimbursement shall be in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property, except that if the change in use occurs after grant closeout but within 5 years of such closeout, the unit of general local government shall make the reimbursement to the State's CDBG program account.

(3) Following the reimbursement of the CDBG program in accordance with paragraph (j)(2) of this section, the property no longer will be subject to any CDBG requirements.

(k) *Accountability for real and personal property.* The State shall establish and implement requirements, consistent with State law and the purposes and requirements of this subpart (including paragraph (j) of this section) governing the use, management, and disposition of real and personal property acquired with CDBG funds.

(l) *Debarment and suspension.* As required by 24 CFR part 24, each CDBG participant shall require participants in lower tier covered transactions to include the certification in appendix B of part 24 of this title (that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction) in any proposal submitted in connection with the lower tier covered transactions. A participant may rely on the certification unless it knows the certification is erroneous.

(m) *Audits.* Audits of the state and units of general local government shall be conducted in accordance with 24 CFR part 44 which implements the Single Audit Act (31 U.S.C. 7501–07). States shall develop and administer an audits management system to ensure that audits of units of general local government are conducted in accordance with 24 CFR part 44.

§ 570.490 Recordkeeping requirements.

(a) *State records.* The state shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the state's administration of CDBG funds under § 570.493. The content of records maintained by the state shall be as jointly agreed upon by HUD and the

states and sufficient to enable HUD to make the determinations described at § 570.493. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. The records shall also permit audit of the states in accordance with 24 CFR part 44.

(b) *Unit of general local government's record.* The State shall establish recordkeeping requirements for units of general local government receiving CDBG funds that are sufficient to facilitate reviews and audits of such units of general local government under §§ 570.492 and 570.493. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

(c) *Access to records.* (1) Representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, or property pertaining to the administration, receipt and use of CDBG funds and necessary to facilitate such reviews and audits.

(2) The State shall provide citizens with reasonable access to records regarding the past use of CDBG funds and ensure that units of general local government provide citizens with reasonable access to records regarding the past use of CDBG funds consistent with State or local requirements concerning the privacy of personal records.

(d) *Record retention.* Records of the State and units of general local government, including supporting documentation, shall be retained for the greater of three years from closeout of the grant to the state, or the period required by other applicable laws and regulations as described in § 570.487 and § 570.488.

§ 570.491 Performance and evaluation reports.

(a) *Content.* The state shall submit to HUD performance and evaluation reports. The content and format of the report shall be as jointly agreed upon by HUD and the states. The report must contain data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. The performance and evaluation report shall contain a separate report for each annual grant until the entire annual grant, as well as program income and reallocated funds distributed under the final Statement covering the annual grant, has been expended by units of general local government and the state has completed reviews of units of general local government pursuant to § 570.492 with respect to such funds.

(b) *Submission deadline.* Performance and evaluation reports shall be submitted annually in September, and no later than September 30.

(c) *Additional information.* If HUD determines that the State's performance and evaluation report is incomplete or, the report, together with information gained from HUD's review, falls substantially short of providing an adequate basis for making the determinations required under § 570.493, HUD may require the State to provide necessary additional information.

(Approved by the Office of Management and Budget under OMB control number 3506-0053.)

§ 570.492 State's reviews and audits.

(a) The state shall make reviews and audits including on-site reviews, of units of general local government as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the Act.

(b) In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences and prevent a recurrence. The state shall establish remedies for units of general local government noncompliance.

§ 570.493 HUD's reviews and audits.

(a) *General.* At least on an annual basis, HUD shall make such reviews and audits as may be necessary or appropriate to determine:

(1) Whether the state has distributed CDBG funds to units of general local government in a timely manner in conformance to the method of distribution described in its final Statement;

(2) Whether the state has carried out its certifications in compliance with the requirements of the Act and this subpart and other applicable laws; and

(3) Whether the state has made reviews and audits of the units of general local government required by § 570.492.

(b) *Information considered.* In conducting performance reviews and audits, HUD will rely primarily on information obtained from the state's performance report, records maintained by the state, findings from on-site monitoring, audit reports, and the status of the state's unexpended grant funds. HUD may also consider relevant information on the state's performance gained from other sources, including litigation, citizens' comments, and other information provided by the state.

§ 570.494 Timely distribution of funds by states.

(a) States are encouraged to adopt and achieve a goal of obligating and announcing 95 percent of funds to units of general local government within 12 months of the state signing its grant agreement with HUD.

(b) HUD will review each state to determine if the state has distributed CDBG funds in a timely manner. The state's distribution of CDBG funds is timely if:

(1) All of the state's annual grant (excluding state administration) has been obligated and announced to units of general local government within 15 months of the state signing its grant agreement with HUD; and

(2) Recaptured funds and program income received by the state are expeditiously obligated and announced to units of general local government.

(c) HUD may collect necessary information from states to determine whether CDBG funds have been distributed in a timely manner.

§ 570.495 Reviews and audits response.

(a) If HUD's review and audit under § 570.493 results in a negative determination, or if HUD otherwise determines that a state or unit of general local government has failed to comply with any requirement of this subpart, the state will be given an opportunity to contest the finding and will be requested to submit a plan for corrective action. If the state is unsuccessful in contesting the validity of the finding to the satisfaction of HUD, or if the state's plan for corrective action is not satisfactory to HUD, HUD may take one or more of the following actions to prevent a continuation of the deficiency; mitigate, to the extent possible, the adverse effects or consequence of the deficiency; or prevent a recurrence of the deficiency:

(1) Issue a letter of warning that advises the State of the deficiency and puts the state on notice that additional action will be taken if the deficiency is not corrected or is repeated;

(2) Advise the state that additional information or assurances will be required before acceptance of one or more of the certifications required for the succeeding year grant;

(3) Advise the state to suspend or terminate disbursement of funds for a deficient activity or grant;

(4) Advise the state to reimburse its grant in any amounts improperly expended;

(5) Change the method of payment to the state from an advance basis to a reimbursement basis;

(6) Based on the state's current failure to comply with a requirement of this subpart which will affect the use of the succeeding year grant, condition the use of the succeeding fiscal years grant funds upon appropriate corrective action by the state. When the use of funds is conditioned, HUD shall specify the reasons for the conditions and the actions necessary to satisfy the conditions.

(b)(1) Whenever HUD determines that a state or unit of general local government which is a recipient of CDBG funds has failed to comply with section 109 of the Act (nondiscrimination requirements), HUD shall notify the governor of the State or chief executive officer of the unit of general local government of the noncompliance and shall request the governor or the chief executive officer to secure compliance. If within a reasonable time, not to exceed sixty days, the governor or chief executive officer fails or refuses to secure compliance, HUD may take the following action:

(i) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(ii) Exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–7);

(iii) Exercise the powers and functions provided for in § 570.496; or

(iv) Take such other action as may be provided by law.

(2) When a matter is referred to the Attorney General pursuant to paragraph (b)(1)(i) of this section, or whenever HUD has reason to believe that a State or unit of general local government is engaged in a pattern or practice in violation of the provisions of section 109 of the Act, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

§ 570.496 Remedies for noncompliance; opportunity for hearing.

(a) *General.* Action pursuant to this section will be taken only after at least one of the corrective or remedial actions specified in § 570.495 has been taken, and only then if the State or unit of general local government has not made an appropriate or timely response.

