

Thursday  
February 27, 1986

# Federal Register

**Briefings on How To Use the Federal Register—**

For information on briefings in Washington, DC, St. Louis, MO, Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

## Selected Subjects

**Administrative Practice and Procedure**

Postal Service

**Animal Drugs**

Food and Drug Administration

**Crop Insurance**

Federal Crop Insurance Corporation

**Customs Duties and Inspection**

Customs Service

**Investment Advisers**

Securities and Exchange Commission

**Passports and Visas**

State Department

**Relocation Assistance and Real Property Acquisition**

Housing and Urban Development Department

Postal Service—Part II

Uniform policies and procedures (17 agencies)—Part IV

**Security Measures**

Coast Guard

**Surface Mining**

Surface Mining Reclamation and Enforcement Office

**Vessels**

Customs Service



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**How To Cite This Publication:** Use the volume number and the page number. Example: 51 FR 12345.

### THE FEDERAL REGISTER: 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 2 1/2 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.

#### ST. LOUIS, MO

**WHEN:** March 11; 9 am.  
**WHERE:** Room 1612,  
 Federal Building,  
 1520 Market Street,  
 St. Louis, MO.  
**CALL:** Dolores O'Guin,  
 St. Louis Federal  
 Information Center,  
 314-425-4109,  
 for reservations.

#### WASHINGTON, DC

**WHEN:** March 20;  
 9 am and 1 pm.  
 (identical sessions)  
**WHERE:** Office of the  
 Federal Register,  
 First Floor  
 Conference Room,  
 1100 L Street NW,  
 Washington, DC  
**CALL:** Ruth Reedy,  
 202-523-5239,  
 for reservations.

#### DENVER, CO

**WHEN:** March 24; 9 am.  
**WHERE:** Room 239,  
 Federal Building,  
 1961 Stout Street,  
 Denver, CO.  
**CALL:** Elizabeth Stout,  
 Denver Federal  
 Information Center,  
 303-236-7181,  
 for reservations.

#### DALLAS, TX

**WHEN:** April 23; 1:30 pm.  
**WHERE:** Room 7A23,  
 Earl Cabell  
 Federal Building,  
 1100 Commerce St  
 Dallas, TX.  
**CALL:** local numbers:  
 Ft. Worth 817-334-3624  
 Dallas 214-767-8585  
 Houston 713-229-2552  
 Austin 512-472-5494  
 San Antonio 512-224-4471  
 for reservations.

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# Rules and Regulations

Federal Register

Vol. 51, No. 39

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

7 CFR Parts 420, 421, 424, 425, 431, 432, 438, and 448

[Doc. No. 0072A]

### Crop Insurance Regulations—Various

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the *Federal Register* on November 22, 1985 (50 FR 48168). The interim rule amended the Corn, Cotton, ELS Cotton, Grain Sorghum, Peanuts, Rice, Soybean and Canning and Processing Tomato Crop Insurance Regulations (7 CFR Parts 420, 421, 424, 425, 431, 432, 438, and 448), effective for the 1985 calendar year only, by extending the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the contracts for such crops for actuarial purposes. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** February 27, 1986.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Friday, November 22, 1985, FCIC published an interim rule, effective upon publication in the *Federal Register* at 50 FR 48168, amending the Corn, Cotton, ELS Cotton, Grain Sorghum, Peanuts, Rice, Soybean and Canning and Processing Tomato Crop Insurance Regulations (7 CFR Parts 420, 421, 424, 425, 431, 432, 438, and 448), effective for the 1985 calendar year only, to change the date for filing contract changes specified in the policies for insuring such crops.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the *Federal Register*, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the *Federal Register* as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

**List of Subjects in 7 CFR Parts 420, 421, 424, 425, 431, 432, 438, and 448**

Crop Insurance; Corn, Cotton, ELS Cotton, Grain Sorghum, Peanuts, Rice, Soybean, and Canning and processing tomato.

### Final Rule

Accordingly, the Interim Rule published in the *Federal Register* on November 22, 1985, at 50 FR 48168, is hereby adopted as final.

**Authority:** Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on February 12, 1986.

Edward Hews,

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 86-4212 Filed 2-26-86; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Parts 422, 430, 434, 436, and 443

[Doc. No. 0073A]

### Crop Insurance Regulations—Various

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the *Federal Register* on December 17, 1985 (50 FR 51383). The interim rule amended the Potato, Sugar Beet, Tobacco (Dollar Plan), Tobacco (Guaranteed Production Plan) and Hybrid Seed Crop Insurance Regulations (7 CFR Parts 422, 430, 434, 436, and 443), effective for the 1985 calendar year only, by extending the date for filing contract changes specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the contracts for such crops for actuarial purposes. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** February 27, 1986.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department

of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health and safety. Therefore, neither an Environment Assessment nor an Environmental Impact Statement is needed.

On Tuesday, December 17, 1985, FCIC published an interim rule, effective upon publication in the **Federal Register** at 50 FR 51383, amending the Potato, Sugar Beet, Tobacco (Dollar Plan), Tobacco (Guaranteed Production Plan) and Hybrid Seed Crop Insurance Regulations (7 CFR Parts 422, 430, 434, 436, and 443), effective for the 1985 calendar year only, to change the date for filing contract changes specified in the policies for insuring such crops.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be

published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

#### List of Subjects in 7 CFR Parts 422, 430, 434, 436, and 443

Crop Insurance; Potato, Sugar Beet, Tobacco (Dollar Plan), Tobacco (Guaranteed Production Plan) and Hybrid seed.

#### Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on December 17, 1985, at 50 FR 51383, is hereby adopted as final.

**Authority:** Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on February 19, 1986.

Edward Hews,

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 86-4213 Filed 2-26-86; 8:45 am]

BILLING CODE 3410-08-M

#### 7 CFR Part 436

[Doc. No. 3196S]

#### Tobacco (Guaranteed Production Plan) and Tobacco (Dollar Plan) Crop Insurance Regulations; Correction

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule and termination; correction.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) published a Final Rule and Termination in the **Federal Register** on Wednesday, February 12, 1986, at 51 FR 5154, amending the Tobacco (Guaranteed Production Plan) Crop Insurance Regulations (7 CFR Part 436), by expanding the provisions therein to incorporate insurance procedures for tobacco types formerly insured under the Tobacco (Dollar Plan) Crop Insurance Regulations (7 CFR Part 434). Section 436.7(d)9.e.(1) inadvertently contained the word "harvested" in the first line thereof which has the effect of changing the meaning of that section. This notice is published to correct that error.

**ADDRESS:** Written comments on this correction may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC, 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department

of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** FR Doc. 86-3040, appearing at 51 FR 5154 is corrected in the following instance:

#### § 436.7 [Corrected]

7 CFR 436.7(d)9.e.(1) introductory text is corrected to read as follows:

(1) Tobacco production which, due to insurable causes, have a value less than the market price for tobacco of the same type, will be adjusted by:

Done in Washington, DC on February 20, 1986.

Edward Hews,

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 86-4240 Filed 2-26-86; 8:45 am]

BILLING CODE 3410-08-M

#### 7 CFR Part 440

[Doc. No. 0063A]

#### Texas Citrus Tree Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Add as a cause of loss the unavoidable failure of irrigation water supply after insurance attaches; (2) Change the method of calculating the insured's share of an indemnity at loss adjustment time; (3) Add a provision that insurance would not attach to acreage on which grafting on existing root stock was performed in the grove within one year prior to the date insurance attaches; (4) Add a provision to provide a coverage level if the insured does not select one; (5) Revise the schedules of coverage; (6) Add a provision to provide that damage to a grove of over 80 percent will be considered as 100 percent damaged; and (7) Add definitions for "Cyclone", and "Freeze". The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** February 28, 1986.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department

of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is November 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) Major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that the action will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, December 5, 1985, FCIC published a Notice of Proposed Rulemaking in the *Federal Register* at 50 FR 49854, to revise and reissue the Texas Citrus Tree Crop Insurance Regulations (7 CFR Part 440), effective for the 1987 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule.

One comment was received relative to the Notice of Proposed Rulemaking (50 FR 49854). The commenter recommended three changes in the policy provisions as follows:

1. Section 2.d.(2)—The language in this section provides that FCIC does not insure any acreage on which grafting on existing root stock has been performed within one year prior to the date insurance attaches. Commenter recommended that FCIC specify that the limitation of one year apply to only those trees rebudded in the grove as opposed to those budded in a nursery and set out in the grove. The present language in this section makes no mention as to where the budding takes place and therefore fails to recognize the greater effectiveness of nursery rebudding. It thus fails to recognize the similarity between resetting of nursery rebudded stock and the setting of new nursery grown stock. FCIC considers this comment relevant since it clarifies that insurance should attach on all trees set out for production consistent with other provisions of the policy, while limiting coverage on trees rebudded in the grove. For this reason, FCIC adopts this recommendation.

2. Section 7.a.(2)—Commenter opposed the change to lengthen to the 20th day the date insurance against hurricane and freeze attaches after application is signed and recommended the 20-day waiting period be applied for new applications and not just for new plantings. After publication of the Notice of Proposed Rulemaking, FCIC determined that the reference to "hurricane" was an error and should have read "cyclone". The error does not appear to affect the substance of the comment which addresses the length of the waiting period. Commenter also suggested FCIC eliminate the present 10-day waiting period before coverage attaches when there is a threat of a freeze. Given the imprecision of long range weather forecasts (more than 3 days), FCIC believes that commenter has a valid comment with respect to the waiting period. However, FCIC needs time to inspect the crop to determine if the acreage is acceptable to the Corporation and, therefore will maintain the present 10-day waiting period.

3. Section 4.d.(1), (2), (3) and (4)—Commenter recommends the percent of coverage for different tree ages be changed from the current 25%, 40%, 60%, 70%, and 100% for the first through the fifth year to 35%, 60%, 85%, and 100% for the first through the fourth year. Commenter contends that with denser tree plantings and improved cultural practices, citrus groves have trees in full production considerably sooner than 5 years. In regard to the schedules of coverage, FCIC has determined to adopt, in part, commenters recommendation by revising the schedule of coverage to be 33%, 60%, 80%, 90%, and 100% for the

first through the fifth year. An actuarial review indicates that production increases until the fifth or sixth year, then stabilizes.

This review shows that the groves have not achieved full production by the fourth year in all cases. Thus, FCIC believes that the full costs of bringing the trees into production are not fully apparent until at least the fifth year. For these reasons, FCIC adopts the proposed change, in part only, by limitedly increasing the percentage of coverage for the first through the fourth year. This change will be beneficial to producers by increasing the amount of insurance available for different tree ages.

In addition, the notice of proposed rulemaking defined "ASCS". This was included in error and has been removed from the definition section in this final rule. Because this crop is not under the Actual Production History (APH) program requiring the involvement of ASCS, there is no need for this definition. Also, the definition of "county" has been changed. The proposed rule identified "County" to include a definition of land identified by an ASCS farm serial number for the county but physically located in another county. Since this crop is not under APH, this reference has been removed in the final rule. Also, the proposed rule included "frost" as an insurable cause of loss and provided a definition. Because frost does not damage trees insurable under the Texas citrus tree policy, there is no need for that provision, and that provision has been removed in this final rule.

Therefore, with the exception of minor changes in language and format, the proposed rule, as discussed above, is adopted as a final rule. The principal changes in the Texas citrus tree policy are:

1. Section 1—Add the failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied in Section 2.

2. Section 2—Add a clause to change the method of calculating the insured's share of an indemnity on crops at loss adjustment time. This limits the insured's indemnity to the insured's interest in the crop at the time of loss.

Add a provision to exclude from insurance any acreage of citrus trees on which grafting on existing root stock has been performed in the grove within one year prior to the date insurance attaches.

3. Section 4—Add a provision for a coverage level if the insured does not select one.

Revise the percent of coverage for different tree ages from 25%, 40%, 60%, 75%, and 100% to 33%, 60%, 80%, 90%, and 100% for the first through the fifth year. This change more closely reflects the actual cost of growing the trees and the value of the trees per acre.

4. Section 9—Add a provision to provide that any grove with over 80 percent damage will be counted as 100 percent damaged. This change is made because it is not cost effective to care for a grove damaged in excess of 80 percent.

5. Section 17—Add definitions of "Cyclone" and "Freeze".

Since policy changes must be on file by February 28, 1986, good cause is shown for making this rule effective in less than 30 days.

#### List of Subjects in 7 CFR Part 440

Crop Insurance; Texas Citrus Tree.

#### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Texas Citrus Tree Insurance Regulations (7 CFR Part 440), effective for the 1987 and succeeding crop years, to read as follows:

### PART 440—TEXAS CITRUS TREE INSURANCE REGULATIONS

#### Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.

- 440.1 Availability of Texas citrus tree insurance.
- 440.2 Premium rates, coverage levels, amounts of insurance, and prices at which indemnities shall be computed.
- 440.3 OMB control numbers.
- 440.4 Creditors.
- 440.5 Good faith reliance on misrepresentation.
- 440.6 The contract.
- 440.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

#### Subpart—Regulations for the 1987 and Succeeding Crop Years

##### § 440.1 Availability of Texas citrus tree insurance.

Insurance shall be offered under the provisions of this subpart on citrus trees in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

##### § 440.2 Premium rates, coverage levels, amounts of insurance, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, coverage levels, amounts of insurance, and prices at which indemnities shall be computed for citrus trees which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level, amount of insurance, and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

##### § 440.3 OMB control numbers.

The OMB control numbers are contained in Subpart H of Part 440, Title 7 CFR.

##### § 440.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

##### § 440.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the Texas Citrus Tree insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) Said insured relied thereon in good faith; and (3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

##### § 440.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the citrus trees as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

##### § 440.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the citrus trees as landlord or owner-operator if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the extended period.

However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a citrus tree contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Texas Citrus Tree Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

## DEPARTMENT OF AGRICULTURE

## Federal Crop Insurance Corporation

## Texas Citrus Tree—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

**AGREEMENT TO INSURE.** We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

## Terms and Conditions

## 1. Causes of loss

a. The insurance provided is against unavoidable damage to citrus trees resulting from the following causes occurring within the insurance period:

- (1) Freeze;
- (2) Excess moisture;
- (3) Hail;
- (4) Fire;
- (5) Cyclone;
- (6) Tornado;
- (7) Failure of the irrigation water supply due to unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9g.

b. We will not insure against any cause of loss or damage to the citrus trees due to:

- (1) Fire, where weeds and other forms of undergrowth have not been controlled or tree prunings have not been removed from the grove;
- (2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
- (3) The failure to follow recognized good grove management practices;
- (4) The failure or breakdown of irrigation equipment or facilities;
- (5) The failure to follow recognized good citrus tree irrigation practices; or
- (6) Any cause not specified in section 1a as an insured loss.

## 2. Crop, Acreage, and Share Insured

a. The crop insured will be any of the following insurable citrus tree types (hereafter called trees) you elect:

- Type I. Early and midseason orange trees;
- Type II. Late orange (including Temples) trees;
- Type III. Grapefruit trees except Star Ruby trees;

Type IV. Star Ruby grapefruit trees;

which are set out for the purpose of harvesting citrus as fresh fruit or juice, which are located on insured acreage, and for which an amount of insurance and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be trees located on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord or owner-operator in the insured citrus trees at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the time of loss.

d. We do not insure any acreage:

- (1) For the crop year the application for insurance is filed unless the acreage has been inspected and considered acceptable by us;
- (2) On which grafting on existing root stock in a grove has been performed within 1 year prior to the date insurance attaches;
- (3) Where the grove management practices carried out are not in accordance with those practices for which premium rates have been established;
- (4) Maintained or set out for experimental purposes;
- (5) In any established grove which does not have the potential to produce at least 70 percent of the area average yield for the type and age, unless we agree in writing to insure that acreage; or
- (6) Which is not irrigated.

e. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the time insurance attaches.

f. We may:

- (1) Exclude from insurance; or
- (2) Limit the amount of insurance on any acreage which was not insured by us the previous crop year.

## 3. Report of Acreage, Share, Number, Type, Age of Trees, and Practice

You must report on our form:

- a. All the acreage of trees in the county in which you have a share;
- b. The practice;
- c. Your share at the time insurance attaches; and
- d. The type, number of trees, and:
  - (1) date of original set out; or
  - (2) date of replacement and/or dehorning, if more than 10 percent of the trees on any unit have been replaced or dehorned in the previous 5 years; and

e. Within 72 hours of the completion of setout; the acreage, type, number of trees, and the date setout is completed for any insurable acreage of trees set out after June 1 of the crop year if you elect to insure such acreage during that crop year.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any trees located in the county. This report must be submitted annually on or before June 30. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by June 30, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

## 4. Coverage Levels and Amounts of Insurance

a. The coverage levels and amounts of insurance are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and amount of insurance on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

d. The amount of insurance will be reduced for any acreage which has not reached the fourth growing season after being set out or fifth year following dehorning. The amount of

insurance will be the product obtained by multiplying the amount of insurance selected from the actuarial table by:

- (1) 33 Percent the year of set out or the year following dehorning;
- (2) 60 Percent the first growing season after being set out or the second year following dehorning;
- (3) 80 Percent the second growing season after being set out or the third year following dehorning; or
- (4) 90 Percent the third growing season after being set out or the fourth year following dehorning.

e. The amount of insurance will be reduced proportionately for any unit on which the stand is less than 90 percent, based on the original planting pattern.

## 5. Annual Premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time insurance attaches.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

## 6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

## 7. Insurance Period

a. Insurance attaches on insured acreage on June 1 for each crop year except that for the first crop year and notwithstanding section 2d(1):

(1) If the application is accepted by us after June 1, the insurance against cyclone and freeze will attach the tenth day after the application is signed by you; and

(2) If any insurable acreage is set out after June 1, insurance will attach on the date set out is completed for the unit if the acreage is reported within 72 hours after the date of completion; except insurance against cyclone and freeze will attach the tenth day after you report such acreage.

b. The insurance period ends at the earlier of:

- (1) May 31 following the beginning of the crop year; or
- (2) Total destruction of the insured trees.

## 8. Notice of Damage or Loss

a. In case of damage or probable loss, you must give us written notice of:

- (1) The dates of damage; and
- (2) The causes of damage.

b. If you are going to claim an indemnity on any unit, we will have the right to inspect all insured acreage and damaged trees before pruning, dehorning, or removal.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

## 9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the trees on the unit; or

(2) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Furnish records concerning all trees on the unit;

(2) Show that any damage to the trees has been directly caused by one or more of the insured causes during the insurance period; and

(3) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance;

(2) Multiplying this result by the applicable percent of loss determined by subtracting from the actual percent of damage determined in accordance with section 9e, the following applicable amount:

(i) 25 percent (for Coverage Level 3) and dividing the result by 75 percent;

(ii) 35 percent (for Coverage Level 2) and dividing the result by 65 percent; or

(iii) 50 percent (for Coverage Level 1) and dividing the result by 50 percent; and

(3) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information you reported, but all acreage of the insurable acreage planted, whether or not reported as insurable, will count against the amount of insurance.

e. The total amount of indemnity will include both trees damaged and trees destroyed due to an insurable cause.

(1) The actual percent of damage to count will be:

(a) The percent of damage determined by dividing the number of scaffold limbs (scaffold limbs are limbs directly attached to the trunk) damaged in an area from the trunk to a length equal to one-fourth (1/4) the height of the tree, by the total number of scaffold limbs before damage occurred. Any trees with over 80 percent actual damage will be counted as 100 percent damaged unless the damage occurs within one year of set out;

(b) Any grove with over 80 percent actual damage will be counted as 100 percent damaged unless the damage occurs within one year of set out; or

(c) The percent of damage resulting from insurable causes occurring during the crop year of set out as follows:

(i) 100 percent if the trees are killed back to the root stock; or

(ii) 90 percent if the trees have less than 12 inches of live wood above the bud union. However, no damage will be considered if more than 12 inches of wood above the bud union is alive.

(2) Any percentage of damage by uninsured causes, will not be included in the actual percent of damage.

f. The amount of indemnity will be determined at the earlier of:

(1) Total destruction of the trees; or  
(2) The calendar date for the end of the insurance period.

g. If you exclude hail and fire as insured causes of loss and the citrus trees are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78-A, "Request to Exclude Hail and Fire."

h. You must not abandon any acreage to us.  
i. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

j. An indemnity will not be paid unless you comply with all policy provisions.

k. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the *Federal Register* semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

l. If you die, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

m. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the trees on the unit before the fire and after the fire.

## 10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such avoidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

## 11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under by the contract.

## 12. Assignment of Indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

## 13. Subrogation (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

## 14. Records and Access to Grove

You must keep for two years after time of loss, records of the trees destroyed or damaged on each unit, including separate records showing the same information for any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, or a determination that no indemnity is due. Any person designated by us will have access to such records and the grove for purposes related to the contract.

## 15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract and insurance on any type of citrus trees may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both other such other payment and setoff are approved.

d. The cancellation and termination dates are May 31 prior to the date insurance attaches.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is

dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

#### 16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by February 28 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

#### 17. Meaning of Terms

For the purposes of Texas citrus tree crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amounts of insurance, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding citrus tree insurance in the county.

b. "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

d. "Crop year" means the period beginning June 1 and extending through May 31 of the following year and is designated by the calendar year in which the insurance period ends.

e. "Cyclone" means only a large-scale, atmospheric wind-and-pressure system characterized by low pressure at its center and counterclockwise circular wind motion which has been named by the United States Weather Service and which has sustained winds in excess of 58 miles per hour at the U.S. Weather Service reporting station nearest to the crop damage at the time of loss.

f. "Dehorning" means the cutting back of each scaffold limb to a length that is no longer than  $\frac{1}{4}$  the height of the tree.

g. "Destroyed" means trees which are damaged to the extent that removal is required.

h. "Freeze" means the condition of air temperatures over a widespread area remaining sufficiently at or below 32 degrees Fahrenheit to cause tree damage.

i. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

j. "Insured" means the person who is an owner of the trees insured and who submitted the application accepted by us.

k. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Set out" means transplanting the citrus tree from the nursery to the grove.

n. "Total destruction" means the occurrence of damage by unit to the trees which have been set out more than one year in excess of 80 percent.

o. "Unit" means all insurable acreage in the county of any one of the tree types referred to in section 2 of this policy, located on contiguous land on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share, or

(2) In which you are a joint-owner.

Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

#### 18. Descriptive Headings

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

#### 19. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

#### 20. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on January 22, 1986.

**Edward Hews,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. 86-4214 Filed 2-26-86; 8:45 am]

BILLING CODE 3410-06-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 85-ASO-8]

#### Alteration of VOR Federal Airways; Georgia; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Correction to final rule.

**SUMMARY:** An editorial error was discovered in the description of Federal Airway V-5 in the Georgia area. This action corrects that error.

**EFFECTIVE DATE:** 0901 UTC, March 13, 1986.

**FOR FURTHER INFORMATION CONTACT:** Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

#### SUPPLEMENTARY INFORMATION:

#### History

Federal Register Document 86-8 was published on January 3, 1986, which amended and established several Federal Airways in south Georgia and north Florida to enhance the flow of air traffic in that area (51 FR 190). An editorial mistake was discovered in the description of airway V-5. This action corrects that error.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

**Adoption of the Correction****PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 86-8, as published in the **Federal Register** on January 3, 1986, (51 FR 190) is corrected as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. § 71.123 is amended as follows:

**V-5 [Amended]**

By removing the words "From Dublin, GA, via Athens, GA" and substituting the words "From Albany, GA, via Vienna, GA; Dublin, GA; Athens, GA".

Issued in Washington, DC, on February 14, 1986.

**Daniel J. Peterson,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 86-4197 Filed 2-26-86; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

[Airspace Docket No. 86-AWA-5]

**Redesignation of VOR Federal Airway, Louisiana**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action redesignates Federal Airway V-69W as V-305 in conjunction with efforts to comply with a resolution of the International Civil Aviation Organization to redesignate alternate airways. The action does not alter the configuration of the airway segment involved.

**EFFECTIVE DATE:** 0901 UTC, May 8, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brent A. Fernald, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8626.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations redesignates VOR Federal Airway V-69W as V-305 in conjunction with efforts to comply with a resolution of the International Civil Aviation Organization to redesignate alternate airways. The amendment has the effect

of renaming an existing airway route segment but does not in any way affect the configuration of that airway. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, VOR Federal airways.

**Adoption of the amendment****PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. § 71.123 is amended as follows:

**V-69 [Amended]**

By removing the words", including a W alternate via INT Shreveport 084° and El Dorado 223° radials"

**V-305 [Revised]**

From Shreveport, LA, via INT Shreveport 084° and El Dorado, AR, 218° radials; El Dorado; Little Rock, AR; Walnut Ridge, AR; Malden, MO; Conningham, KY; Pocket City, IN; INT Pocket City 046° and Bloomington, IN, 205° radials; Bloomington: INT Bloomington 025° and Indianapolis, IN, 185° radials; to Indianapolis.

Issued in Washington, DC, February 19, 1986.

**Daniel J. Peterson,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 86-4198 Filed 2-26-86; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF THE TREASURY****Customs Service****19 CFR Part 4**

[T.D. 86-54]

**Customs Regulations Amendment Adding Norway to List of Countries Whose Pleasure Vessels are Entitled To Be Issued U.S. Cruising Licenses**

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by adding Norway to the list of countries whose pleasure vessels may be issued U.S. cruising licenses. Customs has been informed that yachts used and employed exclusively as pleasure vessels belonging to any resident of the U.S. are allowed to arrive at and depart from Norwegian ports and cruise in the waters of Norway without being subjected to formal entry and clearance procedures. Therefore, Customs is extending reciprocal privileges to pleasure vessels belonging to any resident of Norway.

**EFFECTIVE DATE:** These privileges became effective for Norway on December 18, 1985.

**FOR FURTHER INFORMATION CONTACT:** John Mathis, Carriers, Drawback and Bonds Division (202-566-5706), U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

**SUPPLEMENTARY INFORMATION:****Background**

Section 4.94(a), Customs Regulations (19 CFR 4.94(a)), provides that U.S. vessels documented as yachts, used exclusively for pleasure, not engaged in any trade, and not violating the customs or navigation laws of the U.S. may proceed from port to port in the U.S. or to foreign ports without entering and clearing, as long as they have not visited hovering vessels.

Generally, foreign-flag yachts entering the U.S. are required to comply with the laws applicable for foreign vessels arriving at, departing from, proceeding between ports of the U.S. However, as provided in § 4.94(b), Customs

Regulations (19 CFR 4.94(b)), pleasure vessels from certain countries may be issued cruising licenses which exempt them from formal entry and clearance procedures (e.g., filing manifests, obtaining permits to proceed and paying entry and clearance fees) at all but the first port of entry in the U.S. Yachts or pleasure vessels not carrying passengers or merchandise in trade are exempt from paying tonnage tax and light money in any case pursuant to § 4.21(b)(5), Customs Regulations (19 CFR 4.21(b)(5)). Cruising licenses are available to pleasure vessels of countries which extend reciprocal privileges to U.S. pleasure vessels. A list of these countries is set forth in § 4.94(b).

By diplomatic note dated November 29, 1985, the Norwegian Royal Ministry of Foreign Affairs informed the American Embassy in Oslo, Norway, that the Government of Norway permits yachts used and employed exclusively as pleasure vessels and belonging to any resident of the United States to arrive at and depart from ports of Norway and cruise the waters of Norway without entering and clearing Norwegian Customs, and without the payment of any charges for entering or clearing, dues, duty per ton, tonnage taxes, or charges for cruising licenses. The embassy conveyed this information to the Department of State, which in turn informed Customs Headquarters by a letter dated December 13, 1985. The Carriers, Drawback and Bonds Division of Customs is of the opinion that satisfactory evidence has been furnished to establish the reciprocity required in § 4.94(b). Therefore, on January 14, 1986, the Director of the division determined that, effective retroactively to December 18, 1985, Norway should be added to the list of countries set forth in § 4.94(b).

By virtue of the authority vested in the President by section 5 of the Act of May 28, 1908, 35 Stat. 425, as amended (46 U.S.C. 104), the President has delegated the authority to issue these cruising licenses to the Secretary of the Treasury by E.O. 10289, September 17, 1951. By Treasury Department Order 165-25, the Secretary of the Treasury delegated authority to the Commissioner of Customs to prescribe regulations relating to § 4.94(b) and other sections of the Customs Regulations relating to lists of countries entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82-201), dated October 13, 1982, the Commissioner

delegated authority to amend this section to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then redelegated it to the Director, Regulations Control and Disclosure Law Division.

#### Finding

On the basis of the information received from the Government of Norway and the Department of State, as described above, it has been determined that the United States is in possession of satisfactory evidence regarding the passage of U.S. pleasure vessels through the ports and waters of Norway without their being subjected to formal entry and clearance procedures. Therefore, Norway is added to the list of countries whose pleasure vessels may be issued U.S. cruising licenses.

#### Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely implements a statutory requirement and involves a matter in which the majority of the public is not particularly interested, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary. Further, for the same reasons good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1).

#### The Regulatory Flexibility Act

This document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). That Act does not apply to any regulation such as this for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), or any other statute.

#### Executive Order 12291

This amendment does not meet the criteria for a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a major impact analysis is not required.

#### Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

#### List of Subjects in 19 CFR Part 4

Customs inspection and duties, Imports, Vessels, Yachts.

## PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The authority citation for Part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. 3, 2103. \* \* \*

Section 4.94 also issued under 19 U.S.C. 1433, 1434, 1435, 1441, 46 U.S.C. 91, 104, 313, 314. \* \* \*

#### § 4.94 [Amended]

2. Section 4.94(b), Customs Regulations (19 CFR 4.94(b)), is amended by inserting, in appropriate alphabetical order, the word, "Norway", to the list of countries whose yachts or pleasure vessels may be issued U.S. cruising licenses.

Dated February 20, 1986.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 86-4262 Filed 2-26-86; 8:45 am]

BILLING CODE 4820-02-M

## 19 CFR Parts 12 and 178

[T.D. 86-52]

### Customs Regulations Amendments Concerning Convention on Cultural Property Implementation Act

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

**SUMMARY:** This document amends the Customs Regulations by adding provisions to implement the Convention on Cultural Property Implementation Act. The Convention addressed the problem of illicit importing and exporting of items of cultural property, that is, items of importance for archaeology, prehistory, history, literature, art, or science. These regulations are designed to prohibit illicit traffic in cultural property while allowing the exchange of natural treasures for legitimate scientific, educational, and cultural purposes. The regulations are effective for all importations of cultural property, and archaeological and ethnological material, subject to the Convention.

**EFFECTIVE DATE:** March 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** Legal Aspects: Samuel Orandle, Entry Procedures and Penalties Division (202-566-5765); Operational Aspects: Louis Alfano, Duty Assessment Division (202-566-8651); U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

## SUPPLEMENTARY INFORMATION:

## Background

Beginning in the late 1960's, the U.S. began participating in negotiations, sponsored by the United Nations Educational, Scientific and Cultural Organization (UNESCO), addressing the problem of illicit international trade in cultural property. Cultural property was defined as property which, on religious or secular grounds, is specifically designated by a country as being important in the archaeology, prehistory, history, literature, art, or science of that country.

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, clandestine excavation of archaeological sites and accompanying illegal importing and exporting.

There has been growing concern in the U.S. regarding the need for protecting endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been recent pillaging has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of the museum, archaeological, and scholarly communities, was recognized by the President and Congress. Codes of ethics and professional standards were formally developed by these communities. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in negotiations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub. L. 97-446, 96 Stat. 2329 at 2350). The spirit of the Convention was enacted into law to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance not only to the nations whence they originate, but also to greater international understanding of mankind's common heritage. In 1983 the U.S. became the first major art importing country to implement the 1970 Convention.

It was with these goals in mind that Customs issued interim regulations to carry out the policies of the Act. The interim regulations were published in the *Federal Register* as T.D. 85-107 on June 25, 1985 (50 FR 26193), and took effect immediately. However, comments on the interim regulations were invited for consideration before final regulations were issued.

## Analysis of Comments

One commenter conveyed strong support for the intent of the regulations while expressing a general concern for what he termed "weaknesses and ambiguities". However, the commenter stated the weakness was the result of the Convention and the implementing Act, and therefore, could not be corrected in the regulations. Customs does not believe the regulations are weak. However, we cannot address specifics since the commenter did not raise any specific points.

The remaining 4 commenters were more detailed in their submissions. Comments they raised and Customs replies are as follows.

*Comment:* The definition of "museum" in § 12.104(e) should be attributed to its source, the Museum Services Act (Pub. L. 94-462, 20 U.S.C. 968).

*Reply:* Customs agrees and has added the reference. Also, Customs is adopting a comment that clarifies the point that "recognized museum" under the Act is synonymous with "museum".

*Comment:* The regulations should clarify how the Secretary of the Treasury will select a museum or other institution to temporarily hold a seized article of archaeological or ethnological material, or article of seized cultural property. Also, the regulations should provide for reimbursement to a museum or institution holding such an article or piece of property if the object requires special care or more security than normal.

*Reply:* As written, § 12.104f contains reference to the two basic criteria the Secretary will use in determining which museum or institution, if any, will be given an article or material seized under these regulations, for temporary display. These factors are: the safety that will be provided the article or material, and the museum or institution's assurances, backed by a sufficient bond, that the article or material will be returned to the Secretary upon request. This decision is left to the Secretary's discretion and these regulations are not the proper forum for a listing of specifications concerning museums or institutions. The Secretary will consider such requests by museums or institutions on a case-by-case basis.

As to the comment requesting a regulation providing financial assistance to a museum or institution seeking to temporarily house a seized article or material, Customs is aware of no statutory authority requiring that such aid be made available. To the contrary, Customs believes such a provision is contraindicated by the Secretary's requirement of selecting a museum or institution that is financially able to assure the item's safe return.

*Comment:* Customs failure to prepare a regulatory impact statement is improper. The regulations will have the kind of impact which requires a regulatory impact statement.

*Reply:* Customs disagrees. These regulations will only have a minor impact on the general public. Persons who trade in archaeological and ethnological material, or in cultural property, will be more affected. Certain documentation or evidence will be required upon importation of articles or materials designated by agreements or emergency actions as coming under the protection of the Act. Customs would characterize this as a minor impact. Customs does not believe that these regulations will result in any significant economic costs, and no comments to the contrary were submitted.

*Comment:* Customs Background statement in the interim regulations was unwarranted and improper. Although the text of the interim regulations correctly specifies which prohibitions pertain to which types of property, Customs Background statement may lead to unnecessary confusion.

*Reply:* Customs agrees that the term, "cultural property", may have been used broadly in the Background section of the interim regulations. We regret if any statements made may have appeared too strongly worded.

The intent of the Background section was to convey the urgency of the problem the interim regulations were designed to address. We do not believe the wording was misleading or confusing to a degree requiring that these regulations be reissued with another opportunity to comment. In fact, the commenter raising these points also states the interim regulations themselves correctly set out the prohibitions pertaining to different types of articles or materials.

*Comment:* Portions of the interim regulations are inconsistent with the Act.

*Reply:* Customs agrees that there are some instances where the interim regulations diverged slightly from the Act. To correct this, the following

changes have been made to the final regulations.

(1) In § 12.104(a)(1), the word, "and" is being added after paragraph (a)(1)(ii), and the phrase, "or in addition to paragraphs (a)(1) (i) and (ii) of this section" is being added after paragraph (a)(1)(iii).

(2) In § 12.104(a), reference is made to articles of cultural property stolen from "such institution". The corrected phrase in the final regulations is "such museum, monument, or institution".

(3) In § 12.104(b) in the interim regulations, a phrase was omitted. The proper wording of § 12.104(b) as it appears in the final regulations is as follows: No archaeological or ethnological material designated pursuant to 19 U.S.C. 2604 and listed in § 12.104g, that is exported (whether or not such exportation is to the U.S.) from the State Party after the designation of such material under 19 U.S.C. 2604 may be imported into the U.S. unless the State Party issues a certificate or other documentation which certifies that such exportation was not in violation of the laws of the State Party.

(4) In § 12.104b, the introductory paragraph is changed to read, "The following is a list of State Parties and the date of entry into force for each State Party:". Also, Zambia is added in proper alphabetical order with a date of entry into force of September 21, 1985.

(5) In § 12.104c(a), the phrase, "is filed with the district director," is moved from the end of the paragraph to immediately after the word "Secretary".

(6) In § 12.104d, reference is made to the, "certificate or evidence". The corrected phrase in the final regulations is "certificate, documentation, or evidence".

(7) In § 12.104g, the word "Convention" is changed to "Convention on Cultural Property Implementation Act" to properly reflect the source of the protections provided items and categories of protected materials.

*Comment:* One commenter requested clarification of whether the documentation accompanying an importation of designated archaeological or ethnological material might also apply to importations of cultural property. The commenter, representing research libraries, was concerned over the burden a broad interpretation of these regulations would impose on research libraries obtaining rare manuscripts and incunabula from sources outside the U.S.

*Reply:* The documentation required for importations of designated archaeological and ethnological material does not apply to importations of rare

manuscripts, incunabula, or other items of cultural property.

After consideration of all of the comments received in response to publication of the interim regulations, and further review of the matter, it has been determined to adopt the regulations in final form with the modifications previously discussed.

#### Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

#### Regulatory Flexibility Act

Pursuant to section 3 of the Regulatory Flexibility Act (Pub. L. 96-353, 5 U.S.C. 301 *et seq.*), it is hereby certified that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

#### List of Subjects

##### 19 CFR Part 12

Customs duties and inspections, Imports, Exports.

##### 19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

#### Amendments to the Regulations

Parts 12 and 178, Customs Regulations (19 CFR Parts 12, 178), were amended on an interim basis by the publication of T.D. 85-107, in the *Federal Register* on June 25, 1985 (50 FR 26193). These parts are now amended in final in the following manner:

#### PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (Gen. Hdnote, 11, Tariff Schedules of the United States), 1624. \* \* \* § 12.104 *et seq.* also issued under 19 U.S.C. 2612.

2. Part 12 is further amended by adding a new unit titled, "Cultural Property", designated §§ 12.104-12.104i to read as follows:

#### Cultural Property

Sec.

12.104 Definitions.

12.104a Importations prohibited.

12.104b State Parties to the Convention.

12.104c Importations permitted.

12.104d Importation of articles; time in which to comply.

Sec.

12.104e Seizure and forfeiture.

12.104f Temporary disposition of materials and articles.

12.104g Specific items or categories designated by agreements or emergency actions.

12.104h Exempt materials and articles.

12.104i Enforcement.

#### § 12.104 Definitions.

For purposes of §§ 12.104 through 12.104i:

(a) The term, "archaeological or ethnological material of the State Party" to the 1970 UNESCO Convention means—

(1) Any object of archaeological interest. No object may be considered to be an object of archaeological interest unless such subject—

(i) Is of cultural significance;

(ii) Is at least 250 years old; and

(iii) Was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water; or in addition to paragraphs (a)(1) (i) and (ii) of this section;

(iv) Meets such standards as are generally acceptable as archaeological such as, but not limited to, artifacts, buildings, parts of buildings, or decorative elements, without regard to whether the particular objects are discovered by exploration or excavation;

(2) Any object of ethnological interest. No object may be considered to be an object of ethnological interest unless such object—

(i) Is the product of a tribal or nonindustrial society, and

(ii) Is important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development or history of that people;

(3) Any fragment or part of any object referred to in paragraph (a) (1) or (2) of this section which was first discovered within, and is subject to export control by the State Party.

(b) The term "Convention" means the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property adopted by the General Conference of the United States Nations Educational, Scientific, and Cultural Organization at its sixteenth session (823 U.N.T.S. 231 (1972)).

(c) The term "cultural property" includes articles described in Article 1 (a) through (k) of the Convention, whether or not any such article is specifically designated by any State

Party for the purposes of Article 1.

Article 1 lists the following categories:

(1) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;

(2) Property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;

(3) Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;

(4) Elements of artistic or historical monuments or archaeological sites which have been dismembered;

(5) Antiquities more than 100 years old, such as inscriptions, coins and engraved seals;

(6) Objects of ethnological interest;

(7) Property of artistic interest, such as:

(i) Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

(ii) Original works of statutory art and sculpture in any material;

(iii) Original engravings, prints and lithographs;

(iv) Original artistic assemblages and montages in any material;

(8) Rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;

(9) Postage, revenue and similar stamps, singly or in collections;

(10) Archives, including sound, photographic and cinematographic archives;

(11) Articles of furniture more than 100 years old and old musical instruments.

(d) The term "designated archaeological or ethnological material" means any archaeological or ethnological material of the State Party which—

(1) Is—

(i) Covered by an agreement under 19 U.S.C. 2602 that enters into force with respect to the U.S., or

(ii) Subject to emergency action under 19 U.S.C. 2603 and

(2) Is listed by regulation under 19 U.S.C. 2604.

(e) The term "museum" means a public or private nonprofit agency or institution organized on a permanent basis for essentially educational or esthetic purposes, which, utilizing a professional staff, owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular

basis [Museum Services Act; Pub. L. 94-462; 20 U.S.C. 968]. For the purposes of these regulations, the term "recognized museum" under the Cultural Property Implementation Act shall be synonymous with "museum".

(f) The term "Secretary" means the Secretary of the Treasury or his delegate, the Commissioner of Customs.

(g) The term "State Party" means any nation which has ratified, accepted, or acceded to the 1970 UNESCO Convention.

(h) The term "United States" or "U.S.", includes the customs territory of the United States, the U.S. Virgin Islands and any territory or area the foreign relations for which the U.S. is responsible.

**§ 12.104a Importations prohibited.**

(a) No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which was stolen from such museum, monument, or institution after April 12, 1983, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the U.S.

(b) No archaeological or ethnological material designated pursuant to 19 U.S.C. 2604 and listed in § 12.104g, that is exported (whether or not such exportation is to the U.S.) from the State Party after the designation of such material under 19 U.S.C. 2604 may be imported into the U.S. unless the State Party issues a certificate or other documentation which certifies that such exportation was not in violation of the laws of the State Party.

**§ 12.104b State Parties to the Convention.**

(a) The following is a list of State Parties, and the date of entry into force for each State Party:

State party	Date of entry into force
Algeria.....	Sept. 24, 1974.
Argentina.....	Apr. 11, 1973.
Bolivia.....	Jan. 4, 1977.
Brazil.....	May 16, 1973.
Bulgaria.....	Apr. 24, 1972.
Cameroon.....	Aug. 24, 1972.
Canada.....	June 28, 1978.
Central African Republic.....	May 1, 1972.
Cuba.....	Apr. 30, 1980.
Cyprus.....	Jan. 19, 1980.
Czechoslovakia.....	May 14, 1977.
Democratic Kampuchea.....	Dec. 26, 1972.
Democratic People's Republic of Korea.....	Aug. 13, 1983.
Dominican Republic.....	June 7, 1973.
Ecuador.....	Apr. 24, 1972.
Egypt.....	July 5, 1973.
El Salvador.....	May 20, 1978.
German Democratic Republic.....	Apr. 16, 1974.
Greece.....	Sept. 5, 1981.
Guatemala.....	Apr. 14, 1985.
Guinea.....	June 18, 1979.
Honduras.....	June 19, 1979.
Hungary.....	Jan. 23, 1979.

State party	Date of entry into force
India.....	Apr. 24, 1977.
Iran.....	Apr. 27, 1975.
Iraq.....	May 12, 1973.
Italy.....	Jan. 2, 1979.
Jordan.....	June 15, 1974.
Kuwait.....	Sept. 22, 1972.
Mauritania.....	July 27, 1977.
Mauritius.....	May 27, 1978.
Mexico.....	Jan. 4, 1973.
Nepal.....	Sept. 23, 1976.
Nicaragua.....	July 19, 1977.
Niger.....	Jan. 16, 1973.
Nigeria.....	Apr. 24, 1972.
Oman.....	Sept. 2, 1978.
Pakistan.....	July 30, 1981.
Panama.....	Nov. 13, 1973.
Peru.....	Jan. 24, 1980.
Poland.....	Apr. 30, 1974.
Portugal.....	Mar. 9, 1986.
Qatar.....	July 20, 1977.
Republic of Korea.....	May 14, 1983.
Saudi Arabia.....	Dec. 8, 1976.
Senegal.....	Mar. 9, 1985.
Socialist People's Libyan Arab Jamahiriya.....	Apr. 8, 1973.
Spain.....	Apr. 10, 1986.
Sri Lanka.....	July 7, 1981.
Syrian Arab Republic.....	May 21, 1975.
Tunisia.....	June 10, 1975.
Turkey.....	July 21, 1981.
United Republic of Tanzania.....	Nov. 2, 1977.
United States of America.....	Dec. 2, 1983.
Uruguay.....	Nov. 9, 1977.
Yugoslavia.....	Jan. 3, 1973.
Zaire.....	Dec. 23, 1974.
Zambia.....	Sept. 21, 1985.

(b) Additions to and deletions from the list of State Parties will be accomplished by Federal Register notice, from time to time, as the necessity arises.

**§ 12.104c Importations permitted.**

Designated archaeological or ethnological material for which entry is sought into the U.S., will be permitted entry if at the time of making entry:

(a) A certificate, or other documentation, issued by the Government of the country of origin of such material in a form acceptable to the Secretary is filed with the district director, such form being, but not limited to, an affidavit, license, or permit from an appropriate, authorized State Party official under seal, certifying that such exportation was not in violation of the laws of that country, or

(b) Satisfactory evidence is presented to the district director that such designated material was exported from the State Party not less than 10 years before the date of such entry and that neither the person for whose account the material is imported (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before that date of entry, or

(c) Satisfactory evidence is presented to the district director that such designated material was exported from the State Party on or before the date on which such material was designated under 19 U.S.C. 2604.

(d) The term "satisfactory evidence" means—

(1) For purposes of paragraph (b) of this section—

(i) One or more declarations under oath by the importer, or the person for whose account the material is imported, stating that, to the best of his knowledge—

(A) The material was exported from the State Party not less than 10 years before the date of entry into the U.S., and

(B) Neither such importer or person (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before the date of entry of the material; and

(ii) A statement provided by the consignor, or person who sold the material to the importer, which states the date, or, if not known, his belief, that the material was exported from the State Party not less than 10 years before the date of entry into the U.S. and the reasons on which the statement is based; and

(2) For purposes of paragraph (c) of this section—

(i) One or more declarations under oath by the importer or the person for whose account the material is to be imported, stating that, to the best of his knowledge, the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and

(ii) A statement by the consignor or person who sold the material to the importer which states the date, or if not known, his belief, that the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and the reasons on which the statement is based.

(e) *Related persons.* For purposes of paragraphs (b) and (d) of this section, a person shall be treated as a related person to an importer, or to a person for whose account material is imported, if such person—

(1) Is a member of the same family as the importer or person of account, including, but not limited to, membership as a brother or sister (whether by whole or half blood), spouse, ancestor, or lineal descendant;

(2) Is a partner or associate with the importer or person of account in any partnership, association, or other venture; or

(3) Is a corporation or other legal entity in which the importer or person of account directly or indirectly owns, controls, or holds power to vote 20 percent or more of the outstanding voting stock or shares in the entity.

**§ 12.104d Detention of articles; time in which to comply.**

In the event an importer cannot produce the certificate, documentation, or evidence required in § 12.104c at the time of making entry, the district director shall take the designated archaeological or ethnological material into Customs custody and send it to a bonded warehouse or public store to be held at the risk and expense of the consignee until the certificate, documentation, or evidence is presented to such officer. The certificate, documentation, or evidence must be presented within 90 days after the date on which the material is taken into Customs custody, or such longer period as may be allowed by the district director for good cause shown.

**§ 12.104e Seizure and forfeiture.**

(a) Whenever any designated archaeological or ethnological material is imported into the U.S. in violation of 19 U.S.C. 2606, and the importer states in writing that he will not attempt to secure the certificate, documentation, or evidence required by § 12.104c, or such certificate, documentation, or evidence is not presented to the district director before the expiration of the time provided in § 12.104d, the material shall be seized and summarily forfeited to the U.S. in accordance with Part 162 of this chapter.

(1) Any designated archaeological or ethnological material which is forfeited to the U.S. shall, in accordance with the provisions of Title III of Pub. L. 97-446, 19 U.S.C. 2609(b):

(i) First be offered for return to the State Party;

(ii) If not returned to the State Party be returned to a claimant with respect to whom the designated material was forfeited if that claimant establishes—

(A) Valid title to the material;

(B) That the claimant is a bona fide purchaser for value of the material; or

(iii) If not returned to the State Party under paragraph (a)(1)(i) of this section or to a claimant under paragraph (a)(1)(ii) of this section, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws. No return of material may be made under paragraph (a)(1) (i) or (ii) of this section unless the State Party or claimant, as the case may be, bears the expenses incurred incident to the return and delivery, and complies with such other requirements relating to the return as the Secretary shall prescribe.

(b) Whenever any stolen article of cultural property is imported into the U.S. in violation of 19 U.S.C. 2607, such cultural property shall be seized and

forfeited to the U.S. in accordance with Part 162 of this chapter.

(1) Any stolen article of cultural property which is forfeited to the U.S. shall, in accordance with the provisions of Title III of Pub. L. 97-446, 2609(c):

(i) First be offered for return to the State Party in whose territory is situated the institution referred to in 19 U.S.C. 2607 and shall be returned if that State Party bears the expenses incident to such return and delivery and complies with such other requirements relating to the return as the Secretary prescribes; or

(ii) If not returned to such State Party, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

**§ 12.104f Temporary disposition of materials and articles.**

Pending a final determination as to whether any archaeological or ethnological material, or any article of cultural property, has been imported into the U.S. in violation of 19 U.S.C. 2606 or 19 U.S.C. 2607, the Secretary may permit such material or article to be retained at a museum or other cultural or scientific institution in the U.S. if he finds that sufficient safeguards will be taken by the museum or institution for the protection of such material or article; and sufficient bond is posted by the museum or institution to ensure its return to the Secretary.

**§ 12.104g Specific items or categories designated by agreements or emergency actions.**

(a) [Reserved]

(b) A list of specific items or categories designated by agreements or emergency actions as coming under the protection of the Convention on Cultural Property Implementation Act will from time to time, as the necessity arises, be published in the *Federal Register* by means of a general notice.

**§ 12.104h Exempt materials and articles.**

The provisions of these regulations shall not apply to—

(a) Any archaeological or ethnological material or any article of cultural property which is imported into the U.S. for temporary exhibition or display, if such material or article is rendered immune from seizure under judicial process by the U.S. Information Agency, Office of the General Counsel and Congressional Liaison, pursuant to the Act entitled "An Act to render immune from seizure under judicial process certain objects of cultural significance imported into the United States for temporary display or exhibition, and for other purposes", approved October 19, 1965 (22 U.S.C. 2459); or

(b) Any designated archaeological or ethnological material or any article of cultural property imported into the U.S. if such material or article—

(1) Has been held in the U.S. for a period of not less than 3 consecutive years by a recognized museum or religious or secular monument or similar institution, and was purchased by that institution for value, in good faith, and without notice that such material or article was imported in violation of these regulations, but only if—

(i) The acquisition of such material or article has been reported in a publication of such institution, any regularly published newspaper or periodical with a circulation of at least 50,000, or a periodical or exhibition catalog which is concerned with the type of article or materials sought to be exempted from these regulations,

(ii) Such material or article has been exhibited to the public for a period or periods aggregating at least 1 year during such 3-year period, or

(iii) Such article or material has been cataloged and the catalog material made available upon request to the public for at least 2 years during such 3-year period;

(2) If paragraph (b)(1) of this section does not apply, has been within the U.S. for a period of not less than 10 consecutive years and has been exhibited for not less than 5 years during such period in a recognized museum or religious or secular monument or similar institution in the U.S. open to the public;

(3) If paragraph (b)(1) and (2) of this section do not apply, has been within the U.S. for a period of not less than 10 consecutive years and the State Party concerned has received or should have received during such period fair notice (through such adequate and accessible publication, or other means, as the Secretary or his designee shall prescribe) of its location within the U.S.; and

(4) If none of the preceding subparagraphs apply, has been within the U.S. for a period of not less than 20 consecutive years and the claimant establishes that it purchased the material or article for value without knowledge or reason to believe that it was imported in violation of law.

#### § 12.104i Enforcement.

In the customs territory of the United States, and in the U.S. Virgin Islands, the provisions of these regulations shall be enforced by appropriate customs officers. In any other territory or area within the U.S., but not within such customs territory or the U.S. Virgin Islands, such provisions shall be

enforced by such persons as may be designated by the President.

Part 178, Customs Regulations (19 CFR Part 178), was also amended by the interim regulations issued as T.D. 85-107. The Office of Management and Budget control number issued to these regulations remains the same is retained in § 178.2.

#### PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1824, 44 U.S.C. 3501 et seq.

#### § 178.2 [Amended]

2. Section 178.2 is amended by inserting, in proper numerical order, the following entry:

19 CFR section	description	OMB control No.
12.104c; 12.104e	Certificates and other documentation relating to the importation of items of cultural property.	1515-0147

Alfred R. De Angelus,  
Acting Commissioner of Customs.

Approved February 3, 1986.

Francis A. Keating, II,  
Assistant Secretary of the Treasury.  
[FR Doc. 86-4025 Filed 2-26-86; 8:45 am]

BILLING CODE 4820-02-M

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Food and Drug Administration

#### 21 CFR Part 558

#### New Animal Drugs for Use in Animal Feeds; Salinomycin and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration.  
ACTION: Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by A. H. Robins Co., providing for use of a combination of previously approved premixes containing salinomycin and bacitracin methylene disalicylate (bacitracin MD) for making finished feed for broiler chickens. The feed is to be used for prevention of coccidiosis and for improved feed efficiency.

**EFFECTIVE DATE:** February 27, 1986.

**FOR FURTHER INFORMATION CONTACT:** Lonnie W. Luther, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

**SUPPLEMENTARY INFORMATION:** A. H. Robins Co., 1405 Cummings Dr., P.O. Box 26609, Richmond, VA 23261, filed a supplement to NADA 135-746 providing for combining separately approved salinomycin and bacitracin MD premixes in making a finished broiler feed. The drug levels in the finished feed will be salinomycin, 40 to 60 grams per ton and bacitracin MD, 4 to 50 grams per ton. The indications for feed use are prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. Maxima*, *E. brunetti*, and *E. mivati*, and for improved feed efficiency. The supplemental NADA is approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

#### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 is revised to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.550 by adding new paragraph (c)(1)(vi) to read as follows:

## § 558.550 Salinomycin.

(c) \* \* \*  
(1) \* \* \*

(vi)(a) Amount per ton. Salinomycin 40 to 60 grams and bacitracin methylene disalicylate 4 to 50 grams.

(b) Indications for use. For the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and for improved feed efficiency.

(c) Limitations. Feed continuously as sole ration. Not approved for use with pellet binders. Do not feed to layers. May be fatal if accidentally fed to adult turkeys or horses. Bacitracin MD as provided by No. 046573 in § 510.600(c) of this chapter.

Dated: February 20, 1986.

Marvin A. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-4207 Filed 2-26-86; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF STATE

## 22 CFR Part 41

[Department Regulation 108.847]

## Documentation of Nonimmigrants; Treaty Traders and Investors

AGENCY: Department of State.

ACTION: Final rule.

**SUMMARY:** This final rule amends the language in 22 CFR §§ 41.40(a)(2) and 41.41(a)(3) to read "at least fifty percent owned". The new language will extend eligibility for E visa classification (treaty traders and investors) to employees of organizations which are owned at least fifty percent by a national or nationals of the same country, or to employees of joint ventures which are equally owned by two parties of differing nationalities. The language will be more consistent with modern realities and the needs of international business, and more in keeping with the intent of treaty provisions because it will enable employees of joint ventures and partnerships of two equal partners to qualify as treaty traders or investors.

**EFFECTIVE DATE:** February 27, 1986.

**FOR FURTHER INFORMATION CONTACT:** Stephen K. Fischel, Chief, or Guida Evans-Magher, Consular Affairs Specialist, Legislation and Regulations Division, Visa Services, 2401 E Street NW, Washington, DC 20520. (202) 663-1204, 663-1206.

**SUPPLEMENTARY INFORMATION:** On December 4, 1985, (50 FR 49705) the Department issued proposed regulations [SD-194] to change the present language in 22 CFR 41.40 and 41.41 which requires that an organization must be "principally owned" by a national or nationals of the same treaty country, to read "at least fifty percent owned" by a national or nationals of the same treaty country. The new language allowed for more visa applicants to qualify for E visa classification under section 101(a)(15)(E) of the Immigration and Nationality Act, (8 U.S.C. 1101(a)(15)(E)) by extending eligibility of such classification to employees of organizations owned at least fifty percent by a national or nationals of the same country, or to employees of joint ventures which are equally owned by two parties of differing nationalities. Interested persons were given until January 10, 1986 to submit comments.

## Discussion of Comments

Seven comments were received. Six comments, which included comments from the American Immigration Lawyers Association on behalf of its membership, were enthusiastically in favor of the proposed language which, in addition to lowering the percentage of ownership, extends the eligibility of E visa (treaty traders and investors) classification to employees of joint ventures equally owned by two parties of differing nationalities.

The lone dissenter based his objections on the Supreme Court decision in the case of *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, 50 U.S. LAW WEEK 4643 (1932). Although the case speaks to the responsibilities of corporations incorporated in the United States, it does not address the determination of nationality of "organizations" or "corporations" for purposes of the Immigration and Nationality Act. Thus, the provisions of section 101(a)(15)(E) and the proposed regulations are unaffected by the *Sumitomo* decision.

In light of the number of comments received and in view of the favorable responses, the Department is satisfied that the proposed regulations should be published as a final rule, since they bestow a benefit upon the affected parties. This rule is not considered to be a major rule under Executive Order 12291. In addition, the rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 22 CFR Part 41

Passports and Visas, Aliens, Nonimmigrants, Treaty Traders, Investors.

## Adoption of Amendments

## PART 41—[AMENDED]

In consideration of the foregoing, 22 CFR Part 41 is amended as follows:

1. The authority citation for Part 41 is revised to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; 109(b)(1), 91 Stat. 847.

## § 41.40 [Amended]

2. In the last sentence of paragraph (a)(2) of § 41.40 the word "principally", is replaced with the words "at least fifty percent".

## § 41.41 [Amended]

3. In paragraph (a)(3) of § 41.41, the word "principally", is replaced with the words "at least fifty percent".

Dated: February 18, 1986.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 86-4135 Filed 2-26-86; 8:45 am]

BILLING CODE 4710-06-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

## Office of the Secretary

24 CFR Parts 42, 43, 58, 280, 571, 850, 880, 881, 882, 883, and 941

[Docket No. R-86-1273; FR-2205]

## Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Technical Amendments

AGENCY: Office of the Secretary, HUD.

ACTION: Technical rule.

**SUMMARY:** Elsewhere in today's Federal Register, the Department is promulgating a final rule implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). Because the Uniform Act rule is being promulgated jointly with 16 other Federal agencies, it was not possible to include in that document technical amendments to conform cross-references elsewhere in the Department's regulations to the new sections in the Uniform Act regulation. The amendments following this preamble contain these necessary amendments.

**EFFECTIVE DATE:** May 1, 1986.

**FOR FURTHER INFORMATION CONTACT:** Melvin Geffner, Deputy Director

Relocation and Real Estate Division, Room 7174, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6336. (This is not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

Elsewhere in today's Federal Register, the Department of Housing and Urban Development is promulgating jointly with other Federal agencies a rule to implement cost-effective policies and procedures governing the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601). The rule applies to both direct Federal programs and projects and to federally-assisted programs and projects undertaken by State and local agencies.

Because the final rule removes Subpart A of 24 CFR Part 43 and completely revises 24 CFR Part 42 where HUD's old Uniform Act requirements were contained, cross-references contained in relocation requirements throughout HUD's regulations must be changed to reflect the new regulations issued today. Accordingly, this rule contains miscellaneous amendments to the Department's regulations to conform certain relocation provisions to those in the new Uniform Act regulations.

This rule also adds the Paperwork Reduction Act approval number for the paperwork collection requirements contained in the revised Uniform Act Rule.

#### Other Matters

##### Executive Order 12291

This rule does not constitute a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. 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 of 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.

##### Regulatory Flexibility Act of 1980

Under the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities because it is a

rule of procedure, which conforms cross references in certain relocation provisions in the Department's regulations to the new Uniform Act regulations.

##### National Environmental Policy Act of 1969

A Finding of No Significant Impact with respect to the environment is determined to be unnecessary under the terms of HUD regulations at 24 CFR 50.20(k). HUD regulations implement section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332.

##### HUD Semiannual Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 44166) under Executive order 12291 and the Regulatory Flexibility Act.

#### List of Subjects

##### 24 CFR Part 42

Administrative practices and procedure, Claims, Community development, Grant programs: Housing and community development, Loan programs: Housing and community development, Manufactured homes, Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements.

##### 24 CFR Part 43

Loan programs: Housing and community development, Relocation assistance; Seed-money loans.

##### 24 CFR Part 290

Mortgage insurance, Low and moderate income housing.

##### 24 CFR Part 58

Community development block grants, Grant programs: Housing and community development, Grant programs: Indians, Indians.

##### 24 CFR Part 850

Grant programs: Housing and community development, Relocation assistance; Rental housing, Low and moderate income housing, Cooperatives.

##### 24 CFR Part 880

Grant programs: Housing and community development, Rent subsidies, Low and moderate income housing, new construction.

##### 24 CFR Part 881

Grant programs: Housing and community development, Rent subsidies, Low and moderate income housing.

##### 24 CFR Part 882

Grant programs: Housing and community development, Housing, Mobile homes, Rent subsidies, Low and moderate income housing.

##### 24 CFR Part 883

Grant programs: Housing and community development, Rent subsidies, New construction and substantial rehabilitation, Low and moderate income housing.

##### 24 CFR Part 941

Loan programs: Housing and community development, Public housing, Prototype costs, Cooperative agreements, Turnkey.

Accordingly, the Department's regulations in Title 24 of the Code of Federal Regulations are amended as follows:

#### PART 42—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

1. The authority citation for Part 42 continues to read as follows:

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§§ 42.20, 42.102, 42.103, 42.104, 42.106, 42.107, 42.203, 42.205, 42.207 [Amended]

2. At the end of each section listed below, add the following phrase:

(Approved under OMB Control Number 2506-0011.)

Sections 42.20, 42.102, 42.103, 42.104, 42.106, 42.107, 42.203, 42.205, and 42.207.

#### PART 43—PROVISION OF REPLACEMENT HOUSING UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

3. The authority citation for Part 43 continues to read as follows:

Authority: Sec. 206(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4626(a)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

##### § 43.28 [Amended]

4. In the introductory paragraph of § 43.28, the phrase "§ 43.4 of this part" is removed and the phrase "§ 42.2 of this chapter" is added in its place.

**PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY HOUSING PROJECTS**

5. The authority citation for Part 290 continues to read as follows:

**Authority:** Secs. 202, 203, and 204, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1b, 1701z-11, and 1701z-12); secs. 207 and 211, National Housing Act (12 U.S.C. 1713 and 1715b); section 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

**§ 290.47 [Amended]**

6. In § 290.47(a), the phrase "24 CFR 42.20" is removed and the phrase "§ 42.2(j) of this chapter" is added in its place.

**PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES**

7. The authority citation for Part 571 continues to read as follows:

**Authority:** Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

**§ 571.602 [Amended]**

8. In § 571.602(a), the phrase "at 24 CFR 42.85" is removed and the phrase "in § 42.2(p) of this title" is added in its place.

**PART 850—HOUSING DEVELOPMENT GRANTS**

9. The authority citation for Part 850 continues to read as follows:

**Authority:** Sec. 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

**§ 850.35 [Amended]**

10. In § 850.35(d)(3), the phrase "24 CFR 42.85" is removed and the phrase "in 42.2(p) of this title" is added in its place.

**PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION**

11. The authority citation for Part 880 continues to read as follows:

**Authority:** Secs. 3, 5, and United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

**§ 880.209 [Amended]**

12. In the following table, remove the phrase indicated in the second column and add in its place the phrase indicated in the third column:

Section#	Remove	Add
880.209(a).....	At 24 CFR 42.85.....	In § 42.2(p) of this title.
880.209(b)(3).....	At 24 CFR 42.47.....	§ 42.2(e) of this title.
880.209(b)(4).....	At 24 CFR 42.303.....	In § 42.301 of this title.
880.209(b)(4).....	24 CFR 42.353.....	§ 42.302 of this title.

**PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION**

13. The authority citation for Part 881 continues to read as follows:

**Authority:** Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

**§ 881.209 [Amended]**

14. In the following table, remove the phrase indicated in the second column and add in its place the phrase indicated in the third column:

Section	Remove	Add
881.209(a).....	At 24 CFR 42.85.....	In § 42.2(p) of this title.
881.209(b)(3).....	At 24 CFR 42.47.....	§ 42.2(e) of this title.
881.209(b)(4).....	At 24 CFR 42.303.....	In § 42.301 of this title.
881.209(b)(4).....	24 CFR 42.353.....	§ 42.302 of this title.