(b) *Remedies.* (1) If HUD finds after reasonable notice and opportunity for hearing that a State or unit of general local government has failed to comply with any provision of this subpart, until HUD is satisfied that there is no longer failure to comply, HUD shall:

(i) Terminate payments to the state;

(ii) Reduce payments for current or future grants to the state by an amount equal to the amount of CDBG funds distributed or used without compliance with the requirements of this subpart;

(iii) Limit the availability of payments to the state to activities not affected by the failure to comply or to activities designed to overcome the failure to comply;

(iv) Based on the state's failure to comply with a requirement of this subpart (other than the state's current failure to comply which will affect the use of the succeeding year grant), condition the use of the grant funds upon appropriate corrective action by the state specified by HUD; or

(v) With respect to a CDBG grant awarded by the state to a unit of general local government, withhold, reduce, or withdraw the grant, require the state to withhold, reduce, or withdraw the grant, or take other action as appropriate, except that CDBG funds expended on eligible activities shall not be recaptured or deducted from future CDBG grants to such unit of general local government.

(2) HUD may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (d) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to prevent a continuation of the noncompliance.

(c) In lieu of, or in addition to, the action authorized by paragraph (b) of this section, if HUD has reason to believe that the state or unit of general local government has failed to comply substantially with any provision of this subpart, HUD may:

(1) Refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; and

(2) Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the CDBG funds which was not expended in accordance with this subpart, or for mandatory or injunctive relief.

(d) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the state. At the option of HUD, a unit of general local government may also be a respondent. These procedures are to be followed before imposition of a sanction described in paragraph (b)(1) of this section:

(i) *Notice of opportunity for hearing.* HUD shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall be sent to the respondent by first class mail and shall provide notice:

(i) In a manner which is adequate to allow the respondent to prepare its response, the basis upon which HUD determined that the respondent failed to comply with a provision of this subpart;

(ii) That the hearing procedures are governed by these rules;

(iii) That the respondent has 14 days from receipt of the notice within which to provide a written request for a hearing to the Chief Docket Clerk, Office of Administrative Law Judges, and the address and telephone number of the Chief Docket Clerk;

(iv) Of the action which HUD proposes to take and that the authority for this action is § 570.496 of this subpart;

(v) That if the respondent fails to request a hearing within the time specified, HUD's determination that the respondent failed to comply with a provision of this subpart shall be final and HUD may proceed to take the proposed action.

(2) *Initiation of hearing.* The respondent shall be allowed 14 days from receipt of the notice within which to notify HUD in writing of its request for a hearing. If no request is received within the time specified, HUD's determination that the respondent failed to comply with a provision of this subpart shall be final and HUD may proceed to take the proposed action.

(3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105). The case shall be referred to the ALJ by HUD at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power:

(i) To administer oaths and affirmations;

(ii) To issue subpoenas as authorized by law;

(iii) To rule upon offers of proof and receive relevant evidence;

(iv) To order or limit discovery before the hearing as the interests of justice may require;

(v) To regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(vii) To consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) To make and file initial determinations.

(4) *Ex parte communications.* An ex parte communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. Ex parte communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an ex parte communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

(5) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. HUD has the burden of proof in showing by a preponderance of evidence that the respondent failed to comply with a provision of this subpart. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, shall obtain copies of the transcript.

(7) *The ALJ's decisions.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Generally, within 60 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a Statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by first class mail and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *Record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching the initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of HUD unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary for Community Planning and Development files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the bases of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a Statement of the rationale therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 60 days after the decision of the ALJ was furnished to the parties.

(10) *Judicial review.* The respondent may seek judicial review of HUD's decision pursuant to section 111(c) of the Act.

Dated: October 16, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

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Monday
November 9, 1992

Part III

Department of Transportation

Coast Guard

33 CFR Part 175

Recreational Boating Safety Equipment Requirements; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[CGD 92-045]

RIN 2115-AE26

Recreational Boating Safety Equipment Requirements

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change a number of Federal requirements and exemptions for carriage of personal flotation devices (PFDs) on recreational vessels. The designs and uses of recreational vessels and safety equipment have changed since the rules were first issued or last revised and some of the requirements and exemptions are no longer appropriate. This rulemaking project will provide the recreational boating public with clearer and more appropriate requirements for carrying personal flotation devices and promote a safer recreational boating environment.

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

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA/3406), (CGD 92-045), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Carlton Perry, Auxiliary, Boating, and Consumer Affairs Division, (202) 267-0979.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CDG 92-045) and the specific section of this proposal to which each comment applies, and give a reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place to be announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Mr. Carlton Perry, Project Manager, and Mr. Don Faleris, Project Counsel, Office of Chief Counsel.

Background and Purpose

The designs and uses of vessels and safety equipment have changed since the Federal regulations for carriage of personal flotation devices (PFDs) on recreational vessels were first issued or last revised and some of the requirements and exemptions may no longer be appropriate. After a comprehensive review of recreational boating safety regulations conducted at its May 1992 meeting, the National Boating Safety Advisory Council (NBSAC) recommended a number of changes to the safety equipment carriage requirements for recreational vessels (33 CFR part 175). Prior to that meeting, the Coast Guard received additional related suggestions from the National Association of State Boating Law Administrators (NASBLA) and the general public.

This rulemaking would change the existing regulations on PFD carriage requirements. These changes will provide the boating public with clearer, better consolidated, and more appropriate requirements for carrying personal flotation devices, and will promote a safer recreational boating environment.

Discussion of Proposed Amendments

1. Eliminate Type IV PFD as a Primary Device on Vessels Under 16'

This proposal would amend 33 CFR 175.15 (PFDs required) to remove the Type IV PFD as a primary personal flotation device on recreational vessels under 16 feet in length. The requirement for vessels 16 feet and over to carry a Type IV PFD in addition to a Type I, II, or III PFD for each person on board will be retained. This proposal would also remove the exemption language for canoes and kayaks to treat them like other recreational vessels.

The rulemaking setting PFD carriage requirements in 1973, allowing Type IV PFDs on vessels under 16 feet in length and on canoes and kayaks of any length, emphasized that these vessels were highly maneuverable and had limited storage space in which to stow a throwable device in addition to a wearable device for each person on board. However, the rulemaking also indicated that the Coast Guard would study the matter further. Statistics compiled by the Coast Guard for 1990 reveal that of 865 boating fatalities, there were 534 fatalities (62% of all recreational boating fatalities) where PFDs were not used, or where there were insufficient or no PFDs on board. These statistics also indicate that of the 865 boating fatalities, 366 fatalities involved vessels under 16 feet in length, the category of vessels directly affected by this rulemaking.

Given the high incidence of non-use of nonavailability of wearable (*e.g.*, Type I, II, or III) PFDs on these vessels, it appears that the current regulations allowing carriage of Type IV (*e.g.*, seat cushion) PFDs may not be sufficient. Therefore, more stringent requirements to carry Type I, II, or III PFDs are warranted. We also note that new PFD designs are more comfortable to wear.

This change was recommended by NBSAC in May 1986 and 1992, NASBLA in December 1989, and the National Water Safety Congress (NWSC) in March 1989.

2. Exemption From Preemption

Under 46 U.S.C. 4306, States and their political subdivisions may not establish, continue in effect, or enforce a law or regulation pertaining to recreational vessel safety standards or associated equipment that is not identical to Federal regulation, unless permitted by exemption under 46 U.S.C. 4305. This proposal would add a new § 175.5 (Exemption from preemption) to 33 CFR part 175 to formally allow States to require certain persons or a category of persons on certain types of vessels to carry or even to wear an appropriate PFD, as determined by the States. It would allow States to establish local PFD wearing or carriage requirements concerning children; recreational use of racing shells, rowing sculls, and racing

kayaks; and canoes, kayaks, sailboards, and personal watercraft.

A. Children

Current PFD carriage regulations allow use of a nonwearable Type IV PFD to meet carriage requirements for vessels under 16 feet in length. At least 19 States now require children under a certain age (ranging from 12 to 6 years of age) to wear a PFD while on a vessel due to concern for safety of young children. Young children lack the ability to don PFDs in emergency situations, and assistance from adult passengers in emergency situations may not be sufficient. Currently, a State requirement to wear a PFD is preempted by Federal regulations because it implies a wearable PFD carriage requirement in conflict with Federal regulations. Under this proposal, then, a State will no longer be preempted from requiring children to wear a PFD.

B. Racing Shells, Rowing Sculls, and Racing Kayaks

A current Federal exemption from PFD carriage requirements for racing shells, rowing sculls, and racing kayaks as a class of vessels preempts States from requiring PFDs to be worn during recreational (noncompetitive and noncompetitive practice) use of racing vessels. The original rulemaking emphasized that all of these vessels lacked space in which to stow lifesaving devices, that racing vessels were usually accompanied by other vessels, and that PFDs unduly impaired the rowers', scullers', or paddlers' movements. Now PFD designs are more comfortable and interfere less with physical activity, such as rowing, sculling, and paddling. Further, an increasing number of individuals use racing shells, rowing sculls, and racing kayaks for recreational (noncompetitive and noncompetitive practice) use, and instead of practicing and competing only under supervised conditions, seek out isolated stretches of waterways. In one State, a recreational rowing sculler died on an isolated stretch of river. For all of these reasons, this proposal will provide that States are no longer preempted from regulating the carriage or wearing of PFDs while operating a racing shell, rowing scull, or racing kayak for recreational (noncompetitive and noncompetitive practice) use.

C. Canoes and Kayaks

Currently, Federal regulations for recreational vessels, § 175.15(a), require canoes and kayaks of any length to carry a Type I, II, III, or IV PFD for each person aboard. Further, a provision in § 175.15(b) exempts canoes and kayaks 16 feet in length and over from having to carry a throwable PFD per boat in addition to a wearable PFD per person aboard. This exemption preempts States from requiring PFDs to be worn while operating a canoe or kayak. The original rulemaking emphasized that these vessels lacked space in which to stow lifesaving devices and that PFDs unduly impaired the paddlers' movements. Now PFD designs are more comfortable and interfere less with paddling. For these reasons, this proposal will provide that States are no longer preempted from regulating the wearing of PFDs while operating a canoe or kayak.

D. Sailboards

On July 17, 1980, the Coast Guard proposed a rule which would except operators of certain sailboards from the requirement to carry PFDs (45 FR 47876). Because of comments received primarily from State boating safety officials, the Coast Guard issued a withdrawal of this proposed rule on August 20, 1981 (46 FR 42288). In effect, this withdrawal action initiated an exemption from preemption for States regarding PFD carriage requirements for sailboards. Under the authority of section 9 of the Federal Boat Safety Act of 1971 (46 U.S.C. 4305), the withdrawal notice specifically exempted the States and their political subdivisions from section 10 of the Federal Boat Safety Act of 1971 (46 U.S.C. 4306), which provides for Federal preemption of inconsistent State regulations. Rather than continue to rely on this approach, which is arguably unclear given conflicting State court interpretations pertaining to sailboards, a specific preemption exemption has been placed in proposed § 175.5.

E. Personal Watercraft

Federal regulations for recreational vessels apply to personal watercraft, and require carriage of one PFD for each person on board. The designs of personal watercraft usually do not provide a space to store PFDs and, as a practical matter, most personal watercraft operators choose to wear a PFD rather than stow it. However, an increasing number of States are now requiring that a PFD be worn when operating a personal watercraft. For these reasons, a specific preemption exemption has been placed in proposed § 175.5, to clearly allow this State regulation.

3. PFD Carriage Exemptions

This proposal would relocate an existing exemption from the equipment requirements of 33 CFR part 175 for seaplanes, removing it from § 175.3 (Definitions) and placing it into § 175.1 (Applicability); revise an existing exemption for racing shells, rowing sculls, and racing kayaks in § 175.11 (Applicability); remove an existing exemption for canoes and kayaks 16 feet in length and over in § 175.15(b) (Personal flotation devices required); and add new exemptions for recreational submersibles and foreign competitors in § 175.17 (Exceptions).

A. Seaplanes

Current § 175.3 exempts seaplanes on the water from the definition of the term "vessel" and all of part 175, including subpart B (PFDs), as well. However, in a 1983 recodification of 46 U.S.C. subtitle II, the statutory definition of the term "vessel" in 46 U.S.C. 2101(45), which exempted seaplanes on the water, was changed to refer instead to 1 U.S.C. 3, which does not. Requiring seaplanes on the water to comply with U.S. Coast Guard equipment requirements in addition to the Federal Aviation Administration equipment requirements would be an unnecessary burden on seaplane owners and operators. This proposal would add an exemption provision to § 175.1 for seaplanes on the water to clarify that the exemption is continued, while providing for the consistency of definition at the same time.

B. Racing Shells, Rowing Sculls, and Racing Kayaks

As currently written, § 175.11 (Applicability) provides that subpart B (Personal Flotation Devices) does not apply at all to racing shells, rowing sculls, or racing kayaks. This proposal would remove the broad exemption from PFD carriage requirements now contained in § 175.11 and revise § 175.17 to provide an exception from PFD carriage requirements for these vessels only while engaged in competition or engaged in competition practice and accompanied by a tender equipped with PFDs for all crew members. The original rulemaking on the PFD carriage exemption for racing shells, rowing sculls, and racing kayaks as a class of vessels emphasized that these vessels lacked space in which to stow lifesaving devices and were usually accompanied by other vessels. Now, because practice often occurs without adequate supervision or assistance in the event of capsizing, the blanket exemption is not appropriate. In addition, newer PFD designs are more comfortable and interfere less with rowing, sculling, or paddling.

C. Recreational Submersibles

This proposal would exempt recreational submersibles from PFD carriage requirements. Current PFD carriage requirements reflect surface operating recreational vessels and do not account for recreational submersible operation. Further, there are no Coast Guard approved PFDs for recreational wet or dry submersibles and Coast Guard regulations only provide for approving inflatable PFDs for commercial vessel use. For these reasons, this proposal would amend § 175.17 to specifically exempt recreational submersibles from PFD carriage requirements.

D. Foreign Competitors

Current § 175.1 exempts from all of part 175, including subpart B (PFDs), foreign boats temporarily using waters subject to U.S. jurisdiction. However, Federal PFD regulations do not provide for foreign competitors complying with their own country's PFD requirements when using U.S. vessels (such as those donated for a competition). This proposal would add an exemption provision to § 175.17 for vessels of the United States used by foreign competitors in competition and related practice. As revised, § 175.17 would allow foreign competitors to use their own country's PFDs in competition, although those PFDs may not be Coast Guard approved.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation is unnecessary.