**§ 881.709 [Amended]**

15. In § 881.709, in paragraph (a) remove the phrase "at 24 CFR 42.85" and add in its place "in § 42.2(p) of this title", in paragraph (h) remove the phrase "at § 42.453" and add in its place "in § 42.402(b) of this title"; and in paragraph (i) add a period after "Part 42" and remove the phrase "and the policies and procedures contained in HUD Handbook 1376.1, Relocation and Real Property Acquisition, September 1979."

**PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING**

16. The authority citation for Part 882 continues to read as follows:

**Authority:** Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

**§ 882.406 [Amended]**

17. In § 882.406(a), remove the phrase "at 24 CFR 42.85" and add the phrase "§ 42.2(p) of this title" in its place.

**PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES**

18. The authority citation for Part 883 continues to read as follows:

**Authority:** Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c,

and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

**§ 883.311 [Amended]**

19. In the following table, remove the phrase indicated in the second column and add in its place the phrase indicated in the third column:

Section	Remove	Add
883.311(a).....	At 24 CFR 42.85.....	In § 42.2(p) of this title.
883.311(b)(3)(i).....	24 CFR 42.47.....	§ 42.2(e) of this title.
883.311(b)(4).....	At 24 CFR 42.303.....	In § 42.301 of this title.
883.311(b)(4).....	24 CFR 42.353.....	§ 42.302 of this title.

**PART 941—PUBLIC HOUSING DEVELOPMENT**

20. The authority citation for Part 941 continues to read as follows:

**Authority:** Secs. 4, 5, and 9, United States Housing Act of 1937 (42 U.S.C. 1437b, 1437e, and 1437q); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

21. In § 941.207, the section heading, and paragraphs (a), (b)(1), and (c) are revised as set forth below:

**§ 941.207 Relocation and acquisition.**

(a) *Applicability of Uniform Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) (42 U.S.C. 4601-4655) and HUD implementing regulations in Part 42 of this title apply to the acquisition of real property by a PHA for a project assisted under this Part and to any displacement that results from such acquisition.

(b) \* \* \*  
 (1) PHA acquisition of a site or property that results from a voluntary transaction as described in § 42.101(a)(1) of this title, except the Uniform Act relocation requirements do apply to the displacement of any renter-occupant of such site or property. For purposes of relocation eligibility for such renter-occupants, the "initiation of negotiations" shall be the date of the seller's acceptance of the PHA's written offer to purchase the property.

(c) *Notices.* Persons scheduled to be displaced shall be given written notices and information by the PHA as specified in § 42.203 of this title. Persons not scheduled to be displaced shall be informed of the acquisition and given notice by the PHA of their opportunity to enter into a lease with the PHA, if the PHA has determined their eligibility under Part 960 of this chapter.

\* \* \* \* \*

Dated: February 21, 1986.

Samuel R. Pierce, Jr.  
Secretary.

[FR Doc. 86-4216 Filed 2-26-86; 8:45 am]

BILLING CODE 4210-32-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[T.D. 8067]

#### Income Tax; Accounting for Long-Term Contracts

##### Correction

In FR Doc. 85-30814 beginning on page 376 in the issue of Monday, January 6, 1986, make the following corrections:

1. On page 379, third column, in the third line of § 1.451-3(b)(2)(i)(C),

"followed" should read "following";

2. On page 386, third column, in the third line of § 1.451-3(d)(6)(iii)(H), "long-time" should read "long-term";

3. On page 390, first column, twenty-third line from the bottom of the column in § 1.451-3(d)(9)(x)(B), "section" was misspelled; and

4. On page 391, third column, in the ninth line of § 1.451-3(e)(2), Example (5), "circumstances" was misspelled.

BILLING CODE 1505-01-M

## POSTAL SERVICE

### 39 CFR Parts 927 and 931

#### Miscellaneous Changes to Rules of Procedure

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is adopting this final rule to make it clear that the rules of procedure for reporting infractions by a carrier transporting mail by vessel under the Postal Contracting Manual are likewise applicable to a common carrier by water who fails or refuses to transport the mail when required to do so under 39 U.S.C. 5603. In addition, certain obsolete office and department names are updated, and certain other minor changes are made.

**EFFECTIVE DATE:** March 28, 1986.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Vandamm, (202) 268-3021.

## List of Subjects in 39 CFR Part 927

Administrative practice and procedure, Government contracts, Maritime carriers, Penalties, Postal Service.

For the reasons set out above, the Postal Service amends title 39 CFR as follows:

### PART 927—RULES OF PROCEDURE RELATING TO FINES, DEDUCTIONS, AND DAMAGES

1. In subchapter N, the undesignated center heading for Parts 927 and 931 is revised to read as follows:

#### Rules of Procedure Before the Mail Processing Department

2. The authority citation for Part 927 is revised to read as follows:

Authority: 39 U.S.C. 401, 2601, 5401-5403, 5603, 5604; 49 U.S.C. 1375, 1471.

3. In § 927.1, in the last sentence of paragraph (b), strike out "Office of Transportation Services" and insert "Office of Transportation and International Services" in lieu thereof; in the first and second sentences of paragraph (c), strike out "Office of Transportation Service(s)" and insert "Office of Transportation and International Services" in lieu thereof; and revise paragraph (a) to read as follows:

#### § 927.1 Noncontractual carriage of mail by vessel.

(a) *Report of infraction.* Where evidence is found or reported that a carrier of mail by vessel which has transported or been required to transport mail pursuant to the provisions of section 19-504, Postal Contracting Manual or 39 U.S.C. 5603, has failed or refused to transport the mail when required to do so, has unreasonably or unnecessarily delayed the mails, has committed other delinquencies in the transportation of mail, has failed to carry the mail in a safe and secure manner, or has caused loss or damage to the mail, the facts will be reported to the General Manager, Logistics Division, of the region in which the mail was dispatched or received or was required to be dispatched or received.

\* \* \* \* \*

#### § 927.2 [Amended]

4. In § 927.2, in the last sentence of paragraph (c), strike out "Office of

Transportation Services" and insert "Office of Transportation and International Services" in lieu thereof; in the first and second sentences of paragraph (d), strike out "Office of Transportation Services" and insert "Office of Transportation and International Services" in lieu thereof; and in paragraph (f), strike out "Transportation Handbook M-31, Air Service Instructions, Part 320, for interstate air transportation";

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 86-4126 Filed 2-26-86; 8:45 am]

BILLING CODE 7710-12-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 611

[Docket No. 41276-4176]

#### Fishery Conservation and Management; Foreign Fishing

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

**ACTION:** Notice of initial specifications; correction.

**SUMMARY:** This document makes additional corrections in the specifications table in the notice of initial specifications for all foreign fisheries that was published January 30, 1986, 51 FR 3788.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth D. Haynes, 202-634-7432.

In FR Doc. 86-2061 beginning on page 3788 in the issue of January 30, 1986, the following corrections are made under the "Northwest Region" heading in the specifications table, page 3790.

1. The species code "849" is added for widow rockfish.

2. The figure "0" is corrected to "2,400" under the "Reserve" column for jack mackerel.

3. The figure "0<sup>10</sup>" is corrected to "9,600<sup>10</sup>" under the "TALFF" column for jack mackerel.

Dated: February 24, 1986.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 86-4276 Filed 2-26-86; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register

Vol. 51, No. 39

Thursday, February 27, 1986

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 71

[Airspace Docket No. 85-AWA-10]

#### Proposed Establishment of Airport Radar Service Areas

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** This supplemental notice amends an earlier notice in which the FAA proposed to designate an Airport Radar Service Area (ARSA) at Dulles International Airport, Washington, DC, and reopens the comment period for the proposal. Dulles International Airport is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of an ARSA would require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at Dulles would reduce the risk of midair collision and promote the efficient control of air traffic in the terminal area.

**DATES:** Comments must be received on or before April 11, 1986.

**ADDRESSES:** Send comments on the proposal in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 85-AWA-10, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, D.C.

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

**FOR FURTHER INFORMATION CONTACT:** Paul Smith, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8783.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-AWA-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Comments received during the earlier comment period will be held in the public docket and combined with comments received during this period.

##### Availability of NPRM's

Any person may obtain a copy of this Supplemental Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue,

SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this Supplemental NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

##### The Proposal

On September 30, 1985, the FAA proposed to designate an ARSA at Dulles International Airport, Washington, DC (50 FR 39822), and the comment period for the proposal closed January 2, 1986. One of the goals in the ARSA program is standardization of the designated airspace insofar as possible. Deviation from the standard at Dulles was, and is, necessary due to the rapid rise of the terrain to the west and due to the delegation of airspace. The agency is in the process of making significant changes to the airway and delegated airspace configurations throughout the east coast, commonly referred to as the Expanded East Coast Plan. A modification to the airspace delegated to Dulles Approach Control is anticipated as a part of that plan.

This supplement proposes to amend the earlier notice by raising the 4,000 feet MSL segment within 5 miles of the airport to 4,300 feet MSL. The remainder of the earlier proposal is unchanged. The entire proposal as amended is stated below and an amended graphic is attached.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For the reasons discussed in the NPRM, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act (RFA). A regulatory evaluation was prepared for the NPRM and is included in the public docket of the initial notice. The conclusions of the evaluation are not altered by this supplemental notice.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Airport Radar Service Areas.

**The Proposed Amendment****PART 71—[AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.501 [Amended]**

2. § 71.501 is amended as follows:

**Dulles International Airport, Washington, DC [New]**

That airspace extending upward from the surface to and including 4,300 feet MSL within a 5-mile radius of the Dulles International Airport (lat. 38°56'39"N., long 77°27'28"W.) and lying west of a line extending from the 048°T(057°M) bearing from the airport on the 5-mile arc to the 130°T(139°M) bearing from the airport on the 5-mile arc, and upward from the surface to 3,000 feet MSL east of that line, and that airspace extending upward from 1,700 feet MSL to and including 4,300 feet MSL within a 10-mile radius of the airport from the 149°T(158°M) bearing from the airport clockwise to the 038°T(047°M) bearing from the airport, excluding that airspace beyond 8

miles between the 234°T(243°M) bearing from the airport clockwise to the 272°T(281°M) bearing from the airport, and that airspace extending upward from 1,7000 feet MSL upward to and including 3,000 feet MSL within a 10-mile radius of the airport from the 038°T(047°M) bearing from the airport clockwise to the 149°T(158°M) bearing from the airport, excluding that airspace overlying the Washington, DC, Terminal Control Area.

Issued in Washington, DC, on February 14, 1986.

**Daniel J. Peterson;**

*Manager, Airspace-Rules and Aeronautical Information Division.*

**BILLING CODE 4910-13-M**



**14 CFR Part 71**

[Airspace Docket No. 85-ANM-33]

**Proposed Alteration of VOR Federal Airway V-491 and Establishment of V-589-WY****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend Federal Airway V-491 by renumbering the segment between Medicine Bow and Caspe, WY, V-589. V-491 begins at the Medicine Bow very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) and goes to Casper, WY, and does not begin again until Rapid City, SD. This has created confusion in referencing this airway because it is segmented. This action would enhance flight planning through this area.

**DATE:** Comments must be received on or before April 11, 1986.

**ADDRESS:** Send comments on the proposal in triplicate to:

Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 85-ANM-33, Federal Aviation Administration, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

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

**FOR FURTHER INFORMATION CONTACT:** Burton Chandler, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 426-8627.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental,

and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ANM-33." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend VOR Federal Airway V-491 by renumbering the segment between Medicine Bow and Casper, WY, V-589. W-491 begins at Medicine Bow VORTAC and goes to Casper, WY, VORTAC, and does not begin again until Rapid City, SD. This has created confusion in referencing this airway because it is segmented. It could be confusing and create problems for a pilot filing a flight plan through this area. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It,

therefore—(1) is not a "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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation Safety, VOR Federal Airways.

**The Proposed Amendment****PART 71 — [AMENDED]**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.123 [Amended]**

2. § 71.123 is amended as follows:

**V-491 [Amended]**

By removing the words "From Medicine Bow, WY; INT Medicine Bow 336° and Casper 216° radials; to Casper, WY."

**V-589 [New]**

From Medicine Bow, WY; INT Medicine Bow 336°T(322°M) and Casper, WY, 216°T(201°M) radials; to Casper.

Issued in Washington, DC, on February 14, 1986.

**Daniel J. Peterson,**

*Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 4201 Filed 2-26-86; 8:45 am]

**BILLING CODE 4910-13-M**

**SECURITIES AND EXCHANGE COMMISSION****17 CFR Part 275**

[Release IA-1013; File No. S7-7-86]

**Certain Transactions Not Deemed Assignments**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is proposing for comment a rule under the Investment

Advisers Act of 1940 which provides that a transaction which does not result in a change of actual control or management of an investment adviser shall not be deemed an "assignment" requiring client consent for purposes of that act. If adopted, the rule, which is substantively identical to a corresponding rule under the Investment Company Act of 1940, will provide guidance to investment advisers seeking to determine when events that do not cause a change of actual control of the adviser should not be treated as an assignment.

**DATE:** Comments must be received by March 21, 1986.

**ADDRESS:** Comments should be sent in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-7-86. All comments received will be available for public inspection in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

**FOR FURTHER INFORMATION CONTACT:** Thomas P. Lemke, Chief Counsel (202-272-2030), or Stephanie M. Monaco, Attorney (202-272-2031), Office of Chief Counsel, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission ("Commission") today is publishing for comment proposed Rule 202(a)(1)-1 under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 *et seq.*] ("Act"), which would deem a transaction which does not result in an actual change of control of an investment adviser not to involve an "assignment" requiring client consent under section 205(2) of the Act [15 U.S.C. 80b-5(2)]. The terms of the proposed rule are substantively identical to those of rule 2a-6 [17 CFR 270.2a-6] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*], which deems certain transactions not to involve the assignment of an investment advisory or principal underwriting contract of a registered investment company. If adopted, the rule will provide guidance to investment advisers seeking to determine when events that do not cause a change of actual control or management of the adviser should not be treated as an assignment and will eliminate the need for advisers to file, and the staff to process, routine no-action and interpretive requests on this topic.

### Background and Discussion

Section 205(2) of the Act provides that a registered investment adviser may not enter into or renew an advisory contract unless the contract provides that it cannot be assigned by the adviser without the consent of the other party to the contract. The term "assignment" is defined in section 202(a)(1) of the Act [15 U.S.C. 80b-2(a)(1)] to include, as relevant here, any transfer of an investment advisory contract by the assignor or any transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.<sup>1</sup> The Act's legislative history mentions concern about fiduciaries assigning personal contracts and demonstrates that this provision is directed against persons who would otherwise "traffic" in investment advisory contracts.<sup>2</sup>

From time to time, however, an adviser may be involved in a transaction—particularly a reorganization or other modification in corporate structure involving a controlling block of the adviser's securities—which technically may be considered to be an assignment for purposes of the Act's definition, but which in fact does not alter the actual control or management of the adviser. If the transaction is viewed as an assignment for purposes of section 205(2), the consent of the adviser's clients would be required. However, because such a transaction does not result in an actual change of control or management of the adviser, interpreting the consent requirement of section 205(2) to apply in this situation appears to serve no useful purpose and, in fact, merely increases the adviser's cost of doing business without providing any benefit to clients.

Accordingly, the Commission is proposing a rule that would deem such a transaction not to involve the assignment of an advisory contract for purpose of section 205(2). The terms of the proposed rule are substantively identical to those of rule 2a-6 under the Investment Company Act of 1940,<sup>3</sup>

<sup>1</sup> Section 2(a)(4) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(4)] contains a substantially similar definition of the term "assignment."

<sup>2</sup> See, e.g., S. Rep. No. 1775 76th Cong., 3d Sess. 22 (1940). The legislative history of the Investment Company Act of 1940 states similar concerns about trafficking in advisory and underwriting contracts of investment companies. See, e.g., Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 253 (1940).

<sup>3</sup> Rule 2a-6 was proposed in Investment Company Act Rel. No. 10809, Aug. 6, 1979, 44 FR 47100 (Aug. 10, 1979) and adopted in Investment Company Act Rel. No. 11005, Jan. 2, 1980, 45 FR 1860 (Jan. 9, 1980).

regarding the "assignment" of an advisory or underwriting contract for a registered investment company. The Commission's staff has stated in no-action letters that the term "assignment" should be interpreted in the same manner for purposes of both of the 1940 Acts.<sup>4</sup> Whether a particular transaction involves an actual change of control is, of course, primarily a factual determination. Because the Commission's staff is not in a position to make the investigation necessary to ascertain, verify, or evaluate the requisite factual information regarding particular transactions, the staff ordinarily will not express any opinion in response to inquires as to whether a particular transaction would come within the rule.

### Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the rule proposed herein will not, if adopted, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release.

### Paperwork Reduction Act

The proposed rule is not subject to that Act because it does not involve an information collection requirement.

### List of Subjects in 17 CFR Part 275

Investment advisers, Reporting and recordkeeping requirements, Securities.

### Text of Proposed rule

It is proposed that Part 275 of Chapter II of Title 17 of the Code of Federal Regulations under the Investment Advisers Act of 1940 be amended as follows:

### PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 is revised to read as follows:

Authority: Secs. 203, 204, 211, 54 Stat. 850, as amended, 852, as amended, 855, as amended; 15 U.S.C. 80b-3, 80b-4, 80b-6A, 80b-11 unless otherwise noted.

2. By adding § 275.202(a)(1)-1 as follows:

#### § 275.202(a)(1)-1 Certain transactions not deemed assignments.

A transaction which not result in a change of actual control or management of an investment adviser is not an

<sup>4</sup> E.g., Templeton Investment Counsel Limited, *et al.* (pub. avail. Jan. 23, 1986).

assignment for purposes of section 205(2) of the Act.

By the Commission.  
Dated: February 21, 1986.

Shirley E. Hollis,  
Assistant Secretary.

### Regulatory Flexibility Act Certification

I, John Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed rule 202(a)(1)-1 under the Investment Advisers Act of 1940, if adopted, will not have a significant economic impact on a substantial number of small entities. The reason for the certification is that the rule is merely intended to codify existing informal interpretations about certain transactions not deemed to be "assignments" for purposes of that act.

Dated: February 20, 1986.

John Shad,  
Chairman.

[FR Doc. 86-4217 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### 30 CFR Part 906

#### Public Comment Period and Opportunity for Public Hearing on Proposed Amendment to the Colorado Permanent Regulatory Program

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

**ACTION:** Proposed rule.

**SUMMARY:** OSMRE is announcing procedures for a public comment period and hearing on the substantive adequacy of a program amendment submitted by the State of Colorado to its permanent regulatory program (hereinafter referred to as the Colorado program) which was approved by the Secretary of the Interior under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated January 23, 1986, Colorado submitted an amendment to its regulations at 2 CCR 407-2, 5.03.3(2)(b) concerning suspension or revocation of permits.

This notice sets forth the times and locations that the Colorado program and the proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the

procedures that will be followed regarding the public hearing.

**DATES:** Written comments from the public not received by 4:00 p.m. on March 31, 1986 will not necessarily be considered in the decision process. A public hearing on the proposal will be held at 7:00 p.m. on March 19, 1986. Any person interested in making an oral or written presentation at the hearing should contact Mr. Robert Hagen at the OSMRE Albuquerque Field Office by the close of business on or before March 14, 1986. If no one expresses an interest in participating in the hearing by this date, the hearing will not be held. If only one person has so contacted Mr. Hagen, a public meeting, rather than a hearing, may be held; the results of the meeting will be included in the administrative record.

**ADDRESSES:** Written comments should be mailed or hand delivered to: Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, Attn: Colorado Administrative Record, 219 Central Avenue, NW., Albuquerque, New Mexico 87102.

Copies of the proposed modifications to the program, the Colorado program and the administrative record on the Colorado program are available for public review and copying at the OSMRE offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed program amendment by contacting the OSMRE Albuquerque Field Office.

Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue, NW., Albuquerque, New Mexico 87102, Telephone: (505) 766-1486

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5124, Washington, DC 20240, Telephone: (202) 343-4855

Colorado Mined Land Reclamation Division, Department of Natural Resources, Centennial Building, Room 423, 1313 Sherman Street, Denver, Colorado 80203, Telephone: (303) 866-3567.

The public hearing will be held at the OSMRE Western Technical Center, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue, NW., Albuquerque, New Mexico 87102, Telephone: (505) 766-1492.

## SUPPLEMENTARY INFORMATION:

### I. Background on the Colorado Program

On February 29, 1980, Colorado submitted its proposed permanent regulatory program to the Secretary of the Interior. On December 15, 1980, following a review in accordance with 30 CFR Part 732, the Secretary approved the program subject to the correction of 45 minor deficiencies. Information pertinent to the general background and revisions to the permanent program submission, as well as the Secretary's findings, the disposition of comments and an explanation of the initial conditions of approval can be found in the December 15, 1980 Federal Register (45 FR 82173-82214). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 906.11, 906.15 and 906.16.

### II. Submission of Program Amendment

By letter dated January 23, 1986, Colorado submitted an amendment to its regulations at 2 CCR 407-2, 5.03.3(2)(b) concerning suspension or revocation of permits, which corresponds to the Federal rule at 30 CFR 843.13(a)(3). The text of the amendment is as follows [upper-case words are additions and the italic words are deletions]:

#### Rule 5.03.3 Suspension or Revocation of Permits

(2)(b) *The Division shall determine that a pattern of violations exists if it finds that there were violations of the same or related requirements of the Act, these Rules, or the permit during three or more inspections of the permit area within any 12-month period. THE ADMINISTRATOR SHALL PROMPTLY REVIEW THE HISTORY OF VIOLATIONS OF ANY PERMITTEE WHO HAS BEEN CITED FOR VIOLATIONS OF THE ACT, THESE RULES, OR THE PERMIT DURING THREE OR MORE INSPECTIONS OF THE PERMIT AREA WITHIN ANY 12-MONTH PERIOD TO DETERMINE IF A PATTERN OF VIOLATION EXISTS OR HAS EXISTED.*

In accordance with the provisions of 30 CFR 732.15 and 732.17, OSMRE is now seeking comments on whether the proposed amendment satisfies the criteria for approval of State program amendments. If the Director determines that the amendment satisfies the criteria and is no less stringent than SMCRA and no less effective than the Federal regulations, the amendment will be approved, and 30 CFR Part 906 modified accordingly. If the Director does approve the proposed amendment, it

will become part of the approved Colorado program.

### III. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 1291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory program. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

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

#### List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: February 20, 1986.

Brent Wahlquist,

Deputy Director, Operations and Technical Services.

[FR Doc. 86-4245 Filed 2-26-86; 8:45 am]

BILLING CODE 4310-05-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[CGD5 86-03]

#### Security Zone; James River, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of Proposed Rulemaking.

**SUMMARY:** The Coast Guard is considering a proposal to establish a security zone in the waters of the James River immediately adjacent to the Newport News Shipbuilding and Drydock Co. (NNS) located in Newport

News, Va., and establishing a section of anchorage G-1 as a security zone anchorage. This action is necessary to safeguard U.S. Naval vessels from sabotage or other subversive acts, accidents, or other incidents of a similar nature while they are moored at the shipyard. This security zone will provide protection to these vessels by prohibiting access to the waters around the shipyard, except by certain authorized vessels, and by providing a sufficient area in which to detect unauthorized intrusions in time to allow appropriate security measures to be taken.

**DATES:** Comments must be received on or before April 14, 1986.

**ADDRESSES:** Comments should be mailed to Commander (mpv), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, VA 23704-5004. The comments and other materials referenced in this notice will be available for inspection and copying at 431 Crawford Street, Room 408, in the offices of the Port and Vessel Safety Branch. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant W. J. Wetzel, (804) 398-6388.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD5 86-03) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self addressed postcard or envelope is enclosed. The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

#### Drafting Information

The drafters of this notice are Lieutenant W. J. Wetzel, Project Officer, Port and Vessel Safety Branch, Fifth Coast Guard District, and Commander R. J. Reining, Project Attorney, Legal Office, Fifth Coast Guard District.

### Discussion of Proposed Regulations

After a review of shipyard physical security, the Supervisor of Shipbuilding, Conversion, and Repair for the U.S. Navy at Newport News, Va., in October 1984, requested that the Coast Guard Captain of the Port, Hampton Roads, establish a security zone. The Coast Guard has concluded that a security zone is warranted and appropriate, because the security zone is intended for the protection of assets which are vital to the national interest. It is undeniable that vessels under construction or repair at this shipyard can easily be approached from the water and are vulnerable to acts of sabotage. Prohibiting access to the water areas around this shipyard provides a means of countering this threat without unnecessarily interfering with the public's use of this waterway.

The requested security zone keeps unauthorized persons sufficiently clear of the vessels in and along the shipyard, allows early detection of unauthorized entry, and does not interfere with navigation using the James River for through passage, although a small section of anchorage G-1 along the shipyard will no longer be open to the general public. If this security zone is established, a separate security zone anchorage will be established by this proposal for the use of vessels that are authorized to be within the security zone. The boundaries of anchorage G-1 will be changed by excluding those portions of the anchorage that are within the security zone. This security zone will be limited to water areas only. Present laws and regulations give NNS sufficient authority to restrict access onto its shipyard property and to deal with unauthorized persons within the shipyard.

This proposal would allow certain vessels and individuals to enter the security zone without obtaining the permission from the Captain of the Port. Because of the administrative difficulties involved, and more importantly because it would impose an unreasonable burden upon NNS and interfere with its ability to conduct its business, the proposal does not require vessels that have been authorized use of the shipyard's facilities by NNS, vessels being worked on by NNS or at the NNS shipyard, vessels and individuals performing work at the NNS shipyard, and certain public vessels to obtain permission from the Captain of the Port before entering the security zone. (Individuals aboard those vessels also may enter the security zone without the permission of the Captain of the Port.)

The possible threat to the national security posed by these vessels is assessed by the Navy before they enter the security zone and measures are taken to ensure that the national security is not jeopardized.

The proposal at the same time preserves the Coast Guard's existing authority to control the movement of vessels and individuals on the waters of the United States, including those vessels and individuals that are permitted to enter or remain within the security zone without the specific permission of the Captain of the Port. This authority is restricted by law to actions taken to prevent injury to vessels, waterfront facilities, or the waters of the United States, or to secure the observance of the rights and obligations of the United States. The reservation of this authority is necessary to ensure that the Coast Guard has the ability to take prompt and adequate enforcement action within the security zone if a threat to the national security or the safety of any vessel arises. The reservation of this authority is not intended to, and should not, obstruct or hinder the ability of NNS to conduct its business at the shipyard. The authority of the Coast Guard that has been reserved by this proposal is no greater than the authority the Coast Guard has over vessels and individuals at other waterfront facilities, including other commercial shipyards.

Other individuals who desire to enter the security zone will be required to request permission from the Captain of the Port via the Security Office of the U.S. Navy Supervisor of Shipbuilding, Conversion, and Repair at Newport News, Virginia.

The Coast Guard understands that there are several commercial fishermen who have traditionally fished these waters. We anticipate that the Captain of the Port will grant permission for these individuals to enter the security zone during those periods when they hold valid licenses to take shellfish or other forms of marine life from the James River at that location, if upon review by the U.S. Navy it is determined that these individuals do not pose a security risk to the United States.

At the present time, there are no intentions to require the use of Port Security Cards, or other special credentials on board vessels within this security zone.

This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

#### Economic Assessment and Certification

These proposed regulations are considered to be non-major under

Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The only adverse effect expected to be caused by this proposal are to those interests which will be denied access to the waters contained in this zone. Those interests affected are expected to be primarily recreational, and the loss of the use of this part of the James River should not affect their use of the river for navigation or other purposes except in a very minor way.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

#### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

#### PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.504 is added to read as follows:

#### § 165.504 Newport News Shipbuilding and Dry Dock Company Shipyard, James River, Newport News, Va.

(a) *Location* The following is a security zone: The waters of the James River encompassed by a line beginning at the intersection of the shoreline with the northernmost property line of the Newport News Shipyard and Dry Dock Co. at latitude 37°00'38.1" N., longitude 76°27'05.7" W., thence southerly to latitude 36°59'58.4" N., longitude 76°27'16.7" W., thence southeasterly to latitude 36°59'23.0" N., longitude 76°26'54.6" W., thence westerly to latitude 36°59'21.5" N., longitude 76°26'58.4" W., thence southeasterly to latitude 36°59'12.9" N., longitude 76°26'52.4" W., thence easterly to latitude 36°59'14.2" N., longitude 76°26'49.1" W., thence southeasterly to latitude 36°58'33.9" N., longitude 76°26'24.1" W., thence easterly to latitude 36°58'37.2" N., longitude

76°26'16.0" W., thence northerly to the intersection of the shoreline with the southernmost property line of the Newport News Shipbuilding and Dry Dock Co. at latitude 36°58'48.0" N., longitude 76°26'11.2" W., thence northwesterly along the shoreline to the point of beginning.

(b) *Security zone anchorage.* The following is a security zone anchorage: The waters of the James River encompassed by a line beginning at the intersection of the shoreline with the northernmost property line of the Newport News Shipbuilding and Dry Dock Company shipyard at latitude 37°00'38.1" N., longitude 76°27'05.7" W., thence southerly to latitude 36°59'58.4" N., 76°27'16.7" W., thence easterly to the shoreline at latitude 36°59'58.5" N., longitude 76°27'11.6" W., thence along the shoreline to the point of beginning.

#### (c) *Special regulations.*

(1) Section 165.33 (a), (e), and (f) do not apply to the following vessels or individuals on board those vessels:

- (i) Public vessels of the United States.
- (ii) Public vessels owned or operated by the Commonwealth of Virginia or its subdivisions for law enforcement or firefighting purposes.

(iii) Vessels owned by, operated by, or under charter to Newport News Shipbuilding and Dry Dock Co.

(iv) Vessels that are performing work at Newport News Shipbuilding and Dry Dock Co., including the vessels of subcontractors and other vendors of Newport News Shipbuilding and Dry Dock Co. or other persons that have a contractual relationship with Newport News Shipbuilding and Dry Dock Co.

(v) Vessels that are being built, rebuilt, repaired, or otherwise worked on at or by Newport News Shipbuilding and Dry Dock Co. or another person authorized to perform work at the shipyard.

(vi) Vessels that are authorized by Newport News Shipbuilding and Dry Dock Company to moor at and use its facilities.

(2) Any vessel authorized to enter or remain in the security zone may anchor in the security zone anchorage.

(3) Other vessels desiring access to this zone shall secure permission from the Captain Of The Port through the Security Office of the U.S. Navy Supervisor of Shipbuilding, Conversion, and Repair at Newport News, Virginia. The request shall be forwarded in a timely manner to the Captain Of The Port by the appropriate Navy official. (d) Enforcement. The U.S. Coast Guard may be assisted in the enforcement of this zone by the U.S. Navy.

Dated: February 14, 1986.

James C. Irwin,  
Rear Admiral, U.S. Coast Guard, Commander,  
Fifth Coast Guard District.

[FR Doc. 86-4265 Filed 2-26-86; 8:45 am]

BILLING CODE 4910-14-M

### 33 CFR 166

[CGD 86-008]

#### Port Access Routes; Approach to Mobile, AL

AGENCY: Coast Guard, DOT.

ACTION: Notice of Study.

**SUMMARY:** The Coast Guard is undertaking a study of the shipping safety fairways in the approach to Mobile, Alabama. A modification to the existing fairway is being considered for this area. This study is being conducted in accordance with standards contained in the Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223 and 1224). As a result of this study, new or modified fairways may be proposed in the Federal Register. Also, the results of this study could affect the manner in which specific offshore areas leased after the date of this notice may be explored and developed.

**DATE:** Comments are due on or before May 28, 1986.

**ADDRESS:** Commander (mps), Eighth Coast Guard District, Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130-3396.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Frederick V. Newman, Jr., (505) 589-6901.

**SUPPLEMENTARY INFORMATION:** The area to be examined during the study is bounded by a line connecting the following geographic positions:

Latitude	Longitude
(1) 30°10'36" N.	88° 01'35" W.
(2) 30°08'04" N.	88° 00'38" W.
(3) 30°06'17" N.	87° 59'15" W.
(4) 30°05'15" N.	88° 01'13" W.
(5) 30°05'15" N.	88° 06'05" W.
(6) 30°05'29" N.	88° 09'19" W.
(7) 30°07'15" N.	88° 06'54" W.
(8) 30°10'36" N.	88° 03'53" W.

This area encompasses the junction of the Mobile Ship Channel Safety Fairway, the Mobile to Pensacola Safety Fairway, the Mobile Ship Channel to Sea Safety Fairways, and the Horn Island Pass to Mobile Ship Channel Safety Fairway. These fairways are described in the Code of Federal Regulations in Title 33, Part 166, section 200, paragraphs (d) (38) and (39). Safety fairways are areas in which no fixed structures, temporary or permanent, are permitted and therefore may inhibit exploration and exploitation of mineral resources in the area so designated.

Port access routing needs in the Mobile approach area were previously studied in 1980; and the results were published in the *Federal Register* on October 8, 1981 (46 FR 49989). On the basis of that study no change to the existing shipping safety fairway system in the approaches to Mobile was recommended.

The Coast Guard is initiating a study of the junction of safety fairways in the vicinity of the Mobile Ship Channel entrance in response to a request from Texaco Producing Incorporated to modify the existing Mobile Safety Fairway to open an area presently within the fairway to exploration and production drilling. Specifically, the requested modification would reduce the width of the fairway by moving the western boundary of the existing Mobile Ship Channel Safety Fairway. This boundary would follow a line drawn through the following geographic positions:

Latitude	Longitude
(1) 30°07'15" N	8830° 08'54" W.
(2) 30°08'10" N	8830° 04'40" W.
(3) 30°10'36" N	8830° 03'53" W.

Relocation of the western edge of the Mobile Safety Fairway as proposed would affect the following State and Federal lease blocks: State of Alabama lease blocks 113, 131, and 132; and Mobile Area Federal lease blocks 868 and 869. These blocks would then no longer be subject to the fairway restrictions on fixed structures.

Although the above specific alternative will be examined during this study, comments and recommendations or other information need not be limited to this alternative.

Vessel operators are invited to comment on any positive or negative impacts which may result from modifying the fairways within the study area. Likewise potential leaseholders and offshore developers are encouraged to identify and support any foreseeable costs or benefits from possible modification of the fairways in the study area.

Particular issues to be examined during the study, and on which information and public comments are invited, are as follows:

1. The existing and potential vessel traffic (i.e., types of vessels, traffic patterns, number of vessels, variations in the traffic density, etc.).

2. The need for a fairway adjustment (i.e., identification of the conflicting uses of the area which cannot be reasonably accommodated without an adjustment, and whether those needs can be accommodated without an adverse impact on navigation safety).

3. Alternative configurations which can reasonably accommodate the needs of other users.

4. The effect on vessel traffic of the proposed fairway modification, or an alternative fairway configuration, taking into account the location and angle of turns, length of reaches between turns, and maneuverability of vessels expected to transit the area. Also to be considered is any service vessel traffic to be generated by the construction and operation of structures in the area of the modification.

5. Present needs for fairway areas and whether the fairway can accomplish its original purpose if it is modified as proposed.

6. Impacts on adjacent leaseholders or future leaseholders, and the state and federal leasing process, where tracts are located in fairways. One aspect of this issue is how the existence of the fairway restrictions are factored into the value of a lease.

7. Local conditions (e.g., climate, current, hydrography, conditions of limited visibility, and the effect of shoaling on vessel traffic since the fairway was originally established).

8. Adequacy of the aids to navigation system in the vicinity, including public or private aids required on structures to be sited in the area of the modification, and any relocation of existing aids which may be necessary as a result of a fairway modification.

9. Adequacy of advance information available to mariners, including scheduled revisions of affected nautical charts.

10. The need for a safety zone or buffer zone around structures to be sited in the area of the modification.

11. Long term port development plans, including Corps of Engineers dredging and channel-deepening projects.

The Eighth Coast Guard District will be conducting the study and developing recommendations. Following is the name, address and telephone number of the project officer who will be responsible for the study of this area: Lieutenant Commander Frederick V. Newman, Jr., c/o Commander (mps), Eighth Coast Guard District, Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130-3396, (504) 589-6901.

The Coast Guard is interested in receiving information and opinions from persons who have an interest in safe routing of ships as affected by other uses of the area. Written comments should be mailed to the above address. In accordance with the PWSA, the Coast Guard will directly consult with the Departments of State, the Interior,

Commerce, and Army, and the Governors of the affected states during the study. In order to be most useful, any relevant information should be made available to the district office by the end of the comment period.

#### Procedural Requirements

In conducting this study, the Coast Guard will be governed by certain procedural requirements which are emphasized here to assist those who wish to submit comments. These requirements are based on mandates of the PWSA. The Coast Guard will also apply its experience in the areas of vessel traffic management, navigation, shiphandling, the effects of weather, and prior analysis of the traffic density in certain regions.

The PWSA directs that "in order to provide safe access routes for the movement of vessel traffic proceeding to or from ports . . . the Secretary shall designate necessary fairways and traffic separation schemes" in which the "paramount right of navigation over all other users" shall be recognized. Before a designation can be made, the Coast Guard is required to "undertake a study of the potential traffic density and the need for safe access routes." In accordance with 33 U.S.C. 1223, the Coast Guard will "to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved."

During the study, the Coast Guard is directed to consult with federal and state agencies and to "consider the views of representatives of the maritime community, port and harbor authorities or associations, environmental groups, and other parties who may be affected by the proposed action."

In accordance with the PWSA, the Secretary has the discretion to modify the location or limits of designated

safety fairways, where an adjustment is necessary to accommodate the needs of other uses which cannot be reasonably accommodated otherwise. However, the PWSA also stipulates that such an adjustment should not, in the judgment of the Secretary, "unacceptably adversely affect the purpose for which the existing designation was made and the need for which continues."

The results of this study will be published in the *Federal Register*. If the Coast Guard determines that new or modified routing measure designations are needed, a Notice of Proposed Rulemaking will be published.

It is anticipated that the study will be concluded by July 1986.

Dated: February 20, 1986.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 86-4267 Filed 2-26-86; 8:45 am]

BILLING CODE 4910-14-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1244

[Ex Parte No. 385; Sub-2]

#### Procedures on Release of Data From the ICC Waybill Sample

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Extension of time to file comments.

**SUMMARY:** The notice of proposed rulemaking in this proceeding was served on January 8, 1986 and published in the *Federal Register*, at 51 FR 767, January 8, 1986. February 24, 1986, was given as the due date for comments. This is to give notice that the time for

filing comments has been extended for an additional 45 days.

**DATE:** Comments must be received on or before April 10, 1986.

Comments: An original and 15 copies of any comments referring to Ex Parte No. 385 (Sub-No. 2) should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:**

James A. Nash, Tel. (202) 275-6844  
or

Elaine K. Kaiser, (202) 275-6894.

**SUPPLEMENTARY INFORMATION:** The Interstate Commerce Commission has received a petition from the Association of American Railroads (AAR) requesting a 45-day extension for filing comments in this proceeding. AAR states that the extension will enable the railroad industry to determine whether and to what extent an industry position can be developed. Also, they note that an industry position will expedite the administrative process by eliminating the filing of unnecessary duplicative material and by enabling more precise identification of key issues.

We agree that the 45-day extension is warranted. It will provide the railroads with adequate time to formulate their joint as well as individual positions. Also, this extension will not unduly burden any affected parties because the proposed rules essentially adopt the Commission's Office of Transportation Analysis' current policy for handling waybill requests.

Decided: February 20, 1986.

By the Commission, Heather J. Gradison,  
Chairman.

James H. Bayne,  
Secretary.

[FR Doc. 86-4229 Filed 2-26-86; 8:45 am]

BILLING CODE 7035-01-M

# Notices

Federal Register

Vol. 51, No. 39

Thursday, February 27, 1986

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

### Animal and Plant Health Inspection Service

[Docket No. 86-010]

#### Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of a Meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

**SUMMARY:** The purpose of this document is to give notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

**PLACES, DATES AND TIME OF MEETING:** The meeting will be held at Room 734A of the Federal Building, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, Maryland, March 25 and 26, 1986, from 8:30 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Dr. Harless McDaniel, Chief Staff Officer, Technical Support, VS, APHIS, USDA, ROOM 757, Federal Building, Hyattsville, MD 20782, 301-436-8087.

#### SUPPLEMENTARY INFORMATION:

The purpose of the Committee is to advise the Secretary on means to prevent, suppress, control or eradicate an outbreak of foot-and-mouth disease or other destructive foreign animal or poultry diseases in the event such disease should enter the United States.

The meeting will be open to the public. Written statements concerning these matters may be filed with the committee before or at the time of the meeting.

The following items will be discussed at the meeting:

1. Status of swine repopulation in Haiti.
2. Consideration of Europe as a single entity in regard to the importation of animal products into the United States.

3. Embryo importation—a review of exotic diseases that can be transmitted by embryos.

4. Exotic animal disease teaching aids for use in veterinary colleges.

5. Movement of animals from offshore islands, such as San Clemente, California, to the mainland.

6. Review of APHIS reorganization. The meeting will be open to the public. Written statements concerning these and other matters may be filed with the Committee before or at the time of the meeting.

Dated: February 21, 1986.

**Bert W. Hawkins,**  
*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 86-4273 Filed 2-26-86; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 86-021]

#### General Conference Committee of the National Poultry Improvement Plan; Meeting

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Announcement of meeting.

**SUMMARY:** This document gives notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan.

**DATES:** The meeting will be held March 4, 1986 (9 a.m.-4 p.m.). Written comments may be filed with the Committee before or at the time of the meeting.

**ADDRESSES:** The meeting will be held in the Best Western, Maryland Inn Motel, 8601 Baltimore Blvd., College Park, Maryland 20740. Written comments may be mailed to Dr. I.L. Peterson, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, Room 828, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5140. Comments received may be inspected at this address between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. I.L. Peterson, 301-436-5140.

**SUPPLEMENTARY INFORMATION:** This document gives notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan to be held on March 4, 1986. The purpose of the meeting of the General

Conference Committee is to review the Model State Program for Poultry Disease Prevention and make recommendations to the Department concerning that program.

This notice is being published on an emergency basis less than 15 days in advance of the meeting. There is an outbreak of avian influenza in the New York live poultry marketing area. It is imperative that the committee review the Model State Program for Poultry Disease Prevention on an expedited basis because of this outbreak.

The meeting will be open to the public. Written statements concerning this matter may be filed with the Committee before or at the time of the meeting.

Dated: February 25, 1986.

**J.K. Atwell,**

*Deputy Administrator, Veterinary Services.*

[FR Doc. 86-4401 Filed 2-26-86; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Environmental Statements; Availability, etc.; Alabama Coastal Area Management Program (ACAMP)

**AGENCY:** National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management (OCRM), Commerce.

**ACTION:** Preparation of an Environmental Assessment.

**SUMMARY:** Notice is hereby given of the intent to prepare an environmental assessment on a proposed amendment to the ACAMP under the provisions of section 306 of the Federal Coastal Zone Management Act of 1972 (Pub. L. 92-583, as amended). The environmental assessment will be used to determine whether to prepare a supplemental environmental impact statement (SEIS) as required under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (NEPA).

The amendment to the ACAMP consists of a change in the definition of the construction control line (CCL) applicable to construction on beaches and dunes in the Alabama coastal area in Baldwin County from Perdido Key to

Fort Morgan, excluding the incorporated shoreline area of Gulf Shores.

The CCL replaces the construction setback line that was originally established in the ACAMP as the line running parallel to the shoreline at a point 40 linear feet inland of the most inland point of the crestline which is defined as a line interconnecting the peaks of the primary dune system. Because the crestline varies due to the forces of nature, the exact location of the primary dune crestline is often very difficult to determine, particularly after the damage to the dune system caused by Hurricane Frederick.

The State of Alabama held a public hearing on the proposed CCL on July 11, 1985, in Gulf Shores, Alabama. The Environmental Management Commission adopted the CCL as revised regulations to the ACAMP in October, 1985, and they submitted it to OCRM as an amendment on October 11, 1985.

Federal approval of the amendment would allow the State to maintain their eligibility for program administration grant funds and require that federal actions be consistent with the ACAMP as amended.

In order to determine the scope and significance of issues to be addressed in the environmental assessment, OCRM has reviewed the extensive comments made available by the July 11, 1985 public hearing record and would like to solicit comments from anyone who has knowledge of the impacts which will be associated with implementation of the new CCL. OCRM is currently consulting with the U.S. Fish and Wildlife Service on the endangered Alabama and Perdido Key beach mice under section 7 of the Endangered Species Act. Other aspects being reviewed include the adequacy of the CCL to protect beach dynamics, legal issues including taking, comparison of the old setback line with the CCL, and compliance with the E.O. 11988 on floodplain management.

A scoping meeting will be held on March 18, 1986, in the Navy Conference Room B-100, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, DC, at 10 a.m. If OCRM decides to prepare a SEIS, this meeting will satisfy the NOAA/NEPA scoping process. All interested parties are invited to attend.

Persons or organizations wishing to submit comments on these or other issues should do so by April 1, 1986.

Requests for the above-described documents and all comments should be made to: Ben Mieremet, Coastal Hazards and Technical Assistance Coordinator, Office of Ocean and Coastal Resource Management, 330 Whitehaven St., NW., Washington, DC 20235 202/254-7494.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration.)

Dated: February 24, 1986.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 86-7257 Filed 2-26-86; 8:45 am]

BILLING CODE 3510-08-M

## DEPARTMENT OF DEFENSE

### Department of the Navy

#### Chief of Naval Operations, Executive Panel Advisory Committee, Role of the Naval Reserve in the Maritime Strategy Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Role of the Naval Reserve in the Maritime Strategy Task Force will meet March 19-20, 1986, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to examine or determine a strategic rationale for the employment of Reserve forces, the value of the Reserve to the total force, and the best way to develop Reserve resources. The entire agenda for the meeting will consist of discussions of key issues regarding changes in the strategic balance, the need for mobilization capability, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee; 4401 Ford Avenue, Room 928; Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: February 24, 1986.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve Federal Register Liaison Officer.

[FR Doc. 86-4261 Filed 2-26-86; 8:45 am]

BILLING CODE 3610-AE-M

## DEPARTMENT OF EDUCATION

### Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

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

**DATE:** Interested persons are invited to submit comments on or before March 31, 1986.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: 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 Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster, (202) 426-7304.

**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, Information Resources Management Service publishes this notice containing proposed information collection requests prior to the 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) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: February 24, 1986.

George P. Sotos,  
Director, Information Resources Management  
Service.

#### Office of Educational Research And Improvement

Type of Review Requested: Revision  
Title: Library Services and Construction  
Act (Pub. L. 98-480) Application and  
Project Plans for State Administered  
Programs—Titles I, II and III  
Agency Form Number: ED 921 and ED  
915

Frequency: Annually  
Affected Public: States  
Reporting Burden—Responses: 54;  
Burden Hours: 2,430

Recordkeeping Burden:  
Recordkeepers: 0; Burden Hours: 0.  
Abstract: The application is a required  
submission from State Library Agencies  
in order to receive Federal funds under  
Title I (Library Services), Title II (Public  
Library Construction), and Title III  
(Interlibrary Cooperation and Resource  
Sharing) of the Library Services and  
Construction Act, as amended by Pub. L.  
98-480.

#### Office of Special Education and Rehabilitative Services

Type of Review: REINSTATEMENT  
Title: Education for the Handicapped  
Incentive Grant FY 1987-89

Application for Federal Assistance  
Agency Form Number: 9055-1  
Frequency: Triennial

Affected Public: State or local  
governments

Reporting Burden:  
Responses: 19; Burden Hours: 114

Recordkeeping Burden:  
Recordkeepers: 0; Burden Hours: 0.  
Abstract: States are required to  
submit a state plan in order to receive  
funds under the Education of the  
Handicapped Act. The information  
collected in this application is reviewed  
by the Office of Special Education, and  
is used as a resource for monitoring  
state plans.

#### Office of Special Education and Rehabilitative Services

Type of Review: New  
Title: An Evaluation of the Handicapped  
Migratory Agricultural and Seasonal  
Farmworkers Vocational  
Rehabilitation Service Projects

Agency Form Number: B20-14P  
Frequency: One time only

Affected Public: State or local  
governments

Reporting Burden:  
Responses: 378; Burden Hours: 296.6

Recordkeeping Burden:  
Recordkeepers: 0; Burden Hours: 0.  
Abstract: Section 312 of the  
Rehabilitation Act of 1973 authorized

special projects for handicapped  
migrant and seasonal farmworkers. The  
projects began in 1976. This is the first  
evaluation of the projects required under  
section 14(a) of the Rehabilitation Act of  
1973, as amended.

#### Office of Postsecondary Education

Type of Review Requested: Extension  
Title: Request for Payment of 1986-87  
Pell Grant Award; 1986-87 Alternate  
Disbursement System (ADS) Student  
Report; Notice of Termination/Early  
Graduation

Agency Form Number: Ed 304, 304-1,  
and 304-2

Frequency: On occasion; Semi-annually;  
Annually

Affected Public: Individuals or  
households; Non-profit institutions;  
Small businesses or organizations

Reporting Burden:  
Responses: 122,700; Burden Hours:  
79,755

Recordkeeping Burden:  
Recordkeepers: 900; Burden Hours:  
135.

Abstract: The Request for payment  
will be used to collect data necessary  
for the calculation of a Pell Grant award  
and to process an initial payment. The  
ADS Student Report requests additional  
information needed for processing and  
verifies previously submitted  
information. The Notice of Termination/  
Early Graduation is used to notify the  
Department of students who terminate  
their enrollment.

[FR Doc. 86-4274 Filed 2-26-86; 8:45 am]

BILLING CODE 4000-01-M

#### DEPARTMENT OF ENERGY

##### Federal Energy Regulatory Commission

[Docket No. EF86-2041-000]

##### Department of Energy—Bonneville Power Administration; Filing

February 21, 1986.

Take notice that on February 11, 1986,  
Bonneville Power Administration (BPA)  
filed a request for waiver by the  
Commission, pursuant to § 300.13 of the  
Commission's regulations, of the 60-day  
advance filing requirement in  
§ 300.10(a)(3)(ii) of the Commission's  
regulations. BPA states that it is  
conducting a formal evidentiary hearing  
pursuant to the Northwest Power Act in  
order to determine whether to adopt a  
"variable industrial rate" for its direct  
service aluminum smelter customers.  
BPA states that the hearing is scheduled  
to end on May 1, 1986 and that BPA  
intends to request the Commission to

implement any rate that BPA adopts on  
July 1, 1986. BPA states that it is  
concerned that the hearing process may  
not be completed by May 1, 1986, so that  
it is requesting in advance a waiver of  
the 60-day filing requirement. BPA  
requests that instead it be permitted to  
submit any proposed rate by May 15,  
1986, 45 days in advance of the proposed  
implementation date of July 1, 1986.

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 NW., Washington  
DC 20406, in accordance with Rules 211  
and 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 March 7,  
1986. 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.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 86-4173 Filed 2-26-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C175-52-003, et al.]

##### Equitable Resources Energy Co.; Petitions To Amend Certificates of Public Convenience and Necessity and To Redesignate Rate Schedules

February 21, 1986.

Take notice that on February 11, 1986,  
Equitable Resources Energy Company  
(EREC), of 2900 Grant Building, 330  
Grant Street, Pittsburgh, Pennsylvania  
15219, pursuant to § 154.92, *et seq.*, and  
§ 157.23, *et seq.*, of the Regulations [18  
CFR 154.91, *et seq.* and 157.23, *et seq.*  
(1984)], filed an application to amend the  
certificates of public convenience and  
necessity heretofore issued to  
Philadelphia Oil Company (Philadelphia  
Oil) and the related Gas Rate Schedules  
to reflect a change of name from  
Philadelphia Oil Company to Equitable  
Resources Energy Company as shown  
on the attached Exhibit II and in the  
application which is on file with the  
Commission and open to public  
inspection.

Effective December 13, 1984,  
Philadelphia Oil changed its name to  
Equitable Resources Energy Company  
by Certificate of Amendment to Articles  
of Incorporation issued by the State of  
West Virginia on December 13, 1984.

Notice is hereby given that all the certificates and rate schedules as listed in the attached Exhibit II are hereby redesignated to reflect the change of name from Philadelphia Oil Company to Equitable Resources Energy Company.  
Kenneth F. Plumb,  
Secretary.

**Certificates and Rate Schedules of Philadelphia Oil Company for Redesignation as Equitable Resources Energy Company**

Rate schedule No.	Docket No.	Purchaser
1	C166-1218	Equitable Gas Company,
11	C175-52	Kentucky West Virginia Gas Company.

[FR Doc. 86-4174 Filed 2-26-86; 8:45 am]  
BILLING CODE 6717-01-M

**[Project No. 2245-006]**

**City of Vanceburg, KY; Application for Surrender of License**

February 21, 1986.

Take notice that the City of Vanceburg, Kentucky has filed an application for surrender of its license for the Cannelton Project No. 2245.

In 1976 a license was issued to the City of Vanceburg, Kentucky to construct, operate, and maintain the Cannelton Project No. 2245 to be located at the U.S. Army Corps of Engineers (Corps) Cannelton Locks and Dam on the Ohio River. The project would consist of a powerhouse with an installed capacity of 70,560 kW; a bridge connecting the powerhouse to an access road; an earthen dam between the Corps' Cannelton Dam and the powerhouse; and other appurtenant facilities.

By letter of October 12, 1984, the City of Vanceburg was notified that the project site was rendered to a condition satisfactory to the Corps.

Anyone desiring to be heard or to make any protest about this action should file a motion to intervene or a protest with the Federal Energy Regulatory Commission in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214 (1985). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 385.211 for protests. To become a party, or to participate in any hearing that might be held, a person must file a motion to intervene in accordance with the commission's Rules. Any comments, protest, or motion to intervene must be

filed with the Secretary of the Commission on or before March 31, 1986. The Commission's address is: 825 North Capitol Street NE., Washington, DC 20426.

Kenneth F. Plumb,  
Secretary.

**ENVIRONMENTAL PROTECTION AGENCY**

[OPPE-FRL 2975-4]

**Agency Information Collection Activities Under OMB Review**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the *Federal Register* a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

**FOR FURTHER INFORMATION CONTACT:** Nanette Liepman, (202) 382-2740 or FTS 382-2740.

**SUPPLEMENTARY INFORMATION:**

**Office of Water**

**Title:** Report of Pollution-Caused Fish Kill (EPA ICR #0267). (EPA is proposing a revised form.)

**Abstract:** Information on pollution-caused fish kills is supplied voluntarily to EPA by State fish and game agencies periodically after they receive reports of fish kills from the public. The information is used by EPA to analyze ambient water quality conditions and to identify potential water quality problem areas.

**Respondents:** State fish and game agencies.

**National Pollutant Discharge Elimination System (NPDES)**

**Title:** Supplementary Report on Oil or Hazardous Substances Spill (EPA ICR #0823). (This is a request for renewed approval of existing requirements; no changes are proposed.)

**Abstract:** EPA and/or the U.S. Coast Guard usually investigate spills of oil or hazardous substances into navigable waters. When an on-scene investigation cannot be conducted, EPA may request information from those responsible for

the spill. The Agency uses the data to determine whether (a) cleanup efforts are satisfactory and (b) any enforcement action is necessary.

**Respondents:** Businesses, individuals, state and local governments.

**Title:** Notice of Actual Production Level - Automotive Manufacturing Industries (EPA ICR #1025). (This is a request for renewed approval of existing requirements; no changes are proposed.)

**Abstract:** Permittees with approved alternate discharge limits must notify the permit authority (EPA or state agency) when changes in production are anticipated. The permit authority then evaluates permit compliance based on the alternate limits.

**Respondents:** Automotive manufacturing industries.

**Office of Air and Radiation**

**Title:** New Source Performance Standards (NSPS) for Industrial Surface Coating Large Appliances (Subpart SS)—Information Requirements (EPA ICR #659). (This is a reinstatement of an expired ICR; no changes are proposed.)

**Abstract:** EPA requires new and modified sources to submit notifications of constructions, modifications, startup, shutdowns, and malfunctions and the results of performance tests. Owners/operators record all data and calculations from monthly performance tests used to determine volatile organic compound (VOC) emissions and record all emissions which exceed the standard. Records of daily incinerator temperature, or daily amounts of recovered solvent are maintained. Periods of insufficient incinerator temperature above three continuous hours are recorded.

**Respondents:** Industrial manufacturers and plant operators who use surface coating processes. SIC codes: 3631, 3632, 3633, and 3639.

**Title:** New Source Performance Standards (NSPS) for Metal Furniture Surface Coating (Subpart EE) - Information Requirements (ICR #649). (This is a reinstatement of an expired ICR; no changes are proposed.)

**Abstract:** The EPA requires metal furniture manufacturers of new and modified plants to notify the Agency or delegated enforcement agency of any operational changes that will result in that facility's ability to meet the emission standard for volatile organic compounds. Requirements include installation of temperature measurement devices that calculate the daily volume of VOC-solvent recovered, and records of these calculations. Records of monthly performance tests must be maintained for two years.

Respondents: Industries and plants which apply organic coatings to metal furniture. SIC codes: 2514, 2522, 2531, and 2542.

Title: New Source Performance Standards (NSPS) for Pressure Sensitive Tape and Label Surface Coating (Subpart RR)—Information Requirements (EPA ICR #658). (This is a reinstatement of an expired ICR; no changes are proposed.)

Abstract: EPA requires that owners/operators of industrial operations which coat pressure sensitive tape and label surfaces notify EPA or its delegated agency of any changes or modifications which would affect emission levels. The results of the initial performance test are reported, and air pollution control devices are monitored and their temperatures are recorded. The source submits semi-annual reports of exceedences of VOC emission limits and temperature drops below the allowed limit.

Respondents: Manufacturers of pressure sensitive tape and label materials. SIC code: 2641.

Title: New Source Performance Standards (NSPS) for Metal Coil Surface Coating (Subpart TT)—Information Requirements (EPA ICR #660). (This is a reinstatement of an expired ICR; no changes are proposed.)

Abstract: EPA requires that new or modified sources notify the Agency or its delegated authority of any changes in operations that will affect emissions levels and the results of performance tests. The VOC content of the coatings, VOC emissions, and incinerator daily temperatures will be recorded.

Respondents: Manufacturers of metal coil. SIC code: 3479.

#### Agency PRA Clearance Request Completed by OMB

EPA #0583, Records of PCB Storage and Disposal, was approved 12/10/85 (OMB #2070-0061; expires 12/31/88). Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street SW., Washington, DC 20460.

and

Richard D. Otis (ICRs #0267, 0823, 1025) or Wayne Leiss (ICRs #0649, 0658, 0659, 0660), Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place NW., Washington, DC 20503.

Dated: February 21, 1986.

Daniel J. Fiorino,  
Acting Director, Information and Regulatory  
Systems Division.

[FR Doc. 86-4251 Filed 2-26-86; 8:45 am]

BILLING CODE 5580-50-M

[OPTS-42032B, FRL-2975-7]

#### Decision Not To Test Formamide

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is issuing a decision not to require further testing of formamide, CAS No. 75-12-7, for health effects. On August 24, 1984, U.S. District Court, Southern District of New York, ruling requires EPA to issue a proposed test rule for this chemical under section 4(a) of the Toxic Substances Control Act (TSCA) by March 1988 or state reasons for not issuing one. EPA has determined that data now available to the Agency, including data received pursuant to a negotiated testing agreement between the Agency and BASF Wyandotte Corporation (BASF), are adequate to characterize formamide for these effects and that no further testing is required at this time. However, EPA may develop proposed rulemaking under section 5(a)(2) or 8(a) of TSCA to monitor any significant change in exposure to this chemical.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, DC 20460. Toll Free: (800-424-9065). In Washington, DC: (544-1404). Outside the USA: (Operator-202-554-1404).

**SUPPLEMENTARY INFORMATION:** The Agency is publishing a decision not to require additional testing of formamide for health effects.

#### I. Introduction

In its Tenth Report, published in the Federal Register of May 25, 1982 (47 FR 22582), the Interagency Testing Committee (ITC) designated formamide for priority testing consideration. The ITC recommended that formamide be tested for genotoxic effects, carcinogenicity, and other chronic health effects. EPA issued a notice, published in the Federal Register of May 23, 1983 (48 FR 23098), which announced the Agency's preliminary decision not to propose a rule under section 4(a) of the Toxic Substances Control Act (TSCA) (Pub. L. 94-469, 90 Stat. 2003, 15 U.S.C. 2601) to require health effects testing of

formamide. This decision was based on the Agency's evaluation of the existing data for formamide, the expected exposure profile for formamide, and the tentative acceptance of a testing program submitted by BASF. In the Federal Register of December 29, 1983 (48 FR 57365), EPA issued notice of a negotiated testing agreement (NTA) between EPA and BASF for formamide. Available data did not suggest that formamide is either genotoxic or carcinogenic. Therefore, to answer the concerns expressed by the ITC for other chronic effects, BASF proposed a range-finding study followed by a 90-day subchronic study which was designed to characterize the potential chronic effects of formamide. Because dermal exposure is the most common route of human exposure, the program was designed to clarify the doses at which formamide causes toxic effects after repeated exposure of intact skin over a prolonged period. The specific details of the NTA appear in the December 29, 1983 Federal Register notice. Both the range-finding and 90-day subchronic tests have been completed, and EPA has announced receipt of the test results in two Federal Register notices (49 FR 5190; February 10, 1984 and 50 FR 31919; August 7, 1985). These notices are included in the public docket (OPTS-42032B) for this notice.

On August 24, 1984, the U.S. District Court, Southern District of New York, ruled that negotiated testing agreements were not a legally adequate substitute for rulemaking under section 4 of TSCA in response to priority testing designations of the ITC (*NRDC v. EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984)). In its final order, the court required that EPA publish by March 1986 a notice of proposed rulemaking for formamide or its reasons for not initiating rulemaking. This notice is being published in response to the court's mandate and announces the Agency's decision not to require additional health effects testing for this chemical.

Under section 4(a) of TSCA, the Administrator shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment;

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such

activities on health or the environment can reasonably be determined or predicted, and (iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (1) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure, and release information to determine whether there is or may be substantial production and significant or substantial human exposure or substantial release to the environment. For the findings under section 4(a)(1)(A)(ii) and (B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the finding under section 4(a)(1)(A)(iii) or (B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's approach to determining when these findings are appropriately made is described in detail in EPA's first and second proposed test rules as published in the *Federal Register* of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) findings are discussed at 45 FR 48528 and 46 FR 30300, and the section 4(a)(1)(B) findings are discussed at 46 FR 30300.

## II. Review of Available Data

### A. Production, use, and Exposure

Detailed information on production, use, and exposure appears in the Agency's initial response to the ITC (48 FR 23098; May 23, 1983). The Agency is not aware of any new data that suggest that the production, use, and exposure

profile for formamide has changed since that time.

There is currently no United States production of this chemical; however, BASF imports between 1 and 11 million pounds per year. About 82 percent of the imported formamide is used by the pharmaceutical industry (Ref. 1). The major TSCA use of formamide (13 percent) is in petroleum production, where it acts as a carrier for the corrosion-inhibiting additives pumped into wells during drilling operations. In this capacity, formamide is expected to be quickly hydrolyzed. Furthermore, because formamide is readily biodegraded and does not bioaccumulate, it is not expected to persist in the environment. Other nonconsumptive TSCA uses include soil stabilization (1.0 percent), polymerization (0.5 percent), laboratory (1.0 percent), and ink solvent (1.5 percent) uses (Ref. 3). Consumer products containing formamide as a result of its use as an ink solvent include a number of fiber, plastic, and felt-tip pens and markers (Ref. 3).

There appears to be little opportunity for exposure to formamide based upon present uses. BASF Wyandotte, using data from a 1982 customer survey, estimated that about 400 workers are exposed to formamide under controlled use conditions (Ref. 4). Potential for exposure to formamide from its use as a solvent in water soluble inks occurs both in the formulation of the ink and in the loading of the ink into the writing instrument. The larger manufacturers of these instruments use automated equipment which approach enclosed systems. In less automated equipment, some inhalation of formamide could occur, although dermal exposure to the inks is expected to be minimal. Potential workplace exposure may also occur on an intermittent basis from loading, mixing, or drumming operations. In addition, the 1985 National Occupational Exposure Survey projected that about 1,800 chemists are potentially exposed to formamide (Ref. 22). Product labels advise workers and chemists to use protective equipment such as gloves, respirators, and goggles when handling formamide. Furthermore, because of formamide's known teratogenic potential, the label also warns pregnant workers to avoid contact with formamide unless adequate precautions are observed to minimize their exposure.

Worst-case estimates (assuming 100 percent absorption) suggest that if an adult female were to spill formamide on both hands, she could be exposed to 1.45 mg/kg/contact (Ref. 28). A male worker could also be exposed to 1.45 mg/kg/

contact (assuming 0.13 m<sup>2</sup> hand surface area and 70 kg body weight). EPA believes that the number of male or female workers so exposed to formamide is not substantial. Although no data on the levels of exposure in any of the industries using formamide were submitted, EPA has no evidence which might suggest that the levels of worker exposure coupled with the known toxicity potential of this chemical are significant or present an unreasonable risk, given the use of proper protective equipment recommended on existing labels and anticipated avoidance by pregnant workers.