The Coast Guard has not compiled its own statistics on the number of vessels carrying only Type IV PFDs to meet the Federal PFD carriage requirements. However, based on the results of a national boating survey conducted by the American Red Cross and published in 1991, at least 60 percent of the individuals operating vessels under 16 feet in length reported wearing a PFD all or some of the time. This indicates that perhaps 40 percent of those surveyed carry either a Type IV PFD or no PFD at all, or carry but choose not to wear a Type I, II, or III PFD.

Type IV PFDs (cushion) and Type II PFDs are available at many boating supply stores at a cost of about $8.00 and $6.00, respectively. If 40 percent of the owners of the estimated 10 million vessels under 16 feet in length (51% of 19.5 million total vessels) were each required to purchase 3 wearable PFDs as a result of this rulemaking, the one-time cumulative cost to the public may be as high as $72 million. The actual cost may be less. It may be that many owners will only need to purchase 1 or 2 PFDs, or that the Type II PFDs purchased will be less expensive than the Type IV PFDs currently allowed. Furthermore, the cost of subsequent replacement of unserviceable wearable PFDs should not exceed the current cost of replacement of Type IV PFDs. The statistics compiled by the Coast Guard for 1990 indicate that of 865 boating fatalities, there were 534 fatalities where PFDs were not used, or where there were insufficient or no PFDs on board. These statistics also indicate that of the 865 boating fatalities, 366 fatalities involved vessels under 16 feet in length, the category of vessels directly affected by this rulemaking.

Taking into account the value of a human life, if as few as 10 percent of the 366 fatalities on vessels under 16 feet in length are saved annually, the benefits of requiring the carriage of wearable Type I, II, or III PFDs on all recreational vessels will exceed the one-time cost within two years. The Coast Guard expects the annual saving of lives to continue well beyond two years.

The Coast Guard considered three alternatives in developing the proposed rulemaking.

(1) Take no action. This alternative would retain the existing PFD carriage requirements in 33 CFR part 175 for recreational vessels. States would continue to be restrained from requiring individuals to carry or wear PFDs under certain circumstances for increased safety of life. The Coast Guard would continue an unclear policy of relying on a 1981 notice of withdrawal of a proposed rulemaking as a basis for the States' exemption from preemption regarding PFD carriage or wearing requirements for sailboards. Racing shells, rowing sculls, and racing kayaks would remain exempt from Federal PFD carriage requirements as a class of vessels, even when used by individuals for isolated recreation. The States would continue to be restrained from requiring individuals to wear PFDs under certain circumstances for increased safety of life within the jurisdictional boundaries of the States.

(2) Initiate a rulemaking project to revise 33 CFR part 175 to reflect suggested changes regarding PFD requirements for sailboards, racing sculls, personal watercraft, vessels under 16 feet in length, and use by children.

(3) Initiate a rulemaking project to revise 33 CFR part 175 to reflect suggested changes regarding Federal PFD requirements for sailboards, racing sculls, personal watercraft, vessels under 16 feet in length, and use by children; and add an exemption from preemption for States, allowing States to set local PFD requirements for increased safety of life.

The Coast Guard selected alternative (3) in proposing these regulations because it provides the most comprehensive response and clarification, and at the same time, is a cost-effective approach, economically. Alternative (1), taking no action, would simply continue existing regulations that no longer adequately address current boating safety issues. Alternative (2) would provide much-needed remedies, however, it would not go far enough to relieve States from an unclear policy regarding States' exemption from preemption to regulate PFD wearing or carriage requirements on sailboards, personal watercraft, and other vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The overall impact of this proposal will be to provide clearer, better consolidated, and more appropriate requirements for carrying personal flotation devices on recreational vessels, for a safer recreational boating environment. This will not affect a substantial number of small entities. However, it may have a one-time financial benefit as high as $72 million to PFD manufacturers and retailers, some of which may be small entities. It will primarily impact individual recreational boaters, since the main thrust of the proposal affects recreational vessels under 16' in length, PFD regulation of other small watercraft, and PFD regulation by the States. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the

Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. In fact, portions of it are designed to provide for additional regulatory discretion by the States. The National Association of State Boating Law Administrators has been consulted regarding the proposed exemption from preemption portion of this proposal.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under sections 2.B.2 (c) and (1) of Commandant Instruction M16475.1B. this proposal is categorically excluded from further environmental documentation. This proposal governs regulation of PFD carriage and use, and has no environmental consequences. A Categorical Exclusion Determination is available in the rulemaking docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 175

Marine Safety.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 175 as follows:

PART 175—EQUIPMENT REQUIREMENTS

1. The authority citation for part 175 is revised to read as follows:

Authority: 46 U.S.C. 4302, 4305, 4306; 49 CFR 1.46.

2.–3. In § 175.1, paragraph (e) is added to read as follows:

§ 175.1 Applicability.

* * * * *

(e) Seaplanes on the water.

4. Section 175.3 is revised to read as follows:

§ 175.3 Definitions.

As used in this part:

Boat means any vessel manufactured or used primarily for noncommercial use; leased, rented, or chartered to another for the latter's noncommercial use; or engaged in the carrying of six or fewer passengers.

Passenger means every person carried on board a vessel other than:

(1) The owner or his representative;

(2) The operator;

(3) Bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(4) Any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

Personal Watercraft means a vessel, less than 16 feet in length, propelled by machinery that is designed to be operated by a person sitting, standing or kneeling on the vessel, rather than being operated by a person sitting or standing inside the vessel.

Racing shell, rowing scull, and racing kayak means a manually propelled vessel that is recognized by national or international racing associations for use in competitive racing and one in which all occupants row, scull, or paddle, with the exception of a coxswain, if one is provided, and is not designed to carry and does not carry any equipment not solely for competitive racing.

Recreational vessel means any vessel being manufactured or operated primarily for pleasure; or leased, rented, or chartered to another for the latter's pleasure. It does not include a vessel engaged in the carrying of six or fewer passengers.

Sailboard means a sail propelled vessel with no freeboard and equipped with a swivel mounted mast, not secured to a hull by guys or stays.

Use means operate, navigate, or employ.

Vessel includes every description of watercraft used or capable of being used as a means of transportation on the water.

5. A new § 175.5 is added to subpart A to read as follows:

§ 175.5 Exemption from preemption.

The States are exempted from preemption regarding establishing, continuing in effect, or enforcing State laws and regulations on the wearing or carriage of personal flotation devices concerning the following subject areas within the jurisdictional boundaries of the State:

(a) Children under a certain age.

(b) Operating a canoe or kayak.

(c) Operating a racing shell, rowing scull, or racing kayak for recreational (noncompetitive or noncompetitive practice) purpose.

(d) Operating a sailboard.

(e) Operating a personal watercraft.

6. Section 175.11 is revised to read as follows:

§ 175.11 Applicability.

This subpart applies to all recreational vessels that are propelled or controlled by machinery, sails, oars, paddles, poles, or another vessel.

7. Section 175.15 is revised to read as follows:

§ 175.15 Personal flotation devices required.

Except as provided in § 175.17:

(a) No person may use a recreational vessel unless at least one PFD of the following types is on board for each person:

(1) Type I PFD;

(2) Type II PFD; or

(3) Type III PFD.

(b) No person may use a recreational vessel 16 feet or more in length unless one Type IV PFD is on board in addition to the number of PFD's required in paragraph (a) of this section.

8. Section 175.17 is revised to read as follows:

§ 175.17 Exceptions.

(a) A Type V PFD may be carried in lieu of any PFD required under § 175.15, provided:

(1) The approval label on the Type V PFD indicates that the device is approved:

(i) For the activity in which the vessel is being used; or

(ii) As a substitute for a PFD of the Type required on the vessel in use;

(2) The PFD is used in accordance with any requirements on the approval label; and

(3) The PFD is used in accordance with requirements in its owner's manual, if the approval label makes reference to such a manual.

(b) Racing shells, rowing sculls, and racing kayaks are exempted from the carriage of any PFD required under § 175.15, provided:

(1) The vessel is engaged in competition; or

(2) The vessel is engaged in competition practice and is accompanied by a tender equipped with PFDs for all vessel crew members.

(c) Sailboards and recreational submersibles are exempted from the carriage of any PFD required under § 175.15.

(d) Vessels of the United States used by foreign competitors while practicing for or racing in competition are exempted from the carriage of any PFD required under § 175.15.

Dated: October 30, 1992.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92–27097 Filed 11–6–92; 8:45 am]

BILLING CODE 4910–14–M

federal register

Monday
November 9, 1992

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule, Technical Correction

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule, technical correction.

SUMMARY: The Fish and Wildlife Service is correcting an error in the rule prescribing open seasons on waterfowl that appeared in the **Federal Register** on September 28, 1992.

DATES: Effective on September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634–Arlington Square, Washington, DC 20240, (703) 358–1838.

SUPPLEMENTARY INFORMATION: Public comment was received on proposed rules involving these seasons and was addressed in the September 22, 1992, **Federal Register** (57 FR 43856). In that document, final frameworks were published that would allow these seasons. However, an error was made in the September 28 **Federal Register** prescribing the late open seasons, hunting hours, hunting areas, and daily bag and possession limits for certain migratory game birds in the United States. The correction does not change the contents of prior proposed or final frameworks.

Dated: October 29, 1992.

Mike Hayden,

Assistant Secretary for Fish and Wildlife and Parks.

Part 20—[Corrected]

The following correction is made in Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds published in the September 28, 1992, **Federal Register** (57 FR 44616).

On page 44631, under the heading *Wyoming*, the bag and possession limits for Ducks and Mergansers are revised to read "Point System."

§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

* * * * *

	Season dates	Limits	
		Bag	Possession
* * * * *			
Wyoming:			
Ducks and Mergansers.	Oct. 3–Oct. 19 & Nov. 14–Nov. 30 & Dec. 12–Dec. 28.	[1]	[1]
* * * * *			

[1] Point system.

[FR Doc. 92-27023 Filed 11-6-92; 8:45 am]

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federal register

Monday
November 9, 1992

Part V

Department of the Interior

Bureau of Indian Affairs

Availability of Fiscal Year 1993 Special Tribal Court Funds; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Availability of Fiscal Year 1993 Special Tribal Court Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) invites submission of applications from the governing body of federally recognized tribes and/or judicial systems for FY 1993 Special Tribal Court funds. The purpose of the FY 1993 Special Tribal Court program is to enable tribes to improve the administration of justice on reservations and within Indian communities and insure the expeditious and impartial adjudication of violations of tribal law and resolution of civil disputes. Funding awards will be made on a competitive basis under criteria, terms and conditions set forth in this announcement. The authority under which this grant program is authorized is 25 U.S.C. 13 and Public Law 102-381.

EFFECTIVE DATES: The closing date for submission of applications under this announcement is close of business December 21, 1992, or postmarked on or before midnight December 21, 1992.

ADDRESSES: Bureau of Indian Affairs, Branch of Judicial Services, MS 2611-MIB, 1849 C St., NW., Washington, DC 20240-4001.

FOR FURTHER INFORMATION CONTACT: Branch of Judicial Services at (202) 208-4400.

SUPPLEMENTARY INFORMATION:

A. Scope of FY 1993 Special Tribal Court Program

The purpose of the Special Tribal Court program is to improve and maintain the capabilities of Indian tribes to manage and administer justice at a level which will insure the expeditious and impartial adjudication of violations of tribal law and resolution of civil disputes. To accomplish this purpose the BIA is interested in funding projects that:

1. Improve the operation and management of the tribal court at both the trial and appellate level, including the development of records management, court personnel management, processing time standards, caseflow management, juror utilization, reporting, and other procedures designed to improve the management systems of the court; or

2. Examine and develop codes, ordinances, rules, procedures, and/or evidentiary standards which assure the fair and impartial administration of justice, expeditious adjudication, and implementation of the requirements of the Indian Civil Rights Act; or,

3. Support programs which develop community-based dispositional alternatives and enhance judicial review and management of cases involving substance abuse, juvenile and status offenders, and/or family violence, specifically spouse abuse, elder abuse, and child abuse, neglect and dependency; or,

4. Projects which address special or unique problems, such as court review and evaluation, community education and access to justice, traditional or alternative dispute resolution, automation and technology acquisition, and/or education and training for judges and court personnel.

B. Eligibility Criteria

The governing body of a federally-recognized tribe with an established judicial system or newly created tribal court, or which intends to establish a judicial system may apply for funding under this announcement. Tribes with populations of less than 400 may apply for funding under a multi-tribal or consortia arrangement.

C. Other Conditions

1. Approximately $1,000,000 will be available under this announcement. Funding awards will range in amounts of $10,000 to $35,000 for individual tribal courts and from $20,000 to $50,000 for multi-tribal or consortium awards.

2. Incomplete and/or unresponsive applications will not be reviewed or rated and there shall be no appeal rights for such applications. An incomplete and/or unresponsive application may be an application without: a current tribal governing body or council resolution; an agency *and* area office recommendation, except self-governance tribes for which only an area office recommendation is required; or, an application seeking ordinary, routine operational costs for a court system.

Application Process

A. Content of Application

1. Applications for funding in response to this announcement shall follow the application requirements set forth in the Office of Management and Budget (OMB) Circular A-102, Uniform Requirements for Assistance to State and Local Governments, including completion of Standard Form SF 424 Facesheet and narrative, SF-424b Standard Assurances (Non-construction), as well as DI-1955 (May 1990) Assurance of a Drug-free Workplace, incorporated at the end of this notice.

2. Applications shall include:

(a) A citation of the program area(s) to be addressed by the proposed project;

(b) A statement of specific needs and/or problems to be addressed by the project and the approach to be taken to meet such needs;

(c) A description of the expected products/benefits to be derived from the project and how they relate to the BIA's objective to improve the administration of justice and insure the expeditious and impartial adjudication of violations of tribal law and resolution of civil disputes;

(d) A description of the manner in which the proposed project will be accomplished;

(e) A description of the tasks and resources needed to implement and complete the project, including a list of consultants, organizations and/or key staff required, if any, and a summary description of their qualifications;

(f) A detailed budget and budget justification which reflects how the project's costs are reasonable in view of the anticipated results and benefits;

(g) A statement indicating how other available resources such as tribal income, self-determination grants or contracts will be committed to supplement or support the project;

(i) A description of the manner in which the results and benefits of the project will be evaluated;

(j) The application must include a tribal resolution or endorsement or such other written expression as tribal laws or practice require. In addition, all applications must include letters of recommendation/support from the local BIA agency and/or area office.