Consumer exposure to formamide may result from its use in water-soluble ink formulations. Formamide is used in about 4.0 percent of the pens used in the United States, or 130 million pens (Ref. 5). Based upon conversations with several major U.S. pen manufacturers and their representatives and considering formamide's characteristic quick absorption by paper, resistance to smearing, and added expense, EPA believes that when it is used in consumer pens, it is generally used in finer point pens, not the marker pens often used by children (Ref. 4). Finer point pens usually contain about 5 percent formamide. Formamide is also used in high-performance industrial pens, such as high-speed computer plotter pens. These pens usually contain about 35 percent formamide; however, use of these pens should result in minimal opportunity for consumer exposure.

Several other factors tend to minimize the potential for exposure of persons writing with pens containing formamide. Formamide's low vapor pressure tends to reduce the probability of inhalation. Thus, the only significant potential route of exposure would be from skin contact with wet ink. Because of its low vapor pressure, complete miscibility with water, and lipid solubility, any direct skin contact with formamide would probably result in absorption through the skin. Therefore, worst-case dermal exposure estimates for a child were calculated by EPA using data submitted by BASF (Refs. 3 and 28). Calculations for the ink application exposures were based on a total formulation loading of 1.5 gm for a pen, 6.0 gm for a marker, and an average formamide concentration of 20 percent. If a child painted the central surface of both hands with ink from a broad-tip marker, assuming 100-percent absorption of formamide, the dermal exposure would be about 0.3 mg/kg. On the basis of the results of the 90-day subchronic toxicity testing conducted by BASF there is a

risk quotient of 100 between the no-observed-effect-level (NOEL) and this exposure level. Since this NOEL is for daily dosing over a 90-day period and such misuse by a child is not expected to be repeated daily for 90 days, anticipated risk quotients should be much larger, suggesting lesser concern. Furthermore, considering the physicochemical properties of formamide and the construction of the porous-tip device, which acts to hold the ink in the pen, EPA believes the use of those products would not result in substantial exposure. On the basis of the above information, EPA has concluded that although a large number of consumers may use writing instruments containing formamide, the levels of individual exposure are likely to be well below those found to cause adverse effects.

Formamide has been used in the past or has been suggested for a multitude of other commercial uses, some of which could result in significant worker and/or consumer exposure. Such potential uses include: as an additive to lube oil and hydraulic fluid, as a component in deicing fluids for airport runways, as a curing agent for epoxy resins, as a plasticizer, as an affinity enhancer for dyes, and as a component of liquid fertilizers. The current import volume and predominantly pharmaceutical use of this imported formamide supports the conclusion that the amount of formamide used for these and other uses is small, if any. Furthermore, concern for formamide's recognized developmental toxicity has and undoubtedly continues to limit manufacture and TSCA-related use of this chemical.

#### B. Health Effects

A detailed review of the health effects information available to the Agency prior to the NTA was presented in the Agency's initial response to the ITC (48 FR 23098; May 23, 1983). A summary of these data and the new data on genetic toxicity developed by the National Toxicology Program (NTP) and on subchronic toxicity developed by BASF follows:

1. *Acute toxicity.* The acute toxicity of formamide to laboratory animals is in the slight-to-moderate range. Oral LD<sub>50</sub> values range from 3.2 g/kg in the mouse to 7.5 g/kg in the rat (Refs. 6 and 7). Dermal LD<sub>50</sub> values are reported to be as high as 17 g/kg in the rabbit; the lowest lethal dermal dose for this species is 6.0 g/kg (Refs. 8 and 9).

2. *Mutagenicity.* At the time of the Agency's initial response to the ITC, formamide had not demonstrated a mutagenic response in *in vitro* assays. No indication of mutagenicity was seen

using strains TA-98, TA-100, TA-1535, and TA-1537 (+S9) using the *Salmonella* assay (Ref. 10). It was also reported that formamide was nontoxic and nonmutagenic to *Salmonella* at concentrations up to 200 micrograms per plate but was toxic to the bacteria at 500 micrograms per plate (Ref. 11). In addition, no mutagenic effects were demonstrated in a dominant lethal assay after a single intraperitoneal application ( $\frac{1}{2}$  LD<sub>50</sub>) of formamide to NMRI mice (Refs. 12 and 13). Formamide was also without effect in a cell transformation test using rat embryo cells infected with Rausher leukemia virus (Ref. 14) at concentrations from 0.001 to 100 mg/L.

The NTP recently completed the testing of formamide over five doses in four strains of *Salmonella* (TA 98, TA 100, TA 1535, and TA 1537) with and without activation. Testing was done in triplicate with an independent repeat. No indication of mutagenic activity was seen (Ref. 23). Formamide was also tested and found nonmutagenic in TA-98 with activation (Ref. 24). In addition, the NTP has selected formamide as a neoplastic control in an on-going *Drosophila* sex-linked recessive lethal test (Ref. 25).

The Agency is aware that the data are limited on the potential for formamide to cause chromosomal aberrations. However, based upon the results of the dominant lethal assay (Refs. 12 and 13), the Agency has no grounds to require additional testing for these effects nor reason for concern.

3. *Developmental toxicity.* Three dermal studies were submitted by BASF: the teratogenic effects on rats after repeated percutaneous application (Ref. 15); the teratogenic effect in mice of commercial black ink containing 50-percent formamide following percutaneous application on the 8th day post coitum (Ref. 20); and the teratogenic effect in mice following percutaneous application of this ink on the 13th day post coitum (Ref. 21). In the multiple-dose study, formamide was applied 13 times. Dose-dependent embryotoxic and teratogenic effects were observed. The lowest observed reproductive/teratogenic effect level (LOEL) reported was 0.35 g/kg, the lowest dose tested. In the single-dose studies, significant embryolethal, embryotoxic, and teratogenic (fetal deformities) effects were reported at 2.8 gm/kg. When these effect levels are compared to the worst-case dermal exposure of 1.45 mg/kg for an adult female, a risk quotient of about 240 for repeated exposure for an adult female and her offspring was calculated. Similarly, a risk quotient of over 1,000 was calculated for single dermal

exposure to an adult female and her offspring (Ref. 28).

Three oral studies were submitted by BASF which reported dose-dependent embryotoxic and/or teratogenic effects in rats (Ref. 16), mice (Ref. 17), and rabbits (Ref. 18). Because these studies utilized lower dosages than the dermal studies both LOEL's and NOEL's were determined. Based upon the results of these studies:

(a) Rabbits appear to be the most sensitive species tested for embryotoxic effects (LOEL=0.11 g/kg; NOEL=0.037 g/kg) and least sensitive for teratogenic effects (no effect at the highest dose tested, 0.37 g/kg). Similar results were reported by Merkle and Zeller (Ref. 19). In addition, they reported that 0.2 g/kg formamide caused pronounced maternal toxicity and death.

(b) Mice appear to be more sensitive (LOEL=0.20 g/kg with 11 percent malformations; NOEL=0.13 g/kg) than rats (LOEL=32 g/kg with 4 percent malformations; NOEL=0.18 g/kg).

(c) The oral route of administration appears to cause a slightly greater response in Sprague-Dawley rat (LOEL=0.32 g/kg with 4 percent malformations) than the dermal route (LOEL=0.35 g/kg with 2 percent malformations).

(d) The types of dose-related malformations observed in these studies (cleavage of vertebrae, wavy or fused ribs, cleft palate, multilobular liver, and hydrocephalus internus) were the same in both rats and mice and in both dermal and oral tests.

Based upon these results, the Agency believes that the oral NOEL for rabbits (0.037 g/kg) is a conservative estimate of the dermal NOEL for the developmental effects of formamide. When this NOEL is compared to the worst-case dermal exposure of 1.45 mg/kg for an adult female, a risk quotient of 24 for repeated exposure to an adult female and her offspring was calculated. This risk quotient is an order of magnitude (10x) lower than the quotient calculated using the dermal LOEL. The Agency considers the developmental toxicity data submitted by BASF adequate under current limited use and exposure.

4. *Subchronic toxicity.* Prior to the NTA, the Agency received one study showing that repeated doses of formamide administered by gavage to rats 5 days per week for 4 weeks resulted in dose-dependent cumulative effects expressed as gastritis and erosion of the gastric mucosa (Ref. 2). The no-observed-effect level was 34 mg/kg. However, because of the short duration of exposure and the technical difficulties encountered with gavage

exposure, this study was judged inadequate for risk assessment.

Under the NTA, BASF successfully completed range-finding and 90-day subchronic studies specifically designed to assess the dermal toxicity of formamide, the most common route of human exposure. The studies were designed to clarify the doses at which formamide causes toxic effects after repeated exposure to intact skin over a prolonged period (Ref. 29). They were conducted according to the Organization for Economic Cooperation and Development Subchronic Dermal Toxicity Guideline No. 411 (Ref. 30) and have been reviewed and found acceptable (Refs. 26 and 27). Taking into account the limited current exposure to formamide, EPA believes that the 90-day subchronic test conducted by BASF provides an adequate screen for histopathological effects to the reproductive system and chronic toxicity (with the possible exception of ocular and oncogenic effects for which there is no suggestive evidence) because: extensive biochemical, hematological, and anatomical studies were included; both toxic and non-toxic doses were included; and toxic effects were observed at the high-dose which were not observed at the low-dose (Ref. 33).

The 90-day study conducted in male and female Wistar rats. Formamide was applied to intact, shaved skin, 6 hr/day, 5 days/week at dose levels of 0, 300, 1,000 and 3,000 mg/kg. Although dose levels were based on a 14-day range-finding study, a NOEL was not identified (Ref. 31). The predominant toxic effect observed was polycythemia. A second dermal study using doses of 0, 30, 100, and 3,000 mg/kg provided a NOEL of 30 mg/kg and confirmed the hematological response (Ref. 32). Compound-related effects occurring in a dose-related manner included changes in hematology, clinical chemistry, and weight, i.e., emaciation and decreased body weight (high dose only). Bilateral testicular tubular atrophy was also observed at the 3,000 mg/kg dose. In addition, male rats were clearly more sensitive than female rats to the hematological effects of formamide; significantly increased hemoglobin levels and red cell counts were observed at levels above 300 mg/kg. No abnormalities were detected in the 100 mg/kg or 30 mg/kg dose groups. However, because of the possibility of reduced platelet, lymphocyte, and leucocyte values (not dose-related) at 100 mg/kg, it appears prudent to consider 30 mg/kg the NOEL for the 90-day exposure. When this NOEL is compared to worst-case dermal

exposure estimate for a child (0.30 mg/kg) and adult male or female (1.45 mg/kg), risk quotients of about 100 for the child and 20 for the adult exist. Since the NOEL is for repeatedly daily dosing over 90 days and the worst-case exposure estimates are for events that would rarely be expected to occur, anticipated risk quotient should be much larger, suggesting lesser concern for formamide under current use.

5. *Oncogenicity.* EPA is unaware of any bioassay that has not been performed to assess the carcinogenic potential of formamide. However, there are no data which indicate any potential for oncogenic effects.

### III. Decision Not to Initiate Rulemaking

EPA has reviewed all available data on formamide including structure-activity relationships, acute toxicity, mutagenicity, and teratogenicity data, and the subchronic toxicity data submitted to the Agency by BASF pursuant to the NTA. The data indicate that the chemical has a low but unique toxicity. Its acute toxicity to laboratory animals is in the slight-to-moderate range. Repeated-dose studies by gavage in rodents resulted in cumulative effects expressed as extensive gastritis and erosion of the gastric mucosa. *In vitro* tests used to predict mutagenic and carcinogenic potential indicate that formamide exhibits slight cellular toxicity, but no mutagenic response. Studies in rats, mice, and rabbits indicate that formamide is embryotoxic and teratogenic at widely varying doses, by several routes of administration. Subchronic dermal studies indicate that repeated exposure to formamide may result in polycythemia. No other significant pathology was observed. Since bilateral testicular tubular atrophy was observed in male rats only at a dose level 100 times the NOEL for hematological effects, the data from the BASF 90-day subchronic study do not suggest a potential unreasonable risk of chronic or abnormal reproductive effects from current exposure to formamide.

The Agency finds that these data are valid and, when coupled with earlier data, are sufficient to reasonably predict the identified health effects of formamide and do not suggest potential for unreasonable risk at current exposures. Furthermore, current and anticipated future release and exposure for formamide do not appear sufficient to warrant testing for any other effects on a section 4(a)(1)(B) basis.

EPA has therefore decided that testing of formamide under section 4(a)(1)(A) or (B) of TSCA is not warranted at this time. However, the Agency may develop proposed rulemaking pursuant to section

5(a)(2) and/or 8(a) of TSCA to require notification of the Agency prior to any change in manufacturing (importing), processing, handling, use, release, and disposal patterns that would significantly increase exposure to formamide. Other action (e.g., listing of formamide as a hazardous waste, restricting waste disposal practices) may also be taken by the Agency.

### IV. Public Record

EPA has established a public record for this decision not to test under section 4 of TSCA (docket number OPTS-42032B). The record includes the following information:

#### A. Supporting Documentation

- (1) Federal Register notices pertaining to this decision consisting of:
  - (a) a Notice containing the ITC designation of formamide to the Priority List (47 FR 22582; May 25, 1982).
  - (b) Notice containing the preliminary response to the ITC for formamide (48 FR 23098; May 23, 1983).
  - (c) Notice containing the decision to adopt the Negotiated Testing Program for formamide (48 FR 57365; December 29, 1983).
  - (d) Receipt of data notices (49 FR 5190; February 10, 1984 and 50 FR 31918; August 7, 1985).
- (2) Communications consisting of:
  - (a) Written public and intra-agency or interagency memoranda and comments.
  - (b) Summaries of telephone conversations.
  - (c) Summaries of meetings.
  - (3) Reports—published and unpublished factual materials, including contractor's reports.

#### B. References

- (1) Mathtech. "Level I Economic evaluation: Formamide (March 1982)." Mathtech, Arlington, VA. 22 pp. (1982).
- (2) BASF Wyandotte Corp. "Internal Report: Results of the toxicity of formamide in a four-week investigation in the rat." Industrial Hygiene and Toxicology Laboratory, BASF Aktiengesellschaft, Ludwigshafen, West Germany. (1982).
- (3) BASF Wyandotte Corp. Letter from R.T. Flaherty, BASF Wyandotte Corp., 100 Cherry Hill Rd., P.O. Box 181, Parsippany, NJ 07054, to Steven D. Newburg-Rinn, U.S. Environmental Protection Agency, Test Rules Development Branch, Washington, DC 20460. (September 7, 1982).
- (4) BASF Wyandotte Corp. Product literature. Worker exposure survey presented at a meeting with the EPA Assessment Division. (August 19, 1982).
- (5) BASF Wyandotte Corp. Letter from R.T. Flaherty, BASF Wyandotte Corp., 100 Cherry Hill Rd., P.O. Box 181, Parsippany, NJ 07054, to S.D. Newburg-Rinn, U.S. Environmental Protection Agency, Test Rules Development Branch, Washington, DC 20460. (August 9, 1982).
- (6) Zaeva G.N., Vinogradova K.L., Savina M.Y., Osipenko N.I. "Toxicity of formamide." *Toksikol. Novykh. Prom. Khim. Veshchestv*

9:163-174. (1967). (In Russian; as reported in *Chemical Abstracts* 70:18516c).

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(12) BASF. "Testing of formamide and acetamide for mutagenic effects in the dominant lethal test." Peh J., West Germany. (1974).

(13) Pen J. Proceedings of the Second International Symposium on chromosome aberrations by industrial chemicals and vinyl chloride toxicity. October 28-29, 1974.

(14) Freeman A.E., Weisburger E.K., Weisburger J.H., Wolford R.G., Maryak J.M., Huebner R.J. "Transformation of cell cultures as an indication of the carcinogenic potential of chemicals." *Journal of the National Cancer Institute* 51:799-808. (1973).

(15) BASF. Badische Anilin und Soda-Fabrik. "Internal Report: Report on the examination of formamide for teratogenic effects on rats after repeated percutaneous application corresponding with regular workdays." XIX/197. Ludwigshafen/Rhein, West Germany. (1974).

(16) BASF. Badische Anilin und Soda-Fabrik. "Internal Report: Report on the examination of formamide for teratogenic effects in rats after oral application." XXII/341. Ludwigshafen/Rhein, West Germany. (1974).

(17) BASF. Badische Anilin und Soda-Fabrik. "Internal Report: Report on the examination of formamide for teratogenic effects in mice after oral application." XIX/197. Ludwigshafen/Rhein, West Germany. (1974).

(18) BASF. Badische Anilin und Soda-Fabrik. "Internal Report: Examination of the influence of formamide upon pregnant rabbits and their fetuses after administration by gavage." XXIII/245. D-2104 Hamburg 92 (Hausbruch), West Germany. (1974).

(19) Merkle J. and Zeller H. "Tests of acetamides and formamides for embryotoxic and teratogenic effect in rabbits." *Arzneim Forschung*. (In German; English trans.) 30:1557-1582. (1980).

(20) BASF. "Internal Report: Report on the examination of a commercially available ink (black) for teratogenic effect in mice by percutaneous application on the 8th day post coitum." XXII/341. Ludwigshafen/Rhein, West Germany. (1973).

(21) BASF. Badische Anilin und Soda-Fabrik. "Internal Report: Report on the

examination of a commercially available ink (black) for teratogenic effects in mice by percutaneous application on the 13th day post coitum." XXII/341. Ludwigshafen/Rhein, West Germany. (1974).

(22) NIOSH. National Institute for Occupational Safety and Health. Computer printout: NIOSH trade name ingredient data base-NOSH. Retrieved Sept. 26, 1985.

(23) National Toxicology Program. "Results Report. Ames Test with Formamide." National Institute of Environmental Health Sciences. Research Triangle Park, N.C. (August 28, 1985).

(24) Arimoto S., Nakano N., Ohara Y., Tanaka K., Hayatsu H. "A solvent effect on the mutagenicity of tryptophan pyrolysate mutagens in the *Salmonella* mammalian microsome assay." *Mutation Research* 102:105-112. (1982).

(25) USEPA. U.S. Environmental Protection Agency. Personal communication between Letitia Tahan and Beth Tainer, National Toxicology Program, National Institute of Environmental Health Sciences. Research Triangle Park, N.C. (September 18, 1985).

(26) Research and Evaluation Associates, Inc. "Ad Hoc review No. AH-10: Subchronic toxicity of formamide." Research and Evaluation Associates, Inc. Chapel Hill, N.C. 5 pp. (May 1985).

(27) Federal Republic of Germany. "Audit report on the subchronic dermal toxicity (rat) of formamide; Project No. 38H0294/8255 and Follow-up study to determine a no-observed-effect-level (NOEL); Project No. 38H0400/8431." Dr. Schlottmann, Federal Ministry for Youth, Family Affairs, and Health, Bonn 2 (Bad Godesberg). (1985).

(28) USEPA. U.S. Environmental Protection Agency. Memorandum. Evaluation of the risk from formamide exposure: worst case scenario. James N. Rowe, Ph.D. Pharmacologist, Existing Chemicals Task Force. (1983).

(29) BASF Wyandotte Corp. Proposed voluntary testing program on formamide. (November 4, 1982).

(30) Organization for Economic Cooperation and Development (1981), Subchronic Dermal Toxicity Guideline No. 411, adopted May 12, 1982.

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(32) BASF. "Report on the study of subchronic dermal toxicity of formamide in rats after 3 months exposure." Vols. 1 and 2. Project No. 38H0294/8255. Ludwigshafen/Rein, West Germany. (1985).

(33) Oak Ridge National Laboratory and U.S. Environmental Protection Agency. "Proceedings of the workshop on subchronic toxicity testing." Denver, Colorado. May 20-24, 1979. Publication No. ORNL/EIS-189; EPA-560/11-80-028. (1980).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, along with other information considered by the Agency in development this notice is available for

inspection in the OPTS Reading Rm. E-107, 401 M Street SW., Washington, DC, from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

Authority: 15 U.S.C. 2603.

Dated: February 21, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-4255 Filed 2-26-86; 8:45 am]

BILLING CODE 5650-50-M

## FEDERAL HOME LOAN BANK BOARD

### Capitol Savings and Loan Association, Mount Pleasant, IA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Capitol Savings and Loan Association, Mount Pleasant, Iowa, on February 21, 1986.

Dated: February 24, 1986.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86-4272 Filed 2-26-86; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

### Reissuance of Ocean Freight Forwarder License; Fuji Express

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.: 2126; Name and address: Kenichi Haramoto dba, Fuji Express, 340 Swift Avenue, South San Francisco, California 94080; Date reissued: February 13, 1985.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 86-4234 Filed 2-26-86; 8:45 am]

BILLING CODE 6730-01-M

### Applicants for Ocean Freight Forwarder License; Pac Trek International, Inc.

Notice is hereby given that the following person has filed with the Federal Maritime Commission an

application for license as an ocean freight forwarder pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why the following person should not receive a license are requested to communicate with the Office of Freight Forwarders, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573: Pac Trek International, Inc., 1100 Army Street, San Francisco, CA 94124, Officers: Michael J. Barron, President, Richard Eber, Vice President, Gerald Y. Tom, Secretary/Treasurer.

Dated: February 24, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-4235 Filed 2-26-86; 8:45 am]

BILLING CODE 6730-01-M

#### Revocations of Ocean Freight Forwarder License; Unlimited Shipping Agency, Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License No.: 2796

Name: Unlimited Shipping Agency, Inc.  
Address: P.O. Box 66367, AMF O'Hare,  
Chicago, IL 60666

Date revoked: February 14, 1986

Reason: Requested revocation voluntarily

License No.: 2672

Name: Klaus International, Inc.  
Address: 14340 Memorial Drive, #121,  
Houston, TX 77079

Date revoked: February 18, 1986.

Reason: Requested revocation voluntarily.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 86-4236 Filed 2-26-86; 8:45 am]

BILLING CODE 6730-01-M

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Alcohol, Drug Abuse, and Mental Health Administration

##### Acquired Immunodeficiency Syndrome (AIDS) Research Centers

**AGENCY:** National Institute of Mental Health and National Institute on Drug Abuse, HHS.

**ACTION:** Issuance of program announcement for establishing Acquired

##### Immunodeficiency Syndrome (AIDS) Research Centers, MH-86-16.

**SUMMARY:** The National Institute of Mental Health and the National Institute on Drug Abuse announce the availability of a program announcement concerning establishing of Acquired Immunodeficiency Syndrome (AIDS) Research Centers. This announcement is to encourage coordinated, multidisciplinary center programs on the mental health and drug abuse aspects of AIDS which also provide a research environment to encourage the development of new scientists committed to research on AIDS and which establish a structure to facilitate rapid dissemination of the most recent information related to mental health and drug abuse aspects of AIDS. A center is expected to function as a resource to the scientific and clinical community and to State and community agencies. Support may be requested for up to 5 years. It is anticipated that in Fiscal Years 1986 and 1987, there will be up to \$500,000 in direct costs per year for two to three research centers.

*Receipt and review dates of applications:* Applications will be accepted and reviewed according to the usual Public Health Service schedule and procedures. Applications must be received by April 15, 1986, for funding considerations in Fiscal Year 1986.

##### FOR FURTHER INFORMATION OR A COPY OF THE ANNOUNCEMENT, CONTACT:

Ellen Simon Stover, Ph.D., Deputy Director, Division of Basic Sciences, National Institute of Mental Health, Room 11-103, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-4337, 443-3563

OR

Roy W. Pickens, Ph.D., Director, Division of Clinical Research, National Institute on Drug Abuse, Room 10A-38, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6697.

Robert Trachtenberg,

Acting Administrator Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-4241 Filed 2-26-86; 8:45 am]

BILLING CODE 4160-20-M

##### New Investigator Research Awards

**AGENCY:** National Institute of Mental Health, HHS.

**ACTION:** Issuance of program announcement on New Investigator Research Awards, MH-86-17.

**SUMMARY:** The National Institute of Mental Health announces the

availability of a program announcement concerning the New Investigator Research Award (NIRA) in the areas of Prevention and Mental Health Services Research. NIRA is an award to an institution on behalf of a specific individual and is designed to encourage new investigators (or investigators who have established careers in closely related fields) who wish to specialize in the biomedical and biobehavioral disciplines to develop their research capabilities in Prevention or Mental Health Services. Support may be requested for up to 3 years. It is anticipated that in Fiscal Years 1986 and 1987, there will be up to \$112,500 in direct costs per year for the 3-year period.

*Receipt and review dates of applications:* Applications will be accepted and reviewed according to the usual Public Health Service schedule and procedures, except that for Fiscal Year 1986, NIRA applications in Mental Health Services (not Prevention) have a receipt date of April 1, 1986, with an earliest award date of September 1986.

##### FOR FURTHER INFORMATION OR A COPY OF THE ANNOUNCEMENT, CONTACT:

##### Prevention

Ms. Joyce Lazar, Chief, Prevention Research Branch, National Institute of Mental Health, Room 14C-04, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

or

##### Mental Health Services

Dr. Lawrence Chaitkin, Division of Biometry and Applied Sciences, National Institute of Mental Health, Room 18C-06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Robert Trachtenberg,

Acting Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-4242 Filed 2-26-86; 8:45 am]

BILLING CODE 4160-20-M

##### Food and Drug Administration

##### Advisory Committee; Open Meeting

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in

open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

**General and Plastic Surgery Devices Panel**

*Date, time, and place.* March 25, 9 a.m., Rms. 703-727A, Health and Human Services Bldg., 200 Independence Avenue SW., Washington, DC.

*Type of meeting and contact person.* Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 4 p.m.; closed committee deliberations, 4 p.m. to 5 p.m.; Paul F. Tilton, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20901, 301-427-7156.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before March 11, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss a premarket approval application (PMA) for a collagen hemostatic agent; a PMA supplement for a polydioxanone synthetic absorbable suture; and the reclassification of stainless steel sutures.

*Closed committee deliberations.* The committee may discuss trade secret or confidential commercial or financial information regarding a premarket approval application. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Room 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated

as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under sections 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: February 20, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-4206 Filed 2-26-86; 8:45 am]

BILLING CODE 4160-01-M

## Office of Human Development Services

### Revisions to HDS Discretionary Grants Administration Manual

**AGENCY:** Office of Human Development Services, HHS.

**ACTION:** Final notice.

**SUMMARY:** The Office of Human Development Services (HDS) is publishing in final, the HDS Discretionary Grants Administration Manual. A notice of proposed revisions was published on October 7, 1982. These revisions apply to all discretionary grant programs administered by the Administration on Children, Youth and Families, the Administration on Aging, the Administration on Developmental Disabilities, the Administration for Native Americans, and the Office of Program Development.

**EFFECTIVE DATE:** February 27, 1986.

**FOR FURTHER INFORMATION CONTACT:** Beverly Córdova, (202) 472-6709.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Office of Human Development Services (HDS) published proposed revisions to its Discretionary Grants Administration Manual (HDS/GAM) in the *Federal Register* on October 7, 1982. The manual is applicable to discretionary grant programs administered by the Administration for Children, Youth and Families (ACYF), the Administration on Aging (AoA), the Administration on Developmental Disabilities (ADD), the Administration for Native Americans (ANA), and the Office of Program Development (OPD). Comments on the proposed revisions were solicited with a deadline of December 6, 1982 for receipt of comments. Comments were received from organizations receiving HDS support as well as from other interested organizations and individuals. A summary of these comments and the action taken, as well as other technical changes, is indicated below.

In the past, the HDS/GAM was divided into parts which differentiated between general policies and procedures applicable to all discretionary grants and cooperative agreements (Part I) and unique requirements specific to a particular program (e.g., Part II—Head Start). Since

program specific requirements which supplement, take precedence over, or deviate from, the HDS/GAM are now codified in individual program regulations, we no longer consider such distinctions necessary for this manual. However, where appropriate, any program-specific requirement which has relevance to an HDS/GAM provision is clearly noted. Therefore, Parts II and III to the manual are hereby revoked.

The HDS Discretionary Grants Administration Manual will be provided in its entirety to all current HDS discretionary grantees. Other interested parties may obtain copies of the manual at cost from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

#### Comments and Responses

HDS received twenty-eight comments in response to the October 7 notice. Following are summaries of the specific substantive comments together with our responses.

1. *Comment:* One respondent stated that the HDS Grants Administration Manual (HDS/GAM) is not necessary since the provisions of OMB Circulars establishing uniform requirements for grants and other agreements are incorporated in 45 CFR Part 74, and other policies and procedures applicable to grants are described in the HHS Grants Administration Manual (HHS/GAM).

*Response:* We agree that recipients of financial assistance should not be confronted with duplicative policies and procedures issued by different awarding offices. In fact, the HDS/GAM was issued in 1977 to provide in one document policies and procedures applicable to all discretionary grants awarded by the program offices which are part of HDS. Prior to the issuance of the HDS/GAM, our program offices had used separate policies and procedures.

The HDS/GAM is not a substitute for 45 CFR Part 74 or the HHS/GAM. The HHS/GAM describes policies and procedures for HHS operating divisions as well as recipients. We implement the HHS/GAM provisions with two manuals, one internal, the HDS Grants Administration Staff Manual, and one external, the HDS/GAM. The HDS/GAM implements the Department's provisions and describes options allowed under the Department's rules and certain deviations to 45 CFR Part 74 which have been approved by the Department. These options and deviations are specifically applicable to HDS grants. Deviations are addressed in 45 CFR Part 74.6 and are authorized by "the head of the granting agency or other officials if designated in or

pursuant to formal deviation control procedures established by the agency and OPAL" (Office of Procurement, Assistance, and Logistics). Certain deviations require approval only from the head of the awarding agency. Part 74 also discusses options for granting agencies. Where we have selected a particular option, we have referenced the appropriate Part 74 citation. Finally, the HDS/GAM is useful to a large number of recipients whose sole or major source of Federal assistance is from HDS, since it highlights issues which are typically and frequently of concern to these recipients.

2. *Comment:* A request was made for a definition of the term "capital expenditure".

*Response:* The definition of a "capital expenditure" is: "The cost of the asset including the cost to put it in place. Capital expenditure for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it was acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the regular accounting practices of the organization purchasing the equipment". (See definitions of "capital expenditures" in OMB Circular A-21 and "acquisition cost" in 45 CFR 74.132 and OMB Circular A-122). The Definitions section of the manual has been expanded to include this term.

3. *Comment:* The criteria for selection of proposals for funding under a competition for discretionary grants should be outlined in the program announcement.

*Response:* We agree. The discussion of new applications under section A.2, Application Procedures, of Chapter 1 of the manual has been expanded to require that funding priorities and criteria for review and evaluation must be included in a program announcement.

4. *Comment:* Announcement of the availability of grant funds should be published in the *Federal Register*, even when competition is limited, so that all prospective applicants are properly notified and public information is provided on all grant programs.

*Response:* We do not agree with this comment. According to Chapter 1-55 of the HHS/GAM, publication of a program announcement in the *Federal Register* is not required by Department policy if the granting office sends a copy of the program announcement directly to every potential applicant. However, we

believe that in most cases wide notification should be encouraged. We have added language in Section A, Application Procedures, of Chapter 1 to provide a program option for publication of notice of availability in the Federal Register even when the number of eligible potential applicants is relatively small.

5. *Comment:* The procedures in the manual regarding the Office of Management and Budget Circular A-95 are obsolete since the Circular was revoked.

*Response:* This is correct. Since the proposed HDS/GAM was published, the Department has issued final regulations implementing Executive Order 12372 in 45 CFR Part 100 (see 48 FR 29188, June 24, 1983). We have changed the provisions in this manual in Section E of Chapter 1 to incorporate these final regulations.

6. *Comment:* Clarification on what grant competition information may or may not be released under the Freedom of Information Act (FOIA) is needed since the Department's policy was recently revised. The revised policy states that requests for all records of "evaluative material" with respect to particular applications being considered will be withheld from the public.

*Response:* There are a great deal of permutations and possibilities for the kinds and amounts of information that can be released under an FOIA request. It might prove nonproductive to include FOIA information at all in the HDS/GAM. In response to the comment, we would prefer to forgo generalizations about grant competition information, and deal on a case by case basis with all requests. Therefore, we are deleting the last two sentences of Chapter 1, Section F, Notice to Unsuccessful Grant Applicants, dealing with our responses to requests from unsuccessful applicants for information regarding the award process.

7. *Comment:* The length of anticipated support for various types of programs should be made clear to potential applicants.

*Response:* We agree. The general discussion in Section I, Discretionary Grant Funding, of Chapter 1 of the manual has been expanded to state that the anticipated project period will generally be specified in a program announcement and will also usually be included in the description of the program in the *Catalog of Federal Domestic Assistance*.

8. *Comment:* The cost of audit services should be charged to the budget period being audited rather than the period in which the service was actually provided.

*Response:* We disagree. Generally accepted accounting principles provide for audit obligations to be charged to the fiscal period in which the services are provided. This issue has been clarified in the table showing when obligations should be charged, which appears in Section I of Chapter 1.

9. *Comment:* Forthcoming changes in the Department's Payment Management System (PMS) will make some of the information in the manual regarding liquidation of obligations obsolete.

*Response:* While some of the formats and information requested and generated by the PMS are different from that of the Department Federal Assistance Finance System (DFAFS), the requirements concerning liquidation of obligations have not been affected. All references to DFAFS in the manual have been changed to PMS to reflect the Department's organizational change to the new Payment Management System.

10. *Comment:* A six month time limit should be established for the liquidation of all obligations incurred under a grant assisted project.

*Response:* Our current policy is for grantees to submit final Financial Status Reports (SF-269) showing no unliquidated obligations within 90 days of the end of the project period. In unusual circumstances, we would consider extending the deadline date for liquidating obligations for a reasonable time period. The resultant time frame should be more than sufficient for a recipient to close out its grant accounts. We would consider failure to submit a final report within a reasonable length of time an example of poor financial management and take this into account when the fiscal performance of the grantee is evaluated. A resultant poor evaluation could result in a denial or delay in refunding, grounds for tighter fiscal controls on other HDS grants, or other appropriate action. Language has been added to section I.3, Liquidation of Obligations, of Chapter 1, and section A.2, Financial Status Report, of Chapter 6 to strengthen our position on the need for a timely submittal of the Financial Status Report.

11. *Comment:* The section on Transferring Work Through Subgrants or Procurement Contracts Under Grants is lengthy, unclear, and confusing.

*Response:* After careful consideration we have determined that one addition is necessary in this section. The paragraph in Chapter 1, section K.1 describing prior approval requirements reflects Departmental policy stated in Chapter 1-430 of the HDS/GAM. The paragraph in section K.2 which provides guidance in selecting the proper award instrument has been viewed by most reviewers as

being helpful and concise. We have added a sentence to Section K.2 to make a clear distinction regarding the appropriate use of a subaward and a contract.

12. *Comment:* The subsection on Budget Changes distorts the prior approval requirements of the cost principles contained in OMB Circulars A-21, A-87, and A-122 concerning equipment and other capital expenditures. The prior approval requirements in these circulars are not consistent with each other.

*Response:* We do not believe the HDS/GAM distorts the prior approval requirements set forth in the cited OMB circulars. Although these circulars have different requirements, we are using the authority assigned to us in 45 CFR 74.177(c) to impose the same requirements on all HDS grantees. Thus, in some cases, the requirements on HDS grantees are less rather than more restrictive.

All three circulars that apply to HDS recipients, A-21, A-87, and A-122, have prior approval requirements for the purchase of equipment. The only difference is the threshold which triggers the necessity for prior approval. In interpreting A-87 as it applies to HDS discretionary grants, the provisions dictate prior approval for virtually all items of equipment. A-21 and A-122 are more permissive and require prior approval only for items of equipment having a useful life of two years or more and an acquisition cost of \$500 or more per unit. The manual simply waives the stricter requirements of A-87 and imposes the same requirements as A-21 and A-122 so that we have a consistent policy for all HDS grantees.

13. *Comment:* In Chapter 1, section L.1, Prior Approval Procedures, HDS warns the recipient with regard to acting on written prior approval from HDS when the approved expenditure or activity is unallowable. HDS should not place the burden of responsibility on the recipient, but on HDS, when it approves an unallowable cost or activity.

*Response:* No change has been made in the manual with regard to this issue. This section was intended to alert grantees as to who the proper officials are when requesting changes. HDS does not assume responsibility for the actions of its employees who act beyond the scope of their authority, orally or in writing. If proper approval has been obtained, and, thereafter, an expenditure or activity is found to be unallowable, the HDS awarding office will carry the weight or responsibility for rectifying the problem. Responsibility still rests with the

grantee, however, to be cognizant of HHS regulations regarding prior approval procedures as specified in 45 CFR 74.102.

14. *Comment:* Pub. L. 96-205 states in part that an agency or department shall waive any requirement for local matching funds under \$100,000 required by law to be provided by the Northern Mariana Islands and American Samoa. Additionally, Pub. L. 95-348 states that certain grant funds made available to the Northern Mariana Islands shall remain available until expended. Provisions of the manual should reference these two statutes.

*Response:* As stated in the Introduction, Federal legislation takes precedence where a conflict exists with a provision of the manual. We consider this statement sufficient. It includes by implication Pub. L. 96-205 and Pub. L. 95-348 regarding the Northern Mariana Islands and American Samoa. However, with respect to the issue of funds being available until expended, Pub. L. 95-348 deals with matching formula and/or allotment programs, and would not apply to the discretionary grants covered by the HDS/GAM. No change has been made in the manual.

15. *Comment:* Chapter 2, section D, Valuation of Third-Party In-Kind Contributions, states that a reasonable amount of uncompensated employee time may be charged as an in-kind contribution to the project provided the services are not within the scope of the employee's paid employment. Since uncompensated time involves no cost to the grantee, this section should be deleted.

*Response:* Volunteer services are encouraged by HDS as an acceptable in-kind contribution. As long as the grantee complies with the provisions of the HDS/GAM, and the services performed are reasonable, necessary, and allowable to the projects, such activity should be allowable as an in-kind contribution. No change has been made to the manual on this issue.

16. *Comment:* The Cost Transfers discussion in Chapter 3, section A.3, is confusing. The section is concerned with transferring costs into and out of HDS grant accounts due to errors and/or closely related work. The discussion appears to accept cost transfers as a standard grantee practice and thus might mislead grantees into believing that improper allocation of costs is acceptable.

*Response:* We agree and have deleted this topic from the manual.

17. *Comment:* Major subawards should not be excluded from the direct cost base when computing the amount

of indirect cost dollars to be awarded under a grant.

*Response:* It is necessary to exclude major subawards from the direct cost base to assure that the recipient organization is equitable and based on relative benefits received. Clarifying language has been added to the third paragraph of section B.1 of Chapter 3, Indirect Costs, to explain the purpose of the base exclusion and to emphasize that the specific elements of cost to be excluded from the direct cost base should be part of the indirect cost negotiation and approval process.

18. *Comment:* The discussion of child care costs as allowable costs should require that such costs be authorized by the recipient's written policy.

*Response:* We agree. To avoid possible internal organization conflicts and to ensure consistency, child care costs should be addressed in the grantee's written policy. Language has been added to the discussion of this item in section D, Allowable Costs, of Chapter 3, to include this requirement.

19. *Comment:* The HDS/GAM should provide for payment for unused accumulated leave only upon termination of a grant or termination of an employee paid under a grant, and it should state that payment of cash in lieu of leave at year-end is unallowable.

*Response:* The HDS/GAM is not intended to supersede an organization's consistently applied policies of accounting for compensated absences. If it is an organization's policy (though it is rare) to pay for accumulated leave at the end of a fiscal period, then HDS would not interfere with this policy by placing strictures on those employees working on HDS funded projects.

The discussion of this issue, which appears in section D, Allowable Costs, of Chapter 3, was meant to describe how and when costs associated with earned leave should be recorded under an accrual system or a cash system. The section has been revised to state that, under a cash system, the cost is incurred when the earned leave is taken by the employee and paid by the employer.

20. *Comment:* The interest costs provision in section E, Unallowable Costs, of Chapter 3, is obsolete for educational institutions, since OMB Circular A-21 has been revised.

*Response:* We agree. We have revised this paragraph on interest costs to conform to the current provisions in OMB Circular A-21 for educational institutions.

21. *Comment:* The manual should reflect the use of the SF-270, Request for Advance or Reimbursement, when advance payments by Treasury check are not made on a predetermined basis.

*Response:* Language has been added to sections A.2 and A.3 of Chapter 4 and to section A.5 of Chapter 6 requiring the use of this form when payments are not made to a recipient on a predetermined basis (see 45 CFR 74.75(a)(1)).

22. *Comment:* The discussion of program income as it relates to the sale of donated goods or services should be deleted or qualified to reflect the fact that the recipient must report program income only in a share proportionate to the direct costs charged to the program in connection with the generation of the income.

*Response:* In those instances where program income is generated from the results of non-grant related activities as well as grant activities, the grantee would only report income earned from those activities directly associated with the grant. The commenter's point would appear to be an extrapolation from the definition of program income, but, for the sake of clarity, we have included his distinction in the part of this section dealing with reporting.

In addition, we have deleted the cake sale example relating to the sale of donated goods or services. Since fundraising costs are not allowable under Federal grant programs, HDS cannot permit grant funds to be used for fundraising activities. There may be instances in which a grantee wishes to occasionally conduct fund raising in a building whose cost is charged entirely to an HDS grant. This is permissible provided the incidental use of the building for fund-raising is minor and immaterial and does not interfere with the grant project. As an example, if a grantee held a dance in the Head Start Center to raise money for the program, the net profit of income over expenses would not be program income. Rather, the net profit could be used as a donation to the program as a cash contribution to help satisfy non-Federal share requirements. The generation of that contribution would be irrelevant.

23. *Comment:* There are basically three different alternatives for the use of program income: (1) The deduction alternative, (2) The matching alternative, and (3) The additional costs alternative. These terms should be further clarified, and requirements for reporting program income should be clearly stated to avoid confusion.

*Response:* We agree. Language has been added to section D.2.d of Chapter 4 to clarify the alternatives and uses of program income. We have also further amended this section to clarify the correct methods of reporting program income on the financial status report.

24. *Comments:* (1) The language in section E, Chapter 4, Reimbursements From Other Federal Agencies, is not consistent with procedures currently established in the Head Start program with regard to USDA reimbursement under the Child Care Food Program; and (2) the section as written might encourage a recipient to request funding for the same costs from several Federal funding sources.

*Response:* We agree. We have deleted from the section language which may appear misleading or conflicting.

25. *Comment:* In the Definitions section, the term "consultant" should exclude all employees of the recipient organization without regard to the services they perform.

*Response:* In general, we try to follow the provisions of the HHS/GAM (in this case, Chapter 1-45), especially when doing so has been beneficial to the grantee as well as to the HDS mission. In this case, we would lose a considerable pool of expertise if we could not pay consultant fees to university professors and other professionals who would fall under its pressure. We believe it is not in the public interest to unnecessarily limit consultant fees when there is no conflict of interest between those who would be affected and the grant. Therefore, no change has been made.

26. *Comment:* The discussion of lease versus purchase in section D of Chapter 8 of the manual (1) distorts the prior approval requirements of the cost principles; (2) overstates the requirements of Attachment O of OMB Circular A-102 and A-110, and (3) in the case of educational institutions, does not reflect the revised interest provisions in OMB Circular A-21.

*Response:* (1) We have revised Chapter 8, section D, lease vs. purchase, to delete the reference to prior approval; (2) we have corrected the overstatement of the requirement of Attachments O of OMB Circulars A-102 and A-110 by replacing "shall" with "should" in the following passage: "Generally, the decision to lease or purchase equipment should be based on the lowest cost to the project considering the length of the project and life expectancy of the equipment"; and (3) we have added language which calls to the attention of educational institutions the revision in OMB Circular A-21 which deals with interest.

27. *Comment:* The independent auditor qualifications for public accountants discussed in Chapter 11, Section A, Non-Federal Audits, is an arbitrary and discriminatory requirement. The General Accounting Office (GAO) standard should not be included in the HDS/GAM.

*Response:* The use of Certified Public Accountants (CPAs) for audit work has been a longstanding practice with the Department and is consistent with general Federal practice. Both private and public sectors have found the objectivity and quality of work provided by CPAs extremely valuable in performing monitoring functions as well as safeguarding Federal funds. In addition, in this matter, we are complying with Departmental policy as dictated by GAO. No changes have been made in our requirements.

28. *Comment:* Section B, Audit Resolution, of Chapter 11 should make a clear distinction between the two basic kinds of audit findings, (1) management and systems deficiencies and (2) monetary findings. It should also distinguish between the time frames and actions required for the resolution of each kind of audit finding, and the nature of subsequent HDS actions.

*Response:* This section has been revised to make clear that the audit resolution process is aimed at agreement between the HDS awarding agency and the grantee. Since there is not always agreement, it also addresses HDS's authority to make unilateral decisions. To clarify the difference between audit resolution and debt collection we have reorganized the section to treat each topic separately.

Dated: February 19, 1986.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Final notice is given to the applicability of the HDS Discretionary Grants Administration Manual as published in the *Federal Register* on October 7, 1982, with the following changes:

a. In the "Definitions" section we will add:

• *Capital Expenditure*

The cost of the asset including the cost to put it in place. Capital expenditure for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it was acquired. Ancillary charges; such as taxes, duty, protective in-transit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the organization's regular accounting practices. (See definitions of "acquisition cost" in 45 CFR 74.132 and OMB Circular A-122, and "capital expenditures" in OMB Circular A-21.)

b. In Chapter 1, section A.2.a, the final sentence of the first paragraph will be amended to read:

This announcement describes the program, the amount of funds available, eligibility requirements, where to obtain application forms, the deadlines for submitting an application, criteria for review and evaluation, funding priorities, and other information about the activity.

c. In Chapter 1, section A.2.a, the second sentence in the second paragraph will be amended to read:

In these cases, announcement of the availability of funds may be made through: (1) Publishing a notice in the *Federal Register*; (2) Individual letters to all prospective applicants; (3) Publishing notices in newspapers; or (4) other suitable forms of public notice.

d. In section E, Chapter 1, the provisions concerning the Intergovernmental Review of Federal Programs will be completely revised as follows:

**E. Intergovernmental Review of Federal Programs**

Cross-references:  
Executive Order 12372  
45 CFR Part 100

*1. Background*

The Intergovernmental Review System established by OMB Circular A-95 was replaced by Executive Order (E.O.) 12372 "Intergovernmental Review of Federal Programs", signed by President Reagan on July 14, 1982. Under E.O. 12372 and implementing DHHS regulations published at 45 CFR Part 100, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. A list of HDS covered programs is included as Attachment B to this manual. [For clarity, a list of HDS programs which are not covered by the Order is also included.]

The objectives of the new approach under E.O. 12372 are to (1) increase State flexibility to design a process and select programs, (2) increase the ability of State and local elected officials to influence Federal decisions, and (3) compel Federal officials to be more responsive to State concerns, or explain the reasons why they cannot accommodate those concerns. Nearly every State has adopted a State process and designated a State official or organization to act as the State's "Single Point of Contact" (SPOC) for coordinating and sending official State process comments and recommendations to Federal agencies.

All organizations submitting applications subject to E.O. 12372 review should contact the cognizant SPOC (if one has been designated) as early as possible for instructions regarding the State's process.

## 2. Applicability

The requirements of this section are applicable to all HDS discretionary programs covered by E.O. 12372 except those administered by Federally-recognized Indian Tribes. Changes and additions of covered programs in 45 CFR Part 100 will be announced in the Federal Register.

## 3. The HDS Process

### a. New and Competing Continuation Awards

The responsible HDS granting office will notify the SPOCs as early as possible of the intent to issue new or competing continuation financial assistance awards through the publication of a program announcement in the Federal Register. If every eligible applicant is identifiable by the granting office, the announcement may be mailed to each of them directly instead of being published in the Federal Register.

The program announcement will specify the due date for comments from the SPOCs. That date will normally be the 60th day after the application deadline date. The program announcement and/or the application kit will include a current listing of SPOCs to facilitate early notification. Application kits will include information relating to compliance with the procedures described in this section.

### b. Noncompeting Continuation Awards

As early as possible, the cognizant HDS Grants Officer will notify the appropriate SPOC of the intent to make a noncompeting continuation award. For noncompeting continuations which are generally refunded on a continuous basis, e.g., Head Start, the Grants Officer will send out an early notification letter in July of each year. This letter will alert the SPOC of anticipated funding for the subsequent fiscal year beginning October 1 and will indicate the due date for comments from the SPOC. That date will normally be the 30th day after the application deadline date.

For other noncompeting continuations, HDS will notify the SPOC with a copy of the recipient's refunding guidance letter. This letter is mailed to the recipient six months prior to the continuation date, and will simultaneously be mailed to the cognizant SPOC. Again, an accompanying letter will inform the

SPOC that it will have until 30 days after the application deadline date to submit comments. Current grantees receiving continuation application kits or instructions should notify the SPOC that they are applying for a non-competing continuation award with a 30 day rather than a 60 day review period.

### c. Applicant Compliance Certification

Applicants shall certify that they have contacted the cognizant SPOC by checking the appropriate box in Item 22 of Standard Form 424, Federal Assistance. If more than one State will be served by the proposed project, the SPOC of each State in which the project will operate should be contacted by the applicant. The applicant's certification in Item 22 serves as assurance that all States to be served have been contacted. The Grants Officer will screen each application to ensure that the certification in Item 22 has been included, and immediately notify the SPOC of the receipt of any covered application which should, but does not, indicate that the SPOC has had an opportunity for review.

## 4. Handling Of State Process

### Recommendations: The "Accommodate or Explain Rule"

a. The "accommodate or explain" rule applies when all of the following are present:

(1) A written comment that constitutes a State process recommendation is received by the HDS official designated to receive applications.

(2) The comment is sent or transmitted by the SPOC.

(3) HHS has stated in the Federal Register that the program is covered by E.O. 12372.

(4) The applicant is not a Federally-recognized Indian Tribe.

(5) The comment is received not later than the established due date for State process comments.

b. If all of the factors listed in the preceding paragraph are present, the "accommodate or explain" rule is triggered even if the program is not one that was officially selected for review in the State process.

c. A mere endorsement of a grant application does not trigger the "accommodate or explain" rule. However, a comment that prioritizes or ranks applications does trigger the rule (if all of the factors listed in paragraph a above are present).

d. When the "accommodate or explain" rule applies, HDS must make every effort to accommodate the State process recommendation.

e. The HDS granting office will notify the SPOC in writing whether we

accommodate or non-accommodate a State process recommendation to which the "accommodate or explain" rule applies.

## 5. Accommodations

Accommodating a State process recommendation consists of either: (1) Accepting and carrying out the recommendation, or (2) Negotiating a mutually agreeable solution with the SPOC or State process representative.

## 6. Nonaccommodations

a. Nonaccommodation occurs when:

(1) The State process recommends that an application not be funded, and HDS decides to fund it; or

(2) The State process recommends substantive changes to the application or special conditions in the award and HDS decides to fund the application without these changes or special conditions; or

(3) The State process indicates that a particular application should be chosen for funding over others, and it is not funded while other, lower priority applications are.

b. Explanation requirement:

When a decision is made not to accommodate a State process recommendation, the HDS granting office must promptly send a written explanation of the reason(s) to the SPOC.

c. Delay of implementation: A nonaccommodation decision must not be implemented for at least ten days after the SPOC is first notified of the decision. (See paragraph 7 below concerning exceptions to this rule.) This waiting period requirement is intended to provide adequate time for the State process to formulate an appropriate response if the issue is sufficiently important within the State. Every nonaccommodation explanation given to a SPOC shall notify the SPOC of the specific date after which HDS may implement the nonaccommodation decision. Neither the awards for successful applications nor the disapproval letters for unsuccessful applicants shall be mailed until after the ten day waiting period has expired.

## 7. Unusual Circumstances and Waivers

In unusual circumstances, the Department may allow a reduction in: (1) The 60 day waiting period for new and competing continuations; (2) The 30 day waiting period for noncompeting continuations; or (3) The 10 day waiting period for nonaccommodation letters. For example, a statutory deadline, an emergency, or the end of the fiscal year may necessitate a shorter period. This

authority is used sparingly to deal with unforeseen situations or problems beyond the Department's control.

e. In Chapter 1, section F, the final two sentences will be deleted.

f. In Chapter 1, section I.1, the following insert will be added after the first sentence:

(Note.—HDS program announcements generally specify the length of the project period covered by the grant award. Further information is provided for some HDS programs in the *Catalog of Federal Domestic Assistance*.)

g. In Chapter 1, section I.2, the table showing when obligations must be charged will be changed as follows:

If the Obligation is for:

- Services by a contractor (except for audit services).
- Audit services.

The Obligation is made:

- When the services are provided.

h. In Chapter 1, section I.3, the second paragraph will be revised to read as follows:

If it is not possible to liquidate totally all obligations within the 90-day period specified for submission of a final report, grantees shall notify the HDS Grants Officer in writing and request approval for an extension of time in which to liquidate obligations. At the same time, grantees shall submit a "provisional" final report, indicating when the final report may be expected. Provisional final reports must be submitted on a quarterly basis until all obligations have been liquidated.

Note.—Failure to submit a final report within a reasonable length of time would be considered an example of poor financial management and taken into account when the fiscal performance of the grantee is evaluated. [See Chapter 6.A.2 for more information on the importance of timely reporting.]

When all obligations have been liquidated, the grantee shall submit a final expenditure report, showing \$0 balance on line 10(h) of the SF-269. This \$0 balance must also be reflected on the final Cash Transactions Report (SF-272 or PMS-272) which must be submitted with the final SF-269.

i. In Chapter 1, section K.2, the following sentence will be added after the fourth sentence of the first paragraph:

If the grantee intends to assist a lower tier party, the award should be made as a subgrant. Where a service is acquired or purchased, the award should be a procurement (contract).

j. In Chapter 3, delete section A.3, Cost Transfers.

k. In Chapter 3, section B.1, the first two sentences in the third paragraph will be amended to read:

The indirect cost rate is the ratio, expressed as a percentage, between the indirect costs and a direct cost base, commonly either direct salaries and wages or total direct costs, excluding capital expenditures and other distorting items (such as major subawards and flow-through funds). These base adjustments are necessary to ensure an equitable allocation of indirect costs based on relative benefits received. A definition of the direct cost base, (e.g., the types and/or amounts of distorting items to be excluded from the direct cost base) will be agreed upon as part of the approval process in establishing the organization's indirect cost rate(s) and will be contained in the Rate Agreement.

l. In Chapter 3, section D, the discussion of Child Care Costs in the Allowable Costs Section will be changed as follows:

• *Child Care Costs*

Where authorized by the recipient's written policies, child care costs to allow authorized participants or representatives to attend official board or council meetings, subject to limitations in program guidelines or regulations.

m. In Chapter 3, section D.(1), the discussion of Fringe Benefits will be changed to read as follows:

(1) *Employee sick, vacation, and other leave costs* may be accumulated on an accrual basis or a cash basis provided that an established written policy is consistently applied on an organization-wide basis. Under an accrual accounting system, the costs are recorded when leave is earned. (This meets the requirements of generally accepted accounting principles concerning liability for employee's compensation for future absences.) Under a cash accounting system, the costs are recorded when leave is taken by the employee and paid by the employer.

n. In Chapter 3, section E, the paragraph on interest on borrowed capital or temporary use of endowment funds will be changed to indicate that these costs are unallowable except as follows:

(1) In the case of State, local, and Federally-recognized Indian Tribal governments, interest costs associated with the acquisition of publicly owned buildings which are newly occupied on or after October 1, 1980 are allowable if a "rental rate" system or equivalent system reflecting actual costs is used (see section C.2.a and D.7 of Attachment B of OMB Circular A-87).

(2) In the case of educational institutions subject to the cost principles in OMB Circular A-21 (subsection J.17.e), the cost of interest paid to an external party is allowable where associated with the following assets, provided the assets are used in support of sponsored agreements and the total cost (including depreciation or use allowance, operation and maintenance costs, interest, etc.) does not exceed the rental cost of comparable assets in the same locality:

(a) Buildings acquired or completed on or after July 1, 1982.

(b) Major reconstruction and remodeling of existing buildings completed on or after July 1, 1982.

(c) Acquisition or fabrication of capital equipment (as defined in paragraph J.13, "Equipment and other capital expenditures") completed on or after July 1, 1982, costing \$10,000 or more, if agreed to by the Government.

o. For Chapter 4, Section A.2, Method of Payment, the passage entitled Advance by Treasury check will be amended by the addition of the following passage as the last sentence:

For grants paid through the Division of Accounting Operations or the Regional Administrative Support Center, advances are made through either: (1) Receipt of the SF-272; (2) Payment schedules submitted for new awards; or, (3) By the grantee regularly submitting the SF-270, "Request for Advance or Reimbursement."

p. Chapter 4, section A.3.b, first paragraph, will be changed in its entirety to read:

The HDS Grants Officer, at the time of a new award, sends a payment authorization package containing the grantee's forecasted cash needs for the first four months of the award to DAO or RASC. The finance office makes out a schedule of payments based on the forecasted cash needs and sends it to Treasury, where a check is automatically issued to the grantee at or near the beginning of each month. Subsequent payment requests in three month increments are provided by the grantee as part of the quarterly SF-272, Federal Cash Transactions Report, which are in turn forwarded by DAO or RASC to Treasury. If the grantee submits the SF-270 to request payments, a check is released to the grantee after the form is received and processed.

q. In Chapter 4, section D.2.b, the first example of monies received from sale of donated goods or services "cake sales for Head Start program", will be deleted.

r. In Chapter 4, section D.2.d, the discussion of the options (in bullets) is revised to read as follows:

- Income is deducted from the total project costs and third-party in-kind contributions for the purpose of determining the amount to which the maximum Federal share percentage will be applied. [See *deduction alternative* in 45 CFR 74.42(c).] Under this alternative, the recipient must use the income to reduce the amount of Federal and other funds needed to pay the allowable costs of the project.

Income under this option, when received, must be used for current costs before grant funds. However, the HDS granting office may authorize carryover of income received by the recipient to the recipient's next funding period. If so, the recipient shall use the income carried over before it uses grant funds in that period.

- Income is used for costs that count toward satisfying a matching requirement. [See *cost-sharing or matching alternative* in 45 CFR 74.42(d).] The income, when received, must be used to provide the matching before grant funds are used. The carryover provisions of the deduction alternative also apply to this alternative.

- Income is used by the recipient for costs that further the objectives of the statute under which the grant was made but which are not part of the project budget. They may be allowable or unallowable types of costs. Used in this fashion, income is not deducted from the total project costs when filling out the financial status report and is not required to be used before grant funds; but, it does have to be reported. No authorization from the granting office is necessary if the income is to be used in a later period. [See *additional costs alternative* in 45 CFR 74.42(e).]

The additional costs alternative described in 45 CFR 74.42(e) may not be applied to program income earned by a recipient that is a for-profit organization.

s. The section on Reporting in Chapter 4, Section D.2.d is revised as follows:

The following information pertaining to program income must be reported on the SF-269: (1) Source (or how the income was earned); (2) Amount, and (3) Disposition (identify which alternatives the income was used under and how much for each). Specific instructions for reporting general program income earned on the Financial Status Report (SF-269) are as follows:

(1) Enter on line 10.c all general program income used during this period in accordance with the *deduction alternative*.

(2) Costs paid during the period by general program income under the

*matching alternative* (if permitted by the terms of the grant) must be included in line 10.f, and the amount of costs on that line paid by the income must be stated in item 12 (i.e., if any of the costs on line 10.f were paid by general program income, state the amount in item 12).

(3) The amount of costs paid during the period by general program income under the *additional costs alternative* (if permitted by the terms of the grant) must be stated in item 12 along with a description of the purposes for which the income was used.

(4) If any general program income is being held for use in a later period (to the extent such a deferral is authorized), state the amount in item 12.

(5) If any alternative besides the deduction alternative is permitted or if deferral to a later period is authorized, report the amount of general program income earned during the reporting period in item 12.

(6) In item 12 list the sources of the income earned during the reporting period or describe how the income was earned. If the sources or means are the same as those set forth in the application, state "see application" in item 12.

(7) As a minimum, program income must be reported in a share proportionate to the direct costs charged to the program (or charged to the match) in connection with the generation of the income.

(8) Since interest earned is reported on the SF-272, it is not necessary to report interest on the SF-269.

(9) If SF-270, Request for Advance or Reimbursement, is used to request cash, also report program income in item 11.b of this form.

t. Chapter 4, section E will be substantially shortened to read as follows:

#### E. Reimbursements From Other Federal Agencies

HDS encourages grantees to seek other Federal funds to supplement financial assistance provided by HDS grant funds. Grantees should anticipate the funding of these project costs by sources other than HDS and should not request funds from HDS to support these same activities.

u. In Chapter 6, section A.2, the following passage will be added as the third paragraph:

In unusual circumstances, the deadline date for submitting a final report may be extended for a reasonable time period (if requested in writing and approved by the Grants Officer). However, the grantee should be advised that failure to submit the final financial status reports within a reasonable

period of time would demonstrate poor financial management which could potentially result in a denial or delay in refunding, grounds for tighter fiscal controls on other HDS grants, or other action as may be deemed necessary by the Grants Officer.

v. Chapter 6, section A.5 will be revised to read as follows:

#### 5. Request for Advance or Reimbursement

Cross references:

- 45 CFR 74.75, and
- Exhibit X-6-4 of this chapter.

HDS uses Standard Form 270, "Request for Advance or Reimbursement" when: (1) Advance payments by Treasury check are not made for a nonconstruction grant on a predetermined basis; (2) A grantee is paid by reimbursement for a nonconstruction grant; or (3) a grantee is paid by advance or reimbursement for a construction grant. The frequency for submitting payment requests is discussed in 45 CFR 74.96 and Chapter 4.A of this manual.

w. Chapter 8, section D, will be changed to read as follows:

#### D. Lease Versus Purchase

Appendices G (paragraph 8) and H (paragraph 3.C.(1)) of Part 74 require that an analysis shall be made of lease versus purchase alternatives to determine which approach would be the most economical. Generally, the decision to lease or purchase equipment should be based on the lowest cost to the project considering the length of the project and life expectancy of the equipment. In the case of the educational institutions, which can pay interest in certain circumstances, consideration should also be given to the provisions regarding interest in section J.17.e of OMB Circular A-21 (see "Interest Costs" in Chapter 3.E of this Manual).

x. Chapter (11, section A, first paragraph, will be revised to read as follows:

#### A. Non-Federal Audits

Subpart H of 45 CFR Part 74 (and 45 CFR Part 74, Appendix J) incorporates the audit requirements in OMB Circular A-128 covering governmental recipients and OMB Circular A-110 (Attachment F) for non-governmental recipients. The audit requirements in Circulars A-128 and A-110 are reproduced in Attachment A of this Manual.

In summary, Circular A-128 replaces Attachment P to OMB Circular A-102. The Circular implements the Single Audit Act of 1984. All governmental

recipients receiving \$100,000 or more in Federal funds are to be audited annually unless the government has specific authority to perform less frequent audits. Circular A-110 provides that each recipient must have itself audited by non-Federal auditors at least every two years and that the audit is to be performed on an organization-wide basis, with appropriate sampling of grant-related transactions. Unless authorized by program legislation or regulations, the granting office may not impose grant-by-grant (or subgrant-by-subgrant) audit requirements.

y. Chapter 11, section B, will be amended and a new section C will be added as follows:

#### B. Audit Resolution

Grantees must take timely and appropriate action to resolve audit findings and recommendations, including (1) management and systems deficiencies and (2) monetary findings (i.e., questioned costs). Grantees are usually allowed a 30-day period from the date of request to respond to the responsible audit resolution official (referred to as the "Action Official") concerning audit findings. Thus, grantee organizations have an opportunity to provide any further information they may wish to provide on the audit report. Both monetary and non-monetary findings must be resolved within six months. This means that (1) a final decision on the amount of any monetary recovery must be reached and (2) a satisfactory plan of corrective action, including time schedules, to correct all deficiencies must be established.

Failure to submit timely responses will result in a unilateral determination on the audit findings. If appropriate, the Action Official will also initiate "safeguard" procedures to protect the Government's interests. At the completion of the audit resolution process, the grantee will be notified of the final decision. The grantee may appeal this decision in accordance with the applicable appeal procedures (see Chapter 12).

#### C. Debt Collection

Funds owed to the Federal Government as a result of audit disallowances signed by the appropriate HDS official must be repaid. The Finance Office is primarily responsible for interest calculation and all other debt collection activities. Interest charges will be assessed from the date of the HDS Official's notification of the disallowance if the disallowance is not paid within 30 days of the date of the disallowance letter. If the grantee appeals the final decision and the

disallowed amount is sustained in its entirety or is reduced through a negotiated agreement, interest will be charged for the full period on the sustained amount of the disallowance which was not paid by the date of the disallowance letter.

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#### Social Security Administration

##### Refugee Resettlement Program; Proposed Formula for Allocations to States of Fiscal Year 1986 Funds for Social Services for Refugees and Cuban/Haitian Entrants

**AGENCY:** Office of Refugee Resettlement (ORR), SSA, HHS.

**ACTION:** Notice of proposed formula for allocations to State of fiscal year 1986 funds for refugee and entrant social services.