B. Application Review

All applications will be received and rated at the BIA central office by review panels composed of BIA field and central office personnel. Applications will be reviewed and rated on the basis of the criteria set forth below:

(1) Statement of the Problem and Demonstration of Need for Assistance (15 points)—Applications should describe the problem within the context of the services now available and services unavailable in the community;

(2) Results and/or Benefits Expected (15 points)—Applications should identify the results and benefits to be derived from the project, describe the population to be targeted and the number of persons expected to benefit, and describe types of services to be provided;

(3) Soundness of Approach (35 points)—Applications should reflect an understanding of the problem to be addressed and the expected outcome of the project. The application should: Outline a sound and workable plan of action; identify activities to be carried out and demonstrate a reasonable schedule of accomplishments and target dates (timeline); and, relate the work plan to the criteria to be used to evaluate the results and impact of the project;

(4) Staff Qualifications (10 points)—Applications should describe the background, experience, training and qualifications of consultants, organizations and/or key staff and describe how prospective staff will be recruited and selected. Position descriptions detailing responsibilities and requirements, such as education, experience, skills or personal qualities should be included.

(5) Organizational Experience (10 points)—Applications should describe significant organizational experience in administering funds including a description of the financial system to be used to monitor project expenditures.

(6) Budget and Budget Narrative (15 points)— Applications should demonstrate project costs are reasonable in view of the expected results and benefits. Major budget categories such as personnel, benefits, travel, supplies, equipment and administration must be budgeted directly and identified clearly. The budget narrative should provide the basis for computing all project-related costs, including:

—Personnel estimates should indicate the amount of time personnel will spend on the project and hourly rate.

—Supplies and expenses should indicate purpose and usage, for example: Telephone expenses should estimate the percentage of base and long distance telephone charges necessary to accomplishing the goals and objectives of the project.

—Calculation of per diem and transportation may be based on tribal rates but must indicate which personnel will be traveling, the number of trips to be taken, lengths of stay, and cost estimates.

—Purchase of equipment must be related to the goals and objectives of the project.

C. Submission of Applications

1. An original application and two (2) copies of the complete grant application must be submitted, with all required documentation, to: Department of the Interior, Bureau of Indian Affairs, Branch of Judicial Services, MS–2611–MIB, 1849 C Street NW., Washington, DC 20240–4001, by close of business December 21, 1992.

2. Applications must be hand-delivered to the Branch of Judicial Services no later than the close of business 4:30 P.M., EST, December 21, 1992; or, postmarked on or before midnight December 21, 1992, and received in time to be reviewed along with all other timely applications. Applicants are encouraged to retain a legible, dated receipt issued by the commercial carrier or U.S. Postal Service.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

BILLING CODE 4310-02-M

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

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Standard Form 424 (REV. 4-92)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

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.
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.)

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U. S. C. §4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C. F. R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U. S. C. §1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U. S. C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U. S. C. §6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P. L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a - 7), the Copeland Act (40 U.S.C. §§276c and 18 U. S. C. §§874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A-133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

U.S. Department of the Interior

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the drug-free workplace requirements for Federal grant recipients under the Drug-Free Workplace Act of 1988 (43 CFR Part 12, Subpart D). A copy of the regulation is available from the issuing office.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

Alternate I. (Grantees Other Than Individuals)

A. The grantee certifies that it will or continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about --

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted --

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check _____ if there are workplaces on file that are not identified here.

Name and Title of Authorized Representative

Signature_____ Date_____

DI-1955
May 1990

Instructions for Certification

1. By signing and/or submitting this application or grant agreement, the grantee is providing the Certification Regarding Drug-Free Workplace Requirements.

2. This certification is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including (i) all "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantees payroll; or employees of subrecipients or subcontractors in covered workplaces).

[FR Doc. 92-26969 Filed 11-6-92; 8:45 am]
BILLING CODE 4310-02-C

federal register

Monday
November 9, 1992

Part VI

The President

Executive Order 12820—Facilitating Federal Employees' Participation in Community Service Activities

Federal Register
Vol. 57, No. 217
Monday, November 9, 1992

Presidential Documents

Title 3—

The President

Executive Order 12820 of November 5, 1992

Facilitating Federal Employees' Participation in Community Service Activities

By the authority vested in me as President by the Constitution and the laws of the United States of America, including Public Law 101–610, as amended, and in order to ensure that the Federal Government encourages its employees' participation in community service, it is hereby ordered as follows:

Section 1. *Charge to the Cabinet and Members of the Executive Branch Departments and Agencies.*

(a) The head of each Executive department and agency shall encourage agency employees to participate voluntarily in direct and consequential community service. Community service participation may include, among other things, participation in programs, activities and initiatives designed to address problems such as drug abuse, crime, homelessness, illiteracy, AIDS, teenage pregnancy, and hunger, and problems associated with low-income housing, education, health care and the environment. The White House Office of National Service and the Commission on National and Community Service shall serve as a resource to provide information and support.

(b) The head of each Executive department and agency shall designate a senior official of his or her department or agency to provide leadership in and support for the Federal commitment to community service through employee awareness and participation within his or her department and agency. The senior official shall report to his or her department or agency head to ensure that community service activities receive a high level of visibility and promotion.

(c) The head of each Executive department and agency shall designate an existing office in his or her department or agency to perform the functions listed below. The office shall serve as the Office of Community Service and will be responsible for:

(1) Providing information to employees of the department or agency concerning community service opportunities;

(2) Working with the White House Office of National Service and the Office of Personnel Management to consider any appropriate changes in department or agency policies or practices that would encourage employee participation in community service activities; and

(3) Acting as a liaison with the White House Office of National Service and the Commission on National and Community Service.

Sec. 2. *Administrative Provisions.*

The White House Office of National Service and the Commission on National and Community Service shall provide such information with respect to community service programs and activities and such advice and assistance as may be required by the departments and agencies for the purpose of carrying out their functions under this order.

Sec. 3. *Reporting Provisions.*

The head of each Executive department or agency, or his or her designee, shall submit an annual report on the actions the department or agency has taken to encourage its employees to participate in community service to the White House Office of National Service not later than December 30 each year.

George Bush

THE WHITE HOUSE,
November 5, 1992.

[FR Doc. 92-27351
Filed 11-6-92; 11:02 am]
Billing code 3195-01-M

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Monday, November 9, 1992

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List October 30, 1992

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** Service for Public Law Numbers is available on 202–275–1538 or 275–0920.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 783-3238** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2233**.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[1] Jan. 1, 1992
4	(869-017-00003-5)	16.00	Jan. 1, 1992
5 Parts:			
1-699	(869-017-00004-3)	18.00	Jan. 1, 1992
700-1199	(869-017-00005-1)	14.00	Jan. 1, 1992
1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
7 Parts:			
0-26	(869-017-00007-8)	17.00	Jan. 1, 1992
27-45	(869-017-00008-6)	12.00	Jan. 1, 1992
46-51	(869-017-00009-4)	18.00	Jan. 1, 1992
52	(869-017-00010-8)	24.00	Jan. 1, 1992
53-209	(869-017-00011-6)	19.00	Jan. 1, 1992
210-299	(869-017-00012-4)	26.00	Jan. 1, 1992
300-399	(869-017-00013-2)	13.00	Jan. 1, 1992
400-699	(869-017-00014-1)	15.00	Jan. 1, 1992
700-899	(869-017-00015-9)	18.00	Jan. 1, 1992
900-999	(869-017-00016-7)	29.00	Jan. 1, 1992
1000-1059	(869-017-00017-5)	17.00	Jan. 1, 1992
1060-1119	(869-017-00018-3)	13.00	Jan. 1, 1992
1120-1199	(869-017-00019-1)	9.50	Jan. 1, 1992
1200-1499	(869-017-00020-5)	22.00	Jan. 1, 1992
1500-1899	(869-017-00021-3)	15.00	Jan. 1, 1992
1900-1939	(869-017-00022-1)	11.00	Jan. 1, 1992
1940-1949	(869-017-00023-0)	23.00	Jan. 1, 1992
1950-1999	(869-017-00024-8)	26.00	Jan. 1, 1992
2000-End	(869-017-00025-6)	11.00	Jan. 1, 1992
8	(869-017-00026-4)	17.00	Jan. 1, 1992
9 Parts:			
1-199	(869-017-00027-2)	23.00	Jan. 1, 1992
200-End	(869-017-00028-1)	18.00	Jan. 1, 1992
10 Parts:			
0-50	(869-017-00029-9)	25.00	Jan. 1, 1992
51-199	(869-017-00030-2)	18.00	Jan. 1, 1992
200-399	(869-017-00031-1)	13.00	[4] Jan. 1, 1987
400-499	(869-017-00032-9)	20.00	Jan. 1, 1992
500-End	(869-017-00033-7)	28.00	Jan. 1, 1992
11	(869-017-00034-5)	12.00	Jan. 1, 1992
12 Parts:			
1-199	(869-017-00035-3)	13.00	Jan. 1, 1992
200-219	(869-017-00036-1)	13.00	Jan. 1, 1992
220-299	(869-017-00037-0)	22.00	Jan. 1, 1992
300-499	(869-017-00038-8)	18.00	Jan. 1, 1992
500-599	(869-017-00039-6)	17.00	Jan. 1, 1992
600-End	(869-017-00040-0)	19.00	Jan. 1, 1992
13	(869-017-00041-8)	25.00	Jan. 1, 1992
14 Parts:			
1-59	(869-017-00042-6)	25.00	Jan. 1, 1992
60-139	(869-017-00043-4)	22.00	Jan. 1, 1992
140-199	(869-017-00044-2)	11.00	Jan. 1, 1992
200-1199	(869-017-00045-1)	20.00	Jan. 1, 1992
1200-End	(869-017-00046-9)	14.00	Jan. 1, 1992
15 Parts:			
0-299	(869-017-00047-7)	13.00	Jan. 1, 1992
300-799	(869-017-00048-5)	21.00	Jan. 1, 1992
800-End	(869-017-00049-3)	17.00	Jan. 1, 1992
16 Parts:			
0-149	(869-017-00050-7)	6.00	Jan. 1, 1992
150-999	(869-017-00051-5)	14.00	Jan. 1, 1992
1000-End	(869-017-00052-3)	20.00	Jan. 1, 1992
17 Parts:			
1-199	(869-017-00054-0)	15.00	Apr. 1, 1992
200-239	(869-017-00055-8)	17.00	Apr. 1, 1992
240-End	(869-017-00056-6)	24.00	Apr. 1, 1992
18 Parts:			
1-149	(869-017-00057-4)	16.00	Apr. 1, 1992
150-279	(869-017-00058-2)	19.00	Apr. 1, 1992
280-399	(869-017-00059-1)	14.00	Apr. 1, 1992
400-End	(869-017-00060-4)	9.50	Apr. 1, 1992
19 Parts:			
1-199	(869-017-00061-2)	28.00	Apr. 1, 1992
200-End	(869-017-00062-1)	9.50	Apr. 1, 1992
20 Parts:			
1-399	(869-017-00063-9)	16.00	Apr. 1, 1992
400-499	(869-017-00064-7)	31.00	Apr. 1, 1992
500-End	(869-017-00065-5)	21.00	Apr. 1, 1992
21 Parts:			
1-99	(869-017-00066-3)	13.00	Apr. 1, 1992
100-169	(869-017-00067-1)	14.00	Apr. 1, 1992
170-199	(869-017-00068-0)	18.00	Apr. 1, 1992
200-299	(869-017-00069-8)	5.50	Apr. 1, 1992
300-499	(869-017-00070-1)	29.00	Apr. 1, 1992
500-599	(869-017-00071-0)	21.00	Apr. 1, 1992
600-799	(869-017-00072-8)	7.00	Apr. 1, 1992
800-1299	(869-017-00073-6)	18.00	Apr. 1, 1992
1300-End	(869-017-00074-4)	9.00	Apr. 1, 1992
22 Parts:			
1-299	(869-017-00075-2)	26.00	Apr. 1, 1992
300-End	(869-017-00076-1)	19.00	Apr. 1, 1992
23	(869-017-00077-9)	18.00	Apr. 1, 1992
24 Parts:			
0-199	(869-017-00078-7)	34.00	Apr. 1, 1992
200-499	(869-017-00079-5)	32.00	Apr. 1, 1992
500-699	(869-017-00080-9)	13.00	Apr. 1, 1992
700-1699	(869-017-00081-7)	34.00	Apr. 1, 1992
1700-End	(869-017-00082-5)	13.00	Apr. 1, 1992
25	(869-017-00083-3)	25.00	Apr. 1, 1992
26 Parts:			
§§ 1.0-1-1.60	(869-017-00084-1)	17.00	Apr. 1, 1992
§§ 1.61-1.169	(869-017-00085-0)	33.00	Apr. 1, 1992
§§ 1.170-1.300	(869-017-00086-8)	19.00	Apr. 1, 1992
§§ 1.301-1.400	(869-017-00087-6)	17.00	Apr. 1, 1992
§§ 1.401-1.500	(869-017-00088-4)	38.00	Apr. 1, 1992
§§ 1.501-1.640	(869-017-00089-2)	19.00	Apr. 1, 1992
§§ 1.641-1.850	(869-017-00090-6)	19.00	Apr. 1, 1992
§§ 1.851-1.907	(869-017-00091-4)	23.00	Apr. 1, 1992
§§ 1.908-1.1000	(869-017-00092-2)	26.00	Apr. 1, 1992
§§ 1.1001-1.1400	(869-017-00093-1)	19.00	Apr. 1, 1992
§§ 1.1401-End	(869-017-00094-9)	26.00	Apr. 1, 1992
2-29	(869-017-00095-7)	22.00	Apr. 1, 1992
30-39	(869-017-00096-5)	15.00	Apr. 1, 1992
40-49	(869-017-00097-3)	12.00	Apr. 1, 1992
50-299	(869-017-00098-1)	15.00	Apr. 1, 1992
300-499	(869-017-00099-0)	20.00	Apr. 1, 1992
500-599	(869-017-00100-7)	6.00	[5] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600–End	(869–017–00101–5)	6.50	Apr. 1, 1992
27 Parts:			
1–199	(869–017–00102–3)	34.00	Apr. 1, 1992