**SUMMARY:** This notice proposes the formula for allocation to States of FY 1986 funds for social services under the Refugee Resettlement Program (RRP). The formula yields the allowable allocation of FY 1986 refugee and Cuban/Haitian entrant social service funds for each State participating in the RRP.

**DATE:** Comments on the allocation method provided for in this notice will be considered if received by March 31, 1986.

**ADDRESS:** Address written comments in duplicate, to: David Howell, Office of Refugee Resettlement, Room 1229, Switzer Building, 330 C Street SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** David Howell, (202) 245-1923.

#### SUPPLEMENTARY INFORMATION:

##### I. Amounts Proposed for Allocation

The Office of Refugee Resettlement (ORR) expects to have available \$44,802,000 in refugee/entrant social service funds for FY 1986. This is the amount that was originally requested in the President's Budget for FY 1986. Under the Continuing Resolution for 1986 (Pub. L. 99-190), Congress made \$71,700,000 available for social services; this was then reduced to \$68,617,000 as a result of the 4.3% reduction required to be taken under the Balanced Budget and Emergency Deficit Control Act of 1985 (Pub. L. 99-177), generally referred to as Gramm-Rudman-Hollings. On February 5, 1986, the President proposed a rescission of those FY 1986 social service funds in excess of the original request of \$44,802,000. Congress has not

yet acted on this proposed rescission. In the event that funds above the \$44,802,000 addressed by this notice were to be finally available, ORR would plan to increase proportionally the State allocations proposed here, based on the same population formula as that contained in this notice.

Of this total of \$44,802,000, the Director of ORR proposes to make available to States \$35,829,647 during FY 1986 under the social services allocation formula set out in this notice. Separate announcements have been made of remaining funds not included in this notice.

All allocation figures include both refugees and entrants, since both populations may be served with funds made available under this notice.

The Director proposes to allocate funds directly to States in the following manner:

- \$33,700,001 (75% of the available social service funds) would be allocated on the basis of each State's proportion of the national population of refugees and entrants who had been in the U.S. less than 3 years as of October 1, 1985.

- \$196,286 of the funds would be made available to States which have particular needs associated with small refugee/entrant populations in order to provide a floor of \$45,000 for States for which the formula would otherwise yield less than that amount. In FY 1985, the floor amount was \$75,000; the floor amount of \$45,000 is proposed for FY 1986 to take into account the overall reduction in funds to be allocated.

- \$1,933,360 of the funds would be allocated to each State on the basis of its proportion of the 3-year refugee/entrant population (including a \$5,000 floor) in order to provide an incentive for States to fund refugee/entrant mutual assistance associations (MAAs). A written assurance that these funds will be used for MAAs would be required in order for a State to receive these funds. Guidance for States regarding this assurance is provided in Section II of this notice.

Of the \$8,972,353 in remaining social service funds, the Director anticipates making about \$2,000,000 available to States, if necessary, to provide funding beyond the proposed formula resulting from any adjustment made in population estimates (see Section III, below) specified in Section IV. In addition, \$7,000,000 is currently expected to be used by ORR on a discretionary basis to provide funds for individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program.

The discretionary funds will support: Specific program activities (listed below) designed to improve the delivery of services to refugees in areas designated in announcements of the availability of funds; an interagency agreement with the U.S. Public Health Service for the improvement of State mental health services to refugees; contracts to provide technical assistance to refugee service providers; and such activities as the Director determines to be required to address unique refugee service gaps. Announcements of the availability of funding and grant application procedures for some projects have been issued (Availability of Funding for Grants to States to Implement Favorable Alternate Sites Demonstration Projects, Memorandum to State Refugee Coordinators issued October 1, 1984; Availability of FY 1986 Funding for Grants to States to Implement Comprehensive Discretionary Social Services (CDSS) Projects for Refugees, Memorandum to State Refugee Coordinators issued December 19, 1985; Availability of Funding for Planned Secondary Resettlement of Refugees, 50 FR 20038, May 13, 1985).

## II. Proposed Formula

Under this proposal, \$33,700,001 of the funds available for FY 1986 for social services would be allocated to States in accordance with the formula specified below. A State's allowable allocation would be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—
2. The total number of refugees and entrants who arrived in the United States not more than three years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—
3. The number of refugees and entrants in item 2, above, in the State as of October 1, 1985, adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State. The MAA incentive award supplements will be made subsequently, contingent upon letters of assurance from States.

The proposed formula is identical to that used by ORR for social service allocations in FY 1984 and FY 1985. States have generally supported the concept of this type of formula, which is based on 3-year population estimates, and have supported proposals that minimum amounts be provided to States with small refugee/entrant populations. We believe this position to be

programmatically sound, since data on refugee receipt of cash assistance show the highest to occur during a refugee's first 3 years in the United States.

ORR has reviewed available data regarding the need for social services, and has considered relevant information derived from previous experience in the formula allocation of social service funds, comments received in the FY 1983, FY 1984, and FY 1985 allocation proposals, and numerous consultations with States. From this review, ORR has concluded that the proposed formula will result in allocations being made available to States on an equitable basis. Under this proposal, each State would receive funds in proportion to its population of refugees generally having the greatest need for services. Additional special needs of States will be considered under ORR's CDSS announcement.

While the proposed formula is based on the 3-year refugee population, social service programs are not limited to refugees who have been in the U.S. only three years. States may provide services without regard to an individual refugee's or entrant's length of residence. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.)

ORR funds may not be used to provide services to United States citizens since they are not covered under the refugee and entrant legislation (except that services may be provided to a U.S.-born minor child in a family in which both parents are refugees or entrants or, if only one parent is present, in which that parent is a refugee or entrant).

In accordance with ORR's "Statement of Program Goals, Priorities and Standards for State-Administered Refugee Resettlement Program" issued March 1, 1984, funds awarded under this notice would be subject (as were FY 1985 funds) to a requirement that at least 85 percent of a State's award be used for employment services, English language training, and case management services, reflecting the Congressional objective that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on these types of services. (Immigration and Nationality Act section 412(a)(1)(B).) As in FY 1985, ORR will consider granting, under specific circumstances, a waiver of this provision. In order to receive a waiver, a State must be able to demonstrate to the satisfaction of the Director, ORR, that two of the following three conditions exist: The cash assistance rate for time-

eligible refugees/entrants in the U.S.; less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees/entrants; and/or there are nonemployment-related service needs which are so extreme as to justify an allowance above the basic 15 percent.

States should also expect to use funds proposed under this notice to pay for social services which are provided to refugees/entrants who participate in alternative projects. The Continuing Resolution for FY 1985, in addition to providing funds for the refugee program, amended the Immigration and Nationality Act to provide that:

The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.<sup>1</sup>

The Department has already issued a separate notice in the *Federal Register* with respect to applications for such projects (50 FR 24583; June 11, 1985). The notice on alternative projects does not contain provisions for the allocation of additional social service funds beyond the amounts proposed for availability in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds proposed for allocation under the present notice.

Finally, ORR believes that the continued and/or increased utilization of refugee mutual assistance associations (MAAs) in the provision of social services promotes appropriate use of services as well as the effectiveness of the overall service system. The belief is reinforced by the interest in MAAs which has developed under similar incentive funds awarded to States in previous years. Therefore, additional funds which would be targeted specifically to these organizations have been included in the proposal as an optional award to States which would use them for this purpose.

In order to receive the MAA incentive funds, the appropriate State agency official shall provide written assurance to the Office of Refugee Resettlement

<sup>1</sup> This provision, generally known as the Wilson/Fish Amendment (Pub. L. 98-473), was originally included in the House-passed reauthorization of the Refugee Act, H.R. 3729, as modified and reported by the Senate Judiciary Committee.

that the following conditions will be observed by the State agency is using funds made available to the State under this special allocation:

(1) That such funds will be used to fund refugee/entrant mutual assistance associations for the direct provision of services to refugee and entrant clients.

(2) That the MAA incentive allocation is subject to and included under ORR's requirement that 85% of social service funds allocated by this notice to a State be used for priority services, as defined elsewhere in this notice.

(3) That the State agency will observe the following definition of a mutual assistance association:

(a) That the organization must be legally incorporated as a non-profit organization; and

(b) That not less than 51% of the composition of the Board of Directors or governing board of the mutual assistance association will be comprised of refugees/entrants or former refugees/entrants.

(4) That the State agency shall assist MAA's in seeking other public and/or private funds for the provision of services for refugee and entrant clients in subsequent years.

Written assurances should be sent to the Director, Office of Refugee Resettlement, Room 1229 Switzer Building, 330 C Street SW., Washington, DC 20201, with a duplicate copy to the appropriate ORR Regional Director. It will be assumed that States which have not responded by May 30, 1986, do not intend to avail themselves of this special allocation.

### III. Basis of Refugee and Entrant Population Estimates

The population estimates for the proposed allocation of funds in FY 1986 are based on the ORR Refugee Data System, adjusted as of October 1, 1985, for estimated secondary migration. The data base includes refugees of all nationalities as well as Cuban and Haitian entrants resettled after September 30, 1982. Figures for entrants resettled are based on data maintained by the ORR Florida Office.

For fiscal year 1986, ORR's formula allocations to the States for support services for refugees are to be based on the numbers of refugees who arrived, and entrants who arrived or were resettled, during the preceding three fiscal years: 1983, 1984, and 1985. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1982, and September 30, 1985, who are thought to be living in each State as of October 1, 1985. The population estimates for the fiscal year 1986 allocations cover refugees of all nationalities and Cuban/Haitian entrants.

The adjustments made to the base arrival figures for estimated secondary migration were compiled primarily from Forms ORR-11 submitted by the States. At the time these estimates were compiled, all State data submissions were considered to be final. Findings from the February 1985 refugee child count of the U.S. Department of Education were also used selectively to adjust State population estimates.

Estimates have been developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. In doing so, ORR excluded from the population totals nationwide 3,600 refugees who were resettled subject to a full Federal match of \$1,000 under ORR's voluntary agency program (often referred to as the matching-grant program) with national voluntary refugee resettlement agencies. The social service funds available to serve refugees not covered by the voluntary agency program are limited and, ORR believes, should be directed to the areas where those refugees live.

Table 1, below, shows the estimated three-year populations, as of October 1, 1985, of all refugees (col. 1), excluding those matching-grant refugees discussed above; entrants resettled between October 1, 1982 and September 30, 1985 (col. 2); the total of these figures (col. 3); the formula amounts which the population estimates yield (col. 4); the proposed allocations after allowing for the minimum amounts (col. 5); and the amount available as an incentive to States to use MAA's as service providers (col. 6).

A detailed explanation of the development of data used in this formula allocation can be obtained by writing to the address indicated in Section V of this notice.

### IV. Proposed Allocations

The following allocations are proposed for refugee social services in FY 1986:

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND PROPOSED ALLOCATIONS FOR FY 1986

State	Refugees	Entrants	Total	Formula amount	Proposed allocation	MAA incentive allocation
	(1)	(2)	(3)	(4)	(5)	(6)
Alabama	939	0	939	\$160,972	\$160,972	\$9,076
Arizona	2,117	0	2,117	362,915	362,915	20,461
Arkansas	807	0	807	138,343	138,343	7,800
California	64,652	104	64,756	11,101,047	11,101,047	625,875
Colorado	2,008	25	2,033	348,515	348,515	19,849
Connecticut	2,474	11	2,485	426,001	426,001	24,018
Delaware	27	0	27	4,629	45,000	5,000
Dist. Columbia	497	1	498	85,372	85,372	5,000
Florida	4,164	393	4,557	781,201	781,201	44,044
Georgia	3,320	30	3,350	574,287	574,287	32,378
Hawaii	839	0	839	143,829	143,829	8,109
Idaho	865	0	865	148,286	148,286	8,366
Illinois	8,219	31	8,250	1,414,288	1,414,288	79,737
Indiana	643	0	643	110,229	110,229	6,215
Iowa	1,886	0	1,886	323,315	323,315	18,228
Kansas	2,620	0	2,620	449,144	449,144	25,323
Kentucky	671	0	671	115,029	115,029	6,485
Louisiana	2,887	11	2,898	496,801	496,801	28,010
Maine	933	3	936	160,457	160,457	9,047
Maryland	3,175	3	3,178	544,801	544,801	30,716
Massachusetts	8,534	34	8,568	1,468,802	1,468,802	82,811
Michigan	3,444	1	3,445	590,572	590,572	33,296
Minnesota	5,033	17	5,050	885,716	885,716	48,809
Mississippi	401	0	401	68,743	68,743	5,000
Missouri	2,313	6	2,319	397,544	397,544	22,413
Montana	77	0	77	13,200	45,000	5,000
Nebraska	464	0	464	79,543	79,543	5,000
Nevada	800	96	896	153,600	153,600	8,660

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND PROPOSED ALLOCATIONS FOR FY 1986—Continued

State	Refugees	Entrants	Total	Formula amount	Proposed allocation	MAA incentive allocation
	(1)	(2)	(3)	(4)	(5)	(6)
New Hampshire	367	0	367	62,914	62,914	5,000
New Jersey	2,750	102	2,852	488,915	488,915	27,565
New Mexico	450	0	450	77,143	77,143	5,000
New York	14,517	175	14,692	2,518,633	2,518,633	142,000
North Carolina	1,777	1	1,778	304,801	304,801	17,185
North Dakota	420	0	420	72,000	72,000	5,000
Ohio	2,767	13	2,780	476,572	476,572	26,889
Oklahoma	1,848	5	1,853	317,658	317,658	17,909
Oregon	2,670	0	2,670	457,715	457,715	25,806
Pennsylvania	6,467	26	6,493	1,113,088	1,113,088	62,756
Rhode Island	1,432	0	1,432	245,486	245,486	13,840
South Carolina	394	6	390	66,857	66,857	5,000
South Dakota	371	0	371	63,800	63,800	5,000
Tennessee	1,856	1	1,857	318,343	318,343	17,948
Texas	14,592	14	14,606	2,503,890	2,503,890	141,169
Utah	1,931	0	1,931	331,029	331,029	18,663
Vermont	196	0	196	33,600	45,000	5,000
Virginia	6,288	65	6,353	1,089,088	1,089,088	61,403
Washington	7,475	0	7,475	1,281,431	1,281,431	72,247
West Virginia	66	0	66	11,314	45,000	5,000
Wisconsin	1,911	1	1,912	327,772	327,772	18,480
Wyoming	28	0	28	4,800	45,000	5,000
Guam	36	0	36	6,171	45,000	5,000
<b>Total</b>	<b>195,408</b>	<b>1,175</b>	<b>196,583</b>	<b>33,700,001</b>	<b>33,896,267</b>	<b>1,933,360</b>

## V. State Evidence on Refugee Population

If a State wishes ORR to reconsider its population estimate, it should submit written evidence through its ORR Regional Director. Requests will be evaluated according to a strict standard. The following is the type of evidence which would be considered appropriate:

- Documentation and discussion should be confined to the population entering during fiscal years 1983, 1984, and 1985, and should clearly identify what refugee or entrant groups are being discussed.

- Evidence should include a description of the information collection system(s) used by the State, including data sources, time period covered, timeliness, and validation procedures.

- Special studies and reports can be considered only if they are submitted for review.

- An example of acceptable evidence would be a list of refugees identified by name, alien number, date of arrival, and case size, if appropriate.

Any State evidence on population estimates should be submitted separately from comments on the proposed allocation formula no later than 30 days from date of publication of this notice and should be addressed to: Dr. Linda W. Gordon, Office of Refugee Resettlement, Room 1229, Switzer Building, 330 C Street, SW., Washington, DC 20201, Telephone: (202) 245-1967.

## VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 13.814 Refugee Assistance State Administered Programs)

Dated: February 20, 1986.

Phillip N. Hawkes,

Director, Office of Refugee Resettlement.

[FR Doc. 86-4270 Filed 2-26-86; 8:45 am]

BILLING CODE 4190-11-M

## National Institutes of Health

### National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, National Institutes of Health, March 20-21, 1986, Holiday Inn Crown Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. This meeting will be open to the public on March 20, from 8:30 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552(b)(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on March 20 from approximately 9:30 a.m. to recess; and on March 21 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application, disclosure of which would

constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John Abrell, Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, Room 826, National Institute of Health, Bethesda, Maryland 20892 (301-496-9767) will furnish substantive program information.

Dated: February 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-4208 Filed 2-26-86; 8:45 am]

BILLING CODE 4140-01-M

## National Heart, Lung, and Blood Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, May 15 and 16, 1986, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20892. This meeting will be open to the public from 9:00 a.m. to 4:00 p.m. May 15 and from 9:30 a.m. to 12 noon on May 16 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 12 noon to adjournment May 16 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Board members. Substantive program information may be obtained from Dr. Jack Orloff, Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496-2116.

Dated: February 14, 1986.

Betty J. Beveridge,

*NIH Committee Management Officer.*

[FR Doc. 86-4209 Filed 2-26-86; 8:45 am]

BILLING CODE 4140-01-M

#### National Institute of Allergy and Infectious Diseases; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Transplantation Research Committee, National Institute of Allergy and Infectious Diseases, on March 11-14, 1986, in Conference Room 10, Building 31C, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 1:30 p.m. to 1:50 p.m. on March 11 and from 8:00 a.m. to 8:35 a.m. on March 13 to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, the meeting of the Allergy and Clinical Immunology Subcommittee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 1:50 p.m. on March 11 until recess on March 12 and from 8:40 a.m. on March 13 until adjournment on

March 14. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lynn Trible, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A-32, National Institute of Health, Bethesda, Maryland 20892, telephone (301) 496-5717, will provide summaries of the meetings and rosters of the committees members.

Dr. Nirmal K. Das, Executive Secretary, Allergy, Immunology and Transplantation Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301) 496-7966, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: February 14, 1986.

Betty J. Beveridge,

*NIH Committee Management Officer.*

[FR Doc. 86-4210 Filed 2-26-86; 8:45 am]

BILLING CODE 4140-01-M

#### National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases (NIADDK), April 3, 4, and 5, 1986, National Institutes of Health, Building 2, Room 102, Bethesda, Maryland 20892.

This meeting will be open to the public from 8:00 p.m. on April 3, from 9:00 a.m. to 12:00 p.m. and from 2:05 p.m. to 4:00 p.m. on April 4, and from 9:00 a.m. to 10:30 a.m. on April 5. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIADDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 7:30 p.m. to 8:00 p.m. on April 3, from 12:05 p.m. to 2:00 p.m. and 4:25 p.m. to adjournment on April 4, and from 10:30 a.m. to adjournment on April 5, for the review, discussion and evaluation of

individual intramural programs and projects conducted by the NIADDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, Building 31, Room 9A46, Bethesda, Maryland 20892. Further information concerning the meeting may be obtained by contacting the office of Dr. Jesse Roth, Executive Secretary, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N-222, Bethesda, Maryland 20892, (301) 496-4128.

Dated: February 14, 1986.

[FR Doc. 86-4211 Filed 2-26-86; 8:45 am]

BILLING CODE 4140-01-M

#### DEPARTMENT OF INTERIOR

##### Bureau of Land Management

##### Colorado; Canon City District Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** Notice is hereby given in accordance with Pub. L. 94-579 that the Canon City District Advisory Council Meeting will be held on Thursday, March 20, 1986, 9:30 a.m. to 5 p.m., in the Community Room of the First National Bank Building, 9th and Royal Gorge Boulevard, Canon City, Colorado. The meeting agenda will include:

1. Current issues including Gramm/Rudman budget reductions, National Wildlife Federation court injunction, Foreset Service-BLM Interchange Proposal, Grazing Boards and Fees.
2. Election of Officers, if quorum is present.

3. Project Pride workshop.

4. Information on the San Luis Resource Management Plan and workshop on issues and criteria.

5. Reports from Area Managers on current programs.

6. Public presentations to the council (open invitation). The meeting is open to the public. Persons interested may make oral presentations to the council at 10 a.m. or they may file written statements for the council's consideration. The District Manager may limit the length of

oral presentations depending on the number of people wishing to speak.

**ADDRESS:** Anyone wishing to make a presentation to the council orally or in writing should notify the District Manager, Bureau of Land Management, P.O. Box 311, 3080 East Main, Canon City, Colorado 81212 by March 19, 1986.

**SUPPLEMENTARY INFORMATION:** Summary minutes of the meeting will be available for public inspection and reproduction during regular working hours at the District Office approximately 30 days following the meeting.

**FOR FURTHER INFORMATION CONTACT:** Glenn Wallace, (303) 275-0631.

Donnie Sparks,  
District Manager.

[FR Doc. 86-4243 Filed 2-26-86; 8:45 am]

BILLING CODE 4310-JB-M

#### Minerals Management Service

#### Outer Continental Shelf; Development Operations Coordination; Shell Offshore, Inc.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Shell Offshore Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1249, Block 162, South Timbalier Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

**DATE:** The subject DOCD was deemed submitted on February 20, 1986.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Boulevard, Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is

considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 21, 1986.

J. Rogers Percy,  
Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-4239 Filed 2-26-86; 8:45 am]

BILLING CODE 4310-MR-M

#### INTERSTATE COMMERCE COMMISSION

[Docket No. AB-167; Sub-1078X]

#### Consolidated Rail Corporation; Abandonment in Erie County, NY; Exemption

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.51-mile line of railroad between milepost 393.67 and milepost 394.18.

Applicant has certified (1) that no local or overhead traffic has moved over the line for at least 2 years and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-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 pursuant to *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective March 29, 1986 (unless stayed pending reconsideration). Petitions to stay must be filed by March 10, 1986, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by March 19, 1986, 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 E. Mechem, 1138 Six Penn Center Plaza, Philadelphia, PA 19103-2959.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: February 11, 1986.

By the Commission, Jane F. Mackall,  
Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-4230 Filed 2-26-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30743]

#### The Pittston Company; Control Exemption; Buffalo Creek and Gauley Railroad Co.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts, under 49 U.S.C. 10505, the control by The Pittston Company of Buffalo Creek and Gauley Railroad Company from the requirements of 49 U.S.C. 11343 subject to protective conditions for all employees: (1) *Nunc pro tunc* from April 27, 1981, until the execution of a new voting trust agreement, which has been approved; and (2) for the future, when the new voting trust agreement terminates.

**DATES:** This exemption is effective on March 31, 1986. Petitions to stay must be filed by March 10, 1986, and petitions to reopen must be filed by March 19, 1986.

**ADDRESSES:** Send pleadings referring to Finance Docket No. 30743 to:

- (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
- (2) Petitioner's representatives, Chandler L. van Orman, 888 17th Street NW., Suite 902, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Louis E. Gitomer, (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: February 18, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86-4231 Filed 2-26-86; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 84-17]

#### James M. Sornsin, M.D.; Revocation of Registration; Stay of Revocation With Conditions

On April 17, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order To Show Cause to James M. Sornsin, M.D. (Respondent), at the Henry Ford Hospital, 3799 West Grand Boulevard, Detroit, Michigan, and Cullman Orthopaedic Clinic, 402 Arnold Street NW., Suite 208, Cullman, Alabama. The order to show cause sought to revoke DEA Certificates of Registration AS9115658 and AS1971945 issued to Respondent. The statutory ground under 21 U.S.C. 824(a)(3) for the revocation of AS9115658 was the suspension of Respondent's medical license by the State of Michigan, Department of Licensing and Regulation, Board of Medicine, for a period of one year, thus terminating Respondent's authority to possess, dispense, administer or otherwise handle controlled substances in the State of Michigan. The statutory ground under 21 U.S.C. 824(a)(2) for the revocation of AS1971945 was Respondent's conviction on May 20, 1983, in the United States District Court for the Eastern District of Michigan, for unlawful distribution of controlled substances in violation of 21 U.S.C. 841(a)(1), a felony relating to controlled substances. Respondent, through counsel, requested a hearing on the issues raised by the order to show cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held before Judge Young in Nashville, Tennessee on March 21, 1985. The parties having stipulated that Respondent no longer practiced medicine in the State of Michigan, Respondent consented to the revocation of AS9115658 issued to him at an address in Detroit. The findings of the Administrative Law Judge, therefore, relate to whether the Administrator should, in the exercise of his discretion, revoke AS1971945 issued to Respondent at an address in Cullman, Alabama.

On August 6, 1985, the Administrative Law Judge issued his opinion and recommended ruling in this matter. Government counsel filed exceptions to the recommended ruling on August 14, 1985, pursuant to 21 CFR 1316.66. The Administrative Law Judge transmitted the record to the Administrator on September 6, 1985. On October 28, 1985, the Administrator gave counsel for both sides until December 2, 1985 to comment on any issues raised by the transmittal letter of the Administrative Law Judge. Both Government counsel and counsel for Respondent wrote letters commenting on the transmittal letter of the Administrative Law Judge, who also wrote a letter to the Administrator on December 3, 1985, even though the Administrator had not asked him for his thoughts on any comments that might be filed by counsel. The Administrator has considered the entire record in this matter and hereby enters his final order, based on the following findings of fact and conclusions of law.

The Administrative Law Judge found that Respondent pled guilty in Federal court in Detroit to distribution of Talwin, a Schedule IV controlled substance, in violation of 21 U.S.C. 841(a)(1). Respondent was sentenced to three years incarceration, all but six months of which was suspended, and fined \$10,000. This plea stemmed from Respondent's involvement with two "clinics" in Detroit, Med-Care Clinic and United Physicians Medical Center. Investigation of these "clinics" by the FBI revealed them to be nothing more than fronts for the diversion of significant quantities of controlled substances. Respondent was hired at Med-Care in January, 1981. During the spring of 1981 Respondent and other physicians employed at the "clinic" wrote very large numbers of prescriptions for controlled substances without any medical justification. For example, on May 15, 1981, Respondent wrote 72 prescriptions for controlled substances filled at one Detroit pharmacy alone. Working part-time on that day, Respondent could not have seen any "patient" for more than four minutes. Similarly, the records of this pharmacy show that Respondent wrote 140 Ambenyl, 82 Desoxyn, 92 Preludin, 162 Talwin and 69 Tussionex prescriptions between January and August, 1981. Most of the patients' addresses on these prescriptions were found to be fictitious.

The Administrator finds that business at the "clinics" grew so brisk that the employees abandoned any pretext of "patient care." Office employees simply took orders from the "patients" for whatever controlled substances they

desired. The physicians would proceed to write the prescriptions, filling in fictitious information on patient charts. While the record does not reveal whether Respondent worked at the clinic when business was so brisk, the record does show that in March, 1981, Respondent did write an inordinate number of controlled substance prescriptions for "patients" he claimed he saw. On March 4, 1981, he wrote 45 prescriptions; on March 7, a Saturday, 66 prescriptions; on March 10, 69 prescriptions; on March 12, 57 prescriptions; on March 17, 65 prescriptions on March 19, 91 prescriptions; on March 24, 62 prescriptions and March 26, 43 prescriptions. Respondent generated \$12,000 worth of business during the month of March, 1981, one-half of which was paid to him.

The Administrative Law Judge found that Respondent cooperated with the FBI in its investigation of the "clinics" and their operators. The Administrative Law Judge further found that after Respondent's release from incarceration in November, 1983, he entered the practice of orthopedics in Cullman, Alabama. A physician who works with Respondent testified that he would be willing to monitor Respondent's prescribing of controlled substances were the Administrator to condition Respondent's continued registration on a monitoring of his prescribing of controlled substances.

After the hearing and the filing of proposed findings of fact and conclusions of law by the parties, the Administrative Law Judge, *sua sponte*, decided to include in his opinion and recommended ruling an agreement between this agency and another physician involved in the same "clinic" investigation. Government counsel took exception to the inclusion of the agreement. While the Administrator has considered the rest of the record in reaching his decision, he did not consider the agreement in the other case, as recommended by the Administrative Law Judge. The Government maintains, and the Administrator concurs, that the facts and circumstances surrounding this independent agreement outside the judicial context should not be treated as judicial precedent. Accordingly, the Administrator did not consider the other agreement in making his determination in this matter.

The Administrative Law Judge recommended that the Administrator not revoke the registration of Respondent at the Alabama address. Rather, he recommended that

Respondent be registered, subject to four conditions. The Administrative Law Judge based this recommendation on the agreement reached in the other case and the facts brought forward during the hearing in this matter. The four conditions recommended by Judge Young are:

1. Respondent is to maintain a written log for three years of all prescriptions for controlled substances he writes and of all such substances he administers and dispenses, beginning on the effective date of the final order in this Matter;

2. Dr. Vincent F. Bergquist of the Cullman Orthopaedic Clinic will regularly review the log prepared by Respondent. Dr. Bergquist will discuss its contents with Respondent and satisfy himself that each prescription, administration and dispensation there recorded appears to have been done for a legitimate medical purpose;

3. Three months from the effective date of this final order, and every three months thereafter for a period of three years, Respondent will send the log for the preceding three months to a DEA office specified in the final order; and

4. Before Respondent sends in the log to the DEA office, Dr. Bergquist will endorse at the end of it, a statement to the effect that condition two above has been complied with.

The Administrative Law Judge concluded that the record "amply" demonstrates that Respondent has now "launched in a wholly sound and ethical medical practice" and that he enjoys the confidence of his professional colleagues, both as to competence and to character. The Administrative Law Judge correctly pointed out that this is more than can be said of most respondents coming before him. The Administrative Law Judge also noted Respondent's youth and the fact that he has a young family and good professional prospects.

The Administrator adopts the recommendation of the Administrative Law Judge. The factors the Administrator sees in mitigation of Respondent's past activities are his relative youth and the vouching of Dr. Bergquist. Respondent is admonished not to engage in the improper handling of controlled substances again in his professional career. Any such action on his part during the next three years will swiftly and surely lead to sanctions against both him and his DEA registration.

The Administrator is not satisfied that the recommendation of the Administrative Law Judge sufficiently protects the public in one important regard. The Administrative Law Judge

recommends that the Administrator register Respondent and provide no mechanism for the summary revocation of the registration in the event that Respondent does relapse into his former prescribing practices. Therefore, the Administrator will revoke AS1971945 and deny all pending applications for renewal, but will stay the revocation and denial pending Respondent's successful completion of the conditions recommended by the Administrative Law Judge and adopted by the Administrator. In the event that Dr. Bergquist cannot certify Respondent's compliance, or if any of Respondent's prescriptions are not legitimately issued, the Administrator will summarily suspend AS1971945 pending any hearing on the violation. Respondent is to send the log to the DEA New Orleans Field Division, to the attention of the Diversion Group Supervisor. Upon the successful completion by Respondent of the terms of the probationary registration, the Administrator will grant the Respondent a plenary Certificate of Registration.

In consideration of the facts in this case, the Administrator hereby adopts the recommendation of the Administrative Law Judge to the extent that Respondent is to submit logs to the DEA New Orleans Field Division, subject to the conditions set forth above. Pursuant to 21 U.S.C. 824(a)(2), as delegated to the Administrator of DEA by 21 U.S.C. 871 and 28 CFR 0.100(b), the Administrator hereby revokes DEA Certificate of Registration AS1971945, denies any pending applications for renewal, and stays the revocation and denial pending the successful completion by James M. Sornsin, M.D. of the terms numbered one through four above. The revocation, denial and stay are effective March 31, 1986.

Dated: February 24, 1986.

John C. Lawn,  
Administrator.

[FR Doc. 86-4263 Filed 2-26-86; 8:45 am]

BILLING CODE 4410-09-M

#### **Controlled Substances; Establishment of 1986 Aggregate Production Quota for Methamphetamine (for Conversion)**

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of an established 1986 aggregate production quota.

**SUMMARY:** This notice establishes the 1986 aggregate production quota for methamphetamine (for conversion).

**DATE:** This order is effective February 27, 1986.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Telephone: (202) 633-1366.

**SUPPLEMENTARY INFORMATION:** Section 306 of the Controlled Substances Act, (21 U.S.C. Code 826), requires the Attorney General to establish Aggregate Production Quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On December 27, 1985, a notice proposing to establish a 1986 Aggregate Production Quota for methamphetamine (for conversion) was published in the *Federal Register* (50 FR 53026). All interested persons were invited to comment on or object to the proposal on or before January 27, 1986. No comments or objections were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S. Code 601, et seq. The establishment of annual production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator hereby orders that the 1986 aggregate production quota for methamphetamine (for conversion), expressed in grams of anhydrous base, be established as follows:

Basic Class, 1986 Aggregate Production Quota (grams)  
Schedule II  
Methamphetamine (for conversion),  
1,938,000.

Dated: February 7, 1986.

John C. Lawn,

Administrator, Drug Enforcement  
Administration.

[FR Doc. 86-4264 Filed 2-26-86; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Employee Welfare and Pension Benefit Plans Advisory Council; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., March 14, 1986, at the U.S. Department of Labor, 200 Constitution Avenue, NW., Room C-5515—Seminar Room 6, Washington, DC 20210.

The Advisory Council has formed a 12-member task force to study issues relating to pension plan termination in which excess assets revert to the sponsor of employee benefit pension plans covered by ERISA.

The Advisory Council previously held a public hearing on January 13, 1986 at which time testimony was taken from employee representatives, employer representatives, and other interested individuals and groups.

The purpose of the March 14 meeting is to specifically take testimony from participants and beneficiaries of such terminated plans who have not previously testified. The witnesses are requested to relate their experiences to the Advisory Council and to make suggestions relating to the matter as they deem relevant.

Individuals wishing to address the Advisory Council should submit requests on or before March 10, 1986 to Edward F. Lyszczek, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210 (202/523-8753). Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Signed at Washington, DC, this 25th day of February, 1986.

T. Timothy Ryan, Jr.,

Chairman, ACEWPBP Task Force on  
Terminations and Reversions.

[FR Doc. 86-4353 Filed 2-26-86; 8:45 am]

BILLING CODE 4510-29-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-15]

### NASA Advisory Council, Space Systems and Technology Advisory Committee; Open Meeting

**AGENCY:** National Aeronautics and  
Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Informal Task Force on Automation and Robotics.

**DATE:** March 11, 1986, 8 a.m. to 4:30 p.m.

**ADDRESS:** National Aeronautics and  
Space Administration, Lyndon B.  
Johnson Space Center, Building 1, Room  
966, Houston, TX 77058.

**FOR FURTHER INFORMATION CONTACT:**  
Dr. Melvin Montemerlo, Code R,  
National Aeronautics and Space  
Administration, Washington, DC 20546  
(202/453-2743).

**SUPPLEMENTARY INFORMATION:** The Space Systems and Technology Advisory Committee (SSTAC) was established to provide technology activities in the Office of Aeronautics and Space Technology (OAST). The Informal Task Force on Automation and Robotics, chaired by Dr. Stanley Weiss, is comprised of six members and was formed to provide a review of OAST's automation and robotics program. The meeting will be opened to the public up to the seating capacity of the room (approximately 75 persons including the Task Force members and other participants). The meeting must be held at this time in order that it be in conjunction with the Office of Space Station's Automation and Robotics Panel meeting.

Type of meeting: Open.

Dated: February 21, 1986.

Richard L. Daniels,

Advisory Committee Management Officer,  
National Aeronautics and Space  
Administration.

[FR Doc. 86-4204 Filed 2-26-86; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Records Schedules; Availability

**AGENCY:** National Archives and Records  
Administration, Office of Records  
Administration.

**ACTION:** Notice of availability of  
proposed records schedules; request for  
comments.

**SUMMARY:** The National Archives and  
Records Administration (NARA)  
publishes a notice at least once monthly  
of all agency records schedules  
(requests for records disposition  
authority) which include records  
proposed for disposal. The first notice  
was published on April 1, 1985. Records  
schedules identify records of continuing  
value for eventual preservation in the  
National Archives of the United States  
and authorize agencies to dispose of  
records of temporary value. NARA  
invites public comment on proposed  
records disposals as required by 44  
U.S.C. 3303a(a).

**DATE:** Comments must be received in  
writing on or before April 28, 1986.

**ADDRESS:** Address comments and  
requests for single copies of schedules  
identified in this notice to the Records  
Appraisal and Disposition Division  
(NIR), National Archives and Records  
Administration, Washington, DC 20408.  
Requestors must cite the control number  
assigned to each schedule when  
requesting a copy. The control number  
appears in parenthesis immediately  
after the title of the requesting agency.  
Copies of the schedules are also  
available for public inspection during  
the comment period at the Office of the  
Federal Register, Room 8401, 1100 L  
Street, NW., Washington, DC 20408.

**SUPPLEMENTARY INFORMATION:** Each  
year U.S. government agencies create  
billions of records in the form of paper,  
film, magnetic tape, and other media. In  
order to control the accumulation of  
records, Federal agencies prepare  
records schedules which specify when  
the agency no longer needs them for  
current business and what happens to  
the records after the expiration of this  
period. Destruction of the records  
requires the approval of the Archivist of  
the United States, which is based on a  
thorough study of their potential value  
for future use. A few schedules are  
comprehensive; they list all the records  
of an agency or one of its major  
subdivisions. Most schedules cover only  
one office, or one program, or a few  
series of records, and many are updates  
of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

#### Schedules Pending Approval

1. Department of Agriculture, Forest Service, Office of Information (N1-95-86-1). Motion picture production files.
2. Department of the Air Force, Directorate of Administration, Records Management Branch (N1-AFU-86-29). Military Standard Requisitioning and Issue Procedures (MILSTRIP) and Military Standard Billing System (MILSBILLS) computer listings.
3. Department of the Air Force, Directorate of Administration, Records Management Branch (N1-AFU-86-30). Commissary store records.
4. Department of the Air Force, Directorate of Administration, Records Management Branch (N1-AFU-86-31). Commissary records.
5. Department of the Air Force, HQ, USAF, Directorate of Administration, (N1-AFU-86-33). Air Force Special Activities Center Personnel Selection Panel records.
6. Department of the Air Force, HQ, USAF, Directorate of Administration, (N1-AFU-86-34). Annual summaries of real property transactions.
7. Department of the Air Force, Directorate of Administration, Records Management Branch (N1-AFU-86-36). Transportation requests.
8. Department of the Air Force, Directorate of Administration, HQ, USAF, Records Management Branch (N1-AFU-86-35). Administrative records of base engineer emergency forces.
9. Department of the Army, Records Management Operation Office, Standards Division (N1-AU-86-5). Munitions manufacturing licenses and technical assistance agreements files.
10. Department of the Army, Records Management Operations Office (N1-AU-86-23). Ration control records.
11. Department of the Army, The Adjutant General's Office, Records Management Division (N1-AU-83-11). Hazardous material management records.
12. Department of the Army, Office of the Adjutant General, Records Management Division (N1-AU-85-47).

Non-appropriated fund activities loan and grant records.

13. Department of the Army, The Adjutant General's Office, Records Management Division (N1-AU-85-79). Officer aviation position criteria records.

14. Central Intelligence Agency (N1-263-84-8). The CIA schedule is classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

15. Department of Commerce, Office of Regional Economics (N1-151-86-2). Records relating to tariffs.

16. General Accounting Office, Office of publishing Services (N1-217-86-2). Requests for contract files pertaining to the Miller Act, including correspondence, payment bonds, copies of contracts, final payment vouchers, and related papers.

17. Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank (N1-207-86-1). Subject files, chronological files, and state and territorial files of the SEECB program.

18. Department of labor, Labor Management Services Administration, Office of Labor Management Relations Services (N1-317-86-1). Questionnaires for the study of railroad shop craft employees, 1968.

19. Peace Corps, Office of Public Relations and Office of Administrative Services (N1-362-85-2). Duplicate copies of speeches, press releases and publications; media contact sheets; and audit workpapers.

20. Department of the Treasury, Bureau of the Public Debt, Division of Investor Accounts (N1-53-86-1). Comprehensive records schedules.

21. Veterans Administration, Office of General Counsel (N1-15-85-10). District Counsel Offices records.

22. Veterans Administration, Department of Veterans Benefits (N1-15-85-11). Off-Tape (Manual) Insurance Policy Loan Records.

23. Veterans Administration, Department of Veterans Benefits (N1-15-85-18). Property Management Folders.

Dated: February 21, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86-4250 Filed 2-26-86; 8:45 am]

BILLING CODE 7515-01-M

#### NUCLEAR REGULATORY COMMISSION

##### Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology, and Criteria, and Extreme External Phenomena; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology, and Criteria and Extreme External Phenomena will hold a joint meeting on March 12, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Wednesday, March 12, 1986—8:45 A.M. until conclusion of business*

The Subcommittee will discuss the status of the EDO's review of the two-year trial use of the 1983 proposed Safety Goal Policy and recommendations for the future use of a safety goal policy and the status of the NRC Staff's development of containment performance criteria. The Subcommittee will also review the NRC Staff's proposed resolution for USI A-17, "Systems Interaction in Nuclear Power Plants." The Subcommittee on Extreme External Phenomena will review the 1986 Ohio earthquake and the implications for the Perry Nuclear Power Plant.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. 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 Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the

opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 24, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-4271 Filed 2-26-86; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22926; File No. SR-BSECC-86-1]

### Self-Regulatory Organizations; Proposed Rule Change by Boston Stock Exchange Clearing Corp. Relating to an Amendment to the Schedule of Trade Recording Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(c)(1), notice is hereby given that on January 31, 1986 the Boston Stock Exchange Clearing Corporation ("BSECC") filed with the Securities and Exchange Commission the proposed changes as described in items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organizations' Statement on the Terms of Substance of the Proposed Rule Change

The Boston Stock Exchange Clearing Corporation ("BSECC") has reduced its trade recording fees, effective February 3, 1986. The amendment reduces the trade recording charge per 100 shares from \$.44 per hundred to \$.29 per hundred for the first 2,500 trades per month. In addition the previous rate of \$.00 per hundred for trades in excess of 7,500 per month has been increased to \$.05 per hundred. Finally the maximum charge per tradesize has been reduced from \$100 to \$50.

#### Self-Regulatory Organizations' Statement of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

#### (A) Self-Regulatory Organizations' Statement of the Purpose and Statutory Basis for, the Proposed Rule Change

(1) The BSECC has reduced trade related charges in order to encourage future growth, as well as to pass along to members cost reductions realized through growth and more efficient operations.

(2) The changes herein are changes in fees and therefore, are summarily made effective as of February 3, 1986, pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934, as amended.

#### (B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that this proposed change will impose any burden on competition.

#### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were solicited from the Fee Committee of the BSECC. This committee is composed of representatives of Dealer-Specialist, Retail and Institutional members of the BSECC.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by March 20, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 19, 1986.

Shirley E. Hollis,  
Assistant Secretary.

[FR Doc. 86-4218 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22936; File No. SR-DTC-86-01]

### Self-Regulatory Organizations; Depository Trust Co.; Filing of Proposed Rule Change

The Depository Trust Company ("DTC") on January 29, 1986 submitted a proposed rule change to the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). DTC's rule change would allow DTC participants to accept invitations to tender securities and to surrender those securities through DTC. The Commission is publishing this notice to solicit public comment on the proposal.

DTC's proposal would allow DTC participants to use DTC's voluntary offering program services to process acceptances of invitations to tender securities. Currently, participants must communicate directly with the tender agent and, to the extent those securities are in the depository, must withdraw those securities from the depository in physical form and surrender securities to the tender agent. Under the proposed rule change, participants would have the option to accept eligible invitations either through DTC or directly with the tender agent and could surrender securities to the tender agent by book-entry movements from their accounts at DTC to the tender agent's account at DTC.

The procedures for processing acceptances of invitations to tender securities are substantially similar to DTC's participant operating procedures for exchange offers and cash tender offers. DTC would inform participants whether an invitation qualifies under the program. In accordance with the instructions of participants accepting an eligible invitation, DTC would effect book-entry deliveries of the tendered securities from their accounts to the tender agent's account and would forward their instructions to the tender agent. When DTC receives cash payments from the tender agent for tendered securities, DTC would distribute those payments to its participants through DTC's money settlement system.

DTC's invitation to tender securities program is designed to simplify the process of accepting invitations and tendering securities to tender agents and to permit DTC to continue its regular services rather than making subject securities ineligible for such depository services. Under the program, participants could pledge, by book-entry, their rights to receive the cash payment based on their bids in return for tendered securities or the return of some or all of the tendered securities in accordance with the terms of the invitation. Other depository services, including transfers and withdrawals, would not be available for securities to be issued in exchange for tendered securities until the tender agent releases those securities to DTC.

DTC believes that the proposal is consistent with the Act in general, and with section 17A of the Act in particular, because it facilitates the prompt and accurate clearance and settlement of securities transactions. In addition, DTC believes that the proposal is consistent with the Act because it would allow participants an economical and orderly method for accepting invitations to receive cash payment in return for voluntary tender of securities.

Copies of all documents relating to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC and at DTC's principal office.

To assist the Commission in determining whether to approve the proposal or to institute disapproval proceedings, the Commission invites public comment on the proposal. Comments should refer to File No. SR-DTC-86-01. Please file six copies of comments with the Secretary of the

Commission, 450 Fifth Street, NW., Washington.

Dated: February 21, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4219 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22928; File No. SR-NSCC-85-09]

**Self-Regulatory Organizations; Filing and Order Temporarily Approving on an Accelerated Basis Proposed Rule Change of the National Securities Clearing Corp.**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 31, 1985, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission File No. SR-NSCC-85-09. The Commission is publishing this notice to describe the proposal and to solicit comments on it. The Commission also is temporarily approving, on an accelerated basis, File No. SR-NSCC-85-09 for the reasons discussed below.

**I. Description**

NSCC's proposal amends NSCC's rules and procedures to: (1) Establish as a pilot program a Mutual Fund Settlement, Entry and Registration Verification Service (called "Fund/Serv Service"); (2) create a new category of membership ("Fund/Serv Member") and membership qualifications for the Fund/Serv Service; (3) make changes to certain existing rules regarding Fund/Serv Members' rights, privileges and obligations; and (4) establish fees for the Fund/Serv Service.

**1. The Fund/Serv Service**

New NSCC Rule 52 establishes the Fund/Serv Service that will enable NSCC settling members to submit mutual funds purchase and redemption orders to NSCC. NSCC will transmit all data to Mutual Fund Processors.<sup>1</sup> If NSCC is unable to transmit order data, or the Mutual Fund Processor fails to receive data, the Mutual Fund Processor may obtain summary data to the extent it is available.

On trade date ("T") NSCC settling members submit trade data to NSCC.<sup>2</sup>

<sup>1</sup> A Mutual Fund Processor is a settling member or a Fund/Serv Member that receives mutual fund purchase and redemption orders from NSCC on behalf of eligible mutual funds.

<sup>2</sup> As specified in the new rules, the time frames for action under the new system are set out in NSCC's procedures.

NSCC will check to ensure that the data is submitted in acceptable format but will not check the accuracy of the data. NSCC will transmit all data submitted in acceptable form to the appropriate Mutual Fund Processor on the evening of T. Mutual Fund Processors will have two business days after T (until T+2) to confirm or reject an order received. Mutual Fund Processors can also correct the dollar or share amounts on confirmed orders (reconfirm a confirmed order) up to T+2. NSCC settling members will have until T+2 to submit corrected orders to the extent they disagree with the terms of an order as confirmed or reconfirmed by a Mutual Fund Processor. A Mutual Fund Processor will have until T+3 to reject any changes submitted by an NSCC settling member.

Mutual Fund Processors that receive orders from members outside of NSCC's system may originate orders ("Fund Originated Orders") for the purpose of confirmation and settlement within the Fund/Serv Service System. Fund Originated Orders must be submitted to NSCC on T+1. NSCC will submit the orders to the appropriate member on the evening of T+1. Members will have until T+2 to accept, reject or correct an order. The Mutual Fund Processor need not take any action if he determines to accept a correction submitted by an NSCC settling member. If the Mutual Fund Processor does not reject the correction by T+3, NSCC will settle the order based upon the correction. If the corrected order is rejected, NSCC will delete the order from the Fund/Serv Service.

Members may also submit "As of" orders up to 6 months after T. A trade not submitted on trade date or a trade previously submitted but rejected from the system may be submitted as an "As of" trade. The Mutual Fund Processor can either accept or reject such an order but cannot make any corrections.

Mutual fund transactions will utilize NSCC's existing settlement system. Orders settled through the Fund/Serv Service, however, are not guaranteed by NSCC. Accordingly, to the extent one side failed to pay for a transaction, the contra side would be required to return to NSCC any funds received from NSCC.

Mutual fund purchases will settle automatically on T+5. For mutual fund liquidations, the settlement date could vary from T+5 to T+15, depending on whether the securities are registered in street name or the customer's name. If the securities are registered in street name settlement would occur on T+5. For securities registered in the customer's name, the system will delay

settlement until the Mutual Fund Processor releases the transaction for settlement.<sup>3</sup>

The Mutual Fund Processor will have until T+14 to submit the release. Settlement will occur on the next business day following receipt by NSCC or a release for settlement. Any liquidations remaining in a "delayed" status on T+15 will be deleted from the system.

The Fund/Serv Service also will enable a member to submit registration instructions to a Mutual Fund Processor to the extent that the order was confirmed and settled through the Fund/Serv Service. NSCC will accept registration instructions from T+5 through T+15. All settled orders pending registration instructions on T+15 will be deleted from NSCC's system on T+16.

#### 2. Qualifications for Use of the Fund/Serv System

In order for mutual funds to utilize the Fund/Serv Service, NSCC, in new Rule 51, creates a new category of membership, called a Fund/Serv Member. New Rule 51 defines a Fund/Serv Member as a principal underwriter as defined in section 2(a)(29) of the Investment Company Act of 1940 that is also a registered broker/dealer or an organization that has demonstrated to NSCC's Board of Directors that it could materially benefit from access to the Fund/Serv Service. The rule also requires that the Fund/Serv Member enter into an agreement with NSCC setting forth the rights and obligations of the Fund/Serv Member.

During the pilot program, NSCC proposes to limit participation to no more than four settling members (broker-dealers) and five Fund/Serv members (mutual fund complexes). In its filing, NSCC indicates that it expects the pilot program to last no longer than twelve months.

#### 3. Conforming Amendments to NSCC's Rules

NSCC also is amending many of its existing rules to accommodate the new service and to set forth a Fund/Serv Member's rights and obligations. For example, NSCC Rule 4 is amended to give NSCC the authority to request a clearing fund deposit from Fund/Serv members. NSCC has determined, at least for the pilot program, not to require

Fund/Serv Members to make clearing fund deposits.

NSCC's rule change gives it the right to inspect the Fund/Serv Member's books and records. The proposal also establishes minimum standards of financial responsibility and operational capability. These standards require a Fund/Serv applicant to have a previous business history, capable personnel and sufficient financial ability to meet obligations to NSCC. Since NSCC will not, at least initially, require a clearing fund deposit, NSCC proposes a \$500 million assets-under-management threshold for applicant funds under the pilot since it believes that a Fund/Serv Member who manages assets of this size would not likely be unable to meet its settlement obligations even if an extraordinary number of redemptions were to occur. The rules also require Fund/Serv applicants to complete a questionnaire, but because of NSCC's relative unfamiliarity with the mutual fund industry, NSCC has determined to defer development of a final questionnaire until a later time.

#### 4. Fund/Serv Systems Fees

NSCC also is amending Rule 24, Charges For Services Rendered, to authorize the establishment of fees for the Fund/Serv Service. NSCC will charge a fee of \$0.35 per side per confirmed transaction. In addition, NSCC will charge a participant fee of \$50 per month. This fee covers the costs associated with account maintenance. Broker/dealer participants already paying the maximum participant fee of \$150 per month will not incur additional monthly account maintenance charges.

#### II. NSCC's Rationale

NSCC believes that the proposal is consistent with the Act because it facilitates prompt and accurate clearance and settlement of securities transactions in investment company securities. NSCC is limiting participation in the Fund/Serv System, during the pilot program, to obtain experience with the operational aspect of that system. At the conclusion of the pilot, NSCC expects to offer the Fund/Serv Service to all members and qualifying mutual funds.

NSCC requests accelerated approval of the proposal under section 19(b)(2) of the Act. NSCC believes that accelerated approval is justified because the immediate implementation of the Fund/Serv Service would enable NSCC to provide an automated service for processing mutual fund transactions that is not currently available. Because of the significant growth in mutual funds as an investment vehicle and the manual

processing of mutual fund transactions, NSCC believes that the speedy implementation of the service would greatly enhance the prompt and accurate processing of mutual fund transactions.

#### III. Discussion

The Commission agrees with NSCC that the proposed one year pilot is consistent with Section 17A of the Act. Currently, there are no centralized facilities or systems for the processing of mutual fund securities transactions. Rather, broker-dealers individually develop arrangements with mutual funds and fund transfer agents for the clearance and settlement of such transactions. The development of a central processor, coupled with uniform clearance and settlement procedures, could provide substantial efficiencies for both broker-dealers and for mutual funds and their agents. In recognition of this, in 1985, at the request of the Investment Company Institute and the National Association of Securities Dealers, NSCC began developing an automated clearing and settlement system for mutual fund transactions. The Fund/Serv Service is a result of that effort.

The proposal will enable NSCC to provide automated and centralized order entry, confirmation, registration and settlement services for mutual fund transactions. During the pilot, NSCC will monitor the Fund/Serv Service to ensure the safe and efficient processing of mutual fund transactions and will make changes necessary to provide such service to all NSCC members. In addition, the Fund/Serv Service will utilize the same facilities and the same basic settlement system currently used for other securities transactions. Before expiration of the pilot period, NSCC expects to submit a proposed rule change to establish a permanent system. The Commission therefore finds that the proposal is consistent with the Act and, in particular, with section 17A of the Act.

The Commission believes the implementation of the Fund/Serv Service will enable NSCC to provide an automated service for processing mutual fund transactions that is not currently available. In light of the significant growth of mutual funds as an investment vehicle and the manual processing of mutual fund transactions, the Commission agrees with NSCC that the speedy implementation on a pilot basis of the automated service is a significant step in enhancing the prompt and accurate processing of mutual fund transactions and therefore is in the

<sup>3</sup> Before securities registered in the customer's name can be liquidated, the customer must deliver properly endorsed securities to the broker-dealer. The broker-dealer then forwards them to the mutual fund transfer agent for registration in street name. This process normally can not be completed by T+3 to allow settlement to occur on T+4.

public interest. By limiting the number of broker-dealers in the pilot, and by restricting the pilot to a limited number of mutual funds with substantial assets under management, NSCC is proceeding in a careful, cautious manner while gaining significant experience with the operation of a permanent mutual fund securities processing system. The Commission therefore finds good cause for approving the proposal on an accelerated basis.

You are invited to submit written data, views and arguments concerning the proposal within 21 days from the date this is published in the *Federal Register*. Please file six copies of comments, referring to File No. SR-NSCC-85-09, with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, by March 20, 1986.

Copies of all documents related to the proposal, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC, and at NSCC's principal office.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NSCC-85-09) be, and it hereby is, approved through February 18, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: February 20, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4220 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.**

February 20, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Vestron Inc.

Common stock, \$0.01 par value (file no. 7-8800)

American Family Corporation

Common stock, \$0.10 par value (file No. 7-8801).

These securities are listed and registered on one or more other national

securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 13, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 4221 Filed 2-26-86; 8:45 am]

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**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.**

February 20, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

BMC Industries, Inc.

Common Stock, \$0.10 Par Value (File No. 7-8820)

Centex Corporation

Common Stock, \$0.25 Par Value (File No. 7-8821)

Federal-Mogul Corporation

Common Stock, \$5.00 Par Value (File No. 7-8822)

FoxMeyer Corporation

Common Stock, \$0.10 Par Value (File No. 7-8823)

Green Tree Acceptance, Inc.

Common Stock, \$0.01 Par Value (File No. 7-8824)

McLean Industries, Inc.

Common Stock, \$1.00 Par Value (File No. 7-8825)

The Pep Boys—Manny, Moe & Jack

Common Stock, \$1.00 Par Value (File No. 7-8826)

Zale Corporation

Common Stock, \$1.00 Par Value (File No. 7-8827)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 13, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4222 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.**

February 18, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Sea-Land Corporation

Rights (File No. 7-8807)

Santa Fe Energy Partners L.P.

Depository Units (File No. 7-8803)

Sun Energy Partners

Common Stock, No Par Value (File No. 7-8809)

Gruntal Financial Corporation

Common Stock, \$0.10 Par Value (File No. 7-8810)

Kaneb Energy Partners, LTD

Depository Units Representing Limited Partnership Interests (File No. 7-8811)

Pilgrim Regional Bank Shares, Inc.

Common Stock, \$.001 Par Value (File No. 7-8812)

Badger Meter

Common Stock, \$1.00 Par Value (File No. 7-8813)

Alza Corporation

Common Stock, \$1.00 Par Value (File No. 7-8814)

**Consolidated Stores**

Common Stock, \$0.01 Par Value (File No. 7-8815)

**ML Convertible Securities, Inc.**

Income Shares (File No. 7-8816)

**Republic New York Corporation**

Common Stock, \$5.00 Par Value (File No. 7-8817)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 11, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,  
Assistant Secretary.

[FR Doc. 86-4223 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22935; File No. SR-NASD-85-19]

**Self-Regulatory Organizations; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Submitted by the National Association of Securities Dealers, Relating to Proposed Fees for Information Disseminated by Means of the National Quotation Data Service**

The National Association of Securities Dealers, Inc. ("NASD") has filed with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> a proposed rule change<sup>3</sup>

that would establish a charge of \$79.00 per month for each subscriber terminal receiving full quotation information in NASDAQ securities through vendors other than the NASD or its NASDAQ subsidiary (the NASD has characterized this service as its National Quotation Data Service ("NQDS")).

**I. Background**

The Commission's firm quotation rule, Rule 11Ac1-1 under the Act, requires the NASD as of April 1, 1982, to make available to vendors full quotation information on those over-the-counter ("OTC") securities designated as National Market System ("NMS") Securities.<sup>4</sup> In light of that requirement, the NASD asked vendors whether they were interested in receiving this quotation information on NMS Securities. Only the Instinet Corporation ("Instinet")<sup>5</sup>

The Commission granted the NASD a number of exemptions<sup>6</sup> from having to provide Instinet the data until after technical preparations and negotiations over access terms, with fee as the principal issue, were completed. After nearly two years of negotiations, the parties could not reach an agreement on fees. The NASD thereupon filed with the Commission its proposed fees for the NQDS.<sup>7</sup> Under the proposed fees, Instinet would pay \$3,200 a month for the direct computer communication costs of transmitting the quotation information from the NASD to Instinet. Instinet's customers subscribing to the information would be charged by the NASD a monthly per terminal subscriber fee based on the NASD's \$150 Level 2/3 fee.<sup>8</sup> The \$150 fee would

be reduced to reflect that Instinet would receive quotations in only NMS Securities.<sup>9</sup>

In response to the NASD's fee filing, on July 15, 1983, Instinet filed a petition with the Commission pursuant to section 11A(b)(5) of the Act alleging that the fees for NQDS were an inappropriate limitation or prohibition on access to services provided by the NASD as an exclusive processor of securities information. In its petition, Instinet sought access to quotation information on all NASDAQ securities, not just NMS Securities.<sup>10</sup>

On August 16, 1983, the Commission issued an order pursuant to section 11A(b)(5) of the Act preliminarily finding that at least with respect to those securities designated as NMS Securities, the proposed fees constituted a prohibition or limitation on access to services, and instituted a proceeding to determine whether the prohibition or limitation on access to services was inconsistent with the Act.<sup>11</sup> In that order, the Commission also solicited comments on certain issues raised in the proceeding, including whether Instinet should receive access to quotation information on all NASDAQ securities and in a separate release instituted proceedings pursuant to section 19 of the Act to determine whether to approve or disapprove the proposed fees.<sup>12</sup>

After reviewing the record of the proceeding,<sup>13</sup> The Commission, on April 17, 1984, issued orders determining that, among other things,<sup>14</sup> because Instinet sought to distribute certain NASDAQ quotation information in competition with the NASD, which is an exclusive processor of that information, the proposed fees must be cost-based to ensure the neutrality and

<sup>4</sup> 17 CFR 240.11Ac1-1. NMS Securities are those OTC securities designated pursuant to Rule 11Aa2-1 under the Act, 17 CFR 240.11Aa2-1. The primary effect of designation is to subject OTC stocks to the Commission's firm quotation, last sale reporting, and confirmation rules (Rules 11Ac1-1, 11Aa3-1, and 10b-10 under the Act).

<sup>5</sup> Instinet is a registered broker-dealer that offers computerized execution facilities and securities information services.

<sup>6</sup> See, Securities Exchange Act Release Nos. 18565 (March 23, 1982), 19112 (October 12, 1982), and 19564 (March 3, 1983); 47 FR 13285, 46793, and 48 FR 10175.

<sup>7</sup> See, Securities Exchange Act Release No. 19884 (June 17, 1983), 48 FR 29086 ("1983 Fee Proposal Release"). File No. SR-NASD-83-13.

<sup>8</sup> The NASD sells directly to subscribers its NASDAQ Level 2 and 3 services, which identifies all NASDAQ market makers and their quotations. Level 3 service permits market makers to insert quotations into NASDAQ whereas Level 2 service is information only. The NASD also provides Level 1 service, which provides the best bid and offer quotations in each NASDAQ security without identifying market makers, through other vendors and charges vendors' subscribers \$8.75 per month per terminal.

<sup>9</sup> See 1983 Fee Proposal Release, *supra* note 7, 48 FR at 29087. The NASD's proposed subscriber fee was intended to recover the costs of operating the NASDAQ system.

<sup>10</sup> See, Petition by Instinet for Review of Denial and/or Limitation of Access to Facilities and Services, dated July 15, 1983 ("Instinet Petition"). See, Public File No. 4-256.

<sup>11</sup> See Securities Exchange Act Release No. 20088 (August 16, 1983), 48 FR 38124.

<sup>12</sup> See Securities Exchange Act Release No. 20089 (August 16, 1983), 48 FR 38131.

<sup>13</sup> For a discussion of what composed the proceeding's record, see Securities Exchange Act Release No. 20674 (April 17, 1985), 49 FR 17640 ("April Order").

<sup>14</sup> The Commission instituted proceedings to determine whether Instinet should receive access to full quotation information in all NASDAQ securities, not just NMS Securities. The Commission also granted interim relief to Instinet in the form of immediate access to full NASDAQ quotation information in all NASDAQ securities at an interim subscriber fee equal to the NASDAQ Level 1 fee since Level 1 service was the NASD's only other pass-through service. See discussion, *Infra* note 32.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> File No. SR-NASD-85-19. Notice of the filing was given by issuance of a Commission release and by publication in the *Federal Register*. See Securities Exchange Act Release No. 22376 (August 30, 1985), 50 FR 36692 ("August Notice").

reasonableness of the NASD's charges to Instinet and its subscribers.<sup>15</sup> Under this analysis, the Commission approved the NASD's NQDS vendor fee, but disapproved the NASD's proposed NQDS subscriber fee because that fee was based in part on costs related to functions not used in supplying quotation data to Instinet.<sup>16</sup> One such function that the Commission determined entailed costs the NASD should not be permitted to recover was the inquiry or "quotation query function."<sup>17</sup> The Commission determined that NQDS should not bear costs associated with the NASDAQ system's query function because NQDS provides Instinet only raw quotation data and Instinet would have to develop and offer its own inquiry service to subscribers.<sup>18</sup>

On June 11, 1984, the NASD filed a motion requesting Commission reconsideration<sup>19</sup> of the finding made in the April Order related to costs of the NASDAQ query function. In urging reconsideration of this finding the NASD asserted that market makers necessarily query full quotation information offered through NASDAQ in deciding whether to maintain or change their quotation. Accordingly, the NASD argued that the query function was an essential part of the update function, and, therefore, Instinet's subscribers should bear a proportionate share of the costs related

<sup>15</sup> See April Order, *supra* note 13, and Securities Exchange Act Release No. 20873 (April 17, 1984), 49 FR 17653.

<sup>16</sup> *Id.*

<sup>17</sup> The "query function," for example, allows subscribers to NASDAQ Level 2 and 3 services to recall full quotation information on a NASDAQ terminal. The service requires the NASD both to provide an ability to store quotations and to provide information in response to an inquiry.

<sup>18</sup> See April Order, *supra* note 13, 49 FR at 17649. In support of this finding the Commission stated that it "rejects the NASD's assertion that it should allocate to NQDS an equal share of each of the NASDAQ system's functions because the market makers who build the data-base depend on all NASDAQ system functions. There is no requirement that market makers recall NASDAQ quotation information through their NASDAQ terminals in connection with each quotation update. To the extent a market maker desires to recall quotation information before updating his quotation, he could choose to recall particular quotation information through Instinet terminals or inside quotation information through a variety of sources, without any reliance on the NASDAQ system's storage and recall functions. Moreover, the Commission does not believe that such a subsidization of market makers through NQDS fees is consistent with the Act. While all NASDAQ and NQDS subscribers receive NASDAQ market maker quotation information, the fact remains that NASDAQ subscribers are provided a recall service, which Instinet must provide its subscribers at a separate cost." April Order, *id.*, 49 FR at 17649 n.91.

<sup>19</sup> See motion to George A. Fitzsimmons, Secretary, SEC, from Frank J. Wilson, Executive Vice President and General Counsel, NASD, dated June 11, 1984.

to the query function. The Commission denied the motion, on the basis that the NASD had not advanced any new data or arguments to warrant Commission reconsideration of issues resolved in the April Order.<sup>20</sup>

On November 19, 1984, the NASD filed a second motion requesting Commission reconsideration of the query cost finding based on new evidence.<sup>21</sup> The evidence was derived in part from an NASD statistical study which indicated that 76.8 percent of queries directed to the NASDAQ system were made by market makers in stocks in which they made markets. The Commission denied the motion because the NASD had not demonstrated that there were reasonable grounds for its failure to produce this evidence prior to the April Order. The NASD also had failed to show that the proffered evidence was material to any of the findings contained in the April Order, as the Commission had previously considered and rejected arguments that the evidence was intended to support.<sup>22</sup>

On July 31, 1985, the NASD filed with the Commission SR-NASD-85-19, the proposed NQDS subscriber fee.<sup>23</sup>

## II. Description of SR-NASD-85-19

In its filing with the Commission, the NASD stated that

[t]he proposed rule change establishes a charge of \$79.00 per month per subscriber terminal receiving NQDS information disseminated by a vendor. The proposed rule change is the creation of a fee which accurately reflects the cost of collecting, processing and preparing the NQDS information for distribution of vendors and subscribers and is consistent to the fullest extent possible with the direction contained in the Commission's [April] Order and sound cost accounting principles.

The fee was formulated based on a study performed on behalf of the NASD by the accounting firm of Coopers & Lybrand ("C&L Study"). As further detailed in the August Notice, the NASD explained that

[t]he fee represents the cost of the information as is collected, processed and prepared for distribution through NQDS.

<sup>20</sup> See Securities Exchange Act Release No. 21471 (November 8, 1984), 49 FR 45282.

<sup>21</sup> See Request for Reconsideration based upon New Evidence submitted by Frank J. Wilson, Executive Vice President and General Counsel, and Robert E. Aber, Associate General Counsel, NASD, dated November 19, 1984. The NASD also has filed in the United States Court of Appeals for the District of Columbia Circuit a petition seeking review of the Commission's orders issued in this proceeding. See NASD v. SEC, No. 85-1012 (D.C. Cir. filed Jan. 7, 1985).

<sup>22</sup> See Securities Exchange Act Release No. 21832 (March 8, 1985), 50 FR 10565.

<sup>23</sup> See *infra* note 3.

derived on the basis of a functional analysis of the NASDAQ system, the derivation of cost pools attributable to segregable functions performed within the system and the allocation of these costs to the various services offered by NASDAQ which utilize the functions. These costs were in turn applied to the cost bearing units of sale of the information which are the average number of quotations each such service is capable of accessing.

On October 4, 1985, staff of the Commission met with representatives of the NASD and C&L to clarify the methodology and findings of the C&L Study ("October Meeting").<sup>24</sup> The C&L Study, supplemented by the October Meeting, indicated that the following methodology was used in developing the fee. First, four NASDAQ functions were isolated: Broadcast (Level 1), NQDS, queries, and updates. Next, all NASDAQ costs were isolated and seven cost pools, three direct and four indirect, were created. One direct cost pool representing NASDAQ terminal costs was removed because these costs were recovered separately. C&L then allocated the remaining six cost pools<sup>25</sup> to the four NASDAQ functions. The costs contained in the indirect cost pools were allocated to each function in the same proportion that that function made use of the three system resources. After the costs of the four functions were ascertained, products such as NQDS and Level 1, 2 and 3 services derived from these functions could be priced a number of ways. The fees were adjusted to recover 150% of the NASD's 1984 costs. C&L believed that any pricing scenario that excluded query costs in pricing NQDS would not be appropriate in its judgment.

At the October Meeting, the Commission staff asked a number of specific questions about the Study. The Commission staff questioned why the Study concluded that query costs should be shared by NQDS, particularly since the Commission determined in the April Order that this type of cost was not to be included in calculating the NQDS subscriber fee. C&L stated that in its professional view it believed that an allocation of costs based on the system resources a service utilized required

<sup>24</sup> See File No. 4-256, Memorandum to the Files, from William W. Uchimoto, Division of Market Regulation, SEC, regarding C&L Meeting, dated November 1, 1985. C&L commented on the Commission's Memorandum; see Letter from C&L to Richard G. Ketchum, SEC, dated January 8, 1986.

<sup>25</sup> The three direct cost pools were the costs of each of these NASDAQ component resources: Network Communications, Processor CPU, and Data Storage. The indirect cost pools were: general and administrative costs, systems development and overhead.

NQDS to bear a share of the query costs. In this regard, C&L regarded all subscribers to NASDAQ quotations as benefiting from quotation updates made through Level 3 terminals. C&L concluded that, because updates are based upon market maker queries, all subscribers, including NQDS subscribers, should pay for system costs related to processing market maker queries. In order to isolate those queries that C&L believed were made in connection with a market maker's update, C&L first counted only those queries that were made by market makers in stocks in which they made markets. Of these queries, C&L counted only queries received from Level 3 terminals used to make markets in the particular stocks. C&L determined that 76.8% of Level 3 queries were of this nature.

C&L then responded to questions regarding the Study's view that subscribers to NQDS or Levels 2 or 3 services receive on average nine quotations—eight market makers' quotations and the best bid and offer display ("BBO")—whereas subscribers to Level 1 service receive one quotation, the BBO. Because the Study treated each stored quotation as a single cost unit, subscribers to full quotation information (including NQDS subscribers) thus would bear nine times more query costs than subscribers to Level 1 service. The Commission staff questioned why only one cost unit was attributable to the BBO when the BBO, as a distillation of all market makers' quotations in a specific security, appeared different from individual market maker quotations. C&L believed that the BBO was constructed by massaging "in stream" data reflecting incoming quotation update data. Specifically, C&L assumed the BBO was derived after the data is processed to some degree and validated but before it is entered into the database for storage. Because this data was derived from in stream data, C&L stated that system processing utilized to produce the BBO could not be measured.

### III. Comment Letters

In response to its solicitation of comments on SR-NASD-85-19, the Commission received comment letters from the Information Industry Association ("IIA"),<sup>26</sup> Instinet,<sup>27</sup> and

the NASD.<sup>28</sup> The IIA did not comment on the specifics of how the NQDS fee should be formulated, but did believe that the NQDS fee should be cost-based for the sake of fairness and efficiency.

Instinet's comment letter was accompanied by a report prepared on behalf of Instinet by the accounting firm of Deloitte Haskins & Sells ("DH&S Report") that reviewed the C&L Study. In its comment letter, Instinet urged the Commission to summarily disapprove the NASD's proposed NQDS subscriber fee because the "NASD and Coopers and Lybrand assume things contrary to the April Order that are integral to the fees proposed." In this regard, Instinet noted that the proposed fee departs from the April Order by assigning a portion of the costs of operating NASDAQ's quotation inquiry function to NQDS subscribers. Furthermore, Instinet cited to the DH&S Report in arguing that the NASD's unit pricing theory that "assign[s] different cost factors to products on the basis of the amount of information provided appears to reflect primarily an assignment of value to the product rather than an allocation of costs," a pricing methodology rejected by the April Order. Instinet reasoned that "the number of quotes available is almost irrelevant where high proportions of costs are fixed costs. In that situation, the availability of one quote costs as much as many, many more." Indeed, Instinet contended that, to the extent dissemination of the BBO involved not only collection of some individual market maker quotations as NQDS but also an additional calculation—i.e., determination and updating of the BBO—if anything a higher fee was appropriate for Level 1 than NQDS. Instinet indicated that a preferable approach would be to apportion common costs among all users on an equal basis utilizing subscriber terminals as the appropriate pricing units. By assuming that the charges for terminals receiving NQDS should be no more than those receiving Level 1 service and using the NASD's methodology except as revised with respect to unit pricing, Instinet calculated that the NQDS monthly subscriber fee should be approximately \$11.00 per terminal.

Instinet also argued that it is "unfair and unreasonable" to permit the NASD to set the NQDS subscriber fee to recover 150% of the NASD's 1984 costs. Instinet stated that "even granting the

assumption that NASD's historical cost growth is a reasonable predictor of future growth, a front-loaded, 50% increment generates substantial revenues over three years in excess of those generated by 15% per annum rate increase over the same period."

Instinet believed that the multiplier used would generate a capital surplus which the NASD had not justified and would amount to current customers having "to finance capital expenditures that will benefit different, future customers." Finally, Instinet argued that the NASD failed to take into account increased revenues that Instinet expected would largely offset increased costs over time. Instinet recommended that the NASD should establish fees that recover 1986 forecast expenses.

Instinet then requested that the NASD be required to explain or provide further data regarding how conclusions or findings were reached with respect to a number of technical matters discussed in the C&L Study. Instinet cautioned that the proposed NQDS fee should not be approved without review of this additional information and suggested that the Commission hold an informal conference with the parties to explore these matters fully.

The NASD's comment letter addressed some of the major contentions raised by Instinet's comment letter. The NASD's comments were accompanied by an affidavit from a C&L partner, which responded to 49 questions or remarks expressed by Instinet in commenting on the proposed NQDS subscriber fee. The NASD disputed Instinet's view that services such as NQDS must be segregated and separately costed and argued that the NASDAQ system is monolithic and incapable of being functionally analyzed in the manner indicated by Instinet. The NASD also defended its unit pricing methodology stating that it does not result in value-of-service pricing because "it is a cost hearing unit-of-sale approach applied to the quantity of market information received through each service." The NASD then responded to Instinet's concerns regarding the 50% cost recovery multiplier. The NASD believes that the multiplier is based on a reasonable five year projection of costs and avoids costly and repeated fee filings that would require reviewing costs on an annual basis. The NASD indicated that revenue projections are unpredictable and that Level 2 and 3 revenues may actually decline because of new interfaces and a lower NQDS subscriber fee. Indeed, NASD predicts an eventual operating deficit even with the 50%

<sup>26</sup> See Letter from Kenneth B. Allen, Vice President for Government Relations, IIA, to John Wheeler, Secretary, Commission, dated January 3, 1986.

<sup>27</sup> See Letter from Daniel T. Brooks and Barry S. Spector, Cadwalader Wickersham & Taft, Counsel for Instinet Corporation, to John Wheeler, Secretary, Commission, dated November 29, 1985.

<sup>28</sup> See Letter from Frank J. Wilson, Executive Vice President and General Counsel, NASD, to John Wheeler, Secretary, Commission, dated January 31, 1986. Accompanying the NASD's comment letter was an affidavit from C&L.

multiplier. While the NASD was willing to answer other questions and provide further information, the NASD believed that the current record is sufficient for the Commission to analyze the proposed fee.

#### IV. Discussion

##### A. Standards Governing Commission Review

The NASD's proposed rule change raises a number of issues under the Act regarding the dissemination of market information. These issues include, first, questions regarding the appropriate prices and terms that an exclusive processor of securities data can impose on vendors that may compete with the exclusive processor in marketing the data in specialized formats and displays.<sup>29</sup>

Second, the proposed rule change must be consistent with Section 15A of the Act. Specifically, the proposal must be consistent with:

- Section 15A(b)(5) of the Act, which requires that the NASD's rules "provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls."

- Section 15A(b)(6) of the Act, which requires that the NASD's rules "remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, . . . to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers."

- Section 15A(b)(9) of the Act, which requires that the NASD's rules "do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."

In considering whether the NASD's proposed fee is consistent with these provisions of the Act, the Commission must also consider the proposal in light of the Commission's previous determinations in this matter. Specifically, the Commission, in the April Order, determined that, "at least in the circumstance where an exclusive

processor supplies information to other vendors and competes with those vendors in providing information and terminal services to end-users, the exclusive processor's fees should be based strictly on the expenses it incurs in providing information to vendors."<sup>30</sup> In this connection, the Commission stated that

the NASD may recover only the costs of collecting, validating, [footnote omitted] and preparing the information for shipment to Instinet. Costs related to the NASD's inquiry system, such as storing quotations for inquiry purposes and responding to actual inquiries, cannot be considered in developing an NQDS subscriber charge. In addition, incremental capacity built into its computer and communications system [footnote omitted] necessary to operate an inquiry service, but not necessary for a quotation collection service, cannot be considered costs relevant to the NQDS service.<sup>31</sup>

The Commission also stated that, "barring demonstrable differences in cost, all subscribers to NASDAQ information through vendors other than NASDAQ should pay the same basic fee to the NASD whether they receive the NASDAQ Level 1 best bid and offer service or the Instinet full quotation service."<sup>32</sup>

##### B. Institution of Proceedings to Determine Whether to Approve or Disapprove SR-NASD-85-19

After carefully reviewing the terms of the proposed rule change and the C&L Study upon which the rule change was based, the Commission is unable at this time to determine that the rule change is consistent with the Act, particularly sections 11A and 15A thereunder.

Accordingly, the Commission is instituting proceedings pursuant to section 19(b)(2)(B) under the Act to determine whether the proposed rule change should be approved or disapproved. The Commission believes that these proceedings will provide the NASD and commentators an opportunity further to assess the NASD filing and C&L Study, as well as to review and address the concerns raised in Instinet's comment letter.

Specifically, the commission notes that the C&L Study's method of computing the NQDS fee does not appear to be cost-based. As previously discussed, the Commission, in the April Order, determined that costs not related to a service provided should not be borne by that service. Under this

analysis, the Commission determined that costs associated with operating a quotation query service were not to be included in calculating an NQDS subscriber fee. Notwithstanding the Commission's unequivocal position on query costs, the NASD utilized the C&L Study to base its decision to include certain quotation query costs as common costs apportionable to NQDS subscribers. The NASD's proposed NQDS fee, therefore, is inconsistent with the Act for reasons delineated in the April Order.<sup>33</sup> The Commission preliminarily does not find that the reasoning set forth in the C&L Study justifies a reconsideration of the query function exclusion. C&L based its determination to include market maker query costs on what it labeled as an "assumption"—that because market maker quotations were critical to the operation of the NASDAQ system, all users should share those query costs.<sup>34</sup> This is precisely the same argument made by the NASD and rejected by the Commission in the April Order.<sup>35</sup>

<sup>33</sup> At the October Meeting, C&L conceded that it had utilized only statistics that were collectible directly from the NASDAQ system and had not studied reasons why market makers make queries from Level 3 terminals. Accordingly, irrespective of the Commission's decision not to permit any NASDAQ query costs to be passed on to NQDS subscribers, the Commission believes that the C&L Study fails to distinguish and separate Level 3 queries that could be made for purposes other than an activity done that precedes an update of a market maker's quotation. For example, market makers may query a Level 3 terminal to price an incoming order from the firm's retail sales office or to respond to a phone inquiry from a broker with an agency order.

<sup>34</sup> See C&L Study at 55-56. The NASD and C&L also restate that the NASDAQ system is monolithic and for that reason assert that accepted cost accounting principles do not require separate allocation of system costs attributable to the query function. NASD Comment Letter, *supra* note 28 at 3; C&L affidavit, *supra* note 28 at 2. The Commission understands the structure of the NASDAQ system, and in the April Order determined that the Act requires that the NASD still must make a reasonable attempt to identify specific cost components associated with different services generated by the system in order to exclude query costs from the NQDS fee. This determination was based, in part, on its recognition that the NQDS feed requires Instinet to duplicate costs attributable to a query function in its own system. Indeed, the NASD itself has recognized that there is a capability to separate out costs even in a "monolithic" system. Thus, the NASD, in excluding 24% of query costs, has made some cost allocations with respect to NQDS. The Commission believes, however, that these allocations are insufficient. For the reasons stated in the April Order, the Commission believes that the NASD must make an attempt to exclude all costs associated with the NASDAQ query function; of course, the NASD can include the costs of collecting, validating, and preparing the quotation information for shipment to Instinet.

<sup>35</sup> While the Commission recognizes that an expert analysis of NASDAQ can add precision to measuring costs of the various system functions, the

Continued

<sup>29</sup> In this regard, section 11A(c) of the Act provides that the Commission, may, by rule, assure that "all securities information processors may, for purposes of distribution and publication, obtain [securities data made available by an exclusive processor] on fair and reasonable terms."

Second, the proposed fee must be reviewed to determine whether such fee is fair and reasonable and is consistent with the Congressional mandate in section 11A(a)(1) of the Act to assure "the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities."

<sup>30</sup> April Order, *supra* note 13, 49 FR at 17647.

<sup>31</sup> April Order, *id.*, 49 FR at 17858-59.

<sup>32</sup> April Order, *id.*, 49 FR at 17859. The Commission considered NQDS and Level 1 service to be "pass-through" services that only collected information and passed it on to vendors.

Accordingly, because the NASD included NASDAQ query costs in developing an NQDS subscriber fee, the Commission is unable to conclude at this time that the proposed rule change is consistent with the Act. Moreover, because Instinet would have to provide its own query service while bearing some of the costs of the NASD's competing query service, the commission is unable to make the finding that the rule change does not "impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]." <sup>36</sup>

The Commission in the April Order also determined that the proposed NQDS subscriber fee should be "cost-based and calculated by allocating the percentage of system use of each quotation service offered by the NASD ("functional analysis"), to ensure the neutrality and reasonableness of the NASD's charges to Instinet and its subscribers." <sup>37</sup> The Commission is concerned about the consistency of the NASD proposal with the Commission determination, particularly in its reliance on the C&L Study's unit pricing theory. The Commission questions why C&L chose the stored quotation as the pricing unit over other potential pricing units such as the number of terminals receiving data. The Commission also questions the appropriateness of requiring recipients of full NASDAQ quotation information to bear nine times more costs than recipients of Level 1 service who receive the BBO. <sup>38</sup>

At the October Meeting, when questioned how the BBO was constructed, C&L responded that it believed that the BBO was formulated from "in stream" data prior to its entry into the NASDAQ database. The Commission requests comment on C&L's analysis that it is unlikely that construction of the BBO may directly result from the processing of all market makers' quotations entered into the quotation database in a particular NASDAQ security. In addition, the

Commission requests comments on whether, even if the BBO is constructed in the manner asserted by the NASD, it is possible both from a quotation collection and systems standpoint that dissemination of the BBO may be materially different than dissemination of individual market maker quotations.

The Commission believes that a careful analysis of the actual costs of developing the BBO is necessitated by the Commission's decision in the April Order that "all pass-through subscribers, including the Level 1 fee and the fee to Instinet subscribers, must be calculated on the same basis." <sup>39</sup> In this regard, the Commission provided Instinet and its subscribers interim relief in the form of access to NQDS at a price identical to the NASD's Level 1 charge of \$8.75 per terminal per month. <sup>40</sup> The Commission recognized that "there may be costs properly allocable to NQDS that exceed those relating to NASDAQ Level 1 service," but expected the NASD to ascertain those costs by the "more rigorous cost accounting required by [the April Order]." <sup>41</sup> In light of the cost attribution standard imposed by the April Order, the Commission preliminarily believes that the C&L Study does not provide sufficient support for the NASD's conclusion that the BBO pass-through service should recover for each subscriber only one ninth of the system costs recovered by the NQDS pass-through service. Accordingly, absent a careful and searching examination by the NASD of this matter, the Commission is unable to determine, among other things, that the NASD's proposed NQDS fee is based on a formula that provides for the "equitable allocation of reasonable . . . charges among . . . persons using any facility or system which the association operates or controls." <sup>42</sup>

#### VI. Request for Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the potential grounds for disapproval identified above. <sup>43</sup> Interested persons are invited

<sup>39</sup> April Order, *supra* note 13, 49 FR at 17652.

<sup>40</sup> See April Order, *supra* note 13, 49 FR at 17651.

<sup>41</sup> *Id.*

<sup>42</sup> Section 15A(b)(5) of the Act.

<sup>43</sup> In light of the comments by Instinet and the IIA, commentators are encouraged to revisit and respond to the questions raised in the August Notice. Specifically, the Commission seeks further comment regarding the NASD's unit pricing methodology, cost pools and allocations, and 150% budget multiplier.

to submit comments regarding the proposed rule change by April 1, 1986. Persons desiring to submit written data, views, and arguments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-NASD-85-19.

Copies of the submission and all written statements with respect to the proposed rule change between the Commission and any person, other than those which may be withheld from the public, <sup>44</sup> will be available for inspection and copying at the Commission's Public Reference Room.

It is hereby ordered, pursuant to section 19(b)(2) of the Act, that proceedings be instituted to determine whether to approve or disapprove proposed rule change SR-NASD-85-19.

By the Commission.

Dated: February 21, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4275 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24023; 70-6306]

#### Consolidated Natural Gas Co.; Proposed Issuance of Common Stock Under Dividend Reinvestment Plan and Employee Stock Ownership Plan Reflecting a Two-for-One Stock Split

February 20, 1986.

Consolidated Natural Gas Company ("Consolidated"), 100 Broadway, New York, New York 10005, a registered holding company, has filed with this Commission a further post-effective amendment to its declaration in this proceeding pursuant to sections 6(a), 7, and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50(a)(5) promulgated thereunder.

By prior orders in this proceeding dated June 7, 1979, February 12, 1982, July 9, 1982, November 10, 1983, November 26, 1984, and November 27, 1985 (HCAR Nos. 21069, 22388, 22571, 23114, 23497, and 23925), Consolidated was authorized to issue shares of its common stock, from time to time, to the agent for Consolidated's common stockholders participating in Consolidated's dividend reinvestment plan ("DRP Plan") and to the Trustees of the employee stock ownership plan ("ESOP Plan") of Consolidated and its participating subsidiaries. The time for the issuance of such shares expires on

<sup>44</sup> See 17 CFR 240.24b-2.

Commission believes that the C&L study's allocation of a portion of market maker query costs to Instinet and its subscribers reflects a determination falling outside the scope of C&L's special expertise. As a general matter, the determination regarding whether Instinet should subsidize costs attributable to a separate service not provided to Instinet is a policy question which falls in the Commission's area of expertise and discretion.

<sup>36</sup> Section 15A(b)(9) of the Act.

<sup>37</sup> April Order, *supra* note 13, 49 FR at 17643.

<sup>38</sup> As discussed *supra*, the C&L Study treated a "quotation" as a unit of cost. With an average of eight market maker quotations per security plus the BBO, the NASD's proposal is based on a total of nine quotations per security, with the BBO treated identically as an individual market maker quotation.

December 31, 1989, for the DRP and on December 31, 1986, for the ESOP. As of February 12, 1986, 105,174 shares of common stock, \$4 par value, allocated to the DRP remain unissued, and 77,134 shares of common stock, \$4 par value, allocated to the ESOP remain unissued.

Consolidated has filed a declaration (File No. 70-7217) requesting authorization to amend its Certificate of Incorporation by increasing and classifying its authorized common stock from 50,000,000 shares, \$4 par value, to 120,000,000 shares, \$2.75 par value, primarily for the purpose of effecting a two-for-one stock split. Each share of issued and unissued \$4 par value common stock would be changed into two shares of \$2.75 par value common stock. At the close of business on May 20, 1986, the two-for-one stock split would become effective, assuming shareholder approval of the amendment to the Certificate of Incorporation, and all shares of the common stock would be reclassified as \$2.75 par value common stock.

Consolidated now proposes in this proceeding to issue through December 31, 1989, to both the agent for the DRP Plan and to the trustees of the ESOP Plan, an aggregate of 364,616 shares of its common stock, \$2.75 par value, or twice the number of \$4 par value shares remaining unissued immediately prior to the stock split.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 17, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4224 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24022; 70-7170]

**Consolidated Natural Gas Co.;  
Proposed Issuance of Common Stock  
Under Dividend Reinvestment Plan  
Reflecting a Two-for-One Stock Split**

February 20, 1986.

Consolidated Natural Gas Company ("Consolidated"), 100 Broadway, New York, New York 10005, a registered holding company, has filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to sections 6(a), 7, and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50(a)(5) promulgated thereunder.

By order in this proceeding dated November 27, 1985 (HCAR No. 23926), Consolidated was authorized to issue between January 1, 1986, and December 31, 1989, to the agent for Consolidated common stockholders participating in Consolidated's dividend reinvestment plan ("DRP"), up to 750,000 shares of its common stock, \$4 par value.

Consolidated has filed a declaration (File No. 70-7217) requesting authorization to amend its Certificate of Incorporation by increasing and classifying its authorized common stock from 50,000,000 shares, \$4 par value, to 120,000,000 shares, \$2.75 par value, primarily for the purpose of effecting a two-for-one stock split. Each share of issued and unissued \$4 par value common stock would be changed into two shares of \$2.75 par value common stock. At the close of business on May 20, 1986, the two-for-one stock split would become effective, assuming shareholder approval of the amendment to the Certificate of Incorporation, and all shares of the common stock would be reclassified as \$2.75 par value common stock.

Consolidated now proposes in this proceeding to issue through December 31, 1989, to the agent for the DRP plan, 1,500,000 shares of its common stock, \$2.75 par value, or twice the number of \$4 par value shares authorized prior to the stock split.

The amended declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 17, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the declarant at the address above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of

fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as now amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4425 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14951; File No. 811-3923]

**Lehman International Dollar Funds,  
Inc.; Application for an Order Declaring  
That Applicant Has Ceased To Be an  
Investment Company**

February 20, 1986.

Notice is hereby given that Lehman International Dollar Funds, Inc. ("Applicant") 55 Water Street, New York, New York 10041, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on October 29, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it is incorporated under the laws of the State of Maryland and that it filed a registration statement pursuant to section 8(b) of the Act on December 9, 1983, which became effective on February 16, 1984. Applicant further states that it has only one investment portfolio, Lehman International Dollar Money Market Fund ("Fund"). According to the application, tax law changes were made in 1984 which would adversely affect the investment objective of the Fund as of July 1, 1985; Applicant notified Fund securityholders of those changes and ceased to sell Fund shares after June 22, 1984. During the month of June 1985, securityholders were advised to redeem their Fund shares at net asset value. The application further states that on July 1, 1985, the only securityholder remaining was Shearson Lehman Brothers, Inc., its sponsor, and total assets were \$100,000 in cash. On October 15, 1985, Applicant's directors voted to dissolve

the Corporation. Applicant states that it is not a party to any litigation or administrative proceeding and it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 10, 1986, at 5:30 p.m. do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4226 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24027; 70-7201]

### National Fuel Gas Co.; Proposed \$200,000 Loan for a Note and Preferred Stock Option

February 21, 1986.

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, has filed a declaration with this Commission pursuant to sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

National proposes to lend Metscan, Inc. ("Metscan") the sum of \$200,000 in consideration for a note ("Note") made in the same principal amount at an interest rate of 3% per annum above the prime rate of Chemical Bank accruing from the date of execution. Interest on the unpaid principal balance will be paid quarterly beginning on January 1, 1986. Principal will be payable on demand after the fourth anniversary of the date of the Note.

Contemporaneously, Metscan will grant National an option to purchase 80,000 of its Class C Preferred Shares at \$2.50 per share for a period of four years from the date of the grant, and thereafter for 30 days after the principal and accrued interest is paid in full. At its discretion,

National may exercise its option at any time and apply the option price to any outstanding principal indebtedness. In this instance, Metscan would remain liable for the payment of accrued interest.

Metscan has developed an electronic meter reading device that will provide an economical method of reading meters. This system operates to provide low cost and efficient remote automatic meter reading, meter security, theft detection, consumption monitoring, and control capability for metered utility service, including gas meters. The device is presently being field tested within the National distribution territory.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 17, 1986, to Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice of order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4227 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-14607]

### Union Pacific Corp.; Application and Opportunity for Hearing

Notice is hereby given that Union Pacific Corporation (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Citibank, N.A. ("Citibank") under indentures of the Company dated as of April 1, 1969 and September 1, 1980, respectively (the "1969 Indenture" and "1980 Indenture", respectively), which were heretofore qualified under the Act, and the trusteeship by Citibank under

an Indenture between Albany County, Wyoming ("Albany County") and Citibank, Trustee, dated December 1, 1985 (the "1985 Indenture"), is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Citibank from acting as trustee under any of the indentures.

Section 310(b) of the Act provides in part that if a trustee under an Indenture qualified under the Act has or shall acquire any conflicting interest it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, with certain exceptions stated therein, that there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

In support of its application the Company alleges that:

(1) The Company has outstanding on December 20, 1985 approximately \$5,099,100 aggregate principal amount of its 4 $\frac{3}{4}$ % Convertible Debentures due April 1, 1999 (the "Convertible Debentures") and \$250,000,000 aggregate principal amount of its 11 $\frac{7}{8}$ % Sinking Fund Debentures due 2010 (the "Sinking Fund Debentures") issued under the 1969 Indenture and 1980 Indenture, respectively, in each case executed by the Company and Citibank, as Trustee. The Convertible Debentures were registered under the Securities Act of 1933, as amended (the "Securities Act") (File No. 2-31741), and the 1969 Indenture was qualified under the Act (File No. not available). The Sinking Fund Debentures were registered under the Securities Act (File No. 2-68787) and the 1980 Indenture was qualified under the Act (File No. 22-10659). Citibank is currently acting as trustee under the 1969 and 1980 Indentures.

(2) Pursuant to the 1985 Indenture, there were issued the Adjustable Rate Pollution Control Revenue Bonds (Union Pacific Railroad Company Project), Series 1985, in the aggregate principal amount of \$8,000,000 (the "Bonds"). The proceedings of the sale of the Bonds were loaned to Union Pacific Railroad

Company, a wholly-owned subsidiary of the Company, pursuant to an Pollution Control Financing agreement dated as of December 1, 1985 between Albany County and Union Pacific Railroad Company. The Bonds are payable by Albany County solely from revenues received by Albany County from such Financing Agreement. The rights of Albany County under such Financing Agreement have been assigned to the Trustee to secure the Bonds, and pursuant to a Guaranty dated as of December 1, 1985 (the "Guaranty"), the Company has unconditionally guaranteed the payment by Union Pacific Railroad Company of its obligations under the Financing Agreement in respect of the principal, redemption price, premium, if any, and interest on the Bonds. The Bonds are exempt from registration under the Securities Act by virtue of an exemption contained in section 3(a)(2) thereof, and the 1985 Indenture was not qualified under the Act. Citibank is currently acting as trustee under the 1985 Indenture.

(3) Section 608 of the 1980 Indenture provides in part as follows:

(a) If the Trustee has or shall acquire any conflicting interest, as defined in this section, it shall, within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign in the manner and with the effect hereinafter specified in this Article.

(b) In the event that the trustee shall fail to comply with the provisions of subsection (a) of this section, the Trustee shall, within 10 days after the expiration of such 90-day period, transmit by mail to all Holders, as their names and addresses appear in the Debenture Register, notice of such failure.

(c) For the purposes of this section, the Trustee shall be deemed to have conflicting interest if

(1) The Trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company are outstanding, unless such other indenture is a collateral trust indenture under which the only collateral consists of Debentures issued under this Indenture, provided that there shall exclude from the operation of this paragraph (a) the Indenture, dated as of April 1, 1969, between Union Pacific Corporation and Citibank, N.A., Trustee, relating to the Company's 4¾% Convertible Debentures Due 1999, and (b) any indenture or indentures under which securities, or certificates of interest or

participation in other securities, of the Company are outstanding, if . . .

(ii) The Company shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under this Indenture and such other indenture or indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trustee from acting as such. . . .

The 1969 Indenture contains identical provisions to the above, except for section references and the like and the reference to the 1969 Indenture.

(4) Execution of the 1985 Indenture may invoke Citibank in a conflict of interest within the meaning of section 608 of the 1980 Indenture and the corresponding section 6.08 of the 1969 Indenture, since the 1985 Indenture has not been qualified under the Act and is not the subject of any other proceeding of the Commission.

(5) The Company's obligations with respect to the Convertible Debentures, the Sinking Fund Debentures and the Bonds are wholly unsecured and rank on a parity with each other. The only material differences between the 1969 and 1980 Indentures and the 1985 Indenture, and between the rights of the holders of the Convertible Debentures and the Sinking Fund Debentures and the holders of the Bonds, relate to the fact that the Company is the Guarantor of the obligations of Union Pacific Railroad Company under the Financing Agreement described above, which has been assigned to the Trustee to secure the Bonds, but is the primary obligor under the 1969 and 1980 Indentures, and that the 1969 and 1980 Indentures are wholly unsecured but the 1985 Indenture is secured by the assignment of the rights of Albany County under the Financing Agreement, and also relate to aggregate principal amounts, dates of issue, denominations, events of default, maturity and interest payment dates, interest rates, form of registration, redemption or prepayment procedures, Trustee's reports, restrictions on transferability, conversion, provisions for conflicting interest of the Trustee, and other provisions of a similar nature. Any such differences and any other difference in the provisions of the 1969 and 1980 Indentures and the 1985 Indenture are unlikely to cause any conflict of interest between the respective trusteeships of Citibank under said Indentures.

(6) The Company is not in default under the 1969, 1980 or 1985 Indenture.

(7) Such differences as exist between the 1969 and 1980 Indentures and the 1985 Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors of disqualify Citibank from acting as trustee under the 1969 or 1980 Indenture or the 1985 Indenture.

(8) The Company has waived (a) notice of hearing, (b) hearing on the issues raised by its application and (c) all rights to specify procedures under the Commission's Rules of Practice with respect to the application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission, File No. 22-14607, at 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after March 17, 1986, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of section 310(b)(1) of the Act. Any interested person may, not later than March 17, 1986 at 5:30 P.M., Eastern Standard Time, in writing, submit to the Commission his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-4228 Filed 2-26-86; 8:45 am]

BILLING CODE 8010-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Government Purchases of Products From Countries Designated Under the Caribbean Basin Economic Recovery Act

Under the authority delegated to me by the President in section 1-201 of Executive Order 12260 of December 31, 1980, in order to promote further the economic recovery of the Caribbean

Basin countries, I have determined that the countries, listed below, designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et. seq.) provide appropriate reciprocal competitive government procurement opportunities for United States products and suppliers of such products. I hereby direct that products originating in those countries shall be treated as eligible products for purposes of section 1-101 of Executive Order 12260 until September 30, 1985, unless otherwise provided by the U.S. Trade Representative in the Federal Register. Such treatment shall not apply, however, to products, originating in those countries, that are excluded from duty free treatment under 19 U.S.C. 2703(b).

Clayton Yeutter,

United States Trade Representative.

Countries Designed as Beneficiaries under the Caribbean Basin Economic Recovery Act: Antigua and Barbuda, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Panama, St. Christopher-Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.

[FR Doc. 86-4247 Filed 2-26-86; 8:45 am]

BILLING CODE 3190-01-M

### Implementation of Modifications in Specialty Steel Import Relief

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** This notice modifies the import relief for specialty steel in order to implement agreements with the European Communities, Japan and the Republic of Korea.

**EFFECTIVE DATE:** March 1, 1986.

**FOR FURTHER INFORMATION CONTACT:** Joseph Papovich, Office of the United States Trade Representative (202) 395-4510.

#### SUPPLEMENTARY INFORMATION:

Presidential Proclamation 5074 of July 19, 1983, provided for the temporary imposition of increased tariffs and quantitative restrictions on certain stainless and alloy tool steel imported into the United States. The U.S. Trade Representative was directed by Proclamation 5074 to take such actions and perform such functions for the United States as may be necessary to implement the relief, including the allocation of quota quantities on a country-by-country basis; and, pursuant

to section 203 of the Trade Act of 1974, to negotiate orderly marketing agreements and modify the import relief. On September 18, 1984, the President established a national policy for the steel industry and directed the U.S. Trade Representative to coordinate and direct the implementation of that policy, including the negotiation of new arrangements and the reaffirmation of existing measures limiting steel exports into the United States. Supplemental authority to enforce the national policy for the steel industry was provided for in title VII of the Trade and Tariff Act of 1984 (18 U.S.C. 2253 note).

Pursuant to the above authority, the U.S. Trade Representative has concluded agreements with Australia, Austria, Brazil, Czechoslovakia, the European Communities (Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom of Great Britain and Northern Ireland), German Democratic Republic, Finland, Hungary, Japan, Mexico, Poland, Portugal, the Republic of Korea, Romania, South Africa, Spain, Venezuela, Yugoslavia. In order to implement such agreements, and unless and until further modified by the U.S. Trade Representative, the Tariff Schedules of the United States (TSUS) is modified as follows:

1. Headnote 10 to subpart A, part 2 of the TSUS is modified by adding new paragraph (g) at the end thereof, as follows:

"(g) *Products Subject to Certain Export Restraint Agreements.*

(i) The duties provided for in items 926.00 and 926.05 shall not apply to products of Australia, Austria, Brazil, Czechoslovakia, the European Communities (Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom of Great Britain and Northern Ireland), German Democratic Republic, Finland, Hungary, Japan, Mexico, Poland, Portugal, the Republic of Korea, Romania, South Africa, Spain, Venezuela, Yugoslavia exported to the United States on or after March 1, 1986."

(ii) Items 926.00 and 926.05 are modified by inserting in the parenthetical expressions in each item after the opening of parenthesis the words "except as provided in headnote 10(g) to this subpart, and".

(iii) Items 926.12, 926.13, 926.17, 926.18, 926.22, and 926.23 are modified by replacing the country allocations for "Other" countries with "Other, excluding the European Communities (Belgium, Denmark, Federal Republic of

Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom of Great Britain and Northern Ireland)". These modifications shall be effective as to products of such Member States of the European Communities on or after March 1, 1986. Such products exported to the United States prior to March 1, 1986 shall, on or after March 1, 1986, be permitted entry subject to normal Customs procedures. Such products are subject to a bilateral export restraint agreement with the European Communities which will be implemented on March 1, 1986.

(2) Items 926.12, 926.13, 926.18, 926.22, and 926.23 are further modified by changing the quota quantities for "Other, excluding the European Communities (Belgium, Denmark, Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom of Great Britain and Northern Ireland) to the following:

Item	Quota quantity (in short tons) entered during the restraint period			
	July 20 through Oct. 19	Oct. 20 through Jan. 19	Jan. 20 through Apr. 19	Apr. 20 through July 19
926.12.....	(1)	(1)	(1)	"1,105"
926.13.....	"1,138"	"1,138"	"1,138"	"1,139"
926.17.....	(1)	(1)	(1)	"657"
926.18.....	"676"	"676"	"676"	"677"
926.22.....	(1)	(1)	(1)	"715"
926.23.....	"736"	"736"	"737"	"737"

<sup>1</sup> No change.

Dated: February 21, 1986.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 86-4244 Filed 2-26-86; 8:45 am]

BILLING CODE 3190-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD 86-014]

#### Lower Mississippi River Waterway Safety Advisory Committee; Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. Law 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Lower Mississippi River Waterway Safety Advisory Committee. The meeting will be held on Tuesday, March 11, 1986, in the U.S. Coast Guard Vessel Traffic Service, 4400 Dauphine Street, New Orleans, LA. The meeting is scheduled to begin at 9:30 a.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order.
2. Minutes of the January 14, 1986 Meeting.

3. Briefing of VTS Operation.
4. Tour of Vessel Traffic Service Center New Orleans.
5. Question and Answer Period with Vessel Traffic Service Center Operators.
6. Presentation of Information Concerning the "Black Box" Concept of Vessel Traffic Management and the Global Maritime Distress System.
7. Discussion of the Coast Guard's Challenge to the Committee to Increase Participation in Vessel Traffic Service, New Orleans and to Examine the Scope of the Present New Orleans Vessel Traffic System.

8. Adjournment.

The purpose of this Advisory Committee is to provide consultation and advice to the Commander, Eighth Coast Guard District on all areas of maritime safety affecting this waterway.

Attendance is open to the public. Members of the public may present written or oral statements at the meeting.

Additional information may be obtained from Commander D.F. Withee, USCG, Executive Secretary, Lower Mississippi River Waterway Safety Advisory Committee, c/o Commander, Eighth Coast Guard District (mps), Room 1341, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130-3396, telephone number (504) 589-6901.

Dated: February 19, 1986.

L.C. Kindbom,

*Captain, U.S. Coast Guard Acting Chief,  
Office of Boating, Public, and Consumer  
Affairs.*

[FR Doc. 86-4266 Filed 2-26-86; 8:45 am]

BILLING CODE 4910-14-M

### Federal Aviation Administration

#### Air Traffic Procedures Advisory Committee; Meeting

Pursuant to section 19(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 10, notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Air Traffic Procedures Advisory Committee (ATPAC) to be held from April 6, at 9 a.m., through April 11, 1986, at 4 p.m., at FAA headquarters, 800 Independence Avenue, SW., Washington, DC.

The agenda for this meeting is as follows: A continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Election of new Chairperson.
3. Discussion of agenda items.
4. Discussion of urgent priority items.

5. Report from Executive Director.
6. Old Business.
7. New Business.
8. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify, not later than April 4, 1986, Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic, Acting ATO-300, 800 Independence Avenue SW., Washington, DC, 20591, telephone (202) 426-3725. Information may be obtained from the same source.

The next quarterly meeting of the FAA ATPAC is planned to be held from July 22 through July 25, 1986, in Oakland, California.

Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on February 13, 1986.

Walter H. Mitchell,

*Executive Director, Air Traffic Procedures  
Advisory Committee.*

[FR Doc. 86-4202 Filed 2-26-86; 8:45 am]

BILLING CODE 4910-13-M

# Sunshine Act Meetings

Federal Register

Vol. 51, No. 39

Thursday, February 27, 1986

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).

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### FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:33 p.m. on Friday, February 21, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in First National Bank at Douglas, Douglas, Wyoming, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Friday, February 21, 1986; (2) accept the bid for the transaction submitted by First Wyoming Bank-Douglas, Douglas, Wyoming, an insured State nonmember bank; (3) approve the application of First Wyoming Bank-Douglas, Douglas, Wyoming, for consent to purchase certain assets of and assume the liability to pay deposits made in First National Bank at Douglas, Douglas, Wyoming; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its

consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: February 24, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

*Executive Secretary.*

[FR Doc. 86-4256 Filed 2-25-86; 12:40 pm]

BILLING CODE 6714-01-M

2

### FEDERAL ELECTION COMMISSION

**DATE AND TIME:** Tuesday, March 4, 1986, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC.

**STATUS:** This meeting will be closed to the public.

#### ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration Internal personnel rules and procedures or matters affecting a particular employee

**DATE AND TIME:** Thursday, March 6, 1986, 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington, DC, (Ninth Floor).

**STATUS:** This meeting will be open to the public.

#### MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings  
Correction and Approval of Minutes  
Draft AO 1986-6

Jan W. Baran, Fund for America's Future, Inc.

Routine Administrative Matters

**PERSON TO CONTACT FOR INFORMATION:**  
Mr. Fred Eiland, Information Officer,  
202-376-3155.

Marjorie W. Emmons,

*Secretary of the Commission.*

[FR Doc. 86-4394 Filed 2-25-86; 3:43 pm]

BILLING CODE 6715-01-M

3

### FEDERAL ENERGY REGULATORY COMMISSION

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** February 24, 1986, 49 FR 6489.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** February 26, 1986, 10:00 a.m..

**CHANGE IN THE MEETING:** The following item has been added:

*Item No., Docket No., and Company*

RP-1

TA85-3-26-002, Natural Gas Pipeline Company of America

Lois D. Cashell,

*Acting Secretary.*

[FR Doc. 86-4381 Filed 2-25-86; 2:51 pm]

BILLING CODE 6717-02-M

4

### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 21, 1986.

**TIME AND DATE:** 9:30 a.m., Thursday, February 20, 1986.

**PLACE:** Room 600, 1730 K St., NW., Washington, DC.

**STATUS:** Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

**MATTERS TO BE CONSIDERED:** The consideration of the following matters, previously noticed to be considered by the Commission at this closed meeting, was postponed until further notice.

1. Local Union 2274, UMWA v. Clinchfield Coal Co., Docket No. VA 83-55-C;

2. Local Union 1889, UMWA v. Westmoreland Coal Company, Docket No. WEVA 81-256-C;

3. Local Union 1609, UMWA v. Greenwich Collieries, Docket No. PENN 84-158-C. (Issues in these cases involve the interpretation and application of 30 U.S.C. 821, the compensation provisions of the Mine Act.)

No earlier announcement of the decision to postpone consideration of these cases at this meeting was possible. 5 U.S.C. 552(b)(a)(1).

**CONTACT PERSON FOR MORE INFORMATION:** Jean Ellen, 202-653-5629.

Jean H. Ellen,

*Agenda Clerk.*

[FR Doc. 86-4349 Filed 2-25-86; 11:39 am]

BILLING CODE 6735-01-M

5

**INTER-AMERICAN FOUNDATION BOARD MEETING****TIME AND DATE:**

March 10, 1986—6:00-9:00 p.m.

March 11, 1986—9:00 a.m.—12:00 noon

**PLACE:** 1515 Wilson Boulevard, Fifth Floor, Rosslyn, Virginia 22209.**STATUS:** Open except for the portion to be held as Closed Session to discuss Personnel matters as defined in § 1004.4 (b) of 22 CFR Chapter 10.**MATTERS TO BE CONSIDERED:***March 10, 1986*

1. The Chairman's Report
2. The President's Report
3. Approval of the Minutes of the Meeting of December 9-10, 1985
4. Closed Session to Discuss Personnel Matters as Defined in § 1004.4 (b) of 22 CFR Chapter 10

*March 11, 1986*

5. Report of the Committees of the Board
6. Other Business

**CONTACT PERSONS FOR MORE INFORMATION:**

Robert W. Mashek, Secretary to the Board of Directors, (703) 841-3844  
 Charles M. Berk, General Counsel, (703) 841-3812

Dated: February 21, 1986.

Charles M. Berk,

*Sunshine Act Officer.*

[FR Doc. 86-4283 Filed 2-25-86; 9:48 am]

BILLING CODE 7025-01-M

6

**INTERNATIONAL TRADE COMMISSION****TIME AND DATE:** Tuesday, March 4, 1986, at 10:00 a.m.**PLACE:** Room 117, 701 E Street, NW., Washington, DC 20436.**STATUS:** Open to the public.**MATTERS TO BE CONSIDERED:**

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints:
  - a. Certain sickle guards intended for use in mowing machines (Docket No. 1282).
5. Investigation No. 701-TA-267 and 268, and 731-TA-304 and 305 [Preliminary] (Top-of-the-stove stainless steel cooking ware from Korea and Taiwan)—briefing and vote.
6. Investigation Nos. 701-TA-239 and 731-TA-248 [Final] (Ethyl alcohol from Brazil)—briefing and vote.
7. Any item left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:**

Kenneth R. Mason,  
 Secretary (202) 523-0161.

Dated: February 24, 1986

Kenneth R. Mason,  
 Secretary.

[FR Doc. 86-4337 Filed 2-25-86; 11:24 am]

BILLING CODE 7020-02-M

7

**PAROLE COMMISSION****DATE AND TIME:** Wednesday, February 26, 1986—at 10:00 a.m.**PLACE:** 5550 Friendship Boulevard, One North Park Building, Room 420-F, Chevy Chase, Maryland 20815, and via a conference telephone circuit.**STATUS:** Open: Agency business requires that less than a week's notice be given and this notice is being circulated at the earliest practicable time.**MATTERS TO BE CONSIDERED:**

1. Whether or not to adopt a special Curfew, Residential Confinement Program and, if adopted, the procedures to be used.

**CONTACT PERSON FOR MORE INFORMATION:**

Peter B. Hoffman,  
 Director of Research, United States Parole Commission, (301) 492-5936.

Dated: February 24, 1986.

Joseph A. Barry,  
 General Counsel, United States Parole Commission.

[FR Doc. 86-4319 Filed 2-25-86; 10:51 am]

BILLING CODE 4410-01-M

# Federal Register

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Thursday  
February 27, 1986

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## Part II

### Postal Service

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39 CFR Part 777

Uniform Relocation Assistance and Real  
Property Acquisition Policies and  
Procedures; Final Rule

## POSTAL SERVICE

## 39 CFR Part 777

## Final Revised Uniform Relocation Assistance and Real Property Acquisition Policies and Procedures

AGENCY: Postal Service.

ACTION: Final rule.

**SUMMARY:** The final relocation regulations adopted here replace the original Postal Service relocation regulations adopted in 1975, which were written on the assumption that acquisitions normally occur under the exercise or the threat of the exercise of eminent domain. However, because virtually no postal real property acquisitions involve eminent domain takings, the former regulations have not been entirely satisfactory and have at times resulted in confusion and windfall payments to participants in voluntary transactions with the Postal Service. To avoid these problems, the final rule, using the Department of Transportation's final rule as a model, does not apply to voluntary sales made without the exercise or the threat of the exercise of eminent domain.

EFFECTIVE DATE: March 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harry C. Pennington, (202) 268-3111.

**SUPPLEMENTARY INFORMATION:** On May 28, 1985, the Postal Service published in the *Federal Register* for comment (50 FR 21752) a proposed rule to replace the relocation regulations previously adopted in 1975. A full explanation of the proposed changes, including the variations from the government-wide model rule, was published on May 28 and will not be repeated here, particularly since the Postal Service received no comments on the proposed rule. Accordingly, we are adopting the final rule substantially as proposed, with the exception of a few minor changes which we believe will clarify the final rule.

Implementation of the new regulations will take effect 30 days subsequent to publication in the *Federal Register*. However, any projects which have been publicly advertised prior to this date will continue to have relocation processed under the former regulations.

A description of the minor changes referred to above follows:

1. In paragraph (e) of § 777.13, the definition of "Displaced Person" has four minor changes:

a. A sentence was added to paragraph (e)(1)(ii)(B) so that it now allows the Postal Service to waive the requirement that a tenant still be in occupancy of the displacement property on the date that

title transfers in order to be eligible for assistance.

b. Paragraph (e)(1)(iii) is amended with minor wording changes for clarity. The words "or will be" were inserted before "required to move" in the first sentence. The words "in order for the Postal Service to accomplish the project for which the property was acquired" were inserted before "provided such tenant occupies" in the same sentence. The words "or on the date the Postal Service leases or contracts to lease such property" were deleted from the last sentence which is in parenthesis.

c. Proposed paragraph (e)(2)(iii) was removed. It was ambiguous and could have been misconstrued to eliminate legitimate eligibility. The remaining paragraphs in that section were then renumbered accordingly and a minor wording change was made to the new paragraph (e)(2)(iii) for clarity. The words "for which lawful possession is" were inserted before the word "specified" in the first sentence.

d. Proposed paragraph (e)(2)(viii)(A) was removed to eliminate ambiguity. Paragraph (e)(2)(viii)(B) was changed to (e)(2)(vii), and a sentence was added to exclude as displaced persons, those tenants who are allowed to remain on acquired property and continue renting from the Postal Service, but who are given notice to vacate as a result of failure to comply with the terms of the lease with the Postal Service or failure to renew their leases under prevailing market conditions.

e. An additional definition was added as paragraph (e)(2)(ix) indicating that a person whose property is acquired through "friendly condemnation action" where price is not an issue, is not considered a displaced person.

2. In § 777.13(j), the definition of "Financial Means" was changed slightly for clarification. The words "the greater of" were inserted before "25 percent."

3. Section 777.14 was revised by inserting the words "coercive, or deceptive" in the first line in order to assure that eligibility of displaced persons is protected, and not vulnerable to change because of any action the displaced person may have taken in response to information given or action taken by Postal Service employees.

4. Section 777.22(c)(2) was changed to require that initial contact of displaced persons take place prior to acquisition and prior to the notice of displacement or the notice to vacate, and to suggest that it normally not be made prior to contracting for the acquisition. Language allowing the Postal Service 30 days after the notice of displacement or the notice to vacate before making initial contact was deleted.

5. Section 777.23(b)(6) was modified to provide that the replacement value of property lost, stolen, or damaged in the process of moving would be an allowable moving expense "when determined to be fair and reasonable by the Postal Service." This modification was provided to avoid potential windfalls for damaged articles of little value being replaced with new items having high replacement cost.

6. The last word of § 777.23(d)(4) was changed from "certificate" to "certification" to be consistent with the fee for certification inspections.

7. In § 777.23(h)(1), the annual gross receipts of at least "\$2,000" was changed to "\$5,000" to be consistent with the approximately 150 percent rise in the CPI since the test was instituted. This change has also been made in the Model Rule published by the Department of Transportation.

8. An addition was made to § 777.23(k)(1) to require that, unless the Postal Service determined otherwise, a claimant would have to make a good faith effort to sell an outdoor advertising sign, which was not to be moved, before the claimant could claim the depreciated replacement cost of the sign, less the proceeds from its sale.

9. The last sentence of § 777.24(a)(1) was changed by changing "(e)" to "(f)." This will exclude displaced persons eligible for 180-day Owner Occupant benefits, who choose instead to receive tenant benefits, from eligibility for downpayment assistance. Such persons are excluded from eligibility for downpayment assistance in both the Model Rule published by the Department of Transportation and the proposed rule published by other Federal agencies on May 28, 1985.

10. A sentence was added to § 777.24(f)(4) to encourage the use of installment of escrow rental assistance payments when last resort housing provisions are used to make payments exceeding \$4,000.

11. In § 777.24(h) at the end of the first sentence the words "(not to exceed the costs of such for a comparable replacement dwelling)" were inserted to provide an upper limit on incidental expenses commensurate with costs of comparable housing.

12. In § 777.26(a)(3), the paragraph was clarified by eliminating the words "elect to."

13. In § 777.26(b)(3) the words "but only for such benefits as relate to costs of occupying the new site" were eliminated and the words "with regard to the mobile home and to benefits under § 777.24(b) with regard to the site, subject to a limitation on the home and

site benefits combined of \$15,000" were substituted, thereby clarifying benefits payable for home and site for an owner.

14. Since a displaced person who owns a mobile home, but rents a site, is considered a tenant for the purposes of these regulations, § 777.26(b)(4) was corrected by deleting the words "the further maximum limitation on home and site benefits combined of \$15,000 for a 180-day owner occupant and \$4,000 for a 90-day occupant" and substituting the word "a limitation on home and site benefits combined of \$4,000."

15. In § 777.27(a), the words "who would otherwise be eligible for a replacement housing payment" were deleted so as to reflect the potential applicability of Last Resort Housing to those displaced persons not formerly eligible for a replacement housing payment.

16. A paragraph (d) was added to § 777.27 requiring that displaced persons provide proof of gross monthly income through income tax returns, certified financial statements or other reasonable evidence which the Postal Service determines is satisfactory, before they can be paid last resort housing exceeding the \$4,000 or \$15,000 limitations set out in these regulations.

17. Section 777.31, acquisition procedures, has been renumbered and certain minor editorial changes were made.

18. A paragraph (c) was added to § 777.32, protecting the rights of tenants who own improvements on property to be acquired. The language was taken from the Model Rule and the proposed rule published by other Federal agencies on May 28, 1985.

#### List of Subjects in 39 CFR Part 777

Postal Service, Relocation assistance, Real property, acquisition.

For the above reasons, 39 CFR Part 777 is revised to read as follows:

### PART 777—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

#### Subpart A—General Policy, Purpose and Definitions

Sec.

777.11 General policy.

777.12 Purpose.

777.13 Definitions.

777.14 Certain indirect actions prohibited.

#### Subpart B—Uniform Relocation Assistance

777.21 General procedures.

777.22 Relocation assistance advisory services.

777.23 Moving expenses.

777.24 Replacement housing payments.

777.25 Additional rules for replacement housing payments.

Sec.

777.26 Mobile homes.

777.27 Last resort housing.

777.28 Claims and appeals.

#### Subpart C—Acquisition

777.31 Acquisition procedures.

777.32 Acquisition of tenant-owned improvements.

777.33 Expenses incidental to transfer of title to the Postal Service.

#### Subpart D—Voluntary Acquisitions

777.41 Acquisition procedures.

#### Subpart E—Donations

777.51 Acceptance of donations.

Authority: 39 U.S.C. 401.

### Subject A—General Policy, Purpose and Definitions

#### § 777.11 General policy.

It is the policy of the Postal Service to comply voluntarily with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646; 84 Stat. 1894), hereinafter referred to as the Act.

#### § 777.12 Purpose.

The purpose of these regulations is to update policy and procedures for the Postal Service's voluntary compliance with the Act.

#### § 777.13 Definitions.

(a) *The Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646. The Act consists of three titles: Title I—General Provisions; Title II—Uniform Relocation Assistance; and Title III—Uniform Real Property Acquisition Policy.

(b) *Business.* Any lawful activity, except a farm operation, that is:

(1) Conducted primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and for the manufacturing, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Conducted primarily for the sale of services to the public; or

(3) Solely for the purposes of reimbursing moving and related expenses, conducted primarily for outdoor advertising display purposes, when the display(s) must be moved as a result of the project; or

(4) Conducted by a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(c) *Comparable Replacement Dwelling.* A dwelling which is:

(1) Decent, safe, and sanitary.

(2) Functionally similar to the displacement dwelling with particular attention to the number of rooms and living space.

(3) In an area that is not subject to unreasonably adverse environmental conditions, is not generally less desirable than the location of the displacement dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the displaced person's place of employment.

(4) On a site that is typical in size for residential development with normal site improvements including customary landscaping. The site need not include special improvements such as outbuildings, fences, swimming pools, and greenhouses.

(5) Currently available to the displaced person.

(6) Within the financial means of the displaced person.

(d) *Decent, Safe, and Sanitary Dwelling.* A dwelling which meets local housing and occupancy codes and the following standards, unless they are waived for good cause by the Postal Service. The dwelling must:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other electrical devices.

(3) Contain a heating system capable of sustaining a healthful temperature of approximately 70 degrees except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and areas of living space needed to accommodate the displaced persons. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a bathtub or shower stall, sink, and toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping unit—as opposed to, for example, a room in a boarding house—there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage draining system, and adequate space and utility service connections for a stove and a refrigerator.

(5) Contain unobstructed egress to safe, open space at ground level.

(6) For displaced persons who are handicapped, be free of any barriers which would preclude their reasonable ingress, egress, or use of the dwelling.

(e) *Displaced Person:* (1) Subject to the additional definitions, limitations and exceptions in paragraph (e)(2) of this section, the term "displaced person" is defined as follows. ("Displaced persons" are entitled to receive benefits

only as specifically provided for elsewhere in these regulations.)

(i) A person who owns real property, and who is required to move or to move personal property from the real property following Postal Service action to obtain title to, or a leasehold interest in, such real property by the exercise or the threat of the exercise of eminent domain.

(ii) A person who is a tenant and who is required to move or to move his or her personal property from real property:

(A) Following Postal Service action to obtain the tenant's leasehold interest in such real property by the exercise or the threat of the exercise of eminent domain, or,

(B) Where the Postal Service acquires a fee interest in the property (including long-term leases of 50 years or more), as a result of a Postal Service notice of displacement or notice to vacate such real property, provided the tenant was lawfully in possession at the time of the postal contract to acquire such property. (The requirement that the tenant occupy such real property on the date title is such real property transfers to the Postal Service may be waived for good cause by the Postal Service.)

(C) Where such real property was used to construct a new building for the express purpose of leasing to the Postal Service under circumstances where such tenant would have been a "displaced person" hereunder had the Postal Service itself acquired the land and required the removal of the tenant to undertake construction of the building for Postal Service ownership.

(iii) Where the Postal Service acquires either a fee interest or a leasehold interest in the property, a person who is a residential tenant and is or will be required to move or to move his or her property from the real property, in order for the Postal Service to accomplish the project for which the property was acquired, provided such tenant occupies such real property on the date title in such real property transfers to the Postal Service or the date the Postal Service leases or contracts to lease such property, and further provided such tenant was lawfully in possession at the time of the initiation of negotiations. (The requirement that the tenant occupy such real property on the date title in such real property transfers to the Postal Service may be waived for good cause by the Postal Service.)

(2) The term "displaced person" covers only persons meeting the requirements in paragraph (e)(1) of this section. The term "displaced person" does not cover the following non-exclusive list of examples.

(i) An owner who voluntarily sells his or her real property to the Postal Service, or,

(ii) A tenant who voluntarily transfers his or her leasehold interest to the Postal Service without the exercise or the threat of the exercise of eminent domain, or,

(iii) A tenant who is not lawfully in possession at the times for which lawful possession is specified in paragraphs (e)(1)(ii)(B) and (e)(1)(iii) of this section. A tenant who was legally required by the lease or otherwise to have moved from the property at the times specified in such paragraphs shall not be considered to be lawfully in possession.

(iv) A person who, at the determination of the Postal Service, is not required to relocate permanently, or,

(v) A person who, after receiving a notice of displacement or notice to vacate by the Postal Service, is notified in writing that he or she will not be displaced. Such later notification shall not be issued if the person has already moved. If such latter notification is issued, the Postal Service shall reimburse the person for any reasonable expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of displacement or the notice to vacate or,

(vi) A person who is required to temporarily vacate the premises in order to permit fumigation, repair, painting, or other maintenance or code of enforcement work or,

(vii) A tenant who is required to move from real property as a result of a notice from the Postal Service to vacate such real property where such notice to vacate is issued five years or more after the date of the acquisition of such real property. A tenant who is given a notice to vacate as a result of failure to comply with the terms of his/her lease with the Postal Service or failure to renew his/her lease under prevailing market conditions is not considered to be a displaced person.

(viii) A mobile home occupant who owns the site on which the mobile home is located and who voluntarily sells the site to the Postal Service, regardless of whether such person owns or rents the mobile home.

(ix) A person whose property is acquired through a "friendly condemnation action" where price is not an issue.

(f) *Displacement Dwelling.* The dwelling acquired by the Postal Service from which a displaced person is required to move.

(g) *Dwelling.* The place of permanent or customary and usual residence of a person including a single family house; a

single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit (i.e. room in a boarding house); a mobile home; or any other residential unit.

(h) *Family.* Two or more individuals who are related by blood, adoption, marriage, or legal guardianship who live together as a family unit. If the Postal Service considers that circumstances warrant, others who live together as a family unit may be treated as if they are a family for the purpose of determining assistance under these regulations.

(i) *Farm Operation.* Any activity conducted solely or primarily for the production of one or more types of agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(j) *Financial Means.* A comparable replacement dwelling is within the financial means of the displaced family or individual if the average monthly rental or housing cost (e.g., monthly mortgage payments, insurance for the dwelling unit, property taxes, and other reasonable recurring related expenses) which the displaced person will be required to pay does not exceed the greater of 25 percent of the monthly gross income of the displaced family or individual or the ratio of the present monthly rental or housing cost to the gross income of the displaced family or individual. (Supplemental payments made by public agencies are to be included in gross income for purposes of these comparisons.)

(k) *Initiation of Negotiations.* In the case where eminent domain is neither exercised nor threatened to be exercised, the initiation of negotiations is the initial written communication stating a price by the owner or the owner's representative to the Postal Service, or by the Postal Service to the owner or the owner's representative, regarding a proposed acquisition (by purchase or lease) or an interest in a specific piece of real property. In the case where eminent domain is either exercised or threatened to be exercised, the initiation of negotiations is the date the Postal Service makes a written offer of just compensation.

(l) *Notice of Displacement.* A notice given in writing by the Postal Service to a person that he or she will be displaced from his or her place of residence, business or farm, as a result of a facility action by the Postal Service. A notice of

displacement may be combined with or in a notice to vacate.

(m) *Notice to Vacate.* A notice given in writing by the Postal Service to a person that he or she is to vacate postal owned property on or before a certain date. A notice to vacate may be combined with or in a notice of displacement.

(n) *Owner of Displacement Dwelling.* A person is considered to be an owner, if, at the initiation of negotiations, the person holds any of the following interests in real property acquired for a postal project:

- (1) Fee title, a life estate, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or
- (2) An interest other than leasehold interest in a cooperative housing project which includes the right to occupy a dwelling; or
- (3) A contract to purchase any of the interests or estates described in paragraph (n)(1) or (n)(2) of this section; or
- (4) Any other interest, including a partial interest, which in the judgment of the Postal Service, warrants consideration as ownership.

(o) *Person.* Any individual, family, partnership, corporation, association, business or farm operation.

(p) *Personal Property.* Any tangible property, not considered part of the real property, for which payment has not been included in the acquisition cost.

(q) *Tenant.* A person who has the legal right to temporary use and occupancy of real property owned by another. In some cases, these regulations also use the term "tenant" to refer to a person who occupies real property owned by another but whose legal right was terminated due to a timely notice to vacate the real property used and occupied.

#### § 777.14 Certain indirect actions prohibited.

Postal employees shall take no indirect, coercive, or deceptive actions to cause persons to move from real property in an effort to avoid the circumstances under which such persons would be eligible to receive relocation benefits as displaced persons under these regulations. If a claimant demonstrates that such prohibited action caused him or her to move, he or she will be treated as a displaced person hereunder, if he or she otherwise meets the definition of a displaced person.

### Subpart B—Uniform Relocation Assistance

#### § 777.21 General procedures.

(a) *Planning Prior to Site Selection.* When acquisition of a site under consideration would likely involve displacement of a person eligible under § 777.13 for relocation assistance, the Postal Service representative shall prepare a relocation needs and availability analysis. The Postal Service representative shall include in the analysis a complete inventory of persons who may be displaced and specifically identify their needs.