200–End	(869–017–00103–1)	11.00	[6]Apr. 1, 1991
28	(869–017–00104–0)	37.00	July 1, 1992
29 Parts:			
0–99	(869–017–00105–8)	19.00	July 1, 1992
100–499	(869–013–00106–6)	9.00	July 1, 1992
500–899	(869–013–00107–9)	27.00	July 1, 1991
900–1899	(869–017–00108–2)	16.00	July 1, 1992
1900–1910 (§§ 1901.1 to 1910.999)	(869–013–00109–5)	24.00	July 1, 1991
1910 (§§ 1910.1000 to end)	(869–017–00110–4)	16.00	July 1, 1992
1911–1925	(869–017–00111–2)	9.00	[7] July 1, 1989
1926	(869–017–00112–1)	14.00	July 1, 1992
1927–End	(869–017–00113–9)	30.00	July 1, 1992
30 Parts:			
1–199	(869–013–00114–1)	22.00	July 1, 1991
200–699	(869–017–00115–5)	19.00	July 1, 1992
700–End	(869–017–00116–3)	25.00	July 1, 1992
31 Parts:			
0–199	(869–017–00117–1)	17.00	July 1, 1992
200–End	(869–017–00118–0)	25.00	July 1, 1992
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–189	(869–013–00119–2)	25.00	July 1, 1991
190–399	(869–013–00120–6)	29.00	July 1, 1991
400–629	(869–017–00121–0)	29.00	July 1, 1992
630–699	(869–017–00122–8)	14.00	[8] July 1, 1991
700–799	(869–017–00123–6)	20.00	July 1, 1992
800–End	(869–017–00124–4)	20.00	July 1, 1992
33 Parts:			
1–124	(869–017–00125–2)	18.00	July 1, 1992
125–199	(869–017–00126–1)	21.00	July 1, 1992
200–End	(869–017–00127–9)	23.00	July 1, 1992
34 Parts:			
1–299	(869–013–00128–1)	24.00	July 1, 1991
300–399	(869–017–00129–5)	19.00	July 1, 1992
400–End	(869–013–00130–3)	26.00	July 1, 1991
35	(869–017–00131–7)	12.00	July 1, 1992
36 Parts:			
1–199	(869–017–00132–5)	15.00	July 1, 1992
200–End	(869–017–00133–3)	32.00	July 1, 1992
37	(869–013–00134–6)	15.00	July 1, 1991
38 Parts:			
0–17	(869–013–00135–4)	24.00	July 1, 1991
18–End	(869–013–00136–2)	22.00	July 1, 1991
39	(869–017–00137–6)	16.00	July 1, 1992
40 Parts:			
1–51	(869–017–00138–4)	31.00	July 1, 1992
52	(869–013–00139–7)	28.00	July 1, 1991
53–60	(869–017–00140–6)	36.00	July 1, 1992
61–80	(869–017–00141–4)	16.00	July 1, 1992
81–85	(869–013–00142–7)	11.00	July 1, 1991
86–99	(869–017–00143–1)	33.00	July 1, 1992
100–149	(869–013–00144–3)	30.00	July 1, 1991
150–189	(869–017–00145–7)	21.00	July 1, 1992
190–259	(869–017–00146–5)	16.00	July 1, 1992
260–299	(869–013–00147–8)	31.00	July 1, 1991
300–399	(869–017–00148–1)	15.00	July 1, 1992
400–424	(869–017–00149–0)	26.00	July 1, 1992
425–699	(869–013–00150–8)	23.00	[7] July 1, 1989
700–789	(869–013–00151–6)	20.00	July 1, 1991
790–End	(869–017–00152–0)	25.00	July 1, 1992
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–017–00153–8)	9.50	July 1, 1992
101	(869–013–00154–1)	22.00	July 1, 1991
102–200	(869–017–00155–4)	11.00	[8] July 1, 1991
201–End	(869–017–00156–2)	11.00	July 1, 1992
42 Parts:			
1–60	(869–013–00157–5)	17.00	Oct. 1, 1991
61–399	(869–013–00158–3)	5.50	Oct. 1, 1991
400–429	(869–013–00159–1)	21.00	Oct. 1, 1991
430–End	(869–013–00160–5)	26.00	Oct. 1, 1991
43 Parts:			
1–999	(869–013–00161–3)	20.00	Oct. 1, 1991
1000–3999	(869–013–00162–1)	26.00	Oct. 1, 1991
4000–End	(869–013–00163–0)	12.00	Oct. 1, 1991
44	(869–013–00164–8)	22.00	Oct. 1, 1991
45 Parts:			
1–199	(869–013–00165–6)	18.00	Oct. 1, 1991
200–499	(869–013–00166–4)	12.00	Oct. 1, 1991
500–1199	(869–013–00167–2)	26.00	Oct. 1, 1991
1200–End	(869–013–00168–1)	19.00	Oct. 1, 1991
46 Parts:			
1–40	(869–013–00169–9)	15.00	Oct. 1, 1991
41–69	(869–013–00170–2)	14.00	Oct. 1, 1991
70–89	(869–013–00171–1)	7.00	Oct. 1, 1991
90–139	(869–013–00172–9)	12.00	Oct. 1, 1991
140–155	(869–013–00173–7)	10.00	Oct. 1, 1991
156–165	(869–013–00174–5)	14.00	Oct. 1, 1991
166–199	(869–013–00175–3)	14.00	Oct. 1, 1991
200–499	(869–013–00176–1)	20.00	Oct. 1, 1991
500–End	(869–013–00177–0)	11.00	Oct. 1, 1991
47 Parts:			
0–19	(869–013–00178–8)	19.00	Oct. 1, 1991
20–39	(869–013–00179–6)	19.00	Oct. 1, 1991
40–69	(869–013–00180–0)	10.00	Oct. 1, 1991
70–79	(869–013–00181–8)	18.00	Oct. 1, 1991
80–End	(869–013–00182–6)	20.00	Oct. 1, 1991
48 Chapters:			
1 (Parts 1–51)	(869–013–00183–4)	31.00	Oct. 1, 1991
1 (Parts 52–99)	(869–013–00184–2)	19.00	Oct. 1, 1991
2 (Parts 201–251)	(869–013–00185–1)	13.00	Dec. 31, 1991
2 (Parts 252–299)	(869–013–00186–9)	10.00	Dec. 31, 1991
3–6	(869–013–00187–7)	19.00	Oct. 1, 1991
7–14	(869–013–00188–5)	26.00	Oct. 1, 1991
15–End	(869–013–00189–3)	30.00	Oct. 1, 1991
49 Parts:			
1–99	(869–013–00190–7)	20.00	Oct. 1, 1991
100–177	(869–013–00191–5)	23.00	Dec. 31, 1991
178–199	(869–013–00192–3)	17.00	Dec. 31, 1991
200–399	(869–013–00193–1)	22.00	Oct. 1, 1991
400–999	(869–013–00194–0)	27.00	Oct. 1, 1991
1000–1199	(869–013–00195–8)	17.00	Oct. 1, 1991
1200–End	(869–013–00196–6)	19.00	Oct. 1, 1991
50 Parts:			
1–199	(869–013–00197–4)	21.00	Oct. 1, 1991
200–599	(869–013–00198–2)	17.00	Oct. 1, 1991
600–End	(869–013–00199–1)	17.00	Oct. 1, 1991
CFR Index and Findings Aids	(869–017–00053–1)	31.00	Jan. 1, 1992

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1991. The CFR volume issued January 1, 1987, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1991. The CFR volume issued April 1, 1990, should be retained.

[6] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 30, 1992. The CFR volume issued April 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 1989 to June 30, 1992. The CFR volume issued July 1, 1989, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1992. The CFR volume issued July 1, 1991, should be retained