(b) *Planning Subsequent to Site Selection.* Subsequent to site selection, the Postal Service must review the relocation needs and availability analysis and establish a specific plan for providing the assistance covered by these regulations to any eligible displaced persons. It will further determine the necessity of establishing an on-site relocation office which would be accessible to displaced persons and would be staffed with relocation personnel qualified to render all relocation services. The Postal Service will assure that cost estimates reflect current market conditions and that funding is available for all relocation assistance and activities.

(c) *Contracting for Relocation Services.* When the Postal Service determines it to be advantageous, it may enter into a relocation assistance service contract with a public agency or private firm having expertise in relocation assistance. The contract must require the contractor to follow Postal Service relocation assistance regulations.

(d) *Notice to Vacate, Ninety Day Requirement.* Postal Service notices to vacate must be issued at least 90 days prior to the date the property must be vacated. Any such notice must be in writing and delivered in person with receipt acknowledged, or by certified mail, return receipt requested. The 90-day requirement does not apply to any such notice issued subsequent to a valid notice to vacate issued by the prior owner of the property. A 90-day notice may be given with, or such notice may be combined with, but such notice must not be given before, the notice of displacement referred to in paragraph (f) of this section.

(e) *Shorter Notice Period, Unusual Circumstances.* An occupant may be required to vacate the property on less than 90 days advance written notice if the Postal Service determines that a 90-day notice is impracticable. An example of such a situation is when the person's continued occupancy of the property

would constitute a substantial danger to the person's health or safety.

(f) *Notice of Displacement.* Normally, a notice of displacement will be given at the time of acquisition or later. Such notice must not be given earlier than the time of contracting, except in the case of acquisitions by eminent domain or by the threat of eminent domain. Such notice may be given at the time of contracting or between the time of contracting and the time of acquisition if the Postal Service considers it wise to start the displacement process then and if, in the judgment of the Postal Service, it is clear that person will in fact be a displaced person.

(g) *Notice of Availability of Advisory Services.* The notice of displacement will state that relocation assistance advisory services will be available to the displaced person and will designate who will provide such services.

#### § 777.22 Relocation assistance advisory services.

(a) *General.* The Postal Service carries out an advisory assistance program for displaced persons.

(b) *Relocation Information.* The Postal Service must contact each displaced person to provide an informational statement outlining the assistance available to the particular person. If it is impracticable to contact the displaced persons personally, the informational statement must be mailed to the persons, certified mail, return receipt requested.

(c) *Time of Initial Contact to Provide Relocation Information.* The initial contact to provide relocation information must take place by the following dates:

(1) Where acquisition of the property is to occur as a result of the exercise or the threat of the exercise of eminent domain, at the time of initiation of negotiation or within 30 days thereafter.

(2) In any other instance such contact must be made prior to acquisition and prior to the notice of displacement or the notice to vacate, but it should normally not be made prior to contracting for the acquisition.

(d) *Service to be Provided.* The advisory program shall include such services as may be necessary or appropriate for:

(1) Provide current information on the availability, purchase prices, financing, and rental costs of replacement dwellings.

(2) For displaced persons eligible for replacement housing payments, explain that the displaced person cannot be required to move unless at least one

comparable replacement dwelling is made available.

(i) At the request of the displaced person, the Postal Service must inform that person, in writing, of the specific comparable replacement dwelling used as the basis for the replacement housing payment offer, the price or rent used to establish the upper limit of that offer, the basis for the determination, and the amount of the replacement housing payment to which he or she may be entitled.

(ii) Where feasible, housing must be inspected by the Postal Service representative prior to its being made available to assure that it is a comparable replacement dwelling and meets the decent, safe, and sanitary standard. The displaced person must be notified that a replacement housing payment will not be made unless the replacement dwelling is inspected and determined to be decent, safe, and sanitary.

(iii) Whenever possible, minority displaced persons must be given reasonable opportunities to relocate to comparable dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require the Postal Service to provide a person a larger payment than is necessary to enable that person to relocate to a comparable replacement dwelling.

(iv) All displaced persons, especially the elderly and handicapped, must be offered transportation to inspect housing to which they are referred.

(3) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations, and assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(4) Minimize hardships to displaced persons in adjusting to relocation by providing counseling, advice about other sources of assistance that may be available, and such other help as may be appropriate.

(5) Supply displaced persons with appropriate information concerning Federal, State, and local housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal, State, and local programs offering assistance to displaced persons.

(6) Upon selection of a replacement property by a displaced person, the Postal Service may arrange for a representative to assist the displaced person with necessary arrangements for the move.

#### § 777.23 Moving expenses.

(a) *Eligibility.* (1) Residential displaced persons are entitled to benefits under paragraphs (b) and (c) of this section.

(2) Business and farm displaced persons are entitled to benefits under paragraphs (d) through (k) of this section.

(3) Those business or farm displaced persons who reside on the property where the business or farm operation is conducted are eligible for applicable benefits both as residents and as business or farm displaced persons, but no duplicate payments are allowed.

(4) Persons who are required to move or to move personal property from real property, an interest in which is not acquired by the Postal Service, when it is determined by the Postal Service that such move is necessary or reasonable because of the Postal Service's having acquired an interest in other real property owned or leased by such persons and on which such persons conduct a business or farm operation, under circumstances where such persons are displaced persons with regard to such other real property or would have been displaced persons with regard to such other real property had they been required to move or to move personal property from such other real property, are entitled to benefits as residential, business or farm displaced persons under paragraphs (a)(1) or (a)(2) of this section.

(5) Eligibility for moving expenses does not depend upon the owner's or tenant's actual occupancy of the displacement real property.

(b) *Allowable Expenses, Residential Moves.* Allowable moving expenses include:

(1) Transportation of the displaced person and his or her personal property. Transportation costs are limited to the costs of a move up to a distance of 50 miles unless the Postal Service determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.

(4) Storage of the personal property not to exceed 12 months unless the Postal Service determines that a longer period is necessary.

(5) Reasonable costs for insurance for the replacement value of the personal property being moved or stored.

(6) When determined to be fair and reasonable by the Postal Service the replacement value of property lost, stolen, or damaged in the process of

moving (not through the fault or negligence of the displaced person, his or her agent, or employee), but only where insurance covering such loss, theft, or damage is not reasonably available.

(7) Other moving related expenses that are not listed as non-allowable under paragraph (1)(3) of this section and which the Postal Service determines to be reasonable and necessary.

(c) *Fixed Payment for Moving Expenses, Residential Moves.* Any residential displaced person may choose to receive a fixed payment in lieu of a payment for actual moving and related expenses. This fixed payment will consist of:

(1) A moving expense allowance, not to exceed \$300, which must be determined in accordance with the applicable moving allowance schedules approved by the Federal Highway Administration; and

(2) A dislocation allowance of \$200.

(d) *Allowable Expenses, Business and Farm Operations.* Allowable expenses include:

(1) The expenses allowed under paragraphs (b) (2), (4), (5) and (6) of this section;

(2) Transportation of personal property. Transportation costs are limited to a distance up to 50 miles unless the Postal Service makes a finding that relocation beyond 50 miles is justified.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, and substitute personal property as described in paragraph (d)(8) of this section. This includes connection to utilities available at the replacement site or building and minor modifications to personal property to adapt it to the replacement site or building. Excluded are expenses for providing utilities to or installing utilities at the replacement site or building and expenses for repair, alteration, improvement or modification of the replacement site or building. This exclusion includes, but is not limited to, any repairs, alterations, improvements, or modifications required by local code to bring the building up to standard.

(4) Any license, permit, or certification fee required of the displaced person by a governmental authority at the replacement location. However, this payment is limited to the pro rata value for the remaining useful life of any existing license, permit, or certification.

(5) Reasonable professional services necessary for planning the move of the personal property. Such professional services must be approved in advance

by the Postal Service and shall not exceed the lowest of three acceptable bids.

(6) Relettering signs and replacing stationary, business cards, rubber stamps, etc., on hand at the time of displacement, that are made obsolete as a result of the move. This does not include new signs, and other items replaced will only be reimbursed in the numbers that were on hand when they became obsolete.

(7) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment will consist of the reasonable costs incurred in attempting to sell the item plus the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for this payment the claimant must make a good faith effort to sell the personal property, unless the Postal Service determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value must be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item no more than 50 miles, but with no allowance for storage.

(8) If an item of personal property which is used as part of a business or farm operation is not moved, is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, less any proceeds from the sale. (To be eligible for payments under paragraph (d)(8) of this section, the claimant must make a good faith effort to sell the personal property, unless the Postal Service determines that such effort is not necessary.)

(ii) The estimated cost of moving and reinstalling the replaced item, based on the lowest acceptable bid or estimate obtained by the Postal Service for eligible moving and related expenses, but with no allowance for storage.

(9) A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$1,000, which the Postal Service determines to be reasonable and which are incurred in searching for a replacement location. These expenses include transportation, meals and lodging away from home, time spent searching (based on reasonable salary or earnings) and fees paid to a real estate agent or broker to locate a

replacement site, exclusive of any fees or commissions related to the purchase of such site.

(10) Other moving-related expenses, not listed as non-allowable under paragraph (l)(3) of this section, which the Postal Service determines to be reasonable and necessary.

(e) *Fixed Payment in Lieu of Moving Expenses, Business Moves.* Any displaced business, other than an outdoor advertising display business, or a non-profit organization, is eligible for a fixed payment in lieu of actual moving and related expenses. This payment must be in an amount equal to the average annual net earnings of the business at that location, as computed under paragraph (i) of this section, but not less than \$2,500 nor more than \$10,000. For a displaced person to qualify for this payment, the Postal Service must determine that:

(1) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Postal Service demonstrates that it will not suffer a substantial loss of its existing patronage; and

(2) The business is not part of a commercial enterprise having another establishment which is not being acquired by the Postal Service, and which is under the same ownership and engaged in the same or similar business activities. (For purposes of this rule, if the other establishment did not contribute materially to the income of the displaced person [see paragraph (h) of this section] during the 2 taxable years prior to displacement, it shall not be considered another establishment; for purposes of the preceding sentence); and

(3) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see paragraph (h) of this section). However, the Postal Service may waive this test for good cause.

(f) *Determining the Number of Businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(g) *Fixed Payment in Lieu of Moving Expenses, Farm Operation.* Any displaced farm operation may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with paragraph (i) of this section, but not less than \$2,500 nor more than \$10,000. For a displaced person to qualify for this payment, the Postal Service must determine that the farm operation contributed materially to the income of the displaced person during the two taxable years prior to the displacement (see paragraph (h) of this section). In the case of acquisition of land which was part of a farm operation before the acquisition, the fixed payment shall be made only if the Postal Service determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(h) *Contributes materially.* The term "contributes materially," as used in paragraphs (e) and (g) of this section means that, during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Postal Service determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least \$5,000; or

(2) Had average annual net earnings of at least \$1,000; or

(3) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Postal Service may approve the use of other criteria as determined appropriate.

(i) *Average Annual Net Earnings of a Business or Farm Operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may

be based upon a different period of time when the Postal Service determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Postal Service proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Postal Service determines is satisfactory.

(j) *Nonprofit Organizations.* Any displaced nonprofit organization may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount of \$2,500, if the Postal Service determines that it:

(1) Cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Postal Service demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Postal Service.

(k) *Relocation of Outdoor Advertising Signs.* The amount of a payment for direct loss of an advertising sign which is personal property is the lesser of:

(1) The depreciated replacement cost of the sign, as determined by the Postal Service, less the proceeds from its sale; (To be eligible for payments under this paragraph (k)(1), the claimant must make a good faith effort to sell the sign, unless the Postal Service determines that such effort is not necessary.) or

(2) The estimated cost of moving the sign, no more than 50 miles, but with no allowance for storage.

(l) *General Provisions—(1) Self Moves.* If the displaced person elects to take full responsibility for all or a part of the move, the Postal Service may approve a payment for the person's moving expenses in an amount not to exceed the lowest of three bids acceptable to the Postal Service. Bids may be obtained by either the displaced person or the Postal Service. A qualified Postal Service representative may prepare a moving estimate, in lieu of solicitation for bids, but in such case, the moving expense payment cannot exceed \$2,500.

(2) *Transfer of Ownership.* Upon request by the Postal Service and in accordance with applicable law, the displaced person may transfer to the Postal Service ownership of any personal property that is not to be moved, sold, or traded-in by executing a disclaimer of all rights or interest in the property.

(3) *Non-Allowable Expenses.* Except as specifically otherwise provided

herein, a displaced person is not entitled to payment for:

(i) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership (but see § 777.25(i) and § 777.26).

(ii) Loss of goodwill.

(iii) Loss of profits.

(iv) Loss of trained employees.

(v) Any additional operating expenses of a business or farm operation caused by operating in a new location.

(vi) Personal injury.

(vii) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the displaced person before the Postal Service.

(viii) Expenses for searching for a replacement dwelling.

(ix) Physical changes to the real property at the replacement location of a business or farm operation, except as provided in paragraph (d)(3) of this section.

(x) Costs for storage of personal property on real property owned or leased by the displaced person.

#### § 777.24 Replacement housing payments.

(a) Residential displaced persons are eligible for replacement housing payments as follows:

(1) Residential displaced persons who lawfully and continuously owned and occupied a displacement dwelling for not less than 180 days prior to the initiation of negotiations are entitled to the benefits set out in paragraph (b) of this section. Such displaced persons may alternately choose the benefits under paragraph (f) of this section.

(2) Residential displaced persons who lawfully and continuously owned and occupied, and residential displaced persons who were tenants and lawfully and continuously occupied, a displacement dwelling for not less than 90 days prior to the initiation of negotiations are entitled to the benefits set out in paragraph (e) of this section.

(3) Where the replacement housing payment provided hereunder does not provide for housing within the financial means (see § 777.13(j)) of the displaced person, see § 777.27, Last Resort Housing.

(b) *Benefits for 180 Day Owner Occupants.* Displaced persons eligible under paragraph (a)(1) of this section are entitled to benefits as set out below:

(1) An amount which is the sum of:  
(i) The amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(A) The reasonable cost of a comparable replacement dwelling as

determined by paragraph (c) of this section; or

(B) the purchase price of a decent, safe and sanitary replacement dwelling actually purchased and occupied by the displaced person; plus

(ii) Interest Cost—(see paragraph (d) of this section); plus

(iii) Incidental Expenses (see paragraph (h) of this section).

(2) The benefits in paragraph (b)(1) above are limited to a maximum payment of \$15,000.

(3) The benefits in paragraph (b)(1) above are available only if a decent, safe and sanitary replacement dwelling is purchased within 12 months after the latter of:

(i) The date of acquisition or, in the case of condemnation, the date the required amount is deposited in a court for the displaced person's benefit, or

(ii) The date the person moves from the displacement dwelling.

(c) *Determining the Cost of a Comparable Replacement Dwelling.* The cost of a comparable replacement dwelling for purposes of benefits to be paid to 180 day owner occupants will be determined by applying the following:

(1) If available, at least three representative comparable replacement dwellings must be examined and the payment offer computed on the cost of the fair market value of the dwelling most closely comparable to the displacement dwelling.

(2) To the extent, feasible, comparable replacement dwellings will be selected from the neighborhood in which the displacement dwelling was located. If this is not possible, comparable replacement dwellings will be selected from nearby or similar neighborhoods where housing costs are similar.

(d) *Increased Mortgage Interest Costs.* The amount to be paid to a displaced 180 day owner occupant for increased mortgage interest costs is the amount, if any, by which the present value of the interest on the mortgage loan(s) on the replacement dwelling plus any other debt service costs exceeds the present value of the interest on the mortgage loan(s) on the displacement dwelling plus purchaser's points and loan origination fees, subject to the following:

(1) The payment must be based only on bona fide mortgages that were a valid lien on the displacement dwelling for at least 180 days prior to the initiation of negotiations. All such mortgages on the displacement dwelling must be used to compute the payment.

(2) The payment must be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(3) The payment must be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is shorter.

(4) The new mortgage must be a bona fide mortgage and its interest rate must not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(5) The discount rate used to compute the present value of the increased interest cost must be the prevailing interest rate paid on demand savings deposits by commercial banks in the area in which the replacement dwelling is located.

(6) Purchaser's points and loan origination fees, but not seller's points, are reimbursable to the extent they are not paid as incidental expenses, they do not exceed rates normal to similar real estate transactions in the area, and the Postal Service determines them to be necessary. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, or the new mortgage amount, whichever is less.

(e) *Benefits for 90 Day Owner Occupant and Tenants.* Displaced persons eligible under paragraph (a)(2) of this section are entitled to benefits as set out below:

(1) Rental assistance benefits, as set out in paragraph (f) of this section or downpayment assistance benefits, as set out in paragraph (g) of this section.

(2) The benefits in (e)(1) above are limited to \$4,000.

(3) The benefits in (e)(1) above are available only if a decent, safe and sanitary replacement dwelling is purchased or rented within 12 months after the latter of:

(i) The date of acquisition or, in the case of condemnation, the date the required amount is deposited in the court for the displaced person's benefit, or

(ii) The date the person moves from the displacement dwelling.

(f) *Rental Assistance.* The rental assistance benefits, not to exceed \$4,000, for 90 day owner occupants and tenants will be computed as follows:

(1) The amount which must be added to 48 times the average monthly rental paid at the displacement dwelling (or, if the displaced person is an owner occupant, the fair market rental value had the displacement dwelling been rented) for the three-month period prior to displacement to provide a total amount equal to the lesser of:

(i) 48 times the reasonable monthly rental of a comparable replacement dwelling; or

(ii) 48 times the actual monthly rental cost of the decent, safe, and sanitary dwelling actually rented and occupied by the displaced person.

(2) If utilities are included in either the replacement dwelling or the displacement dwelling rent, appropriate utilities must be factored into both rentals. If utilities are not included in either monthly rental then the payment will be computed using the base rental rates.

(3) If, in the opinion of the Postal Service, the monthly rental at the displacement dwelling is significantly below the fair market rent of the displacement dwelling, such fair market rent must be used in computing the rental assistance payment.

(4) The payment under this section must be disbursed in a lump-sum amount unless the Postal Service determines on a case-by-case basis, for good cause, that the payment should be made in installments. Where the rental assistance payment exceeds \$4,000 under the provisions of Last Resort Housing, (§ 777.27), installment payments or payments through escrow accounts may be considered.

(g) *Downpayment Assistance.* Downpayment assistance, not to exceed \$4,000, is available to 90 day owner occupants and 90 day tenants subject to the following: The payment will be the full amount of the first \$2,000 of the required downpayment and incidental expenses plus one-half of any amount required for such downpayment and incidental expenses over \$2,000.

(h) *Incidental Expenses.* Incidental expenses covered under paragraph (b)(1)(iii) or (g) of this section are those reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling and customarily paid by the buyer (not to exceed the costs of such for a comparable replacement dwelling). They include:

(1) Legal, closing, and related costs, including those for title search and insurance, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA appraisal fees.

(3) FHA or VA application fee.

(4) Certification of structural soundness when required by the lender.

(5) Credit report.

(6) Owner's and mortgagee's evidence or assurance of title.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes.

(9) Such other costs as the Postal Service determines to be incidental to the purchase.

#### § 777.25 Additional rules for replacement housing payments.

(a) *Multiple Owners.* When a single family dwelling is owned by more than one person and occupied by only some of the 180 day owners (for example, when the dwelling is owned by an estate and only one of the heirs is in occupancy), the occupant(s) is (are) eligible to receive a maximum total price differential which is the lesser of:

(1) The difference between (i) the reasonable cost of a comparable replacement dwelling, as determined under § 777.24(c) and (ii) the acquisition cost of the displacement dwelling; or

(2) The difference between (i) the occupant's share of the acquisition cost of the displacement dwelling and (ii) the purchase price of a decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(b) *Multiple Occupants of One Displacement Dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Postal Service, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Postal Service determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(c) *Mixed Use and Multi-Family Properties Acquired.* If the displacement dwelling was part of a property that contained another dwelling unit or space used for non-residential purposes, or if it is located on a lot larger than that typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling and site can be considered its acquisition cost when computing the price differential.

(d) *Disaster-Related Insurance Proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a disaster related loss to the displacement dwelling must be included in the acquisition cost of the displacement dwelling when computing the price differential.

(e) *Inspection of Replacement Dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Postal Service must inspect the replacement dwelling and determine that it is a decent, safe, and sanitary dwelling.

**(f) Purchase of Replacement Dwelling.**

A displaced person is considered to have met the requirement to purchase a replacement dwelling if the person has purchased an existing dwelling; purchased and rehabilitated or moved and restored an existing dwelling; or constructed a new dwelling, provided in each instance the dwelling is determined to be decent, safe and sanitary.

**(g) Conversion of Payment.** A displaced person who initially rents a replacement dwelling and receives a rental assistance payment may, within the required 12 month eligibility period, purchase a decent, safe and sanitary replacement dwelling. In such case, he or she is eligible to revise his or her original claim, and claim any additional assistance for which he or she was originally eligible. However, any portion of the rental assistance payment that has been disbursed must be deducted from the resultant replacement housing payment or downpayment assistance payment.

**(h) Payment After Death.** A replacement housing payment is personal to the displaced person. Upon his or her death, the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing will be paid.

(2) The full payment must be disbursed in any case in which a member of a displaced family dies and other family members continue to occupy the replacement dwelling selected in accordance with these regulations.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person must be disbursed to the estate.

**(i) 180 Day Owner Retention of Displacement Dwelling.** If a 180 day owner occupant retains ownership of his or her dwelling or the right to move his or her dwelling from the displacement site, and he or she moves it and reoccupies it on a replacement site, the cost of the actual replacement dwelling to be computed for purposes of § 777.24(b)(1)(i)(A) (not to exceed the purchase price of a comparable replacement dwelling) will be the sum of:

(1) The expenses of moving and restoring the retained dwelling to a condition comparable to that prior to the move; and

(2) The salvage or other value deducted from the acquisition cost for the retained ownership; and

(3) Additional costs, if necessary, incurred to make the unit a decent, safe, and sanitary replacement dwelling; and

(4) The cost of the replacement site, not to exceed the cost of a comparable available and suitable replacement site.

**(j) 90 Day Owner/Retention of Displacement Dwelling.** A 90 day owner occupant who retains ownership of his or her dwelling or the right to remove his or her dwelling may receive the benefits as if he or she were a 180 day owner occupant subject, however, to a limitation of \$4,000 on maximum benefits in lieu of the \$15,000 limitation set out in paragraph § 777.24(b)(2).

**§ 777.26 Mobile homes.**

**(a) Moving Expenses.** Displaced persons who are occupants of mobile homes are eligible for moving expenses under § 777.23 subject to the following:

(1) If the person owns the mobile home, moving expenses may, at the owner's option, include any reasonable costs incurred to move the mobile home to a replacement site, plus the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting, and awnings) which were not acquired, anchoring of the unit, and utility "hook-up charges."

(2) If the person rents the mobile home, the Postal Service may allow the person moving expense benefits for moving the mobile home as if the person were an owner of the mobile home under paragraph (a)(1) of this section.

(3) If costs of moving a mobile home are paid as moving expenses under paragraphs (a)(1) or (a)(2) of this section, the person may not receive housing assistance benefits hereunder, other than any benefits to which they are entitled that are limited to the site of the mobile home.

(4) Displaced occupants of mobile homes are eligible for moving expenses for personal property other than the mobile home and its appurtenances, but only to the extent the Postal Service does not pay the costs of moving the mobile home (either as moving expenses or replacement housing payments or, if it does pay such costs, the personal property is of a type that is customarily moved separately from the mobile home.)

**(b) Replacement Housing Payments.** Displaced persons who are 180 day or 90 day occupants of mobile homes qualify for replacement housing payments under § 777.24 subject to the following:

(1) If the displaced person owns the mobile home and owns the site, the

person is eligible for benefits under either § 777.24 (b) or (e).

(2) If the displaced person rents the mobile home and rents the site the person is eligible for benefits under § 777.24(e).

(3) If the displaced person rents the mobile home and owns the site the person is eligible for benefits under § 777.24(e), with regard to the mobile home and to benefits under § 777.24(b) with regard to the site, subject to a limitation on the home and site benefits combined of \$15,000. (Persons who voluntarily sell mobile home sites are not displaced persons and are not entitled to benefits under Subpart B. See § 777.13(e)(2)(viii)).

(4) If the displaced person owns the mobile home and rents the site the person is eligible for benefits under either § 777.24 (b) or (e) with regard to the mobile home and to benefits as a tenant under § 777.24(e) with regard to the site, subject to a limitation on home and site benefits combined of \$4,000.

**(c) Special Rules for Mobile Homes.** (1) In computing replacement housing payments for mobile home owners under paragraph (b) of this section, apply the terms of § 777.25 (i) and (j) as appropriate, to transactions involving moving the mobile home to a new site.

(2) The acquisition of a portion of a mobile home park may leave a remainder that is not adequate to continue the operation of the park. When the Postal Service determines that its acquisition of the real property has had this effect and that for this reason a mobile home occupant located on the remaining part of the property is required to move, such occupant shall be considered a displaced person under these regulations and shall be entitled to such benefits hereunder as the person would otherwise qualify.

**§ 777.27 Last resort housing.**

**(a) Basic Determination to Provide Last Resort Housing.** A displaced person cannot be required to move from his or her dwelling unless at least one comparable replacement dwelling is made available to him or her which is within his or her financial means. When such comparable replacement dwelling is not available, additional measures may be taken to provide for "last resort" housing for eligible displaced persons.

**(b) Basic Rights of Persons to be Displaced.** The provisions of this section do not deprive any displaced person of any rights the person may have under these regulations such as the right to accept the maximum replacement housing payment available under these regulations and to move to a decent,

safe and sanitary replacement dwelling even if such dwelling is beyond the person's financial means.

(c) *Methods of Providing Replacement Housing.* The Postal Service has broad latitude in implementing this section, but implementation must be on a reasonable cost basis. The Postal Service may provide last resort housing using the following methods:

(1) Rehabilitation of and/or additions to an existing replacement dwelling.

(2) The construction of a new replacement dwelling.

(3) The provision of a direct loan which requires regular amortization or deferred repayment. Terms of such loan will be at the discretion of the Postal Service.

(4) A replacement housing payment in excess of the \$4,000 and \$15,000 limitations contained in § 777.24. A rental subsidy under this section may be provided in installments.

(5) The relocation and any needed rehabilitation of a replacement dwelling.

(6) The purchase or lease of land and/or a replacement dwelling by the Postal Service and subsequent sale or lease to, or exchange with, a displaced person.

(7) The removal of barriers to the handicapped.

(8) Any other method determined by the Postal Service to be reasonable.

(d) *Proof of Financial Need.* Last Resort Housing benefits exceeding the limitations under § 777.24(b)(2) and § 777.24(e)(2) will not be paid unless required to provide housing within the displaced person's financial means. To establish financial means, the displaced person must furnish the Postal Service proof of gross monthly income through income tax returns, certified financial statements or other reasonable evidence which the Postal Service determines is satisfactory.

#### § 777.28 Claims and appeals.

(a) *Preparation of Claim.* The relocation representative should assist eligible displaced persons in the preparation of claims for moving assistance and relocation housing assistance. Preliminary review should be conducted in the field by the relocation representative with the displaced person, to preclude technical difficulties in processing the claim at a higher level.

(b) *Documentation.* Any claim for a relocation payment must be supported by such documentation as may be required to support the claim, for example the length of occupancy at the displacement dwelling, the rent paid at the displacement dwelling, expenses incurred in relocating, etc. A displaced person must be provided reasonable

assistance to complete and file any required claim.

(c) *Time for Filing.* All claims must be filed with the Postal Service within 18 months after the date of the actual move from the displacement property.

(d) *Review, Approval and Payment.* The Postal Service will review claims within 60 days of submission and approve or disapprove payment. Upon approval or partial approval of the displaced person's claim, the Postal Service will promptly authorize payment of the approved amount. The certification that the claimant has occupied decent, safe, and sanitary housing must be completed prior to final payment of replacement housing payments.

(e) *Relocation Payments Not Considered as Income.* Upon approval of the claim and delivery of the relocation payment, the displaced person must be advised that no relocation payment made under these procedures shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal Law.

(f) *Certification.* Certification that a person is displaced will be provided any agency requiring such information to assist that person under any Federal law or program.

(g) *Advance of Funds.* If the displaced person cannot arrange for the acquisition of a replacement property because of financial problems and the problems would be solved by an advance of funds, the Postal Service may determine the estimated amount of the actual claim and authorize an advance of that amount or a portion thereof. The displaced person will be fully informed in writing that his or her final claim will then be subject to adjustment. Advance payments should not be made to persons with a history of financial irresponsibility.

(h) *Money Owed to the Postal Service.* In cases of Postal Service leasing the acquired property to a displaced person, or in cases of advance moving cost payments, any monies due the Postal Service by the displaced person and not paid before the remainder of the relocation payments are made must be deducted from such payments and the relocation file so documented.

(i) *Notice of Denial of Claim.* If the Postal Service disapproves all or part of a payment claimed, or refuses to consider the claim on its merits because of untimely filing or other grounds, it must promptly notify the claimant in writing of the determination, the basis

for the determination, and the procedures for appealing the determination.

(j) *Appeal Procedure.* If a displaced person wishes to file an appeal:

(1) The appeal must be in writing.

(2) The appeal must be directed to the General Manager, Real Estate Division, and must set forth the displaced person's reasons for the appeal. (The General Manager shall not have taken part in the decision which led to the appeal. Appeals misdirected to others must be forwarded immediately to the General Manager with notification of the forwarding to the appellant.)

(3) The appeal must be submitted within 60 days after the displaced person receives written notification of the Postal Service's original determination concerning the displacee's claim. The Postal Service may extend this time limit for good cause.

(k) *Right of Representation.* A displaced person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(l) *Review of Files by Appellant.* The Postal Service must permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are confidential. Such inspection will be permitted as allowed under the Freedom of Information Act, 39 CFR Part 265.

(m) *Scope of Review.* In deciding an appeal, the Postal Service must consider all pertinent justification and other material submitted by the displaced person and all other available information that is needed to ensure a fair and full review of the appeal.

(n) *Determination and Notification After Appeal.* Promptly after receipt of all supporting information submitted by the appellant, the General Manager, Real Estate Division, must make a written determination on the appeal, including the basis on which the decision was made, and furnish the appellant a copy. If the full relief requested is not granted at the regional level, the General Manager, Real Estate Division, must advise the person of his or her right to appeal the decision to the Director, Office of Real Estate. The rules stated here for appeals to the General Manager apply as well as to appeals to the Director, Office of Real Estate.

#### Subpart C—Acquisition

##### § 777.31 Acquisition procedures.

(a) *Policy; Application of Section.* The Postal Service, as a matter of policy,

acquires interests in real property through voluntary agreements with owners. Only under unusual and compelling circumstances, and on a case-by-case basis, does the Postal Service acquire real property through the exercise or the threat of the exercise of eminent domain. This policy does not, however, prevent the Postal Service from occasionally entering into mutually agreeable condemnation proceedings with an owner, where price is not an issue, and for such purposes as to clear title or to acquire property from certain elected officials. For the purposes of this section, the Postal Service does not consider such voluntary and mutually agreeable uses of condemnation proceedings as the exercise or the threat of the exercise of eminent domain. The following regulations apply only to acquisitions by the exercise or the threat of the exercise of eminent domain:

(1) *Notice to Owner.* As soon as feasible after deciding to acquire a specific property through the exercise of eminent domain, the Postal Service must notify the owner of its intent to acquire the property.

(2) *Expeditious Negotiations.* The Postal Service must make every reasonable effort to acquire real property expeditiously by negotiation.

(3) *Appraisal and Invitation to Owner.* Before the initiation of negotiations, the real property shall be appraised in accordance with Postal Service appraisal standards as outlined in RE-1 and the owner or the owner's designated agent shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(4) *Establishment of Offer of Just Compensation.* Prior to the initiation of negotiations (see § 777.13(k) for definition) the Postal Service must establish an amount which it believes is just compensation for the real property rights to be acquired. The amount must not be less than the approved appraisal of the fair market value, including damages or benefits to the remaining property. Appraisers shall not give consideration to, or include in their real property appraisals, any allowances for the benefits provided by Title II of the Act.

(5) *Summary Statement.* Promptly after determining fair market value, the Postal Service shall make a written offer to acquire the property for the full amount believed to be just compensation. Along with the written purchase offer, the owner must be given a written statement of the basis for the offer of just compensation. This statement must include:

(i) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for

the real property to be acquired and the compensation for damages, if any, must be separately stated.

(ii) The location and description of the real property and the interest(s) to be acquired.

(iii) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify and separately held ownership interest in the improvement(s), for example, a tenant-owned improvement.

(6) *Basic Negotiation Procedures.* The Postal Service must make every reasonable effort to contact the owner or the owner's representative and:

(i) Discuss the Postal Service's offer to purchase the property including the basis for the offer of just compensation, and;

(ii) Explain Postal Service acquisition policies and procedures including the provisions for the payment of incidental expenses as described under § 777.33.

(7) *Opportunity to Consider Offer.* The owner must be given a reasonable opportunity to consider the Postal Service's offer, to present material which he or she believes is relevant to determining the value of the property, and to suggest modification in the proposed terms and conditions of the purchase. The Postal Service must consider the owner's presentation.

(8) *Updating Offer of Just Compensation.* If the information presented by the owner or a material change in the character or condition of the property indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Postal Service must have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Postal Service must promptly reestablish just compensation and offer the revised amount to the owner in writing.

(9) *Contracts and Options.* Contracts to purchase shall cover only those items related to the acquisition of the property, and not incorporate provisions for making payments for relocation costs or related costs under Title II of these regulations.

(10) *Title II Benefits Not To Be Considered.* In the event of condemnation, estimated compensation shall be determined solely on the basis of the appraised value of the real property with no consideration being given to or reference contained therein

to the payments to be made under Title II.

(11) *Coercive Action.* The Postal Service shall not advance the time of condemnation, or defer negotiations or condemnation, or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(12) *Inverse Condemnation.* If the Postal Service intends to acquire any interest in real property by exercise of the power of eminent domain, it must institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute proceedings to prove the fact of the taking of the real property.

(13) *Payment Before Taking Possession.* Before requiring the owner to surrender possession of the real property, the Postal Service must either:

(i) Pay the agreed purchase price to the owner; or

(ii) In the case of a condemnation proceeding, deposit with the court for the benefit of the owner an amount not less than the amount of the approved appraised value of the property or the amount of the award of compensation in the condemnation proceeding for the property.

(14) *Right-of-Entry.* With the prior approval of the owner, the Postal Service may obtain a right-of-entry before making payment to the owner.

#### § 777.32 Acquisition of Tenant-owned Improvements.

(a) *Acquisition of Improvements.* When acquiring any interest in real property, the Postal Service must acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property. This must include any improvement of a tenant owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Special Conditions.* Payment for tenant-owned improvements will be made to the tenant only if he or she meets the following conditions:

(1) In consideration for the payment the tenant-owner assigns, transfers, and releases to the Postal Service all of the tenant-owner's rights, title, and interests in the improvement;

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(c) *Preservation of Tenant's Rights.* Nothing in this section shall be construed to deprive the tenant-owner of any rights to reject payment under this section and to obtain payment for such property interests in accordance with other applicable law.

**§ 777.33 Expenses incidental to transfer of title to the Postal Service.**

(a) *Reimbursement.* When property is acquired through the exercise or the threat of the exercise of eminent domain, the owner shall be reimbursed for all reasonable expenses he or she necessarily incurred in conveying the real property to the Postal Service for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar incidental expenses. However, the Postal Service will not pay costs solely required to perfect the owner's title to the real property.

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage, entered into in good faith, encumbering the real property.

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Postal Service obtains title to the property or effective possession of it, whichever is earlier.

(b) *Direct Payment.* Whenever feasible the Postal Service must pay these costs directly and thus avoid the

need for an owner to pay such costs and then seek reimbursement from the Postal Service.

(c) *Certain Litigation Expenses.* The owner of the real property acquired must be reimbursed any reasonable expenses, including reasonable attorney, appraisal, and engineering fees which the owner actually incurred because of a condemnation proceeding if:

(1) The final judgment of the court is that the Postal Service cannot acquire the real property by condemnation; or

(2) The condemnation proceeding is abandoned by the Postal Service other than under an agreed-upon settlement; or

(3) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Postal Service effects a settlement of such a proceeding.

**Subpart D—Voluntary Acquisitions**

**§ 777.41 Acquisition procedures.**

(a) *Voluntary Acquisitions.* Acquisition rules for voluntary purchases are set out in Handbook RE-1, Realty Acquisition and Management and cover such areas as appraisal and negotiation procedures.

(b) *Tenant-Owned Improvements.* In general the Postal Service deals exclusively with the fee owner on the acquisition of all real property interest at the site. The Postal Service may,

however, in exceptional cases deal directly with a tenant on a leasehold improvements matter. Should the Postal Service acquire the fee interest without acquiring rights in a leasehold improvement under circumstances in which the tenant would be entitled to compensation under § 777.32 above if the acquisition were by eminent domain or the under threat thereof, the tenant will be entitled to the benefits that would, under such circumstances, have been paid under § 777.32 above, unless the tenant has formally disclaimed further right in the real property improvement beyond the time of the expiration of his or her tenancy.

**Subpart E—Donations**

**§ 777.51 Acceptance of donations.**

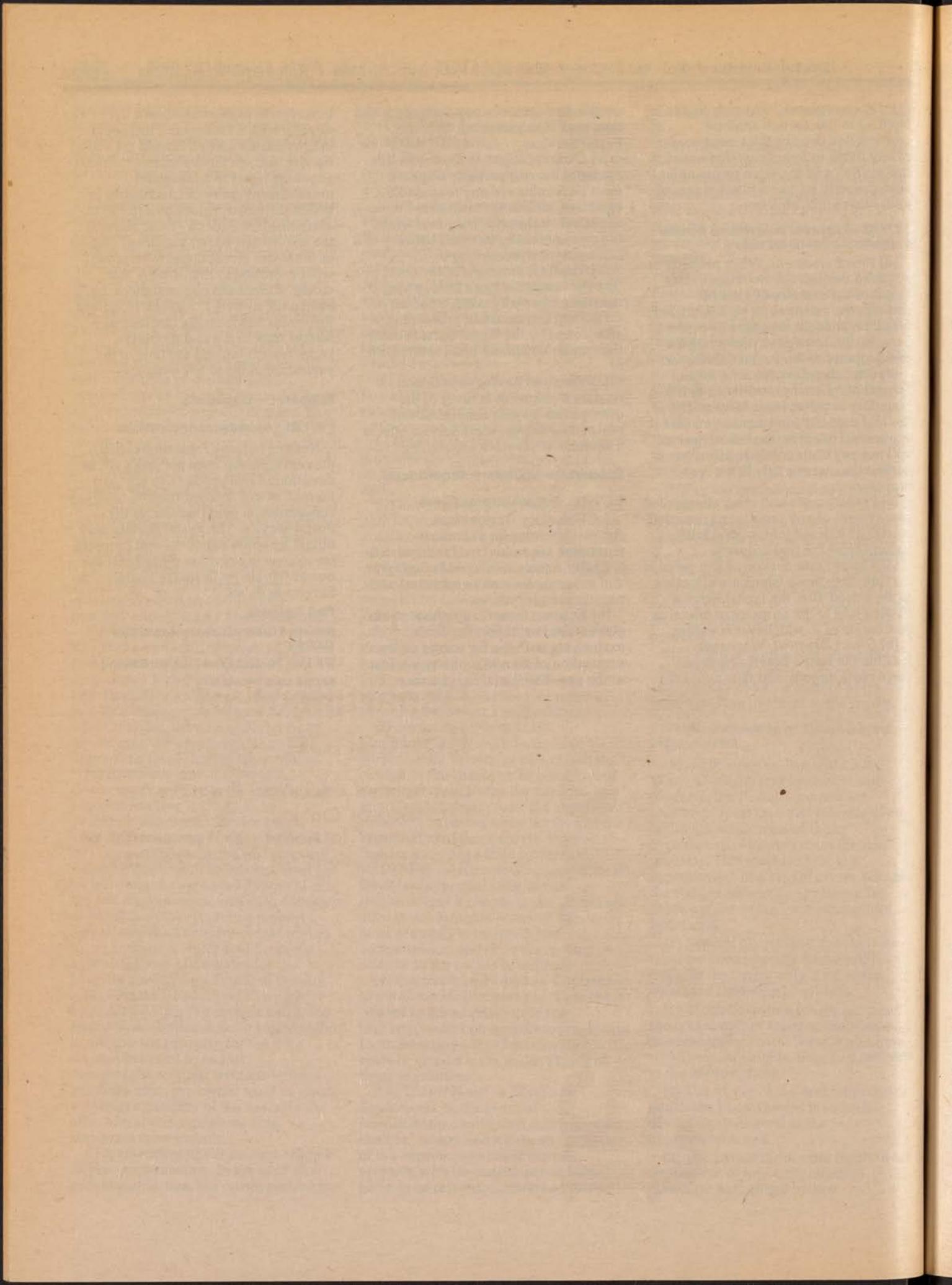
Nothing in these regulations shall prevent a person from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefor, to the Postal Service. The Postal Service may obtain an appraisal of the real property for income tax or other purposes if the owner thereof requests the Postal Service to do so.

Fred Eggleston,

*Assistant General Counsel Legislative Division.*

[FR Doc. 86-4282 Filed 2-26-86; 8:45 am]

BILLING CODE 7710-12-M



Department of Education

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Thursday  
February 27, 1986

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**Part III**

**Department of  
Education**

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**Law-Related Education Program;  
Extension of Closing Date and  
Amendment to Notice for Transmittal of  
New Applications for Fiscal Year 1986**

February 12, 1963

Part III

Department of  
Education

Law-Related Education Program  
Extension of Closing Date and  
Amendment to Notice for Tentative of  
New Applications for Each Year 1962

राजस्थान प्रशासनिक सेवा

**DEPARTMENT OF EDUCATION****Office of Elementary and Secondary Education****Grants, Availability, etc.; Law-Related Education Program**

**AGENCY:** Department of Education.

**ACTION:** Notice of Extension of Closing Date and Amendment to Notice for Transmittal of New Applications for Fiscal Year 1986 under the Law-Related Education Program.

**SUMMARY:** This notice extends the closing date of March 7, 1986, to April 7, 1986, for the transmittal of applications for new projects under the law-related education program (84.123). The fiscal year 1986 application notice for this program, published in the *Federal Register* on January 9, 1986 (51 FR 1028), provides detailed information concerning this program. This notice amends the January 9 notice to invite applications for projects on constitutional law.

**SUPPLEMENTARY INFORMATION:** The law-related education program is intended to enable children, youth, and adults to be more informed and effective citizens by equipping them with knowledge and skills pertaining to the law, the legal process, the legal system, and the fundamental principles and values on which these are based. An understanding of the Constitution and its importance in our democracy is essential in developing an appreciation for our democratic system of government and in preparing youth to be knowledgeable, responsible citizens. The 200th anniversary of the signing of the U.S. Constitution will take place on September 17, 1987.

In view of the upcoming bicentennial of the Constitution, the Secretary of Education believes it is especially appropriate to invite applications under the law-related education program that propose projects on the Constitution, its origins and development, and the fundamental role of the Constitution in our legal system over the past two centuries. For example, proposed projects may educate students about

principles that serve as the groundwork for American constitutional democracy, about the original documentary sources relevant to the Constitution, and/or about the concepts implemented by the Constitution, such as the rights and responsibilities of citizenship. This invitational priority is in addition to the invitational priorities stated in the January 9 notice.

**FOR FURTHER INFORMATION CONTACT:** Inquiries concerning this extension and amendment should be addressed to Jack A. Simms, U.S. Department of Education, Office of Elementary and Secondary Education, Room 2023, FOB-6, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 472-7960.

(20 U.S.C. 3851)

(Catalog of Federal Domestic Assistance No. 84.123, Law-Related Education Program)

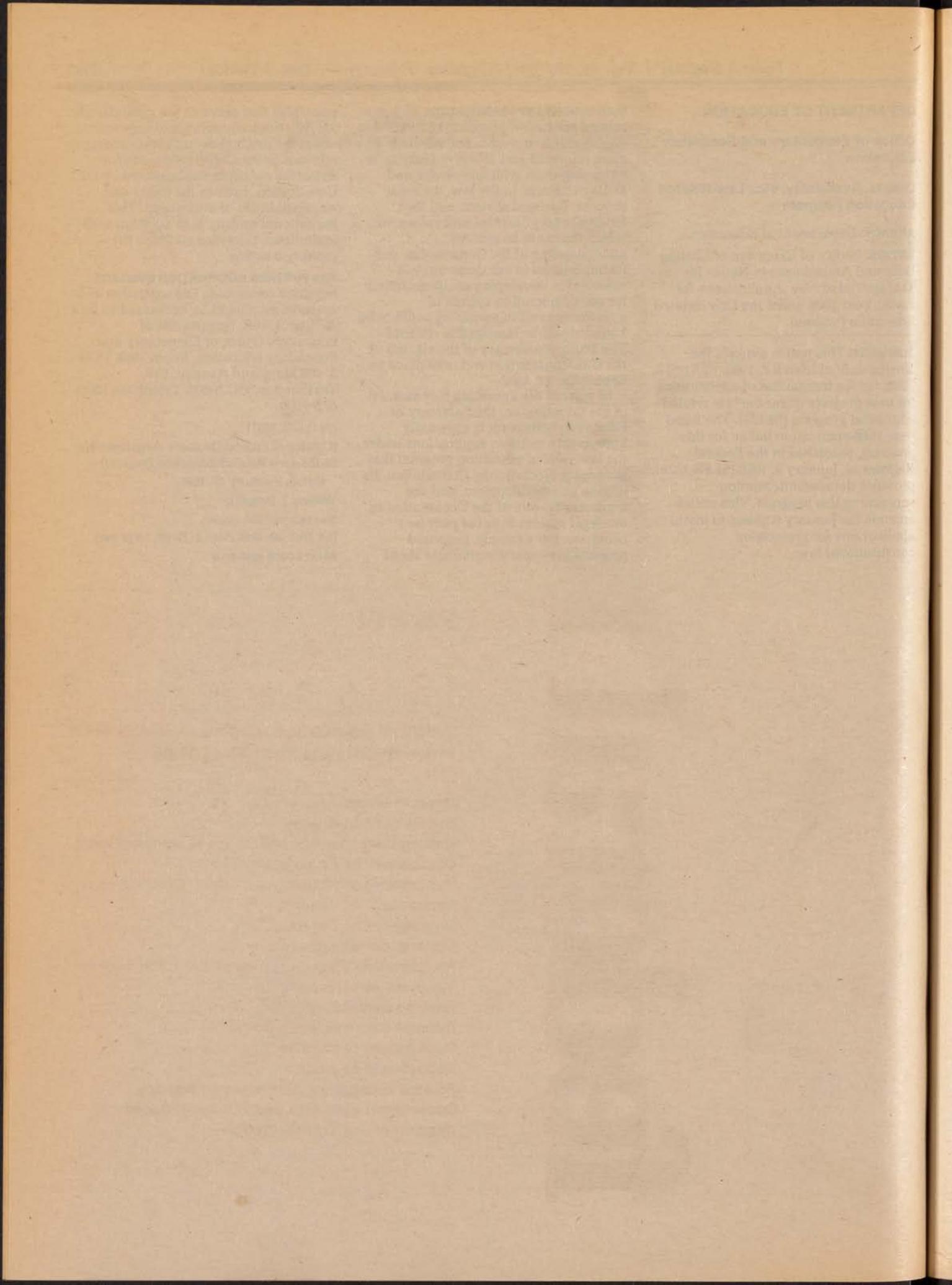
Dated: February 26, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-4445 Filed 2-26-86; 10:37 am]

BILLING CODE 4000-01-M



# **federal register**

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Thursday  
February 27, 1986

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## **Part IV**

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### **Uniform Relocation Assistance and Real Property Acquisition; Final Rule**

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Department of Agriculture  
Department of Energy  
National Aeronautics and Space Administration  
Department of Commerce  
Department of Housing and Urban Development  
Department of Labor  
Department of Defense  
Department of Education  
Pennsylvania Avenue Development Corporation  
Veterans Administration  
Environmental Protection Agency  
General Services Administration  
Department of the Interior  
Department of Justice  
Federal Emergency Management Agency  
Department of Health and Human Services  
Department of Transportation

## DEPARTMENT OF AGRICULTURE

7 CFR PART 21

## DEPARTMENT OF ENERGY

10 CFR PART 1039

## DEPARTMENT OF COMMERCE

13 CFR PART 310

15 CFR PARTS 11 AND 916

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR PART 1208

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR PARTS 42 AND 43

## DEPARTMENT OF LABOR

29 CFR PART 12

## DEPARTMENT OF DEFENSE

32 CFR PARTS 259, 641 AND 742

## DEPARTMENT OF EDUCATION

34 CFR PART 15

## PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR PART 904

## VETERANS ADMINISTRATION

38 CFR PART 25

## ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 4

## GENERAL SERVICES ADMINISTRATION

41 CFR PARTS 101-6, 101-18 AND 105-51

## DEPARTMENT OF THE INTERIOR

41 CFR PART 114-50

## DEPARTMENT OF JUSTICE

41 CFR PART 128-18

## FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 25

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR PART 15

## DEPARTMENT OF TRANSPORTATION

49 CFR PART 25

## Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

**AGENCIES:** Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of the Interior; Department of Justice; Department of Labor; Department of Transportation; Environmental Protection Agency; Federal Emergency Management Agency; General Services Administration; National Aeronautics and Space Administration; Pennsylvania Avenue Development Corporation; Veterans' Administration.

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a common rule for the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) which requires that owners of real property to be acquired for Federal or federally-assisted programs and persons displaced from their dwellings, businesses, or farms as a result of such acquisition be provided fair, consistent, and equitable treatment. This regulation revises existing Uniform Act regulations and implements the Uniform Act for the 17 agencies listed above. The Department of Transportation, which published a final rule implementing the Uniform Act of March 5, 1985, is publishing this regulation as a "Final rule; request for comments."

**DATES:** This regulation is effective May 28, 1986, unless otherwise stated in the agency specific preamble. If an agency chooses to make this regulation effective earlier than May 28, 1986, it will publish a notice to that effect in the Federal Register. However, the regulation will not be effective earlier than March 31, 1986. It applies to all acquisitions and displacements for which the initiation of negotiations, defined at § 2(k), has not occurred as of the effective date.

The paperwork requirements for certain sections are not effective. See discussion under "Paperwork Reduction Act of 1980" in **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** See individual agencies below.

**SUPPLEMENTARY INFORMATION:** In May 1982, the Office of Management and Budget (OMB), in response to the concerns of State and local governments, formed a Uniform Act Interagency Regulatory Review Working Group to develop uniform regulations to

be implemented by each covered agency for the Uniform Act. On February 27, 1985, a Presidential Memorandum was published in the Federal Register naming the Department of Transportation (DOT) as the agency with lead responsibility for the Uniform Act. On March 5, 1985, DOT published in the Register a model Uniform Act rule, which (in accordance with the President's February 27, 1985, memorandum) was followed on May 28, 1985, by a proposed common Uniform Act rule for 16 other covered agencies.

In response to the May 28 Federal Register publication, 37 respondents submitted more than 140 comments which were circulated to all covered agencies. The Working Group, under the leadership of OMB and DOT, then reviewed the comments and recommended changes to the proposed rule. These changes then were reviewed by all covered agencies. The regulations of all covered agencies are superseded by this common regulation, although DOT is publishing this regulation as a "Final rule; request for comments."

A description of the substantive changes from the proposed rule follows below. Numerous other changes not affecting content were made for clarity or readability. This regulation is applicable to both direct Federal programs and projects and to federally-assisted programs and projects undertaken by State and local government agencies. Uniform Act requirements, previously carried out under the differing regulations and procedures of separate Federal agencies, now will be included in this common rule. In addition, this common rule will increase the flexibility of State and local government agencies in implementing the Uniform Act.

**Subpart A—General***Section 2 Definition of real property.*

One commenter suggested including a definition of real property in the regulations. This proposal was not adopted because the criteria for distinguishing between real property and personal property vary from State to State. In some more complicated cases, the Agency may require a legal opinion on the appropriate classification of property.

*Section 2(b) Definition of business.*

One commenter recommended that the definition of a business be revised to require a minimum period of operation at the displacement site as a condition of eligibility for payment of moving expenses. The Uniform Act does not

contain any basis for such a restriction. Therefore, the suggestion was not adopted.

*Section 2(c) Definition of comparable replacement dwelling.*

There were numerous comments on the components of this definition. These comments are addressed as follows:

*Section 2(c)(2) Functional similarity.*

A number of commenters expressed concern over the proposed requirement at Section 2(c)(2) that a comparable replacement dwelling must be functionally similar to the displacement dwelling with particular attention to the number of rooms and living space. Of special concern was the reasonableness of the costs that would be incurred when replacing run-down substandard housing with standard housing, regardless of the size of the housing or the needs of the displaced person. In many cases, the betterment of the person's living standards may be the primary purpose of the project, and excessive cost could render the project infeasible or limit the number of persons whose living conditions could be improved by the project.

In an effort to address the comments, while assuring fair and equitable treatment of all persons displaced from their homes by a project, we have added an explanation of intent in Appendix A. The statement in Appendix A indicates that the term "functionally similar" means that the comparable replacement dwelling must perform the same function, provide the same utility, and be capable of contributing to the same life style as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

*Section 2(c) Comparable replacement dwelling.*

Section 2(c)(5) of the proposed rule indicated that a comparable replacement dwelling must be "currently available to the displaced person." Several commenters interpreted this to permit displacing agencies to satisfy their Uniform Act obligations by offering persons replacement housing made affordable under federally-assisted housing programs, such as the Department of Housing and Urban Development (HUD) Section 8 Existing Housing Program. This interpretation is not correct.

Under the Uniform Act, a person displaced from private market housing, who is not receiving assistance under any government housing program before displacement, must be provided referrals to private market dwellings

which meet all the other criteria of Section 2(c) without any subsidy under a government housing program.

To ensure there will be no misunderstanding of the intent of the law and these regulations, Section 2(c)(5) has been modified to indicate that a comparable replacement dwelling must be available on the private market, unless the person is receiving government housing assistance to occupy the displacement dwelling. In the latter case, a comparable replacement dwelling may reflect similar government housing assistance. In addition, an explanation of the intent of the rule has been included in Appendix A.

*Section 2(c)(6) Financial means standard.*

Section 2(c)(6) of the proposed rule specified that a comparable replacement dwelling must be "within the financial means of the displaced person." It further indicated that a replacement dwelling would meet this standard if the person's basic monthly housing costs after displacement did not exceed those same costs before displacement, after taking into account the replacement housing payment provided under these regulations. A number of commenters supported this "make whole" approach, while others opposed it. Those objecting to the adoption of this standard suggested that a person's monthly housing costs after displacement should not exceed a percentage (25% or 30%) of the person's income and that, where necessary, a replacement housing payment should be sufficient to reduce a person's monthly housing costs to such level.

The final rule retains the "make whole" financial means standard at Section 2(c)(6) as consistent with the basic intent of the Uniform Act that a displaced person "shall not suffer disproportionate injuries" as a result of a project and that the person should be able to maintain the same life style after displacement.

Generally, those who preferred a percentage of income test commented from their experience with HUD-assisted community development and housing programs. It is noted that under the HUD-assisted Community Development Block Grant (CDBG) program, communities have authority to develop relocation payment standards that exceed those required by the Uniform Act, provided that all persons in like circumstances are treated in a like manner. Thus, communities which wish to use a percentage of income test when computing rental assistance payments may do so by adopting a local written policy in accordance with 24 CFR 570.606(b). Such payments may be

provided to any displaced persons for whom the community determines payment to be appropriate.

It is also noted that displaced low-income persons receive priority for federally-assisted housing programs designed to provide suitable, decent, safe and sanitary rental housing at a cost for rent and utilities that does not exceed 30% of the persons' adjusted income.

Several commenters requested clarification of the obligation of a displacing agency in those cases where the maximum replacement housing payment under Subpart F is not sufficient to ensure that appropriate replacement housing is within the financial means of the displaced person.

The requirement to provide displaced persons with replacement housing that is within their financial means is set forth in Section 205(c)(3) of the Uniform Act. Section 205(c)(3) requires that such housing must be available to the person before displacement (i.e., before the person moves). Therefore, whenever a \$15,000 replacement housing payment under Section 402 would be insufficient to meet the financial means standard at Section 2(c)(6), the Agency must provide assistance under the last resort housing provisions of Subpart G. In order to make this requirement clear, a statement of this policy has been included in the final rule at Section 2(c)(6)(iii) and Section 403(b).

In order to deal with widely varied circumstances, Subpart G provides displacing agencies broad latitude to determine and implement the most cost-effective method of complying with the financial means standard. This may involve cash payments, the provision of housing or other methods. Several examples follow.

Example 1: An eligible person rents a comparable replacement dwelling and the increased cost for rent and utilities is \$100 per month, or \$4,800 over a 48-month period. Although a rental assistance payment under Section 402 is limited to \$4,000, the last resort housing provisions of Subpart G would make it possible for the Agency to meet the financial means standard by providing the person \$4,800. The payment may be in a lump sum or in installments.

Example 2: A 180-day owner-occupant buys a comparable replacement home and the sum of the price differential described at Section 401(c), increased mortgage interest costs, and incidental expenses as described at Section 401(e), is \$20,000. Although a replacement housing payment for 180-

day homeowner-occupants under Section 401 is limited to \$15,000, the last resort housing provisions of Subpart G would make it possible for the Agency to meet the financial means standard by providing the person \$20,000.

Example 3: As in Example 2, the cost of obtaining a comparable replacement dwelling is \$20,000. However, the Agency can build a new dwelling or rehabilitate an existing one at a cost which would yield a replacement housing payment of \$17,500. It may choose this cost-effective method of meeting its obligation to make available a comparable replacement dwelling. Should the displaced person choose another replacement dwelling, his total replacement housing payment would be limited to \$17,500.

While a payment under Subpart G may be necessary to meet the financial means test, it should not provide a higher payment than necessary to meet the "make whole" standard. Because the method for computing the increased mortgage interest cost component (Section 401(d)) of a replacement housing payment for a 180-day homeowner would do so, the final rule at Section 2(c)(6)(i) has been clarified by including a reference to Appendix A, Section 602 which explains that a last resort housing payment to a 180-day homeowner who must pay a higher interest rate on the new mortgage, may reflect the "buy down" approach to reimbursement of increased mortgage interest costs. (See Appendix A, Section 2(c)(6).)

However, clarification of Section 2(c)(6)(i) to permit use of the "buy down" approach when computing last resort housing payments does not change the method of computing a replacement housing payment under Section 401.

#### *Section 2(f) Definition of displaced person.*

Section 2(f)(1)(i) of the proposed rule indicated that the Agency shall determine whether a person is displaced as a direct result of a partial acquisition. Two commenters expressed concern that the statement could be construed to mean that the Agency's discretion to determine whether a tenant-occupant is permanently displaced does not extend to an acquisition of the entire real property. To preclude such unintended interpretation, this statement has been moved from Section 2(f)(1)(i) to Section 2(f)(2)(iv).

Section 2(f)(1)(iii) has been amended to indicate that a person displaced, as a result of the Agency's acquisition of or written order to vacate, for the project, other real property on

which the person conducts a business or farm operation, is eligible for payment of moving expenses under Section 301, Section 302, or Section 303.

Through an inadvertent error, the proposed rule did not make reference to the latter two sections. The change is necessary to conform the rule to the statute. Also, because the term "business" is defined to include any "nonprofit organization," the reference to the latter has been deleted from Section 2(f)(1)(iii).

#### *Section 2(f)(2) Persons not displaced.*

In response to two comments, a statement has been included in Appendix A at Section 2(f)(2)(iii) to explain that tenant-occupants who move from acquired real property but who are not permanently displaced within the meaning of the regulations must be treated fairly and equitably.

Section 2(f)(2)(viii) of the proposed rule permitted an Agency to determine that a person who is required only to temporarily vacate the premises for a short period to permit fumigation or other code enforcement work is not a "displaced person" under the regulations. Since Section 2(f)(2)(iii) authorizes the same determination, the provision at Section 2(f)(2)(viii) has been deleted.

#### *Section 2(k) Initiation of negotiations.*

Several commenters expressed confusion about the meaning of portions of this provision. In response to these comments, we have rewritten the provision to clarify it, but we have not changed its meaning. The provision now clearly indicates that for acquisitions and displacements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510, commonly known as Superfund), there is a different definition for the initiation of negotiations. This is due to the differing nature of the Superfund program which is discussed in Appendix A, Section 2(k).

#### *Section 3 No duplication of payments.*

Several commenters expressed the view that Agencies would have to conduct extensive searches to be certain that they were not making duplicate payments. This was not the intention of the proposed rule and we have added a statement in Appendix A, Section 3 explaining that an Agency is required to avoid duplicating only those other payments of which it has knowledge at

the time it is making the payment under these regulations.

#### *Section 8 Compliance with other laws and regulations.*

Section 8(g) of the proposed rule indicated that implementation of the regulations was subject to certain provisions of Executive Order 12259, "Leadership and Coordination of Fair Housing in Federal Programs." Two commenters called attention to the fact that the entire Executive Order was pertinent to the rule. Accordingly, the rule has been modified to identify the applicability of Executive Order 12259 at Section 8(j), and paragraphs (j) through (l) of the proposed rule have been redesignated as paragraphs (k) through (m) of the final rule. In addition, Executive Order 11990, "Protection of Wetlands," which had been inadvertently omitted, has been added at Section 8(1).

#### *Section 9(c) Reports.*

A number of commenters suggested that the content of the statistical report at Appendix B of the rule be expanded and that such report data be collected from displacing agencies more frequently than once each three years. Two commenters suggested deletion of two lines.

No change has been made to the statistical entries in Appendix B in response to these comments. The report data outlined in Appendix B are considered adequate for the general information needs of Federal agencies.

#### *Section 10 Appeals.*

A number of commenters objected to the proposal to eliminate (under certain federally-assisted programs) a person's right to appeal the decision of a State agency to the Federal agency funding the project. Several were concerned over the objectivity of the State agency when reviewing a request to overrule its earlier decision. Two of the commenters represented State agencies whose objections were based on a concern over whether they could continue to obtain a Federal Agency's review and advice on specific cases.

Programs which will be subject to the final rule vary in nature and many have operated successfully without a regulation authorizing persons to appeal a State Agency's decision to the Federal Agency funding the project. For this reason, we have not changed the final rule to provide for an appeal to the Federal level for all such programs. Federal agencies monitor State agency actions under federally-assisted programs. Also, any person dissatisfied

with a State agency's determination on his or her appeal may seek judicial review of the determination.

With respect to State agencies obtaining review and advice from a Federal Agency, no change in present program administration is intended. State agencies may continue to seek advice as to the general interpretation of a rule or its application in specific cases, whether or not an affected person has filed an appeal.

Section 102(b) of the proposed rule provided a person the right to appeal to an Agency its determination as to the person's eligibility for, or the amount of, a relocation payment or certain acquisition expenses. Several commenters recommended that the grounds for appeal be expanded to cover the adequacy of an Agency's referrals to comparable replacement housing before displacement, as provided under the current HUD Uniform Act regulations. Such deficiencies could be addressed by appealing the payment determination, since deficiencies in replacement housing would produce incorrect payments. Therefore, no change in the scope of appeals is considered necessary.

#### Subpart B—Real Property Acquisition

##### *Section 101 Applicability of acquisition requirements.*

One commenter raised the issue of the applicability of Subpart B to acquisition of property from a Federal, State, or local government Agency. The commenter's position was that such acquisitions should not be subject to Subpart B. Past practice of Federal agencies implementing the Uniform Act varies on this point. For example, the Department of Housing and Urban Development regulations excluded such acquisitions from coverage, while the Department of Transportation and Federal Highway Administration (FHWA) regulations did not.

As a consequence of this comment, we changed Section 101(a)(2) to indicate that Subpart B applies only if the acquiring governmental Agency has the authority to condemn the property of the owning Agency. This approach will reduce unnecessary paperwork and other administrative burdens on assistance recipients while maintaining Uniform Act protections for those needing them.

##### *Section 102 Basic acquisition policies.*

Several commenters proposed that the notice to the owner (of the Agency's interest in acquiring the property)

required by Section 102(b) should be in writing. After careful consideration, we concluded that to require written notification in all cases would be impractical and would result in an unnecessary administrative burden. However, any Agency may elect to provide a written notice. Moreover, all Agencies must comply with the recordkeeping requirements of Section 9(a).

One commenter recommended that a relocation specialist accompany the appraiser during the property inspection discussed at Section 102(c). While not required by the regulation, this may be done if an Agency so chooses.

Another commenter suggested that an appraisal not be required for properties valued at less than \$500 since the appraisal fee could exceed the property's value. We carefully considered this point but concluded that the requirement for an appraisal in all instances should be retained. First, we believe that the Uniform Act does not afford such latitude. Second, in the case of Federal and some State laws, basing the need for an appraisal on a threshold dollar amount in partial acquisitions is not a sound criterion, since a complicated valuation problem can result in a modest or even zero estimate of just compensation.

However, the reader should note Section 103(b) (Standards of Appraisals), which contemplates development of an appraisal format for low value, uncomplicated acquisitions and Section 108 (Donations).

One commenter suggested that the administrative settlement provision at Section 102(j) be revised to permit but not require the Agency to pay "depreciated replacement cost installed" for a real property improvement. This provision is intended to allow an Agency flexibility in settling cases where specific circumstances make it reasonable to do so. It is impractical to provide a complete list of the numerous reasons for making such settlements in the rule. However, we expect the responsible Agency official to be judicious in the use of this provision, documenting the basis for the settlement. This provision is not to be used as a substitute for ensuring that other acquisition-related work is done properly. For example, if there is an error in the appraisal or appraisal review on a given parcel/property to be acquired, it is expected that the problem will be referred to the appropriate appraiser and/or appraisal reviewer for reconsideration, and, if necessary, correction. Administrative settlements should be used only when it is determined by the Agency that a

reasonable difference of opinion exists concerning just compensation and such a settlement is prudent and in the public interest. Accordingly, a given situation might justify a settlement based upon an allowance for "depreciated replacement cost installed."

One commenter suggested that the phrase "for construction purposes" be inserted after "right-of-entry" near the end of the last sentence of Section 102(j) dealing with payment before taking possession. This change was recommended so that unnecessary restrictions would not be imposed on the Agency's survey activities. We have made the change to clarify this point. Another commenter recommended that the phrase "in exceptional cases" be deleted from this provision. This suggestion has not been adopted because it is intended that a right-of-entry (i.e., taking possession before payment is made available) be used *only* in the exceptional case. For example, this provision is intended to prohibit the use of rights-of-entry solely to meet a predetermined construction schedule, unless the project, itself, is of an emergency nature. Section 301(4) of the Uniform Act requires that, to the greatest extent practicable, no owner shall be required to surrender possession before payment is made available.

Several comments were received expressing concern that the fair market rent for short-term occupancy under Section 102(m) could be interpreted to be an inappropriately high rent in some circumstances. We have added language to Appendix A, Section 102(m) to clarify this provision.

##### *Section 103 Criteria for appraisals.*

One commenter recommended that the provisions of Section 103(e) (Qualifications of appraisers) and Section 103(f) (permitting the appraiser of a property to negotiate the acquisition of that property if its value is \$2,500 or less) should apply only when Federal funds are directly involved in the acquisition of property. This recommendation has not been adopted. If property is acquired for a Federal or federally-assisted project, the requirements of the Uniform Act and this implementing regulation apply whether or not Federal funds are directly involved in acquisition.

One commenter recommended that the regulation address the eligibility of appraisal costs under federally-assisted programs. The eligibility of this type of cost varies by program and, therefore, may be addressed only in specific program regulations.

*Section —104 Review of appraisals.*

Three commenters questioned the need for a review of any appraisal if the interest to be acquired is under \$2,000 or is uncomplicated and of a low value. We do not agree. A review appraisal serves as an important check on the appraiser and enhances consistency among offers. In addition, it is a useful management tool providing oversight of Agency appraisal operations. Two of these commenters appeared to believe that the regulation required an overqualified reviewer or a contract reviewer. An appraiser's qualifications should be commensurate with the difficulty of the appraisal problem. (See Section —103(e).) There is no need to retain a contract reviewer if there is someone on the staff, or otherwise available, who has suitable experience. Even when a contract reviewer is hired, the Agency still retains ultimate responsibility for establishing the amount of the offer to the owner.

*Section —106 Expenses incidental to transfer of title to the Agency.*

One commenter suggested that incidental expenses should be reimbursed when the owner is required to pay a certain cost and the Agency later chooses to duplicate the action for its own reasons. We agree since the owner has no choice in such circumstances. An editorial change has been made to Appendix A, Section —106 to convey this point more clearly.

*Section —108 Donations.*

The preamble to the proposed rule noted that Section —108, in part, allowed an owner of real property to waive his right to an appraisal as long as he is informed of that right. As a corollary, we wish to note that an Agency may use one appraisal as a basis for just compensation for a number of other similar parcels, as long as the owner of such other parcel(s) waives the right to an appraisal. This will reduce the cost of acquiring land while maintaining Uniform Act protections.

**Subpart C—General Relocation Requirements**

A number of commenters expressed concern about the absence of a requirement for relocation planning, asserting that without such a requirement it is not possible to successfully relocate displaced persons. We do not agree.

The rule does not prohibit relocation planning. Displacing agencies are free to plan in accordance with their needs, in recognition of the fact that they will

have to meet the law's requirement to make comparable housing available to displaced persons before such persons may be required to move. We believe that early problem identification and resolution are desirable to avoid delays in project advancement, unnecessary litigation and other management difficulties. Therefore, displacing agencies are encouraged to continue to take appropriate actions to avoid these problems.

*Sections —203 (a) and (b) Relocation notices.*

One commenter noted that no specific time had been designated for giving these notices and seemed to recommend doing so. We do not agree. The circumstances of an Agency's knowing that a particular person will be displaced and its ability to provide him or her the information these notices require will vary widely. Designating a particular date or event which would apply to all cases is not practical, in our opinion. However, we wish to make it clear that the requirement in both of these provisions is that the notices must be given promptly. In particular, the general information notice must be provided at the earliest feasible date so that persons to be displaced may be aware of assistance available to them.

Another commenter recommended consolidating the notices under Section —203 (a) and (b) into one notice to be provided promptly after the initiation of negotiations. We have not accepted this suggestion because we believe it would delay the displaced person's receipt of basic information contained in the general information notice. As noted above, we believe the expeditious provision of this information is essential. However, we agree with the same commenter's suggestion that, if the two notices are separated by a substantial time period, the second notice should reiterate the basic information which was contained in the first. We encourage all displacing agencies to follow such a practice.

*Section —203(c) Ninety-day notice.*

In response to a comment, we have changed the language in this provision to make it clear that the ninety-day notice may not be issued before the Agency has notified the person to be displaced of at least one available comparable replacement dwelling. Another commenter requested that the rule explicitly include Court Orders which contain specific vacate dates as meeting the ninety-day notice requirement. While we do not believe such a statement belongs in the rule, we agree that a written Court Order could

meet this requirement. However, under ordinary circumstances the ninety-day notice requirement should have been met long before a case goes to condemnation.

*Section —204(a) Availability of comparable replacement dwelling prior to displacement.*

Several comments under this section have been dealt with under other, more appropriate sections. This includes the suggestion that HUD Section 8 existing units be considered as comparable housing and the concern about the financial means criterion adopted by the regulations (see Sections —2(c) (5) and (6)).

One commenter "strongly disagrees with the implication that only one referral needs to be made to a displacee." This is an incorrect reading of the rule. The rule, as proposed, required that, "Where possible, three or more comparable replacement dwellings shall be made available (emphasis added)." Only in situations where it is not possible to obtain three comparable replacement dwellings is it permitted to obtain fewer than three. However, in no case is it permitted to require a move without one comparable having been made available.

*Section —204(a)(2) Availability of comparable replacement dwelling prior to displacement.*

In response to several comments, we have deleted the phrase "(not less than 90 days)" from this section since 90 days may not be an appropriate amount of time in all cases. The displacing Agency will have to judge what is a reasonable amount of time to negotiate and enter into a lease or purchase agreement.

*Section —205(b)(2) Relocation assistance advisory services.*

Several commenters took issue with the proposed rule concerning services to be provided to assist minority persons to relocate to dwellings not in areas of minority concentration. The rule makes clear that all activities under the Uniform Act and its implementing regulations must be carried out in a nondiscriminatory manner. This applies to all phases of the process—from the initial contact with owners and displacees to the provision of housing and other relocation assistance and through the final settlement of relocation and acquisition payments. In addition, the rule provides that minority persons who wish to seek replacement housing in nonminority areas, whenever possible, shall be provided opportunities to do so. We believe that to go beyond

these requirements is unnecessary and exceeds the proper scope of this regulation.

*Section —206 Eviction for cause.*

Several commenters asked if a displaced person who is evicted from the displacement dwelling and who fails to relocate to decent, safe, and sanitary housing within one year after the eviction is precluded from receiving a replacement housing payment, even if the displacing agency failed to provide a referral to comparable replacement housing. In our view, it would be inconsistent with the intent of the Uniform Act to penalize the displaced person for the Agency's failure to carry out its responsibilities. Therefore, we have modified this provision to make the beginning of the one-year period for obtaining replacement housing the later of either the moving date or the date referral to comparable replacement housing is made.

*Section —207 General requirements—claims for relocation payments.*

There were comments on several subsections of Section —207:

*Section —207(b) Expeditious payments.*

One commenter suggested that payment of relocation claims be required within a specific time period, e.g., 30 days. We do not agree. Circumstances vary widely among displacing agencies. For some, making a payment is relatively uncomplicated; for others, it may involve a number of different individuals and even departments. No specific standard would serve both displacees' and agencies' interests. We believe the standard we proposed, i.e., "as soon as feasible," is the correct approach.

*Section —207(d) Time for filing.*

In response to a comment, we have restructured this provision to make clear the separate requirements for tenants and owners.

*Section —207(f) Deductions from relocation payments.*

Several commenters objected to the idea of allowing displacing agencies to deduct from relocation payments any rent which is owed them. We believe the ability to deduct rent actually and legitimately owed to the displacing Agency is essential to an effective relocation program. Without it, there is little incentive for a recalcitrant occupant either to pay the rent or to move. We see no reason why an occupant should not pay rent to an Agency which has acquired his dwelling and is permitting him to remain on site.

However, we also believe that the Agency has responsibilities toward such occupants. First among these is the

prohibition of deductions which would prevent the person to be displaced from obtaining comparable replacement housing. Second, the Agency must meet its responsibilities under these regulations, including referrals to comparable housing, the provision of informational materials and notices, and other assistance. In the case of slum or dangerous conditions, which seem to be the major causes of concern to the commenters, we would expect the Agency to take appropriate action regarding site occupants. In addition, other forums, such as local courts or administrative agencies, are available to such persons.

**Subpart D—Payments for Moving and Related Expenses**

*Section —302 Fixed payment for moving expenses—residential moves.*

One commenter recommended that the moving expense schedule be revised to provide more realistic payments. While this suggestion has merit, the Uniform Act imposes an upper limit of \$300 for moving expenses plus a \$200 dislocation allowance for this payment.

*Section —303 Payment for actual reasonable moving and related expenses—nonresidential moves.*

One commenter recommended that self-moves to a storage site (see Section —303(a)(4)) be prohibited and that the Agency, at its discretion, pay only the actual cost of the move conducted by a licensed commercial moving company selected by the Agency. We considered this recommendation to be unduly restrictive and, therefore, no change has been made.

One commenter suggested that the eligibility of franchise fees be specified in the regulation at Section —303(a)(6). In general, eligible moving expense items are too numerous to list individually in the regulation; we have included only broad categories of expenses and those specific items which occur frequently. Each funding agency should provide the necessary guidance to specify which individual items are eligible costs.

Another commenter recommended that we specifically exclude attorneys' fees from the eligible professional services necessary for planning, moving and reinstalling personal property (Section —303(a)(8)). We did not adopt this suggestion but we note that such fees must be reasonable and necessary to be eligible costs.

In response to a comment, we added a provision under purchase of substitute personal property (Section 303(a)(12)) allowing estimated moving cost to be

based on a single bid or estimate when the move would be low cost or uncomplicated.

One commenter suggested that allowable searching expenses for a replacement site for an advertising sign should be limited to \$300, while another suggested that finders' fees for franchise establishments should be addressed. We concluded that it was impractical to single out certain types of businesses for a different benefit level and that the individual Agency should determine what payment amount is reasonable and necessary.

One commenter suggested that designated agents of the Agency, such as movers and appraisers, be allowed to make inspections of the displacement and replacement sites as discussed in Section —303(b)(3). This is the intent of the regulation.

Several comments recommended changes in the procedure for self-moves at Section —303(c). This section has been rewritten for clarity. Since the definition of a business includes nonprofit organizations, we have deleted the redundant reference to them from this section and Sections —303 (f) and (j). We also deleted the statement concerning additional documentation of moving expenses actually incurred. Determination of the need to gather further information is left to the Agency. Lastly, we added a provision to permit an Agency to make a payment based upon a single bid or estimate for moves which are low cost or uncomplicated in nature.

*Section —304 Fixed payment for moving expenses—nonresidential moves.*

Several commenters questioned the provision in Section —304(a)(1) presuming that a business will suffer a substantial loss of existing patronage, unless the Agency demonstrates otherwise. Given the disruption incident to most moves, we believe the burden of proof belongs with the Agency, not the business. Therefore, no change was made.

Two commenters suggested that the gross receipts portion of the material contribution test at Section —2(d)(1) provided windfall payments, i.e., that the \$2,000 gross receipts threshold is an insufficient basis for making a \$2,500 payment. They also suggested raising the \$1,000 net earnings threshold in Section —2(d)(2). We made no changes in Section —2(d)(2), believing \$1,000 in net earnings to be sufficient to meet the material contribution test. However, we did change the threshold level for the gross receipts test from \$2,000 to \$5,000,

consistent with the approximately 150 percent rise in the Consumer Price Index since the test was instituted.

Section 2(d)(4) gave an Agency wide discretion to determine, in hardship cases, that the earnings of a business "contribute materially" and thus qualify it for an "in lieu" payment. Two commenters noted that Section 304(a)(3) of the proposed rule addressed the same issue through a waiver. The inconsistency has been corrected by deleting the waiver provision at Section 304(a)(3).

One commenter suggested that the procedure in Section 304(b) for determining the number of businesses should apply to all business relocation payments, not just fixed payments. We believe this issue to be of particular importance for fixed payments; however, if an Agency believes it needs to determine the number of businesses for another business relocation payment, it may use the same criteria.

One commenter suggested that the list of ineligible moving expenses in Section 305 be expanded to include a number of additional items, such as overtime, mistakes, and feasibility studies. We believe it is impractical to list all ineligible costs and that the "ineligibility" of items not specified in Section 305 should be determined by the Agency as part of its responsibility for determining whether costs are reasonable and necessary for the move. The same commenter also suggested that Section 305(j) better distinguish between reinstallation of relocated machinery, equipment and other personal property and physical changes to the real property at the replacement location. We concluded that this determination should be made by the Agency.

In response to two comments, Section 305(k) has been revised to indicate that it prohibits payments for storing personal property on property already owned or leased by the displaced person.

#### Subpart E—Replacement Housing Payments

##### Section 401 Replacement housing payments for 180-day homeowner-occupants.

The paragraphs in this section have been rearranged for consistency. Paragraph (c) becomes (f), (d) becomes (c), (e) becomes (d), and (f) becomes (e).

Three commenters suggested changes in the procedure for determining the replacement housing payment when the displaced person retains, relocates, and reoccupies the displacement dwelling. In response, we changed Section

401(c)(4)(iii), formerly Section 401(d)(4)(iii), so that the purchase price of the replacement dwelling will reflect the current fair market value of the replacement site rather than what the displaced person previously paid for it. In addition, we added Section 401(c)(4)(iv) to clarify the requirement in Section 401(d)(4)(iii) of the proposed rule that the retention value of the displacement dwelling is to be included in the purchase price of a replacement dwelling if it is included in the acquisition cost used in computing the replacement housing payment.

We have made a number of language changes in Section 401(d), formerly Section 401(e), solely for clarification.

One commenter suggested that the payment described in Section 401(e), formerly Section 401(f), should be limited to the incidental expenses in connection with purchasing a comparable replacement dwelling. In general, we did not accept this suggestion because we believe such a requirement would yield administrative burdens for implementing agencies out of proportion to the resulting savings. However, we did change the treatment of title insurance, formerly in Section 401(f)(1), now Section 401(e)(6), by limiting compensation to the cost for a comparable dwelling. Two other commenters suggested that the cost of termite inspection be listed as an eligible expense. We agree and have revised Section 401(f)(4), now Section 401(e)(4), accordingly. In addition, we deleted the words "by the lender" from this provision so that the cost of a structural certification or termite inspection would be an eligible incidental expense, if required.

##### Section 402 Replacement housing payments for 90-day occupants.

Two commenters suggested that we permit the Agency to extend for good cause the one-year time period in Section 402(a)(2) for renting/purchasing and occupying a replacement dwelling. We agree and have made the change.

Six commenters objected to the use of the "make whole" approach for determining the rental assistance payment under Section 402(b)(1). They argued that the financial means test should be based on percentage of income. These comments were extensively considered. As discussed under Section 2(c)(6) above, we believe that the intent of the Uniform Act is to provide a means for preventing disproportionate injury to persons displaced by public projects. The "make whole" standard accomplishes this objective.

A number of commenters expressed concern over the provision at Section 402(b)(1) (see also Section 2(c)(6)(ii)) that the market rent of the displacement dwelling is to be used when computing the rental assistance payment for a displaced person who paid little or no rent before displacement. The commenters feared that the provision would unfairly reduce the amount of the rental assistance payment to low-income persons, especially the elderly, who pay a low rent before displacement.

This provision is intended to address the computation of payments for homeowner-occupants (who, of course, did not pay rent before displacement), and those very unusual situations where a tenant is paying an unreasonably low rent, and a payment based on such rent would provide a windfall. The provision is not intended to apply in those situations where use of the fair market rent would result in a hardship because of the displaced person's income, or other special circumstances. An explanation of this intent has been included in Appendix A, Subpart E.

Three comments concerned the inclusion of utility services when computing a rental assistance payment. One indicated that the inclusion of utility services in the payment computation could result in an inappropriate subsidy and suggested that no utility services be reflected in the payment. The other two commenters expressed concern that the provision required all utility services to be reflected in the payment computation, if a single utility service is included in any of the applicable contract rents.

In response to these comments, the provision has been revised to indicate that the Agency must include in the payment computation the cost of any utility service (i.e., heat, water) which is included in either the displacement dwelling rent or the replacement dwelling rent. If neither rent includes a specific utility service, the Agency may compute the payment with or without such service. In any case, the Agency must ensure that like circumstances are compared.

##### Section 403 Additional rules governing replacement housing payments.

Four commenters suggested various changes at Section 403(a)(1) concerning the adjustment of the asking price for a comparable replacement dwelling. We considered the suggestions and made clarifying changes.

Several commenters suggested changes in the procedure at Section

...403(a)(2) for computing a replacement housing payment when the displacement property contains a major exterior attribute. Two commenters suggested that the displacing agency be allowed either to adjust the acquisition cost of the displacement dwelling by deducting the value of the attribute (as provided in the rule) or to pay for the additional cost of the attribute when it is not included in the comparable replacement property. We do not agree. We believe that the purpose of a replacement housing payment is to provide comparable housing, not exterior attributes such as swimming pools, larger-than-typical lots, etc. Moreover, paying for the cost of such attributes would add considerable cost to the relocation process without concomitant housing benefits. In addition, the language in this paragraph regarding partial acquisitions of a typical residential property, where the remainder constitutes a buildable residential lot, has been clarified.

Two commenters suggested that Section 403 (d) and (e), which relate to occupancy requirements, be consolidated. We agree and have combined and clarified the two provisions in Section 403(e).

#### Subpart F—Mobile Homes

A number of comments were received on this Subpart indicating that we had not made clear the intent of certain proposed provisions. To clarify these items, and to conform Subpart F to the remainder of the regulations, the following changes have been made.

##### *Section 502 Moving and related expenses—mobile homes.*

Section 502(a)(3) of the proposed rule has been moved to Section 502(h) of the final rule and revised to make it clear that the reasonable cost of repairs and/or modifications to make a mobile home decent, safe and sanitary are reimbursable, if the Agency determines that it would be practical to relocate the mobile home. A conforming change has been made to Section 503(c)(1).

Section 502(b) of the proposed rule has been moved to Section 502(c) of the final rule and clarified to indicate that payment of a nonreturnable mobile home park entrance fee may be reimbursable, if the person is displaced from a mobile home park or if the Agency determines that payment of the fee is necessary to effect relocation.

##### *Sections 503 and 504 Replacement housing payments for 180-day mobile homeowner occupants and 90-day mobile home occupants*

Sections 503(c) 504(c) have been clarified to indicate that a person displaced from a mobile home site may be eligible for a replacement housing payment to assist in purchasing or renting a replacement site, even if the person is not displaced from the mobile home.

##### *Section 505 Additional rules governing relocation payments to mobile home occupants.*

Section 505(a) has been modified to make it clear that the computation of a replacement housing payment must take into account the increased cost for both the replacement mobile home and the replacement mobile home site. Also, since this provision, as revised, fully explains the intent of Section 505(b)(1) of the proposed rule, the latter provision has been deleted and the next two paragraphs redesignated accordingly.

Section 505(b)(3) of the proposed rule has been moved to Section 505(b)(2) and revised to make clear its intent to set an upper limit on the replacement housing payment to a 180-day mobile home owner who elects not to relocate the mobile home, even though the Agency determines that, with certain repairs or modifications, relocation of the unit would be practical. To conform it with Section 401(c)(4), this provision also has been revised to require that the upper limit of the payment take into account the cost of moving the mobile home to a replacement site.

Section 505(e), which formerly discussed only mobile home occupants, has been reworded to make it clear that an owner required to move a mobile home as a direct result of a partial acquisition is eligible for payment of moving expenses, regardless of whether he or she occupied the mobile home.

#### Subpart G—Last Resort Housing

The rule supersedes the current governmentwide rule on last resort housing issued by the Department of Housing and Urban Development (HUD) at 24 CFR Part 43. Subpart G sets forth policies and procedures that maximize the flexibility of agencies seeking to use Section 206 of the Uniform Act (last resort housing provisions). By removing unnecessary existing requirements, it allows agencies to design and implement last resort housing measures according to their own needs.

Section 601(a) has been clarified to indicate that whenever a replacement housing payment under Subpart E would be insufficient to provide a comparable replacement dwelling on a timely basis

to a person, the Agency is authorized to take appropriate last resort housing measures under Subpart G to accomplish this objective. This clarification is consistent with those added at Section 2(c)(6)(iii) and Section 403(b).

In response to two comments, Section 601(b) has been clarified by indicating that a 180-day homeowner-occupant, who is eligible for a replacement housing payment under Section 401, is entitled to a reasonable opportunity to purchase a comparable replacement dwelling. However, this provision must be read in conjunction with the definition of "owner of displacement dwelling" at Section 2(1) and is not to be interpreted as requiring the Agency to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement home than the Agency would be required to provide such persons if they owned fee simple title to such dwelling. A statement to this effect has been included in Appendix A, Section 601(b).

#### Appendices

The reader's attention is directed to the appendices which accompany the rule. Appendix A provides additional information concerning the intent of certain portions of the rule. Appendix B provides a report form and instructions for those agencies which elect to require a report on Uniform Act activities.

#### Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more, or certain other specified effects.

We intend the final rule to result in savings to State and local governments in the implementation of the Uniform Act. However, we do not believe that the regulation will have an annual economic effect of \$100 million or more or the other effects listed in the Order. For this reason, we have determined that the regulation is not a major rule within the meaning of the Order.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives

to the rule that would minimize the economic impact on small entities.

The head of each of the agencies covered by this notice, or delegatee, has certified that this regulation, if adopted, will not have a significant economic impact on a substantial number of small entities. The provisions of the Uniform Act which provide the benefits covered by the rule have not changed. The primary impact of the rule is expected to be the elimination of unnecessary administrative requirements and the consequent reduction of burden on affected entities.

#### Paperwork Reduction Act of 1980

Sections 102(e), 103(b), 104(c), 203(a), 203(c), 205(b), 207(g), and 303(b) contain paperwork requirements subject to review by the Office of Management and Budget (OMB) Under Public Law 96-511, the Paperwork Reduction Act of 1980 (the Act). Each covered Federal agency will submit these requirements to OMB for approval in accordance with the Act and associated regulations at 5 CFR 1320. Except for the Department of Transportation (which has already received OMB approval (Order No. 2105-0508), these requirements will not be effective until OMB approval has been obtained. Each Federal agency will publish a notice in the *Federal Register* once OMB approval is obtained.

#### DEPARTMENT OF AGRICULTURE

##### Office of the Secretary

##### 7 CFR Part 21

#### FOR FURTHER INFORMATION CONTACT:

Frank W. Bright, Realty Specialist, Office of Operations, United States Department of Agriculture, Room 1566-South Building, 14th & Independence Avenue, SW., Washington, D.C. 20250, Area Code 202, Telephone No. 447-5113. Office hours Monday through Friday from 8:00 a.m. to 4:30 p.m.

#### List of Subjects in 7 CFR Part 21

Relocation assistance, Real property acquisition.

Title 7 of the Code of Federal Regulations is amended by revising Part 21 as set forth at the end of this document.

Issued in Washington, D.C., February 21, 1986.

John J. Franke Jr.,

Assistant Secretary for Administration.

#### PART 21—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

##### Subpart A—General

- Sec.
- 21.1 Purpose.
  - 21.2 Definitions.
  - 21.3 No duplication of payments.
  - 21.4 Assurances, monitoring and corrective action.
  - 21.5 Manner of notices.
  - 21.6 Administration of jointly-funded projects.
  - 21.7 Federal agency waiver of regulations.
  - 21.8 Compliance with other laws and regulations.
  - 21.9 Recordkeeping and reports.
  - 21.10 Appeals.

##### Subpart B—Real Property Acquisition

- 21.101 Applicability of acquisition requirements.
- 21.102 Basic acquisition policies.
- 21.103 Criteria for appraisals.
- 21.104 Review of appraisals.
- 21.105 Acquisition of tenant-owned improvements.
- 21.106 Expenses incidental to transfer of title to the agency.
- 21.107 Certain litigation expenses.
- 21.108 Donations.

##### Subpart C—General Relocation Requirements

- 21.201 Purpose.
- 21.202 Applicability.
- 21.203 Relocation notices.
- 21.204 Availability of comparable replacement dwelling before displacement.
- 21.205 Relocation assistance advisory services.
- 21.206 Eviction for cause.
- 21.207 General requirements—claims for relocation payments.
- 21.208 Relocation payments not considered as income.

##### Subpart D—Payments for Moving and Related Expenses

- 21.301 Payment for actual reasonable moving and related expenses—residential moves.
- 21.302 Fixed payment for moving expenses—residential moves.
- 21.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
- 21.304 Fixed payment for moving expenses—nonresidential moves.
- 21.305 Ineligible moving and related expenses.

##### Subpart E—Replacement Housing Payments

- 21.401 Replacement housing payment for 180-day homeowner-occupants.
- 21.402 Replacement housing payment for 90-day occupants.
- 21.403 Additional rules governing replacement housing payments.

##### Subpart F—Mobile Homes

- 21.501 Applicability.
- 21.502 Moving and related expenses—mobile homes.
- 21.503 Replacement housing payment for 180-day mobile homeowner-occupants.
- 21.504 Replacement housing payment for 90-day mobile home occupants.
- 21.505 Additional rules governing relocation payments to mobile home occupants.

##### Subpart G—Last Resort Housing

- 21.601 Applicability.
- 21.602 Methods of providing replacement housing.

Appendix A—Additional information.

Appendix B—Statistical information.

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

#### DEPARTMENT OF ENERGY

##### 10 CFR Part 1039

#### FOR FURTHER INFORMATION CONTACT:

Donald G. Trost, MA-222.1, Chief, Real Property Branch, Real Property and Facilities Management Division, United States Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-1191

John Herrick, Esq, GC-44, United States Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-8618.

#### List of Subjects in 10 CFR Part 1039

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements.

Chapter X of Title 10 of the Code of Federal Regulations is amended by adding Part 1039 as set forth at the end of this document.

Martha O. Hesse,

Assistant Secretary, Management and Administration.

#### PART 1039—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

##### Subpart A—General

- Sec.
- 1039.1 Purpose.
  - 1039.2 Definition.
  - 1039.3 No duplication of payments.
  - 1039.4 Assurances, monitoring and corrective action.
  - 1039.5 Manner of notices.
  - 1039.6 Administration of jointly-funded projects.
  - 1039.7 Federal agency waiver of regulations.
  - 1039.8 Compliance with other laws and regulations.

- Sec.  
1039.9 Recordkeeping and reports.  
1039.10 Appeals.
- Subpart B—Real Property Acquisition**
- 1039.101 Applicability of acquisition requirements.  
1039.102 Basic acquisition policies.  
1039.103 Criteria for appraisals.  
1039.104 Review of appraisals.  
1039.105 Acquisition of tenant-owned improvements.  
1039.106 Expenses incidental to transfer of title to the agency.  
1039.107 Certain litigation expenses.  
1039.108 Donations.

- Subpart C—General Relocation Requirements**
- 1039.201 Purpose.  
1039.202 Applicability.  
1039.203 Relocation notices.  
1039.204 Availability of comparable replacement dwelling before displacement.  
1039.205 Relocation assistance advisory services.  
1039.206 Eviction for cause.  
1039.207 General requirements—claims for relocation payments.  
1039.208 Relocation payments not considered as income.

- Subpart D—Payments for Moving and Related Expenses**
- 1039.301 Payments for actual reasonable moving and related expenses—residential moves.  
1039.302 Fixed payment for moving expenses—residential moves.  
1039.303 Payment for actual reasonable moving and related expenses—nonresidential moves.  
1039.304 Fixed payment for moving expenses—nonresidential moves.  
1039.305 Ineligible moving and related expenses.

- Subpart E—Replacement Housing Payments**
- 1039.401 Replacement housing payments for 180-day homeowner occupants.  
1039.402 Replacement housing payment for 90-day occupants.  
1039.403 Additional rules governing replacement housing payments.

- Subpart F—Mobile Homes**
- 1039.501 Applicability.  
1039.502 Moving and related expenses—mobile homes.  
1039.503 Replacement housing payments for 180-day mobile owner occupants.  
1039.504 Replacement housing payments for 90-day mobile occupants.  
1039.505 Additional rules governing relocation payment to mobile home occupants.

- Subpart G—Last Resort Housing**
- 1039.601 Applicability.  
1039.602 Methods providing replacement housing.
- Appendix A—Additional information.  
Appendix B—Statistical report form.

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

**DEPARTMENT OF COMMERCE**

**13 CFR Part 310**  
**15 CFR Parts 11 and 916**

[Docket No. 50573-6022]

**FOR FURTHER INFORMATION CONTACT:** Mary DiGiulian, Director Office of Administrative Services Management, United States Department of Commerce, Room 6319, Washington, D.C. 20230 (202-377-0864).

**ADDITIONAL SUPPLEMENTARY INFORMATION:** These Regulations supersede existing Department of Commerce regulations governing Uniform Relocation Assistance and Real Property Acquisition located at 13 CFR Part 310 and 15 CFR Part 916. The collection of information requirements contained in this rule have been approved under OMB No. 0690-0001.

**List of Subjects in 15 CFR Part 11**

Relocation assistance, Real property acquisition, Reporting and record keeping requirements.

**Jerry B. Vance,**  
*Deputy Director, Procurement and Administrative Services.*

1. Title 15 of the Code of Federal Regulations is amended by adding Part 11 as set forth at the end of this document.

**PART 11—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

**Subpart A—General**

- Sec.  
11.1 Purpose.  
11.2 Definitions.  
11.3 No duplication of payments.  
11.4 Assurances, monitoring and corrective action.  
11.5 Manner of notices.  
11.6 Administration of jointly-funded projects.  
11.7 Federal agency waiver of regulations.  
11.8 Compliance with other laws and regulations.  
11.9 Record keeping and reports.  
11.10 Appeals.

**Subpart B—Real Property Acquisition**

- 11.101 Applicability of acquisition requirements.  
11.102 Basic acquisition policies.  
11.103 Criteria for appraisals.  
11.104 Review of appraisals.

- Sec.  
11.105 Acquisition of tenant-owned improvements.  
11.106 Expenses incidental to transfer of title to the agency.  
11.107 Certain litigation expenses.  
11.108 Donations.
- Subpart C—General Relocation Requirements**
- 11.201 Purpose.  
11.202 Applicability.  
11.203 Relocation notices.  
11.204 Availability of comparable replacement dwelling before displacement.  
11.205 Relocation assistance advisory services.  
11.206 Eviction for cause.  
11.207 General requirements—claims for relocation payments.  
11.208 Relocation payments not considered as income.

**Subpart D—Payments for Moving and Related Expenses**

- 11.301 Payment for actual reasonable moving and related expenses—residential moves.  
11.302 Fixed payment for moving expenses—residential moves.  
11.303 Payment for actual reasonable moving and related expenses—nonresidential moves.  
11.304 Fixed payment for moving expenses—nonresidential moves.  
11.305 Ineligible moving and related expenses.

**Subpart E—Replacement Housing Payments**

- 11.401 Replacement housing payment for 180-day homeowner occupants.  
11.402 Replacement housing payment for 90-day occupants.  
11.403 Additional rules governing replacement housing payments.

**Subpart F—Mobile Homes**

- 11.501 Applicability.  
11.502 Moving and related expenses—mobile homes.  
11.503 Replacement housing payment for 180-day mobile homeowner occupants.  
11.504 Replacement housing payment for 90-day mobile home occupants.  
11.505 Additional rules governing relocation payments to mobile home occupants.

**Subpart G—Last Resort Housing**

- 11.601 Applicability.  
11.602 Methods of providing replacement housing.

Appendix A—Additional information.  
Appendix B—Statistical report form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894. (42 U.S.C. 4601).

**PART 916—[REMOVED AND RESERVED]**

2. Title 15 of the CFR is further amended by removing and reserving Part 916.

**PART 310—[REMOVED AND RESERVED]**

3. Title 13 of the Code of Federal Regulations is amended by removing and reserving Part 310.

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****14 CFR Part 1208**

**FOR FURTHER INFORMATION CONTACT:** Ms. Gitta G. Haber, 202-453-1958.

**List of Subjects in 14 CFR Part 1208**

Uniform relocation assistance, Real property, Relocation, Federally-assisted programs, Housing, Real property acquisition, Relocation requirements, Replacement housing, Mobile homes, Moving and related expenses, Relocation assistance.

Title 14 of the Code of Federal Regulations is amended by adding Part 1208 as set forth at the end of this document.

William R. Graham,  
*Acting Administrator.*

**PART 1208—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS****Subpart A—General**

- Sec.
- 1208.1 Purpose.
- 1208.2 Definitions.
- 1208.3 No duplication of payments.
- 1208.4 Assurances, monitoring and corrective action.
- 1208.5 Manner of notices.
- 1208.6 Administration of jointly-funded projects.
- 1208.7 Federal agency waiver of regulations.
- 1208.8 Compliance with other laws and regulations.
- 1208.9 Recordkeeping and reports.
- 1209.10 Appeals.

**Subpart B—Real Property Acquisition**

- 1208.101 Applicability of acquisition requirements.
- 1208.102 Basic acquisition policies.
- 1208.103 Criteria for appraisals.
- 1208.104 Review of appraisals.
- 1208.105 Acquisition of tenant-owned improvements.
- 1208.106 Expenses incidental to transfer of title to the agency.
- 1208.107 Certain litigation expenses.
- 1208.108 Donation.

**Subpart C—General Relocation Requirements**

- 1208.210 Purpose.

- 1208.202 Applicability.
- 1208.203 Relocation information and written notices.
- 1208.204 Availability of comparable replacement dwelling before displacement.
- 1208.205 Relocation assistance advisory services.
- 1208.206 Eviction for cause.
- 1208.207 General requirements—claims for relocation payments.
- 1208.208 Relocation payments not considered as income.

**Subpart D—Payments for Moving and Related Expenses**

- 1208.301 Payments for actual reasonable moving and related expenses—residential moves.
- 1208.302 Fixed payment for moving expenses—residential moves.
- 1208.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
- 1208.304 Fixed payment for moving expenses—nonresidential moves.
- 1208.305 Ineligible moving and related expenses.

**Subpart E—Replacement Housing Payments**

- 1208.401 Replacement housing payments for 180-day homeowner-occupants.
- 1208.402 Replacement housing payments for 90-day occupants.
- 1208.403 Additional rules governing replacement housing payments.

**Subpart F—Mobile Homes**

- 1208.501 Applicability.
- 1208.502 Moving and related expenses—mobile homes.
- 1208.503 Replacement housing payments for 180-day mobile homeowner occupants.
- 1208.504 Replacement housing payments for 90-day mobile home occupants.
- 1208.505 Additional rules governing relocation payments to mobile home occupants.

**Subpart G—Last Resort Housing**

- 1208.601 Applicability.
- 1208.602 Methods of providing replacement housing.
- Appendix A Additional information.
- Appendix B Statistical report form.

**Authority:** 42 U.S.C. 4601, Sec. 213.

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Parts 42 and 43**

[Docket No. R-86-1239; FR-2106]

**EFFECTIVE DATE:** This regulation is effective May 1, 1986 for all acquisitions and displacements for which the initiation of negotiations occurs on or after May 1, 1986.

**FOR FURTHER INFORMATION CONTACT:** Melvin Geffner, Deputy Director, Roland Brown, Georgian Carter, or Alvin West, Relocation and Real Estate Division, Room 7174, Department of Housing and

Urban Development, 451 Seventh Street S.W., Washington, D.C. 20410. Telephone (202) 755-8336. (This is not a toll-free number.)

**ADDITIONAL SUPPLEMENTARY**

**INFORMATION:** This regulation supersedes existing HUD regulations governing Uniform Relocation Assistance and Real Property Acquisition found at 24 CFR Part 42 and Part 43, Subpart A. The regulation implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act). The common preamble to this final rule describes the principal changes that will be made in response to the comments submitted to the Federal Agencies on the proposed rule, including those submitted to the Department of Housing and Urban Development.

In addition to this rule the Department is publishing elsewhere in today's issue of the *Federal Register*, a rule containing technical amendments to other HUD regulations which cite relocation requirements in old Part 42 and Part 43, Subpart A. These changes are necessary to accurately reflect current program requirements. This document also contains appropriate amendments to add OMB control numbers to the Paperwork requirements contained in HUD's relocation regulations.

**Providing Comparable (Affordable) Replacement Dwellings on a Timely Basis**

These regulations accord all persons displaced from a dwelling the right to assistance sufficient to relocate to a comparable replacement dwelling (defined at § 42.2(c)). If a \$15,000 replacement housing payment under § 42.401 or a \$4,000 replacement housing payment under § 42.402 would not be sufficient to ensure that a comparable (affordable) replacement dwelling is available on a timely basis, the Agency must provide additional or alternative relocation assistance or abandon the displacement-causing activity.

Under § 42.102(m), if a person who is the owner or tenant of the real property at the time of its acquisition by the agency is permitted to occupy it after acquisition on a short-term basis, the rent may not exceed the "fair market rent" for the property. The term "fair market rent" means the rent paid for the unsubsidized use of similar property in similar areas and, thus, may differ from the Fair Market Rent (FMR) established by HUD under its section 8 housing assistance payments programs.

The last resort housing provisions of Subpart C offer Agencies wide latitude to devise appropriate solutions (see

§ 42.602) for providing such additional or alternative assistance, including the most frequently used option—increasing the replacement housing payment above the limit set forth in § 42.401 or § 42.402. Under the Community Development Block Grant Program grant recipients may, as an alternative to the last resort housing procedures at Subpart G, adopt a written policy in accordance with 24 CFR 570.606(b) under which displaced persons will be provided relocation assistance at levels that will ensure the availability of a comparable replacement dwelling.

To facilitate relocation in a timely and cost-effective manner, Agencies are encouraged to provide referrals to comparable replacement dwellings at the time of the initiation of negotiations (defined at § 42.2(k)) or as soon as feasible thereafter. Timely notification of the specific comparable replacement dwelling and the price or rent used as the basis for establishing the upper limit of the replacement housing payment (see § 42.205(b)(2)(i)) is an essential step in the relocation process. Unless such notification is provided in a timely manner, the level of replacement housing assistance would be based on the purchase price or rent of the decent, safe and sanitary dwelling to which the person actually moves, whether or not the resulting compensation exceeds that necessary to relocate to a comparable replacement dwelling.

Section 42.403(a)(1) permits the Agency to adjust the asking price for the comparable replacement dwelling that is used as the basis for computing the upper limit of a replacement housing payment, if the adjustment can be justified by local market data. It should be noted that a comparable replacement dwelling must be actually available to the person to be displaced. It cannot be a dwelling that was recently sold and therefore not available to the person. Nor can the payment be based on a statistical average of recent sales prices. Although very recent sales prices of dwellings similar to the comparable dwelling may serve as a basis for adjusting the asking price, should the comparable replacement dwelling be sold at a price above the adjusted price, the Agency may be required to reestablish the upper limit of the replacement housing payment on the basis of the actual sales price or to select another comparable replacement dwelling for this purpose.

#### Executive Order 12291

This rule does not constitute a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981.

Analysis of the rule indicates that it does not (1) have an annual effect of 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.

#### Regulatory Flexibility Act of 1980

Under the provisions of section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. The primary effect on grantees administering the rule will be a reduction in administrative costs and other burdens resulting from the simplification and clarification of certain policies and the elimination of policy differences among the Federal agencies promulgating this common rule. A small number of displaced businesses would no longer be eligible to choose a fixed payment (up to \$10,000) in lieu of a payment for their actual moving expenses. However, there would be minimal effect on the relocation assistance provided to other displaced businesses and all displaced businesses would remain eligible for reimbursement of their actual moving expenses.

#### Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, 20410.

#### HUD Semiannual Agenda

This rule was listed as sequence number 907 in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 44199) under Executive Order 12291 and the Regulatory Flexibility Act.

#### Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of Paperwork Reduction Act of 1980 (44 U.S.C. 3501-

3520) and have been assigned OMB Control Number 2506-0011.

#### List of Subjects in 24 CFR

##### 24 CFR Part 42

Administrative practice and procedure; Claims; Community development; Grant programs: housing and community development; Loan programs: housing and community development; Manufactured homes; Real property acquisition; Relocation assistance; Reporting and recordkeeping requirements.

##### 24 CFR Part 43

Loan programs: housing and community development; Relocation assistance.

Title 24 of the Code of Federal Regulations is amended as follows:

Dated: February 21, 1986.

Samuel R. Pierce, Jr.,  
Secretary.

1. Part 42 is revised as set forth at the end of this document.

#### PART 42—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

##### Subpart A—General

###### Sec.

- 42.1 Purpose.
- 42.2 Definitions.
- 42.3 No duplication of payments.
- 42.4 Assurance, monitoring and corrective action.
- 42.5 Manner of notices.
- 42.6 Administration of jointly-funded projects.
- 42.7 Federal agency waiver of regulations.
- 42.8 Compliance with other laws and regulations.
- 42.9 Recordkeeping and reports.
- 42.10 Appeals.

##### Subpart B—Real Property Acquisition

- 42.101 Applicability of acquisition requirements.
- 42.102 Basic acquisition policies.
- 42.103 Criteria for appraisals.
- 42.104 Review of appraisals.
- 42.105 Acquisition of tenant-owned improvements.
- 42.106 Expenses incidental to transfer of title to the agency.
- 42.107 Certain litigation expenses.
- 42.108 Donations.

##### Subpart C—General Relocation Requirements

- 42.201 Purpose.
- 42.202 Applicability.
- 42.203 Relocation notices.
- 42.204 Availability of comparable replacement dwelling before displacement.
- 42.205 Relocation assistance advisory services.

- 42.206 Eviction for cause.  
 42.207 General requirements—claims for relocation payments.  
 42.208 Relocation payments not considered as income.

#### Subpart D—Payments for Moving and Related Expenses

- 42.301 Payment for actual reasonable moving and related expenses—residential moves.  
 42.302 Fixed payment for moving expenses—residential moves.  
 42.303 Payment for actual reasonable moving and related expenses—nonresidential moves.  
 42.304 Fixed payment for moving expenses—nonresidential moves.  
 42.305 Ineligible moving and related expenses.

#### Subpart E—Replacement Housing Payments

- 42.401 Replacement housing payment for 180-day homeowner-occupants.  
 42.402 Replacement housing payment for 90-day occupants.  
 42.403 Additional rules governing replacement housing payments.

#### Subpart F—Mobile (Manufactured) Homes

- 42.501 Applicability.  
 42.502 Moving and related expenses—mobile (manufactured) homes.  
 42.503 Replacement housing payment for 180-day mobile (manufactured) homeowner-occupants.  
 42.504 Replacement housing payment for 90-day mobile (manufactured) home occupants.  
 42.505 Additional rules governing relocation payments to mobile (manufactured) home occupants.

#### Subpart G—Last Resort Housing

- 42.601 Applicability.  
 42.602 Methods of providing replacement housing.

Appendix A—Additional Information.  
 Appendix B—Statistical Report Form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

### PART 43—PROVISIONS OF REPLACEMENT HOUSING UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

2. The authority citation for Part 43 is revised to read as set forth below and any citation following any section in Part 43 is removed.

Authority: Section 215 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601-4655); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

#### Subpart A—[Removed and Reserved]

3. Part 43 is amended by removing and reserving Subpart A.

### DEPARTMENT OF LABOR

#### 29 CFR Part 12

FOR FURTHER INFORMATION CONTACT: Joseph McGovern, Office of Space and Telecommunications Management, 200 Constitution Avenue, N.W., Washington, DC 20210, Telephone: (202) 523-6405.

#### List of Subjects in 29 CFR Part 12

Real property acquisition, Relocation assistance.

Title 29 of the Code of Federal Regulations is amended by adding Part 12 as set forth at the end of this document.

Thomas C. Komarek,  
*Assistant Secretary for Administration and Management.*

### PART 12—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

#### Subpart A—General

- Sec.  
 12.1 Purpose.  
 12.2 Definitions.  
 12.3 No duplication of payments.  
 12.4 Assurances, monitoring and corrective action.  
 12.5 Manner of notices.  
 12.6 Administration of jointly-funded projects.  
 12.7 Federal agency waiver of regulations.  
 12.8 Compliance with other laws and regulations.  
 12.9 Recordkeeping and reports.  
 12.10 Appeals.

#### Subpart B—Real Property Acquisition

- 12.101 Applicability of acquisition requirements.  
 12.102 Basic acquisition policies.  
 12.103 Criteria for appraisals.  
 12.104 Review of appraisals.  
 12.105 Acquisition of tenant-owned improvements.  
 12.106 Expenses incidental to transfer of title to the agency.  
 12.107 Certain litigation expenses.  
 12.108 Donations.

#### Subpart C—General Relocation Requirements

- 12.201 Purpose.  
 12.202 Applicability.  
 12.203 Relocation information and written notices.  
 12.204 Availability of comparable replacement dwelling before displacement.  
 12.205 Relocation assistance advisory services.  
 12.206 Eviction for cause.  
 12.207 General requirements—claims for relocation payments.

- 12.208 Relocation payments not considered as income.

#### Subpart D—Payments for Moving and Related Expenses

- 12.301 Payment for actual reasonable moving and related expenses—residential moves.  
 12.302 Fixed payment for moving expenses—residential moves.  
 12.303 Payment for actual reasonable moving and related expenses—nonresidential moves.  
 12.304 Fixed payment for moving expenses—nonresidential moves.  
 12.305 Ineligible moving and related expenses.

#### Subpart E—Replacement Housing Payments

- 12.401 Replacement housing payment for 180-day homeowner-occupants.  
 12.402 Replacement housing payment for 90-day occupants.  
 12.403 Additional rules governing replacement housing payments.

#### Subpart F—Mobile Homes

- 12.501 Applicability.  
 12.502 Moving and related expenses—mobile homes.  
 12.503 Replacement housing payment for 180-day mobile home owner-occupants.  
 12.504 Replacement housing payment for 90-day mobile home occupants.  
 12.505 Additional rules governing relocation payments to mobile home occupants.

#### Subpart G—Last Resort Housing

- 12.601 Applicability.  
 12.602 Methods of providing replacement housing.

Appendix A Additional information.  
 Appendix B Statistical report form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, 84 Stat. 1894 (42 U.S.C. 4601.)

### DEPARTMENT OF DEFENSE

#### 32 CFR Parts 259, 641, and 742

FOR FURTHER INFORMATION CONTACT: Jerome Liess, Department of the Army, Office of the Chief Engineers, 20 Massachusetts Ave., N.W., Washington, D.C. 20314-1000 (202-272-0517).

ADDITIONAL SUPPLEMENTARY INFORMATION: This regulation replaces existing Department of the Army and Department of the Navy regulations published in 32 CFR Part 641 and 32 CFR Part 742, respectively, with a single uniform regulation for the three military departments of the Department of Defense. Since the Department of the Army is the land acquisition agent for the Department of the Air Force, no regulations have been issued by that Department. Procedures for the processing of applications for assistance

and appeals under the Act remain the same as under the prior regulations.

#### Lists of Subjects in 32 CFR Part 259

Real property acquisition, Relocation requirements, Moving and related expenses, Replacement housing, Mobile home relocation, Last resort housing, Relocation assistance.

Linda Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

1. Title 32 of the Code of Federal Regulations is amended by adding Part 259 as set forth at the end of this document.

### PART 259—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

#### Subpart A—General

Sec.

- 259.1 Purpose.
- 259.2 Definitions.
- 259.3 No duplication of payments.
- 259.4 Assurances, monitoring and corrective action.
- 259.5 Manner of notices.
- 259.6 Administration of jointly-funded projects.
- 259.7 Federal agency waiver of regulations.
- 259.8 Compliance with other laws and regulations.
- 259.9 Recordkeeping and reports.
- 259.10 Appeals.

#### Subpart B—Real Property Acquisition

- 259.101 Applicability of acquisition requirements.
- 259.102 Basic acquisition policies.
- 259.103 Criteria for appraisals.
- 259.104 Review of appraisals.
- 259.105 Acquisition of tenant-owned improvements.
- 259.106 Expenses incidental to transfer of title to the agency.
- 259.107 Certain litigation expenses.
- 259.108 Donations.

#### Subpart C—General Relocation Requirements

- 259.201 Purpose.
- 259.202 Applicability.
- 259.203 Relocation notices.
- 259.204 Availability of comparable replacement dwelling prior to displacement.
- 259.205 Relocation assistance advisory services.
- 259.206 Eviction for cause.
- 259.207 General requirements—claims for relocation payments.
- 259.208 Relocation payments not considered as income.

#### Subpart D—Payments for Moving and Related Expenses

- 259.301 Payments for actual reasonable moving and related expenses—residential moves.
- 259.302 Fixed payment for moving expenses—residential moves.

259.303 Payment for actual reasonable moving and related expenses—nonresidential moves.

259.304 Fixed payment for moving expenses—nonresidential moves.

259.305 Ineligible moving and related expenses.

#### Subpart E—Replacement Housing Payment

259.401 Replacement housing payments for 180-day homeowner-occupants.

259.402 Replacement housing payments for 90-day occupants.

259.403 Additional rules governing replacement housing payments.

#### Subpart F—Mobile Homes

259.501 Applicability.

259.502 Moving and related expenses—mobile homes.

259.503 Replacement housing payments for 180-day mobile home occupants.

259.504 Replacement housing payments for 90-day mobile home occupants.

259.505 Additional rules governing relocation payments to mobile home occupants.

#### Subpart G—Last Resort Housing

259.601 Applicability.

259.602 Methods of providing replacement housing.

Appendix A—Additional information.

Appendix B—Statistical report form.

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

### PARTS 641 and 742—[REMOVED AND RESERVED]

2. Title 32 is further amended by removing and reserving parts 641 and 742.

## DEPARTMENT OF EDUCATION

### 34 CFR Part 15

#### FOR FURTHER INFORMATION CONTACT:

Gary Rasmussen, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 1175, Washington, D.C. 20202. Telephone: (202) 245-0306.

#### ADDITIONAL SUPPLEMENTARY

**INFORMATION:** These regulations governing Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs replace previous uniform regulations published by the Department of Health, Education, and Welfare on April 2, 1973 (38 FR 8492), which were adopted and republished with appropriate conforming technical amendments by the Department of Education on May 9, 1980 (45 FR 30825). The text of these regulations is explained elsewhere in this document.

### Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

### List of Subjects in 34 CFR Part 15

Government property, Relocation assistance, Real property acquisition.

Title 34 of the Code of Federal Regulations is amended by revising Part 15 as set forth at the end of this document.

Dated: February 24, 1986.

William J. Bennett,

Secretary of Education.

### PART 15—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

#### Subpart A—General

Sec.

- 15.1 Purpose.
- 15.2 Definitions.
- 15.3 No duplication of payments.
- 15.4 Assurances, monitoring and corrective action.
- 15.5 Manner of notices.
- 15.6 Administration of jointly-funded projects.
- 15.7 Federal agency waiver of regulations.
- 15.8 Compliance with other laws and regulations.
- 15.9 Recordkeeping and reports.
- 15.10 Appeals.

#### Subpart B—Real Property Acquisition

- 15.101 Applicability of acquisition requirements.
- 15.102 Basic acquisition policies.
- 15.103 Criteria for appraisals.
- 15.104 Review of appraisals.
- 15.105 Acquisition of tenant-owned improvements.
- 15.106 Expenses incidental to transfer of title to the agency.
- 15.107 Certain litigation expenses.
- 15.108 Donations.

#### Subpart C—General Relocation Requirements

- 15.201 Purpose.
- 15.202 Applicability.
- 15.203 Relocation notices.
- 15.204 Availability of comparable replacement dwelling before displacement.

- 15.205 Relocation assistance advisory services.  
 15.206 Eviction for cause.  
 15.207 General requirements—claims for relocation payments.  
 15.208 Relocation payments not considered as income.

#### Subpart D—Payments for Moving and Related Expenses

- 15.301 Payment for actual reasonable moving and related expenses—residential moves.  
 15.302 Fixed payment for moving expenses—residential moves.  
 15.303 Payment for actual reasonable moving and related expenses—nonresidential moves.  
 15.304 Fixed payment for moving expenses—nonresidential moves.  
 15.305 Ineligible moving and related expenses.

#### Subpart E—Replacement Housing Payments

- 15.401 Replacement housing payment for 180-day homeowner-occupants.  
 15.402 Replacement housing payment for 90-day occupants.  
 15.403 Additional rules governing replacement housing payments.

#### Subpart F—Mobile Homes

- 15.501 Applicability.  
 15.502 Moving and related expenses—mobile homes.  
 15.503 Replacement housing payment for 180-day mobile homeowner-occupants.  
 15.504 Replacement housing payment for 90-day mobile home occupants.  
 15.505 Additional rules governing relocation payments to mobile home occupants.

#### Subpart G—Last Resort Housing

- 15.601 Applicability.  
 15.602 Methods of providing replacement housing.

Appendix A—Additional information.

Appendix B—Statistical report form.

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 94 Stat. 1894 (42 U.S.C. 4601).

### PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

#### 36 CFR Part 904

##### FOR FURTHER INFORMATION CONTACT:

Mr. Jerry M. Smedley, Director of Development Operations/Acting Deputy Director of Development (202/724-9068), or Mr. Reginald H. Robinson, Program Manager (202/724-9068), Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, N.W., Washington, D.C. 20004-1703.

##### ADDITIONAL SUPPLEMENTARY

INFORMATION: This regulation creates significant changes in the existing regulation of the Pennsylvania Avenue Development Corporation as follows:

#### Subpart A—General

##### Section 904.2 Definitions.

##### (h) Farm operation.

No farm operations currently exist within the Pennsylvania Avenue development area, as that area is defined in 40 U.S.C. Section 871(f), however, this definition and the provision in this regulation related to farm operations are included here for uniformity.

#### Subpart F—Mobile Homes

No mobile homes currently exist within the Pennsylvania Avenue development area, as that area is defined in 40 U.S.C. Section 871(f), however, this Subpart relating to mobile homes is included here for uniformity.

#### List of Subjects in 36 CFR Part 904

Relocation assistance, Real property acquisition, Reporting and recordkeeping requirements.

Title 36 of the Code of Federal Regulations is amended by revising Part 904 as set forth at the end of this document.

M.J. Brodie,  
 Executive Director.

### PART 904—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

#### Subpart A—General

- Sec.  
 904.1 Purpose.  
 904.2 Definitions.  
 904.3 No duplication of payments.  
 904.4 Assurances, monitoring and corrective action.  
 904.5 Manner of notices.  
 904.6 Administration of jointly-funded projects.  
 904.7 Federal agency waiver of regulations.  
 904.8 Compliance with other laws and regulations.  
 904.9 Recordkeeping and reports.  
 904.10 Appeals.

#### Subpart B—Real Property Acquisition

- 904.101 Applicability of acquisition requirements.  
 904.102 Basic acquisition policies.  
 904.103 Criteria for appraisals.  
 904.104 Review of appraisals.  
 904.105 Acquisition of tenant-owned improvements.  
 904.106 Expenses incidental to transfer of title to the agency.  
 904.107 Certain litigation expenses.  
 904.108 Donations.

#### Subpart C—General Relocation Requirements

- 904.201 Purpose.  
 904.202 Applicability.  
 904.203 Relocation of information and written notices.

- 904.204 Availability of comparable replacement dwelling before displacement.  
 904.205 Relocation assistance advisory services.  
 904.206 Eviction for cause.  
 904.207 General requirements—claims for relocation payments.  
 904.208 Relocation payments not considered as income.

#### Subpart D—Payments for Moving and Related

- 904.301 Payment for actual reasonable moving and related expenses—nonresidential moves.  
 904.302 Fixed payment for moving expenses—residential moves.  
 904.303 Payment for actual reasonable moving and related expenses—nonresidential moves.  
 904.304 Fixed payment for moving expenses—nonresidential moves.  
 904.305 Ineligible moving and related expense.

#### Subpart E—Replacement Housing Payments

- 904.401 Replacement housing payment for 180-day homeowner-occupants.  
 904.402 Replacement housing payment for 90-day occupants.  
 904.403 Additional rules governing replacement housing payments.

#### Subpart F—Mobile Homes

- 904.501 Applicability.  
 904.502 Moving and related expenses—mobile homes.  
 904.503 Replacement housing payment for 180-day mobile home owner occupants.  
 904.504 Replacement housing payment for 90-day mobile home occupants.  
 904.505 Additional rules governing relocation payments to mobile home occupants.

#### Subpart G—Last Resort Housing

- 904.601 Applicability.  
 904.602 Methods of providing replacement housing.

Appendix A—Additional information.

Appendix B—Statistical report form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

### VETERANS ADMINISTRATION

#### 38 CFR Part 25

##### FOR FURTHER INFORMATION CONTACT:

Pam Swiatek, Chief, Real Estate Division (098C), Office of Construction, Veterans' Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-3105

##### ADDITIONAL SUPPLEMENTARY

INFORMATION: The Veterans' Administration, in accordance with the Presidential Memorandum of February 27, 1985, and in conjunction with other

covered agencies, published on May 28, 1985, in the Federal Register, a proposed common rule implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 to replace those contained in 38 CFR Part 25. Title 38 CFR is amended by removing the existing regulations in Part 25, and inserting the final common rule in that part.

In response to the May 28 Federal Register publication, the VA received one comment by the State of Washington Department of Transportation objecting to § 25.3, which placed "no duplication of payments" responsibility on the acquiring agency, as burdensome. The suggested change has been considered. The rule never intended to inquire the agencies to make extensive searches to insure that there is no duplication of payments. A section has been added to Appendix A explaining that an agency is required to avoid duplicating only those payments of which it has knowledge at the time it is making the payment under the regulations.

#### List of Subjects in 38 CFR Part 25

Relocation assistance, Veterans' Administration, Real property acquisition.

Title 38 of the Code of Federal Regulations is amended by revising Part 25 to read as forth at the end of this document.

Approved: February 14, 1986.

Everett Alvarez, Jr.,  
Acting Administrator.

### PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

#### Subpart A—General

- Sec.
- 25.1 Purpose.
  - 25.2 Definitions.
  - 25.3 No duplication of payments.
  - 25.4 Assurance, monitoring and corrective action.
  - 25.5 Manner of notices.
  - 25.6 Administration of jointly funded projects.
  - 25.7 Federal agency waiver of regulations.
  - 25.8 Compliance with other laws and regulations.
  - 25.9 Recordkeeping and reports.
  - 25.10 Appeals.

#### Subpart B—Real Property Acquisition

- 25.101 Applicability of acquisition requirements.
- 25.102 Basic Acquisition policies.
- 25.103 Criteria for appraisals.
- 25.104 Review of appraisals.

#### Sec.

- 25.105 Acquisition of tenant-owned improvements.
- 25.106 Expenses incidental to transfer of title to the agency.
- 25.107 Certain litigation expenses.
- 25.108 Donations.

#### Subpart C—General Relocation Requirements

- 25.201 Purpose.
- 25.202 Applicability.
- 25.203 Relocation notices.
- 25.204 Availability of comparable replacement dwelling before displacement.
- 25.205 Relocation assistance advisory services.
- 25.206 Eviction for cause.
- 25.207 General requirements—claims for relocation payments.
- 25.208 Relocation payments not considered as income.

#### Subpart D—Payments for Moving and Related Expenses

- 25.301 Payment for actual reasonable moving and related expenses—residential moves.
- 25.302 Fixed payment for moving expenses—residential moves.
- 25.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
- 25.304 Fixed payment for moving expenses—nonresidential moves.
- 25.305 Ineligible moving and related expenses.

#### Subpart E—Replacement Housing Payments

- 25.401 Replacement housing payment for 180-day homeowner-occupants.
- 25.402 Replacement housing payment for 90-day occupants.
- 25.403 Additional rules governing replacement housing payments.

#### Subpart F—Mobile Homes

- 25.501 Applicability.
- 25.502 Moving and related expenses—mobile homes.
- 25.503 Replacement housing payment for 180-day mobile homeowner-occupant.
- 25.504 Replacement housing payment for 90-day mobile homeowner-occupants.
- 25.505 Additional rules governing relocation payments to mobile home occupants.

#### Subpart G—Last Resort Housing

- 25.601 Applicability.
- 25.602 Methods of providing replacement housing.

#### Appendix A—Additional Information.

#### Appendix B—Statistical Report Form.

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 4

[FRL 2965-6]

FOR FURTHER INFORMATION CONTACT: Marshall Schy, Grants Administration Division (PM-216), Room 3317M, (202) 382-5298. (This is not a toll-free number.)

#### ADDITIONAL SUPPLEMENTARY

INFORMATION: Federal agencies are jointly publishing a common final rule to implement cost-effective policies and procedures governing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.). The rule, as a part of the President's regulatory relief program, is designed to reduce the burden of regulation and paper work for EPA's assistance recipients. When effective, this rule will supersede the existing EPA Uniform Act rule at 40 CFR Part 4. In addition to the items discussed above in the common preamble, EPA wishes to bring the following sections to the attention of its readers.

#### Section 4.101 Real Property Acquisition (General).

Section 4.101(b) provides a benchmark of 50 years beyond which the acquisition requirements of this rule clearly apply to leases. Appendix A at § 4.101(b) notes that an Agency may apply those requirements to a less-than-full-fee acquisition short of 50 years which, in its judgment, should be covered. In the past, under the wastewater treatment grant program, EPA has applied Uniform Act requirements to necessary acquisitions if they were for 20 years or longer. EPA will continue to use this standard under the common rule.

#### Section 4.103 Criteria for Appraisals.

The rule significantly expands the criteria for appraisals of real property under EPA and EPA-assisted programs. Section 4.103(a) defines an appraisal; § 4.103(b) provides minimum standards for the content of appraisals; § 4.103(e) discusses qualifications for appraisers; and § 4.103(f) discusses conflict of interest in appraisals.

#### Section 4.104 Review of Appraisals.

The rule adds a requirement that the Agency have an appraisal review process. The purpose of the review is to assure that all appraisals meet Agency appraisal standards.

**Section 4.108 Donations.**

The rule permits the full or partial donation of real property to an Agency, as long as the donor is informed of his right to just compensation. Similarly, an owner of real property may waive his right to an appraisal of his property as long as he is informed of that right. This will allow the Agency to avoid the cost of appraisals in situations where the owner believes the benefit he will receive from the project is greater than the value of the interest being acquired, e.g., easements to provide water sewer lines. In addition, it will allow the Agency to use one appraisal as the basis for determining just compensation for a number of other, similar parcels, as long as the owner of such parcel(s) waives the right to an appraisal.

This has been a long-standing problem in EPA's wastewater treatment program under which State agencies may purchase numerous easements, each often of nominal value. In this situation, the cost of obtaining an appraisal for each acquisition may well exceed the value of the interest being acquired. This not only is costly and unproductive, but, in some cases, may affect the viability of the proposed project.

**Section 4.207(e) Multiple occupants of one displacement dwelling.**

EPA's previous rule (at § 4.333) provided for separate replacement housing payments for multiple occupants of a single dwelling. The common final rule provides for a prorated share of all relocation payments in such multiple occupancy situations, except when the displacing agency determines that more than one household had been maintained. When that occurs, each household has a separate entitlement to relocation payments.

**Section 4.304(c) Fixed payment for moving expenses—Nonresidential moves [Farm operation].**

The common final rule modifies a portion of EPA's current requirement found at § 4.205-3. That provision, in part, requires that a partial acquisition of a farm operation leave the farm operation with an uneconomic remnant in order for a fixed payment to be payable. The rule only requires that in such cases, the partial acquisition cause a substantial change in the nature of the farm operation.

**Section 4.403(a) Determining cost of comparable replacement dwelling.**

The current EPA rule at § 4.330 provides three methods of determining

the cost of a comparable replacement dwelling, i.e., using dwelling units available on the market, the schedule method, and alternative methods if the market and schedule methods are inappropriate. The common final rule retains only the market method.

**Section 4.336 Certification of eligibility pending purchase of replacement dwelling.**

The common final rule deletes the requirement at § 4.336 that the displacing agency, at the request of a displaced person, provide a certificate concerning eligibility for a replacement housing payment. While this no longer is required, EPA encourages displacing agencies to continue to provide this and similar assistance to displaced persons.

**Section 4.502 EPA share of costs.**

The common final rule deletes the provision at § 4.502(a) of EPA's current regulation requiring that payments and other costs under the Uniform Act be shared in the same manner as other project costs. It also deletes the provision at § 4.502(c) that EPA may advance to a State agency the EPA share of the cost of certain Uniform Act payments if it is determined to be necessary for the expeditious completion of a program or a project. These deletions are for regulatory simplification. Since both provisions are statutory (section 211 of the Uniform Act), the requirements are unchanged.

**List of Subjects in 40 CFR Part 4**

Real property acquisition, Relocation assistance.

Title 40 of the Code of Federal Regulations is amended by revising Part 4 as set forth at the end of this document.

Lee M. Thomas,  
Administrator.

February 21, 1985.

**PART 4—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

**Subpart A—General**

Sec.

- 4.1 Purpose.
- 4.2 Definitions.
- 4.3 No duplication of payments.
- 4.4 Assurances, monitoring and corrective action.
- 4.5 Manner of notices.
- 4.6 Administration of jointly-funded projects.
- 4.7 Federal agency waiver of regulations.
- 4.8 Compliance with other laws and regulations.
- 4.9 Recordkeeping and reports.
- 4.10 Appeals.

**Subpart B—Real Property Acquisition**

- 4.101 Applicability of acquisition requirements.
- 4.102 Basic acquisition policies.
- 4.103 Criteria for appraisals.
- 4.104 Review of appraisals.
- 4.105 Acquisition of tenant-owned improvements.
- 4.106 Expenses incidental to transfer of title to the agency.
- 4.107 Certain litigation expenses.
- 4.108 Donations.

**Subpart C—General Relocation Requirements**

- 4.201 Purpose.
- 4.202 Applicability.
- 4.203 Relocation notices.
- 4.204 Availability of comparable replacement dwelling before displacement.
- 4.205 Relocation assistance advisory services.
- 4.206 Eviction for cause.
- 4.207 General requirements—claims for relocation payments.
- 4.208 Relocation payments not considered as income.

**Subpart D—Payments for Moving and Related Expenses**

- 4.301 Payment for actual reasonable moving and related expenses—residential moves.
- 4.302 Fixed payment for moving expenses—residential moves.
- 4.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
- 4.304 Fixed payment for moving expenses—nonresidential moves.
- 4.305 Ineligible moving and related expenses.

**Subpart E—Replacement Housing Payments**

- 4.401 Replacement housing payment for 180-day homeowner-occupants.
- 4.402 Replacement housing payment for 90-day occupants.
- 4.403 Additional rules governing replacement housing payments.

**Subpart F—Mobile Homes**

- 4.501 Applicability.
- 4.502 Moving and related expenses—mobile homes.
- 4.503 Replacement housing payment for 180-day mobile home owner-occupants.
- 4.504 Replacement housing payment for 90-day mobile home occupants.
- 4.505 Additional rules governing relocation payments to mobile home occupants.

**Subpart G—Last Resort Housing**

- 4.601 Applicability.
- 4.602 Methods of providing replacement housing.

Appendix A—Additional information.  
Appendix B—Statistical report form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

**GENERAL SERVICES  
ADMINISTRATION****41 CFR Parts 101-6, 101-18 and  
105-51**

**FOR FURTHER INFORMATION CONTACT:** Mr. John H. Quigley, Director, Space Management Division (202-566-1875) or Mr. John P. Spock, Space Management Division (202-523-5549), General Services Administration, 18th and F Streets, NW., Washington, DC 20405. Office hours Monday through Friday from 8:00 to 4:30 P.M., ET.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** The recordkeeping and information collection requirements included in these regulations have been submitted or are simultaneously being submitted for approval to the Office of Management and Budget.

To promote the uniform and effective administration of Federal relocation assistance and real property acquisition as provided for in the Uniform Act and the Presidential Memorandum of February 27, 1985, GSA revokes its existing implementing regulations in 41 CFR 101-18.000 through 101-18.003-19 and 41 CFR 101-18.300 through 101-18.312, and adopts the uniform model regulation published herein and promulgates it at 41 CFR 105-51. The model regulation in general provides greater details than exist under GSA's present implementing regulations. The subject coverage is generally the same, however, the model regulation differs as follows:

*Section 105-51.103 No duplication of payments, and § 105-51.104, Assurances, monitoring and corrective action, are new.*

*Section 105-51.101(b) Revises GSA's regulations on leasehold acquisition as published in 41 CFR 101-18.312.*

*Section 105-51.102(g) Is a new requirement for updating offers of just compensation.*

*Section 105-51.103 Expands GSA's criteria for appraisals.*

Subparts C, D and E, dealing with general relocation requirements, payment for moving and related expenses, and replacement housing payments, respectively, provide expanded details over those contained in GSA's regulations.

Subpart F on mobile homes is new.

Subpart G expands GSA's present coverage of last resort housing. Appendix A, Additional information is new.

Effect on other Directives. The provisions of 41 CFR indicated above are superseded by this rule. The Governmentwide regulation, issued by

GSA to implement the Uniform Act, at 41 CFR 101-6.1 is cancelled.

**List of Subjects in 41 CFR Part 105-51**

Real property acquisition; Relocation assistance.

Title 41 of the Code of Federal Regulations is amended as set forth below.

1. Title 41 is amended by adding Part 105-51 to read as follows:

**PART 105-51—UNIFORM  
RELOCATION ASSISTANCE AND  
REAL PROPERTY ACQUISITION FOR  
FEDERAL AND FEDERALLY ASSISTED  
PROGRAMS****Subpart 105-51.0—General**

Sec.	Purpose.
105-51.001	Purpose.
105-51.002	Definitions.
105-51.003	No duplications of payments.
105-51.004	Assurances, monitoring and corrective action.
105-51.005	Manner of notices.
105-51.006	Administration of jointly-funded projects.
105-51.007	Federal agency waiver of regulations.
105-51.008	Compliance with other laws and regulations.
105-51.009	Recordkeeping and reports.
105-51.010	Appeals.

**Subpart 105-51.1—Real Property  
Acquisition**

105-51.101	Applicability of acquisition requirements.
105-51.102	Basic acquisition policies.
105-51.103	Criteria for appraisals.
105-51.104	Review of appraisals.
105-51.105	Acquisition of tenant-owned improvements.
105-51.106	Expenses incidental to transfer of title to the agency.
105-51.107	Certain litigation expenses.
105-51.108	Donations.

**Subpart 105-51.2—General Relocation  
Requirements**

105-51.201	Purpose.
105-51.202	Applicability.
105-51.203	Relocation information and written notices.
105-51.204	Availability of comparable replacement dwelling prior to displacement.
105-51.205	Relocation assistance advisory services.
105-51.206	Eviction for cause.
105-51.207	General requirements—claims for relocation payments.
105-51.208	Relocation payments not considered as income.

**Subpart 105-51.3—Payments for Moving  
and Related Expenses**

105-51.301	Payments for actual reasonable moving and related expenses—residential moves.
105-51.302	Fixed payment for moving expenses—residential moves.

105-51.303	Payment for actual reasonable moving and related expenses—nonresidential moves.
105-51.304	Fixed payment for moving expenses—nonresidential moves.
105-51.305	Ineligible moving and related expenses.

**Subpart 105-51.4—Replacement Housing  
Payments**

105-51.401	Replacement housing payments for 180-day homeowner-occupants.
105-51.402	Replacement housing payments for 90-day occupants.
105-51.403	Additional rules governing replacement housing payments.

**Subpart 105-51.5—Mobile Homes**

105-51.501	Applicability.
105-51.502	Moving and related expenses—mobile homes.
105-51.503	Replacement housing payments for 180-day mobile homeowner occupants.
105-51.504	Replacement housing payments for 90-day mobile home occupants.
105-51.505	Additional rules governing relocation payments to mobile home occupants.

**Subpart 105-51.6—Last Resort Housing**

105-51.601	Applicability.
105-51.602	Methods of providing replacement housing.

Appendix A—Additional information.

Appendix B—Statistical report form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

2. Part 105-51 is further amended as follows:

a. Change "Subpart D" to read "Subpart 105-51.3" in the following places:

105-51.501

105-51.502(a)(2)

b. Change "Subpart E" to read "Subpart 105-51.4" in the following places:

§ 105-51.501

§ 105-51.505(a)

§ 105-51.601(a)

c. In Appendix A change the subpart designations to read as set forth in the table of contents for Part 105-51 above.

**PART 101-6—MISCELLANEOUS  
REGULATIONS****Subpart 101-6.1—[Removed and  
Reserved]**

3. Subpart 101-6.1 is removed and reserved.

**PART 101-18—ACQUISITION OF REAL  
PROPERTY**

4. The authority citation for Part 101-18 continues to read as follows:

Authority: 63 Stat. 377 (40 U.S.C. 304c, 471, 490, 601-615); 73 Stat. 479; (40 U.S.C. 490 note); (42 U.S.C. 4201-4244); (40 U.S.C. 531-535); E.O. 11512, 35 FR 3979; 84 Stat. 1894, unless otherwise noted.

5. Part 101-18 is amended by removing § 101-18.003 through 101-18.003-19 and by removing and reserving Subpart 101-18.3 as follows:

§§101-18.003 through 101-18.003-19 [Removed].

#### Subpart 101-18.3—[Removed and Reserved]

Dated: February 20, 1986.

Paul Trause,  
Acting Administrator of General Services.

### DEPARTMENT OF THE INTERIOR

#### 41 CFR Part 114-50

**FOR FURTHER INFORMATION CONTACT:** Billy Lee Hart, Chief, Division of Real Property Management, Office of Acquisition and Property Management, Room 5517, Department of the Interior, Washington, D.C. 20240. Phone: 202-343-3336.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** Federal agencies are promulgating jointly a final common rule to implement cost-effective policies and procedures governing the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601). This final common rule is applicable to both direct Federal programs and projects and to federally-assisted programs and projects undertaken by State and local governments.

This regulation supersedes the existing Department of the Interior regulation governing Uniform Relocation Assistance and Real Property Acquisition found at 41 CFR Part 114-50. The principal changes that will be made in the current regulation are discussed below.

#### Section 114-50.302 (—2) (a) Definition of Agency.

The term agency has been clarified to mean that an agency within the Department of the Interior means bureau or office including those programs implemented by State or local governmental units with Federal or State financing.

#### Section 114-50.307 (—7) Federal Agency Waiver of Regulations.

The term agency in this section has also been clarified to mean that for the

purposes of this subpart Federal funding agencies include bureaus and offices.

The Department of the Interior is codifying the rule in Title 41 of the CFR as a subpart rather than as a part. Therefore, the section numbering will be different from the common rulemaking. The differences are displayed in the table of contents of Subpart 114.50.3 below. Conforming amendments are being made to correct the internal references in light of the differences between the Department of the Interior and the common rulemaking numbering.

#### List of Subjects in 41 CFR Part 114-50

Uniform relocation assistance and real property acquisition policies, Relocation assistance, Real property acquisition.

Title 41 of the Code of Federal Regulations is amended as set forth below.

Joseph E. Doddridge, Jr.,  
Deputy Assistant Secretary—Policy, Budget and Administration.

1. The authority citation for Part 114-50 continues to read as follows:

Authority: 5 U.S.C. 301, and sec. 213 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 1900 (42 U.S.C. 4601, 4633).

2. Part 114-50 is amended by revising Subpart 114-50.3 to read as set forth at the end of this document:

#### PART 114-50—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

##### Subpart 114-50.3—Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

###### General

- |                  |   |  |
|------------------|---|--|
| Sec.             |   |  |
| 114-50.301 (—1)  | Purpose.                                      |  |
| 114-50.302 (—2)  | Definitions.                                  |  |
| 114-50.303 (—3)  | No duplication of payments.                   |  |
| 114-50.304 (—4)  | Assurances, monitoring and corrective action. |  |
| 114-50.305 (—5)  | Manner of notices.                            |  |
| 114-50.306 (—6)  | Administration of jointly-funded projects.    |  |
| 114-50.307 (—7)  | Federal agency waiver of regulations.         |  |
| 114-50.308 (—8)  | Compliance with other laws and regulations.   |  |
| 114-50.309 (—9)  | Recordkeeping and reports.                    |  |
| 114-50.310 (—10) | Appeals.                                      |  |

###### Real Property Acquisition

- |                   |  |
|-------------------|--|
| 114-50.311 (—101) | Applicability of acquisition requirements. |
|-------------------|--|

- |  |  |  |
|--|--|--|
| Sec.                                   |  |  |
| 114-50.312 (—102)                      | Basic acquisition policies.  |  |
| 114-50.313 (—103)                      | Criteria for appraisals.   |  |
| 114-50.314 (—104)                      | Review of appraisals.  |  |
| 114-50.315 (—105)                      | Acquisition of tenant-owned improvements.                            |  |
| 114-50.316 (—106)                      | Expenses incidental to transfer of title to the agency.              |  |
| 114-50.317 (—107)                      | Certain litigation expenses.   |  |
| 114-50.318 (—108)                      | Donations.   |  |
| <b>General Relocation Requirements</b> |  |  |
| 114-50.321 (—201)                      | Purpose.   |  |
| 114-50.322 (—202)                      | Applicability.   |  |
| 114-50.323 (—203)                      | Relocation information and written notices.                          |  |
| 114-50.324 (—204)                      | Availability of comparable replacement dwelling before displacement. |  |
| 114-50.325 (—205)                      | Relocation assistance advisory services.                             |  |
| 114-50.326 (—206)                      | Eviction for cause.  |  |
| 114-50.327 (—207)                      | General requirements—claims for relocation payments.                 |  |
| 114-50.328 (—208)                      | Relocation payments not considered as income.                        |  |

###### Payments for Moving and Related Expenses

- |                   |   |
|-------------------|---|
| 114-50.331 (—301) | Payment for actual reasonable moving and related expenses—residential moves.    |
| 114-50.332 (—302) | Fixed payment for moving expenses—residential moves.                            |
| 114-50.333 (—303) | Payment for actual reasonable moving and related expenses—nonresidential moves. |
| 114-50.334 (—304) | Fixed payment for moving expenses—nonresidential moves.                         |
| 114-50.335 (—305) | Ineligible moving and related expenses.   |

###### Replacement Housing Payments

- |                   |  |
|-------------------|--|
| 114-50.341 (—401) | Replacement housing payment for 180-day homeowner-occupants. |
| 114-50.342 (—402) | Replacement housing payment for 90-day occupants.            |
| 114-50.343 (—403) | Additional rules governing replacement housing payments.     |

###### Mobile Homes

- |                   |  |
|-------------------|--|
| 114-50.351 (—501) | Applicability.   |
| 114-50.352 (—502) | Moving and related expenses—mobile homes.                                |
| 114-50.353 (—503) | Replacement housing payment for 180-day mobile homeowner-occupants.      |
| 114-50.354 (—504) | Replacement housing payment for 90-day mobile home occupants.            |
| 114-50.355 (—505) | Additional rules governing relocation payments to mobile home occupants. |

###### Last Resort Housing

- |                   |   |
|-------------------|---|
| 114-50.361 (—601) | Applicability.                            |
| 114-50.362 (—602) | Methods of providing replacement housing. |

Appendix A—Additional information.  
Appendix B—Statistical report form.

3. Subpart 114-50.3 is further amended as follows:

a. Change "this part" to read "this subpart" in the following places:

§ 114-50.307  
§ 114-50.343(e)

b. Change "this Subpart" to read "§§ 114-50.311 through 114-50.318" in the following places:

§ 114-50.311 (a) and (b)  
§ 114-50.315 (b) and (e)

c. Change "this Subpart prescribes" to read "Sections 114-50.321 through 114-50.328 prescribe" in § 114-50.321.

d. Change "This Subpart describes" to read "Sections 114-50.351 through 114-50.355 describe" in § 114-50.351.

e. Change "Subpart D" to read "§ 114-50.331 through 114-50.335" in the following places:

§ 114-50.351  
§ 114-50.352(a)(2)

f. Change "Subpart E" to read "§§ 114-50-341 through 114-50.343" in the following places:

§ 114-50.351  
§ 114-50.355(a)  
§ 114-50.361(a)

g. Change "this Subpart" to read "§ 114-50.361 through 114-50.362" in the following places:

§ 114-50.361(a) and (b)  
§ 114-50.362 introductory text and (d)

h. In Appendix A, remove the subpart designations from each of the headings.

i. In Appendix A, under the heading "Real Property Acquisition," change "this Subpart" to read "§§ 114-50.31 through 114-50.318" in the three places where it occurs.

#### Subparts 114-50.1, 114-50.2, and 114-50.4 through 114-50.13 [Removed and Reserved]

4. The Part is further amended by removing and reserving Subparts 114-50.1, 114-50.2, and 114-50.4 through 114-50.13.

### DEPARTMENT OF JUSTICE

#### 41 CFR Part 128-18

##### FOR FURTHER INFORMATION CONTACT:

Mr. Philip M. Zeidner, Department of Justice, Director, Facilities and Property Management Staff, Room 6315, Main Justice Building, 10th and Pennsylvania Avenue, NW., Washington, DC 20530.

##### ADDITIONAL SUPPLEMENTARY

**INFORMATION:** The Department of Justice is codifying the rule in Title 41 of the CFR as a subpart rather than as a part. Therefore, the section numbering will be different from the common rulemaking. The differences are displayed in the

Table of Contents of Subpart 128-18.50 below. Conforming amendments are being made to correct the internal references in light of the differences between the Department of Justice numbering and the common rulemaking.

This regulation, replaces the existing Department of Justice regulation published in 41 CFR Part 128-18.

#### List of Subjects in 41 CFR Part 128-18

Real property acquisition, Personal property, Relocation assistance.

Title 41 of the Code of Federal Regulations is amended by revising Part 128-18 as set forth at the end of this document.

Dated: February 21, 1986.

W. Lawrence Wallace,  
Assistant Attorney General for  
Administration.

1. Part 128-18 is revised as set forth at the end of this document.

### PART 128-18—ACQUISITION OF REAL PROPERTY

#### Subpart 128-18.50—Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs

##### Sec.

- 128-18.5001 (Subpart A) General.
- 128-18.5001-1 (—1) Purpose.
- 128-18.5001-2 (—2) Definitions.
- 128-18.5001-3 (—3) No duplication of payments.
- 128-18.5001-4 (—4) Assurances, monitoring and corrective action.
- 128-18.5001-5 (—5) Manner of notice.
- 128-18.5001-6 (—6) Administration of jointly-funded projects.
- 128-18.5001-7 (—7) Federal agency waiver of regulations.
- 128-18.5001-8 (—8) Compliance with other laws and regulations.
- 128-18.5001-9 (—9) Recordkeeping and reports.
- 128-18.5001-10 (—10) Appeals.
- 128-18.5002 (Subpart B) Real Property Acquisition.
- 128-18.5002-1 (—101) Applicability of acquisition requirements.
- 128-18.5002-2 (—102) Basic acquisition policies.
- 128-18.5002-3 (—103) Criteria for appraisals.
- 128-18.5002-4 (—104) Review of appraisals.
- 128-18.5002-5 (—105) Acquisition of tenant-owned improvements.
- 128-18.5002-6 (—106) Expenses incidental to transfer to title to the agency.
- 128-18.5002-7 (—107) Certain litigation expenses.
- 128-18.5002-8 (—108) Donations.
- 128-18.5003 (Subpart C) General Relocation Requirements.
- 128-18.5003-1 (—201) Purpose.
- 128-18.5003-2 (—202) Applicability.
- 128-18.5003-3 (—203) Relocation notices.
- 128-18.5003-4 (—204) Availability of comparable replacement dwelling before displacement.

##### Sec.

- 128-18.5003-5 (—205) Relocation assistance advisory services.
- 128-18.5003-6 (—206) Eviction for cause.
- 128-18.5003-7 (—207) General requirements—claims for relocation payments.
- 128-18.5003-8 (—208) Relocation payments not considered as income.
- 128-18.5004 (Subpart D) Payments for Moving and Related Expenses.
- 128-18.5004-1 (—301) Payments for actual reasonable moving and related expenses—residential moves.
- 128-18.5004-2 (—302) Fixed payment for moving expenses—residential moves.
- 128-18.5004-3 (—303) Payment for actual reasonable moving and related expenses—nonresidential moves.
- 128-18.5004-4 (—304) Fixed payment for moving expenses—nonresidential moves.
- 128-18.5004-5 (—305) Ineligible moving and related expenses.
- 128-18.5005 (Subpart E) Replacement Housing Payments.
- 128-18.5005-1 (—401) Replacement housing payments for 180-day homeowner-occupants.
- 128-18.5005-2 (—402) Replacement housing payment for 90-day occupants.
- 128-18.5005-3 (—403) Additional rules governing replacement housing payments.
- 128-18.5006 (Subpart F) Mobile Homes.
- 128-18.5006-1 (—501) Applicability.
- 128-18.5006-2 (—502) Moving and related expenses—mobile homes.
- 128-18.5006-3 (—503) Replacement housing payments for 180-day mobile home owner-occupants.
- 128-18.5006-4 (—504) Replacement housing payments for 90-day mobile home occupants.
- 128-18.5006-5 (—505) Additional rules governing relocation payments to mobile home occupants.
- 128-18.5007 (Subpart G) Last Resort Housing.
- 128-18.5007-1 (—601) Applicability.
- 128-18.5007-2 (—602) Methods of providing replacement housing.

Appendix A—Section-by-section analysis.  
Appendix B—Statistical report form.

**Authority:** Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

2. Part 128-18 is further amended as follows:

a. Change "this part" to read "this subpart" in the following places:

§ 128-18.5001-7  
§ 128-18.5003-1  
§ 128-18.5005-3(e)

b. Change "this subpart" to read "§ 128-18.5002" in the following places:

§ 128-18.5002-1 (a) and (b)  
§ 128-18.5002-5 (b) and (e)

c. Change "This Subpart" to read "§ 128-18.5003" in § 128-18.5003-1.

d. Change "This Subpart" to read "§ 128-18.5006" in § 128-18.5006-1.

e. Change "Subpart D" to read "§ 128-18.5004" in the following places:

§ 128-18.5006-1

f. Change "Subpart E" to read "§ 128-18.5005" in the following places:

§ 128-18.5005-2(b)

§ 128-18.5006-1

§ 128-18.5006-5(a)

§ 128-18.5007-1(a)

g. Change "this subpart" to read "§ 128-18.5007" in the following places:

§ 128-18.5007-1 (a) and (b)

§ 128-18.5007-2 introductory text and (d)

h. Change "This Subpart G" to read "§ 128-18.5007" in § 128-18.5005-3(b).

i. In Appendix A change the subpart designations to read as set forth in the table of contents for Subpart 128-18.50 above.

j. In Appendix A under § 128-18.5002 entitled "Real Property Acquisition" change "this subpart" to read "this section" in the places where it occurs.

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 25

**FOR FURTHER INFORMATION CONTACT:**  
John Scheibel, Federal Emergency  
Management Agency, 500 C Street, S.W.,  
Washington, D.C. (202) 646-4100.

#### List of Subjects in 44 CFR Part 25

Real property acquisition, Relocation assistance.

Title 44 of the Code of Federal Regulations is amended by adding Part 25 as set forth at the end of this document.

February 11, 1986.

Julius W. Becton, Jr.,

Director.

## PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

### Subpart A—General

Sec.

- 25.1 Purpose.
- 25.2 Definitions.
- 25.3 No duplication of payments.
- 25.4 Assurances, monitoring and corrective action.
- 25.5 Manner of notices.
- 25.6 Administration of jointly-funded projects.
- 25.7 Federal agency waiver of regulations.
- 25.8 Compliance with other laws and regulations.
- 25.9 Recordkeeping and reports.
- 25.10 Appeals.

Sec.

### Subpart B—Real Property Acquisition

- 25.101 Applicability of acquisition requirements.
- 25.102 Basic acquisition policies.
- 25.103 Criteria for appraisals.
- 25.104 Review of appraisals.
- 25.105 Acquisition of tenant-owned improvements.
- 25.106 Expenses incidental to transfer of title to the agency.
- 25.107 Certain litigation expenses.
- 25.108 Donations.

### Subpart C—General Relocation Requirements

- 25.201 Purpose.
- 25.202 Applicability.
- 25.203 Relocation notices.
- 25.204 Availability of comparable replacement dwelling before displacement.
- 25.205 Relocation assistance advisory services.
- 25.206 Eviction for cause.
- 25.207 General requirements—claims for relocation payments.
- 25.208 Relocation payments not considered as income.

### Subpart D—Payments for Moving and Related Expenses

- 25.301 Payment for actual reasonable moving and related expenses—residential moves.
- 25.302 Fixed payment for moving expenses—residential moves.
- 25.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
- 25.304 Fixed payment for moving expenses—nonresidential moves.
- 25.305 Ineligible moving and related expenses.

### Subpart E—Replacement Housing Payments

- 25.401 Replacement housing payment for 180-day homeowner-occupants.
- 25.402 Replacement housing payment for 90-day occupants.
- 25.403 Additional rules governing replacement housing payments.

### Subpart F—Mobile Homes

- 25.501 Applicability.
- 25.502 Moving and related expenses—mobile homes.
- 25.503 Replacement housing payment for 180-day mobile homeowner-occupants.
- 25.504 Replacement housing payment for 90-day mobile home occupants.
- 25.505 Additional rules governing relocation payments to mobile home occupants.

### Subpart G—Last Resort Housing

- 25.601 Applicability.
- 25.602 Methods of providing replacement housing.

Appendix A—Additional information.

Appendix B—Statistical report form.

**Authority:** Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-616, 84 Stat. 1894 (42 U.S.C. 4601).

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 15

**FOR FURTHER INFORMATION CONTACT:**  
Gary Houseknecht, Office of Assistance and Cost Policy at Room 513-D, Hubert H. Humphrey Building, 200 Independence Ave. SW Washington, D.C. 20201, or call (202) 245-7565.

#### ADDITIONAL SUPPLEMENTARY

**INFORMATION:** Federal agencies are jointly publishing a final rule to adopt cost-effective policies and procedures governing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (42 U.S.C. Sec. 4601.) The rule, as part of the President's regulatory relief program, is designed to reduce the burden of regulatory compliance and paperwork for the Department's assistance recipients.

This rule supersedes the existing Department of Health and Human Services regulation at 45 CFR Part 15. That rule was last revised on April 2, 1973 (38 FR 8492).

#### List of Subjects in 45 CFR Part 15

Real property acquisition, Relocation assistance.

Title 45 of the Code of Federal Regulations is amended by revising Part 15 as set forth at the end of this document.

Otis R. Bowen, M.D.,

Secretary.

February 18, 1986.

## PART 15—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

### Subpart A—General

Sec.

- 15.1 Purpose.
- 15.2 Definitions.
- 15.3 No duplication of payments.
- 15.4 Assurances, monitoring and corrective action.
- 15.5 Manner of notices.
- 15.6 Administration of jointly-funded projects.
- 15.7 Federal agency waiver of regulations.
- 15.8 Compliance with other laws and regulations.
- 15.9 Recordkeeping and reports.
- 15.10 Appeals.

### Subpart B—Real Property Acquisition

- 15.101 Applicability of acquisition requirements.
- 15.102 Basic acquisition policies.
- 15.103 Criteria for appraisals.
- 15.104 Review of appraisals.
- 15.105 Acquisition of tenant-owned improvements.

- 15.106 Expenses incidental to transfer of title to the agency.  
 15.107 Certain litigation expenses.  
 15.108 Donations.

#### Subpart C—General Relocation Requirements

- 15.201 Purpose.  
 15.202 Applicability.  
 15.203 Relocation notices.  
 15.204 Availability of comparable replacement dwelling before displacement.  
 15.205 Relocation assistance advisory services.  
 15.206 Eviction for cause.  
 15.207 General requirements—claims for relocation payments.  
 15.208 Relocation payments not considered as income.

#### Subpart D—Payments for Moving and Related Expenses

- 15.301 Payments for actual reasonable moving and related expenses—residential moves.  
 15.302 Fixed payment for moving expenses—residential moves.  
 15.303 Payments for actual reasonable moving and related expenses—nonresidential moves.  
 15.304 Fixed payment for moving expenses—nonresidential moves.  
 15.305 Ineligible moving and related expenses.

#### Subpart E—Replacement Housing Payments

- 15.401 Replacement housing payments for 180-day homeowner-occupants.  
 15.402 Replacement housing payments for 90-day occupants.  
 15.403 Additional rules governing replacement housing payments.

#### Subpart F—Mobile Homes

- 15.501 Applicability.  
 15.502 Moving and related expenses—mobile homes.  
 15.503 Replacement housing payments for 180-day mobile home owner-occupants.  
 15.504 Replacement housing payments for 90-day mobile home occupants.  
 15.505 Additional rules governing relocation payments to mobile home occupants.

#### Subpart G—Last Resort Housing

- 15.601 Applicability.  
 15.602 Methods of providing replacement housing.

Appendix A—Additional information.  
 Appendix B—Statistical report form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

### DEPARTMENT OF TRANSPORTATION

#### 49 CFR Part 25

**ACTION:** Final rule; request for comments.

**DATES:** This rule is effective April 28, 1986.

Comments must be received on or before March 31, 1986.

**ADDRESS:** Submit written comments, preferably in triplicate, to FHWA Docket No. 79b, Federal Highway Administration, Room 4205, HHC-10, 400 Seventh Street, SW., Washington, D.C. 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. Wayne Kennedy, Director, Office of Right-of-Way, FHWA, (202-426-0342); Mr. Reid Alsop, Office of Chief Counsel, FHWA, (202-426-0800); or Mr. Joseph F. Canny, Acting Director, Office of Transportation Regulatory Affairs, OST, (202-426-4220); Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590. Office hours (FHWA) Monday through Friday are from 7:45 a.m. to 4:15 p.m., ET. Office hours (OST) Monday through Friday are from 9:00 a.m. to 5:30 p.m., ET.

#### ADDITIONAL SUPPLEMENTARY INFORMATION:

The Department of Transportation (DOT) today is publishing an amended version of its regulation establishing policies and procedures for implementing the Uniform Act. This amended version was developed in response to comments received by other Federal agencies to a Notice of Proposed Rulemaking published in the Federal Register on May 28, 1985 (50 FR 21712). DOT's final rule which was effective July 3, 1985 (50 FR 8955, March 5, 1985), is amended in order for it to conform with the Government-wide final rule. The amendments contained herein, except for the change in § 25.3 are not expected to have a significant effect on State highway operations or procedures as they are primarily changes needed to clarify the meaning and intent of the regulation. The preamble to the common final rule should be referred to for discussion and explanation of these amendments. While the Department does not anticipate any significant comment on the general provisions of this regulation as these remain unchanged from the July 3 final rule, the revisions to the text are numerous and it therefore wishes to afford an opportunity for comments following publication. Accordingly, interested parties will have 30 days to comment on the revisions as discussed in the preamble to the common rule.

Regarding section 25.3, on March 5, 1985, simultaneously with the publication of DOT's final rule, a Supplemental Notice of Proposed Rulemaking was published. This notice requested comments on a proposed substantive change to § 25.3 which concerns duplication of payments. While virtually all commenters favor a prohibition against duplication of payments, the majority were not in favor of adopting the language in the proposed rule. They expressed fear that an expansion of the current rule which prevents duplication of payments made under State laws of eminent domain to include payments made under any Federal, State or local law, would create administrative burdens of major proportions. Literally interpreted, the proposed language could create such burdens, but such was not the intent. Therefore, in response to the comments received, the intent of this paragraph has been clarified in Appendix A of this final rule at § \_\_.3, that no Agency is required to conduct an exhaustive search for duplicative payments. It is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is made. Based on this clarification of intent, DOT has adopted the proposed language at § 25.3 and has incorporated it into the amended final rule as published today.

#### Regulatory Evaluation

The Department has determined that this document does not constitute a major rule under the criteria of Executive Order 12291 or a significant rule under the Department's Regulatory Policies and Procedures. (44 FR 11034; February 26, 1979).

#### Paperwork Reduction Act Requirements

This rule contains information collection requirements. The requirements are contained in §§ \_\_.9(a), \_\_.9(c), \_\_.202, \_\_.206, and \_\_.303(b)(2). These are the identical items previously submitted by the Department to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). OMB has approved them for use through December 31, 1988. The OMB approval number is 2105-0508. The Department will apply to OMB for approval of continued use of these reports at the appropriate time.

#### List of Subjects in 49 CFR Part 25

Transportation, Relocation assistance, Real property acquisition, Reporting and recordkeeping requirements.

Issued this 20th day of February, 1986, at Washington, D.C.

Elizabeth H. Dole,

Secretary of Transportation.

**PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS**

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- 25.3 No duplication of payments.
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**Subpart G—Last Resort Housing**

- 25.601 Applicability.
- 25.602 Methods of providing replacement housing.

Appendix A—Additional information

Appendix B—Statistical report form.

Authority: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601).

**PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSIGNED PROGRAMS**

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- 602 Methods of providing replacement housing.

Appendix A—Additional information.

Appendix B—Statistical report form.

**Subpart A—General**

**§ 25.1 Purpose.**

The purpose of these regulations is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs; and

(b) To ensure that persons displaced as a result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.

**§ 25.2 Definitions.**

(a) *Agency.* The term "Agency" means the Federal agency, State or State

agency which acquires the real property or displaces a person (see § 2(f)).

(b) *Business.* The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Solely for the purpose of § 303 of these regulations, conducted primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(c) *Comparable replacement dwelling.* The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe, and sanitary as described in § 2(e).

(2) Functionally similar to the displacement dwelling with particular attention to the number of rooms and living space. (See Appendix A.)

(3) In an area that is not subject to unreasonable adverse environmental conditions, is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the person's place of employment.

(4) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 403(a)(2).)

(5) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A.)

(6) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full price differential as described at § 401(c), all increased mortgage interest costs as described at § 401(d) (for last resort housing see Appendix A, § 602) and all incidental expenses as described at § 401(e).

(ii) A replacement dwelling rented by a displaced person is considered to be within his or her financial means if the monthly rent at the replacement dwelling does not exceed the monthly rent at the displacement dwelling, after taking into account any rental assistance which the person receives under these regulations. If the cost of any utility service is included in either rent, an appropriate adjustment must be made if necessary to ensure that like circumstances are compared. For a person who paid little or no rent before displacement, the market rent of the displacement dwelling may be used when computing costs (see Appendix A, § 402(b)(1)).

(iii) Whenever a \$15,000 replacement housing payment under § 401 or a \$4,000 replacement housing payment under § 402 would be insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a person, the Agency shall provide additional or alternative assistance under the last resort housing provisions at Subpart G, which may include increasing the replacement housing payment so that a replacement dwelling is within the displaced person's financial means.

(d) *Contribute materially.* The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least \$5,000; or

(2) Had average annual net earnings of at least \$1,000; or

(3) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(e) *Decent, safe, and sanitary dwelling.* The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply, unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other electrical devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of

approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(f) *Displaced person.*

(1) *General.* The term "displaced person" means any person (defined at § 2(m)) who moves from the real property or moves his or her personal property from the real property:

(i) As a direct result of the Agency's acquisition of such real property in whole or in part for a project. This includes any person who moved from the real property as a result of the initiation of negotiations as described at § 2(k); or

(ii) As a result of a written order from the acquiring Agency to vacate such real property for the project; or

(iii) As a result of the Agency's acquisition of, or written order to vacate, for a project, other real property on which the person conducts a business or farm operation. Eligibility as a displaced person under this subparagraph applies only for purposes of obtaining relocation assistance advisory services under § 205 and moving expenses under § 301, § 302, or § 303.

(2) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as a displaced person under these regulations.

(i) A person who moves before the initiation of negotiations (see also § 403(e)); or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see also Appendix A); or

(iv) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or

(v) A person who, after receiving a notice of relocation eligibility (described at § 203), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(vi) An owner-occupant who voluntarily sells his or her property (as described at § 101(a) in Appendix A) after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to these regulations; or

(vii) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(viii) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under P.L. 93-477 or P.L. 93-303.

(g) *Dwelling*. The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(h) *Farm operation*. The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(i) *Federal agency*. The term "Federal agency" means any department, agency, or instrumentality in the Executive Branch of the Government, any wholly owned Government corporation, and the Architect of the Capitol, the Federal Reserve Banks and branches thereof.

(j) *Federal financial assistance*. The term "Federal financial assistance" means any Federal grant, loan, or contribution, except a Federal guarantee or insurance.

(k) *Initiation of negotiations*. The term "initiation of negotiations" means the delivery of the initial written offer by the Agency to the owner or the owner's representative to purchase real property for a project for the amount determined to be just compensation, unless applicable Federal program regulations specify a different action to serve this purpose. However:

(1) If the Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the date the person moves from the property. (See also § 505(c).)

(2) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Owner of displacement dwelling*. A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired for a project:

(1) Fee title, a life estate, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraphs (1) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(m) *Person*. The term "person" means any individual, family, partnership, corporation, or association.

(n) *Salvage value*. The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from

the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(o) *State*. The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands, or a political subdivision of any of these jurisdictions.

(p) *State agency*. The term "State agency" means any department, agency or instrumentality of a State or of a political subdivision of a State, or two or more States, or of two or more political subdivisions of a State or States.

(q) *Tenant*. The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(r) *Uniform Act*. The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et seq.; Pub. L. 91-646), and amendments thereto.

### § 3 No duplication of payments.

No person shall receive any payment under these regulations if that person receives a payment under Federal, State, or local law which is determined to have the same purpose and effect as such payment under these regulations. (See Appendix A, § 3.)

### § 4 Assurances, monitoring and corrective action.

(a) *Assurances*. Before a Federal agency may approve any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and these regulations. A State agency's assurances under section 305 of the Uniform Act must contain specific reference to the State law which the Agency believes provides an exception to sections 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally assisted programs or projects.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with these regulations, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and these regulations. The Federal agency may also apply sanctions in accordance with applicable program regulations.

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out these regulations in a manner that minimizes fraud, waste, and mismanagement.

#### § 5.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under these regulations, except the notice described at § 5.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

#### § 5.6 Administration of jointly funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to these regulations, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and these regulations. All federally assisted activities under the agreement shall be deemed a project for the purposes of these regulations.

#### § 5.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced

person under this part. Any request for a waiver shall be justified on a case-by-case basis.

#### § 5.8 Compliance with other laws and regulations.

The implementation of these regulations shall be in compliance with all applicable laws and implementing regulations, including the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.).

(f) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(g) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12259.

(h) Executive Order 11246—Equal Employment Opportunity.

(i) Executive Order 11625—Minority Business Enterprise.

(j) Executive Order 12259—Leadership and Coordination of Fair Housing in Federal Programs.

(k) The Flood Disaster Protection Act of 1973 (P.L. 93-234);

(l) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

(m) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

#### § 5.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with these regulations. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under these regulations.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with these regulations are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under these regulations if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act

provides, unless the Federal funding agency shows good cause.

#### § 5.10 Appeals

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and these regulations.

(b) *Actions which may be appealed.* A person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly determine the person's eligibility for, or the amount of, a payment required under § 5.106 or § 5.107, or a relocation payment required under these regulations. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

**Subpart B—Real Property Acquisition****§ 101 Applicability of acquisition requirements.**

(a) *General.* The requirements of this Subpart apply to any Agency acquisition of real property for a Federal or federally assisted project, except:

(1) Voluntary transactions that meet the criteria specified in Appendix A, § 101(a).

(2) The acquisition of real property from a Federal agency, State, or State agency, if the acquiring Agency does not have the authority to acquire the property through condemnation.

(b) *Less-than-full-fee interest in real property.* The requirements of this Subpart apply to the acquisition of a life estate or a life use, to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more, and to the acquisition of permanent easements. (See also Appendix A, § 101 (b).)

(c) *Federally-assisted projects.* For federally-assisted projects the provisions of §§ 102, 103, 104, and 105 apply to the extent practicable under State law. (See § 4 (a).)

**§ 102 Basic acquisition policies.**

(a) *Expedient acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and these regulations. (See also § 203.)

(c) *Appraisal and invitation to owner.* Before the initiation of negotiations, the real property shall be appraised and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also § 104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written

statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and (1) discuss its offer to purchase the property including the basis for the offer of just compensation, and (2) explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or offer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts

to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trail costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall—

(1) Pay the agreed purchase price to the owner; or

(2) In the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property.

In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. An uneconomic remnant is a remaining part of the property in which the owner is left with an interest that the Agency determines has little or no utility or value to the owner.

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

**§ 103 Criteria for appraisals.**

(a) *Definition of appraisal.* An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a

specific date, supported by the presentation and analysis of relevant market information.

(b) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, the appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, and adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(c) *Influence of the project on just compensation.* To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(d) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 2(n)) of the retained improvement.

(e) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(f) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is \$2,500, or less.

#### § 104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they met applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may

develop appraisal documentation in accordance with § 103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

#### § 105 Acquisition of tenant-owned improvements.

(a) *Acquisition of Improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at § 2(n).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property

interests in accordance with other applicable law.

**§ 106 Expenses incidental to transfer of title to the Agency.**

The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(a) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(b) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(c) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

**§ 107 Certain litigation expenses.**

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

**§ 108 Donations.**

Nothing in these regulations shall prevent a person, after being informed of the right to receive just compensation, based on an appraisal of the real property, from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefor, to the Agency. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation.

**Subpart C—General Relocation Requirements**

**§ 201 Purpose.**

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance under the regulations in this Part.

**§ 202 Applicability.**

These requirements apply to the relocation of any displaced person as defined at § 2(f).

**§ 203 Relocation notices.**

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the Agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to eligibility for, or the amount of, any relocation payment for which the person may be eligible.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § 2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice.*

(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § 204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

**§ 204 Availability of comparable replacement dwelling before displacement.**

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 2(c)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in monthly housing costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes for filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

#### § 205 Relocation assistance advisory services.

(a) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527), and offers the services described in paragraph (b) of this Section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project has caused substantial economic injury because of such acquisition, it may offer the services to such person.

(b) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(1) Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(2) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 204(a).

(i) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the

replacement housing payment (see § 403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(ii) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 2 (c) and (e).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(iii) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(iv) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(3) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(4) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(5) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loans and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to persons to be displaced.

(c) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

#### § 206 Eviction for cause.

Eviction for cause must conform to applicable State and local law. Any person who has lawfully occupied the real property, but who is later evicted

for cause on or after the date of the initiation of negotiations, retains the right to the relocation payments and other assistance set forth in these regulations. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves or the date a comparable replacement dwelling is made available, whichever is later.

#### § 207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expedient payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* All claims for a relocation payment shall be filed with the Agency within 18 months after:

(1) For tenants, the date of displacement;

(2) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one displacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 204 of these regulations. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

**§ 208 Relocation payments not considered as income.**

No relocation payment received by a displaced person under these regulations shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

**Subpart D—Payment for Moving and Related Expenses**

**§ 301 Payment for actual reasonable moving and related expenses—residential moves.**

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 2(f)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § 305, as the Agency determines to be reasonable and necessary.

**§ 302 Fixed payment for moving expenses—residential moves.**

Any person displaced from a dwelling, or a seasonal residence, is entitled to receive a fixed payment in lieu of a payment for actual moving and related expenses under § 301, that consists of:

(a) A moving expense allowance not to exceed \$300 which shall be determined in accordance with the applicable moving allowance schedule approved by the Federal Highway Administration; and

(b) A dislocation allowance of \$200.

**§ 303 Payment for actual reasonable moving and related expenses—nonresidential moves.**

(a) *Eligible costs.* Any business or farm operation which qualifies as a displaced person (defined at § 2(f)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at § 303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months,

unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for—

(i) Planning the move of the personal property;

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds

from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

- (i) Transportation.
  - (ii) Meals and lodging away from home.
  - (iii) Time spent searching, based on reasonable salary or earnings.
  - (iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.
- (14) Other moving-related expenses that are not listed as ineligible under § 203.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in § 203.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self-moves.* If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) *Transfer of ownership.* Upon request and in accordance with

applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

**§ 203.304 Fixed payment for moving expenses—Nonresidential moves.**

(a) *Business.* A displaced business (except an outdoor advertising display business or a nonprofit organization) may be eligible to choose a fixed payment in lieu of a payment for actual moving and related expenses. The payment shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than \$2,500 nor more than \$10,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency demonstrates that it will not suffer a substantial loss of its existing patronage; and

(2) The business is not part of a commercial enterprise having another establishment, which is not being acquired by the Agency, and which is under the same ownership and engaged in the same or similar business activities. (For purposes of this rule a remaining business facility that did not contribute materially to the income of the displaced person during the 2 taxable years prior to displacement shall not be considered "another establishment."); and

(3) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see § 203.2(d)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 203.2(h)) may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than \$2,500 nor more than \$10,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment in lieu of a payment for actual moving and related expenses of \$2,500, if the Agency determines that it:

(1) Cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Agency.

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other

reasonable evidence which the Agency determines is satisfactory.

**§ 405 Ineligible moving and related expenses.**

A displaced person is not entitled to payment for:

- (a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this rule does not preclude the computation under § 401(c)(4)(iii); or
- (b) Interest on a loan to cover moving expenses; or
- (c) Loss of goodwill; or
- (d) Loss of profits; or
- (e) Loss of trained employees; or
- (f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location; or
- (g) Personal injury; or
- (h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or
- (i) Expenses for searching for a replacement dwelling; or
- (j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in § 303(a)(3); or
- (k) Costs for storage of personal property on real property already owned or leased by the displaced person.

**Subpart E—Replacement Housing Payments**

**§ 401 Replacement housing payment for 180-day homeowner-occupants.**

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the later of:

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court; or

(ii) The date the person moves from the displacement dwelling.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$15,000. (See also § 403(b).) The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement

dwelling, as determined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential.*

(1) *Determination of price differential.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see § 3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling, shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 2(e)); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A, § 401(c)(4)(iii)), unless the claimant rented the

displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The amount to be paid under § 401(b)(2) is the sum of the present value of the following two items: The increase in interest costs that result when the mortgage interest rate on the replacement dwelling exceeds the mortgage interest rate on the displacement dwelling, and other debt service costs. The following rules apply to the computation:

(1) The payment shall be based only on bona fide mortgages that were a valid lien on the displacement dwelling for at least 180 days prior to the initiation of negotiations. All such mortgages on the displacement dwelling shall be used to compute the payment.

(2) The payment shall be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(3) The payment shall be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is shorter.

(4) The interest charge on the new mortgage shall not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(5) The present value of the increased interest costs shall be computed at the prevailing interest rate paid on savings deposits by commercial banks in the area in which the replacement dwelling is located.

(6) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent—

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area; and

(iii) The Agency determines them to be necessary.

The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 402(c)(1) are those necessary and reasonable costs actually incurred by

the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.*

A 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 401(a) but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed \$4,000, computed and disbursed in accordance with § 402(b).

#### § 402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$4,000 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date

the required amount is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment.*

(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$4,000 for rental assistance. [See also § 403(b).] Such payment shall be 48 times the amount obtained by subtracting the average monthly rent of the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency (for an owner-occupant or tenant who pays little or no rent, the average cost for rent shall be the fair market rent; see Appendix A, Subpart E), from the lesser of:

(i) The monthly rent for a comparable replacement dwelling; or

(ii) The monthly rent for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Utility services.* Any utility service which is included in the monthly rent for either the displacement dwelling or the comparable replacement dwelling must be included when computing the rental assistance payment. Appropriate adjustments to reflect the cost of utility services shall be made, if necessary to ensure that like circumstances are compared.

(3) *Manner of disbursement.* The payment under this section shall be disbursed in a lump sum, unless the Agency determines on a case-by-case basis, for good cause, that the payment should be made in installments.

(c) *Downpayment assistance payment.*

(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a payment for downpayment assistance not to exceed \$4,000. Such payment shall be the full amount of the first \$2,000 of the required downpayment and incidental expenses (see § 401(e)) plus one-half of any amount required over \$2,000, provided that the displaced person matches equally the amount in excess of \$2,000. A displaced person eligible to receive a replacement housing payment for a 180-day homeowner-occupant under § 401 is not eligible for this payment.

(2) *Required downpayment.* For purposes of this section, the term "required downpayment" means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the

purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the "required downpayment" shall be the amount which the Agency determines is necessary for the downpayment.

(3) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

#### § 403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 2(c)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also § 205(b)(2)(i)). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(3) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Applicability of last resort housing.* Whenever a \$15,000 replacement housing payment under § 401 or a \$4,000 replacement housing payment under § 402 would be insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a person, the Agency

shall provide additional or alternative assistance under the last resort housing provisions at Subpart G, which may include increasing the replacement housing payment so that a replacement dwelling is within the displaced person's financial means as described in § 2(c)(6).

(c) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 2(e).

(d) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- (1) Purchases a dwelling; or
- (2) Purchases and rehabilitates a substandard dwelling; or
- (3) Relocates a dwelling which he or she owns or purchases; or
- (4) Constructs a dwelling on a site he or she owns or purchases; or
- (5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(e) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the Agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(f) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 402(b) is eligible to receive a payment under § 401 or § 402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 401 or § 402(c).

(g) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not

be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

#### Subpart F—Mobile Homes

##### § 501 Applicability.

This Subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile homesite who meets the basic eligibility requirements of these regulations. Except as modified by this Subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

##### § 502 Moving and related expenses—Mobile homes.

A tenant or owner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her personal property on an actual cost basis in accordance with § 301 or, as an alternative, on the basis of a fixed payment under § 302. (However, if the mobile home is not acquired but the owner obtains a replacement housing payment under one of the circumstances described at § 503(c), the owner is not eligible for payment for moving the mobile home.) The following rules apply to payments for actual moving expenses under § 301:

(a) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting and awnings) which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(b) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and

sanitary, and the Agency determines that it would be practical to relocate it, the reasonable cost of such repairs and/or modifications is reimbursable.

(c) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

##### § 503 Replacement housing payment for 180-day mobile homeowner-occupants.

A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed \$15,000, under § 401 if:

(a) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 401(a); and

(c) The Agency acquires the mobile home and/or mobile homesite, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(1) Is not and cannot economically be made decent, safe, and sanitary; or

(2) Cannot be relocated without substantial damage or unreasonable cost; or

(3) Cannot be relocated because there is no available comparable replacement site; or

(4) Cannot be relocated because it does not meet mobile home park entrance requirements.

If the mobile home is not actually acquired, but the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at § 401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

##### § 504 Replacement housing payments for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed \$4,000, under § 402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 402(a); and

(c) The Agency acquires the mobile home and/or mobile homesite, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at § 503(c).

**§ 505 Additional rules governing relocation payment to mobile home occupants.**

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile homesite must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either \$15,000 or \$4,000) permitted under the section that governs the computation for the dwelling. (See also § 403(b).)

(b) *Cost of comparable replacement dwelling.*

(1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under § 401(c), the cost of a comparable replacement dwelling is the sum of—

- (i) The value of the mobile home;
- (ii) The cost of any necessary repairs or modifications; and
- (iii) The estimated cost of moving the mobile home to a replacement site.

(c) *Initiation of negotiations.* If the mobile home is not actually acquired, but the occupant is considered displaced under these regulations, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under these regulations.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of

moving the mobile home under these regulations, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under these regulations.

**Subpart G—Last Resort Housing**

**§ 601 Applicability.**

(a) *Basic determination to provide last resort housing.* A person cannot be required to move from his or her dwelling unless at least one comparable replacement dwelling is made available to the person. Whenever an Agency determines that a replacement housing payment under Subpart E would not be sufficient to provide a comparable replacement dwelling on a timely basis to the person, the Agency is authorized to take appropriate measures under this Subpart to provide such a dwelling. The Agency's obligation to ensure that a comparable replacement dwelling is available shall be met when such a dwelling, or assistance necessary to provide such a dwelling, is offered under the provisions of this Subpart.

(a) *Basic rights of persons to be displaced.* The provisions of this Subpart do not deprive any displaced person of any rights the person may have under the Uniform Act or any implementing regulations. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under the procedures in this Subpart (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible. A 180-day homeowner-occupant who is eligible for a payment under § 401 is entitled to a reasonable opportunity to purchase a comparable replacement dwelling. (See Appendix A, § 601(b).)

**§ 602 Methods of providing replacement housing.**

Agencies shall have broad latitude in implementing this Subpart, but

implementation shall be on a reasonable cost basis. The methods of providing last resort housing include, but are not limited to:

(a) Rehabilitation of and/or additions to an existing replacement dwelling.

(b) The construction of a new replacement dwelling.

(c) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(d) A replacement housing payment in excess of the limits set forth in § 401 or § 402. A rental assistance subsidy under this Subpart may be provided in installments or in a lump sum.

(e) The relocation and, if necessary, rehabilitation of a dwelling.

(f) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with, a displaced person.

(g) The removal of barriers to the handicapped.

**Appendix A—Additional Information**

This appendix provides additional information to explain the intent of certain provisions of the rule.

**Subpart A—General**

**Section 2(c) Definition of comparable replacement dwelling.**

The requirement in § 2(c)(2) that a comparable replacement dwelling be "functionally similar" to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

Generally, functional similarity is an objective standard, reflecting the range of purposes for which the various features of a dwelling may physically be used. However, in determining whether a replacement dwelling is functionally similar to the displacement dwelling, the Agency may consider reasonable trade-offs in specific features when the replacement unit is "equal or better than" the displacement dwelling.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room.

Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or consequentially less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally similar" to a larger but very run-down substandard displacement dwelling.

Section 2(c)(5) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in these regulations prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under these regulations. (If a person accepts assistance under a government housing program, the rental assistance payment under § 402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

*Section 2(f)(2) Persons not displaced.*

Section 2(f)(2)(iii) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be displaced. Because such occupants are not considered "displaced persons" under these regulations, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the

tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under these regulations may file an appeal in accordance with § 10.

*Section 2(k) Initiation of negotiations.*

This section of the rule provides a special definition for acquisitions and displacements under Pub. L. 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

*Section 3 No duplication of payments.*

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

*Section 9(c) Reports.*

This regulation allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize

the administrative burden on Agencies implementing this rule, a basic report form (see Appendix B) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

**Subpart B—Real Property Acquisition**

*Section 101(a) General.*

The provisions of this Subpart apply to real property acquisition for the following types of Federal or federally-assisted programs or projects:

(1) Those carried out under the threat of eminent domain, including amicable agreements under the threat of such power.

(2) Where there is an intended, planned, or designated project area, and all or substantially all of the property within that area is eventually intended to be acquired. Such acquisitions are subject to the requirements of this Subpart whether or not the Agency has or intends to use the power of eminent domain.

Provided it does not conflict with the foregoing, an Agency may determine that the requirements of this Subpart do not apply to an acquisition if all of the following conditions are present:

(1) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area.

(2) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is eventually to be acquired.

(3) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed.

Acquisitions meeting the foregoing criteria are classified as voluntary transactions. The essence of a voluntary transaction is the conditions surrounding the transaction, not the type of transaction itself. A voluntary transaction may involve a donation, an exchange, or a market sale, if the transaction is without compulsion on the part of the Agency.

In those situations where an Agency wishes to purchase more than one site within a geographic area on a "voluntary transaction" basis, it is intended that all owners be treated similarly.

Although the displacement of the owner-occupant of the real property as a result of a voluntary transaction is not subject to these regulations (see § 2(f)(2)(vi)), the displacement of a

tenant-occupant of the real property is subject to these regulations.

*Section —101(b) Less-than-full-fee interest in real property.*

This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

*Section —102(d) Establishment of offer of just compensation.*

The initial offer to the property owner may not be less than the amount of the Agency's approval appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

*Section —102(f) Basic negotiation procedures.*

It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

*Section —102(i) Administrative settlement.*

This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

*Section —102(j) Payment before taking possession.*

It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

*Section —102(m) Fair Rental.*

Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by

the Agency on short notice. Such rent may not exceed "the fair rental value . . . to a short-term occupier." The Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

*Section —103(b) Standards of appraisal.*

In paragraph (b)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

*Section —103(c) Influence of the project on just compensation.*

As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

*Section —103(f) Conflict of interest.*

The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, the rule provides that the same person may both appraise and negotiate an acquisition, if the value is \$2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with § —104. This includes appraisals of real property valued at \$2,500, or less.

*Section —104 Review of appraisals.*

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

Before acceptance of an appraisal, the review appraiser must determine that

the appraiser's documentation, including valuation data and the analyses on that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

*Section —106 Expenses incidental to transfer of title to the agency.*

Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

*Section —108 Donations.*

This section provides that the Agency must obtain an appraisal and offer the full amount of just compensation due unless the owner, after being fully informed of such policies, releases the Agency from these obligations.

**Subpart C—General Relocation Requirements**

*Section —204(a) Availability of comparable replacement dwelling before displacement.*

This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, this regulation requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this rule is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

*Section —205 Relocation assistance advisory services.*

Section —205(b)(2)(iii) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration,

minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

*Section 206 Eviction for cause.*

Basic eligibility for assistance is established on the basis of facts existing as of the date of the initiation of negotiations. Once the Agency has determined that a person has satisfied such requirements, there is no basis for changing that determination.

*Section 207 General requirements—claims for relocation payments.*

Section 207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate.

**Subpart E—Replacement Housing Payments**

The provision in § 401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have an appraisal made. Any reasonable method at arriving at the fair market value may be used.

The provision in § 402(b)(1) to use the fair market rent for the displacement dwelling is intended to address the computation of payments for homeowner-occupants (who, of course, paid no rent before displacement) and those unusual situations in which a tenant is paying an unreasonably low rent and a payment based on such rent would provide a windfall. The provision is not intended to apply in those situations where the use of the fair market rent would result in a hardship because of the displaced person's income or other special circumstances.

**Subpart F—Mobile Homes**

*Section 503(c) Replacement housing payment for 180-day mobile homeowner-occupants.*

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under § 401 and a replacement housing payment for a site computed under § 402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under § 401 to assist in the purchase of a replacement site or, under § 402, to assist in renting a replacement site.

**Subpart G—Last Resort Housing**

*Section 601(a) Basic determination to provide last resort housing.*

No additional guidelines for implementation are included in the regulation because additional requirements would tend to limit the flexibility considered necessary or appropriate to provide comparable replacement housing on a timely basis.

*Section 601(b) Basic rights of persons to be displaced.*

This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of displacement dwelling" at § 2(l). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

*Section 602 Methods of providing replacement housing.*

The use of cost effective means of providing replacement housing is implied throughout the regulation. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are allowed, they should be cost-effective.

Whenever last resort housing assistance is provided to a 180-day homeowner-occupant who must pay a higher interest rate for a new mortgage, reimbursement of increased mortgage interest costs may be based on the "buy down" approach, rather than the more costly formula at § 401(d). Under the "buy down" approach, a lump sum payment is made to reduce the amount of the new mortgage to the amount which can be amortized with the same repayment schedule (payment amounts and due dates) as the mortgage on the displacement dwelling. However, the "buy down" approach shall not be used to reduce a payment to less than \$15,000 if the payment computed under § 401 would equal \$15,000.

**Appendix B—Statistical Report Form**

This appendix sets forth the statistical information which may be collected

from Agencies in accordance with § 9(c).

*General*

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646 (herein called the "Uniform Act").

2. *Report period.* Activities shall be reported on a Federal Fiscal Year basis, i.e., October 1–September 30, for the year in which the report is required.

3. *Where and when to submit report.* Submit an original and two copies of this report to (Name and Address of Federal Agency) as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15 of the year in which the report is due.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the payment was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts B and C to the nearest dollar.

6. *Statutory references.* The references in parentheses in Part B indicate the section of the Uniform Act that authorizes the cost.

*Part A. Persons Displaced*

Report in Part A the number of persons ("households," "businesses, including nonprofit organizations," and "farms") who were permanently displaced during the report year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, not by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

*Part B. Relocation Payments and Expenses*

*Columns (a) or (b).* Report in Column (a) the number of claims approved during the report year. Report in Column (b) the total amount represented by the claims reported in Column (a).

*Line 10b, Column (b).* Report in Column (b) the amount of increased mortgage interest costs that was

included in the total amount approved for Replacement Housing Payments for Homeowners on Line 10a, Column (b). Leave Line 10b, Column (a) blank.

*Line 13.* Report in Column (a) the number of households displaced by project or program activities which were provided assistance in accordance with section 206(a) of the Uniform Act.

Report in Column (b) the total financial assistance under Section 206(a) allocable to the households reported in Column (a). (If a household received financial assistance under section 203 or section 204 as well as under section 206(a) of the Uniform Act, report the household as a claim in Column (a), but in Column (b) report only the amount of financial assistance allocable to section 206(a). For example, if a tenant-household receives a payment of \$5,000 to rent a replacement dwelling, the sum

of \$4,000 shall be included on Line 11, Column (b), and \$1,000 shall be included on Line 13, Column (b).)

*Line 14.* Report on Line 14 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under section 205 of the Uniform Act.

*Part C. Real Property Acquisition Subject to Uniform Act*

*Line 16, Columns (a) and (b).* Report in Column (a) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (b) the total of the amounts paid, deposited in

court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

*Line 17.* Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved. Leave Line 17, Column (b), blank.

*Part D. Relocation Appeals Filed During Report Year*

*Line 18.* Report on Line 18 the total number of relocation appeals filed during the report year by a person alleging the Agency failed to properly determine the person's eligibility for, or the amount of, a relocation payment required under these regulations.

BILLING CODES 3410-98; 6450-01; 3510-FB; 7510-01; 4210-32; 4510-23; 3810-01; 4000-01; 7630-01; 8320-01; 6560-50; 6820-23; 4310-10; 4410-01; 6718-01; 4150-04; 4910-62-M

# Model Uniform Act Report

Attachment  
Appendix B

## Part A. Persons Displaced by Activities Subject to the Uniform Act During Report Year

	Item	Total (a)	No. of Owners (b)	No. of Tenants (c)
1	Households (Families and individuals)			
2	Businesses and Nonprofit Organizations			
3	Farms			

## Part B. Relocation Payments and Expenses Under Uniform Act During Report Year

	Item	No. of Claims (a)	Amount (b)
4	Payments for Moving Expenses for Households	Actual Expenses (Section 202(a))	
5		Fixed Payment Including Dislocation Allowance (Section 202(b))	
6	Payments for Moving Expenses for Business and Nonprofit Organizations	Actual Expenses (Section 202(a))	
7		Payment in Lieu of Actual Expenses (Section 202(c))	
8	Payment for Moving Expenses for Farms	Actual Expenses (Section 202(a))	
9		Payment in Lieu of Actual Expenses (Section 202(c))	
10a	Replacement Housing Payments for Homeowners (Section 203(a))		
10b	Amount on Line 10a Attributable to Increased Mortgage Interest Costs		
11	Rental Assistance Payment (Tenants and Certain Others) (Section 204(1))		
12	Downpayment Assistance (Tenants and Certain Others) (Section 204(2))		
13	Housing Assistance as Last Resort (Section 206(a))		
14	Relocation Advisory Assistance and Services Cost (Section 205)		
15	Total (Sum of Lines 4 through 14 Excluding Line 10b)		

## Part C. Real Property Acquisition Subject to Uniform Act During Report Year

	Item	No. of Parcels (a)	Compensation (b)
16	Total Parcels Acquired		
17	Total Parcels Acquired by Condemnation included on Line 16 (where price disagreement was involved)		

## Part D. Relocation Grievances Filed During Report Year

		Total No.
18	Relocation Grievances Filed in Connection with Project / Program	

[FR Doc. 86-4305 Filed 2-26-86; 8:45 am]

BILLING CODES 3410-98; 6450-01; 3510-FB; 7510-01;  
4210-32; 4510-23; 3810-01; 4000-01; 7630-01; 8320-01;  
6560-50; 6820-23; 4310-10; 4410-01; 6718-01; 4150-04;  
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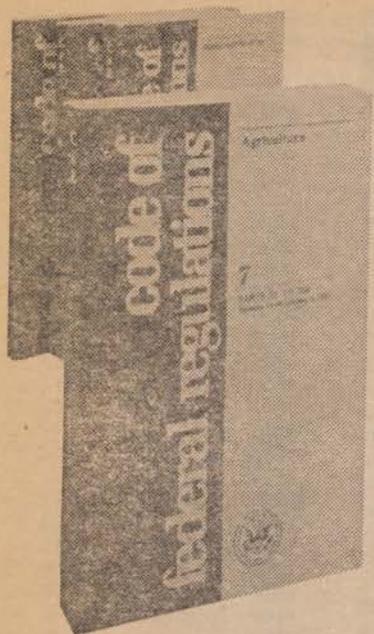
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