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Presidential Documents

Title 3—

The President

Proclamation 5638 of April 24, 1987

Victims of Crime Week, 1987

By the President of the United States of America

A Proclamation

Nearly 35 million Americans became victims of crime in 1986. Six million of them were victims of serious, violent crimes. Crime—of any kind—can have a devastating impact on innocent victims and their families. Besides the immediate physical and financial injuries, criminal deeds exact an emotional toll from their victims that can deprive them of their health, their sense of security and control, and even their basic trust in others, the core of our social contract. Many victims desperately and futilely search for the reason a criminal chose them as prey. When they turn to the wider community for solace and support, they are often ignored, treated insensitively, or, worst of all, blamed for their plight.

Nothing is benign about such neglect of those whom our society has failed to shield from harm. Evaluating our criminal justice system's response to the needs of victims, the President's Task Force on Victims of Crime found that it frequently compounded the indignity they suffered. The system often failed to protect victims from defendants released on bail; it did not inform or consult victims before crucial decisions were made regarding their cases; it failed to hold violent criminals fully accountable for the damage done to innocent lives. While affording assistance to the accused, the criminal justice system offered only limited support to the victim striving to cope with the sudden, tremendous, and utterly unjust burdens imposed by a criminal attack.

Four years ago the Task Force produced a reform agenda designed to restore balance to the criminal justice system. Since then, action has been taken on nearly 80 percent of its proposals in every part of our country. Law enforcement officers, prosecutors, and judges are being educated on the needs of crime victims. The number of community programs providing direct services and assistance to victims is growing rapidly. More than 40 States have enacted new laws recommended by the Task Force to better protect the interests of crime victims. In an unprecedented expression of support, the Federal government has given the States the proceeds from fines and penalties levied against individuals convicted of Federal crimes. The States are using these proceeds to expand their assistance programs for victims.

This progress is truly encouraging, and the swelling tide of support for victims suggests that reforms on their behalf will continue to be made in the future. I commend the men and women inside and outside the justice system, in government and the private sector, and in communities throughout our Nation who are dedicated to the fair treatment of the innocent victims of crime. By their actions, they affirm our Nation's commitment to the goal of liberty and justice for all.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning April 26 as Victims of Crime Week, 1987. I urge government officials and all citizens to continue to help the innocent victims of crime and to treat them with respect, compassion, and fairness, for the sake of justice and human dignity.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-9664
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 215, 220, 225 and 226

[Amdt. Nos. 70, 34, 52, 9 and 17]

Use of School Facilities, Equipment, and Personnel for Nonprofit Nutrition Programs for the Elderly

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for the National School Lunch Program, Special Milk Program, School Breakfast Program, Summer Food Service Program and Child Care Food Program. This final rule allows the facilities, equipment, and personnel acquired or employed by a school food authority, with program funds provided under the National School Lunch or Child Nutrition Acts, to be used at local discretion to support a nonprofit nutrition program for the elderly. This final rule permits such utilization based on specific legislative language contained in Pub. L. 99–500 and 99–591.

EFFECTIVE DATE: April 28, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302; (703) 756–3620.

SUPPLEMENTARY INFORMATION: This rule establishes that equipment, facilities and personnel funded under a program authorized by the National School Lunch Act (42 U.S.C. 1751 *et seq.*) or Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*) may be used by a school food authority to support a nonprofit nutrition program for the elderly. This rule is based on a nondiscretionary statutory provision. For this reason, the Administrator of the Food and Nutrition Service has determined, in accordance with 5 U.S.C. 553(b) and 553(d) that prior notice and comment are unnecessary and contrary to the public interest and that good cause exists for making the rule effective upon publication. In addition, since this rule merely implements cited statutory provisions, it constitutes an interpretive rule for which notice and comment rulemaking and a 30-day period before taking effect are not required by 5 U.S.C. 553.

This final rule has been reviewed under Executive Order 12291 and has been classified not major. This rule will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for program participants, individual industries, Federal, State or local government agencies or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

The National School Lunch, Special Milk, School Breakfast, Summer Food Service and Child Care Food Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, 10.556, 10.553, 10.559, and 10.558 respectively and are subject to the provision of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

This final rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities.

No new reporting or recordkeeping requirement is included which would require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The programs being amended are approved by OMB under the following control numbers: National School Lunch Program 0584–0006; Special Milk Program, 0584–0005; School Breakfast Program, 0584–0012; Summer Food Service Program, 0584–0057; and Child Care Food Program, 0584–0055.

Background

Currently school facilities, equipment, and personnel in many localities are used to serve a variety of community purposes such as nutrition programs for the elderly. The Department has traditionally supported the use of school resources for nonprofit elderly nutrition programs as long as such utilization did not impair the effectiveness of the federally funded Child Nutrition Programs.

Section 326 of recently enacted Pub. L. 99–500 and 99–591 formalized the on-going use of child nutrition program resources for nonprofit elderly nutrition programs. Section 326 amended section 12 of the National School Lunch Act by adding a new subsection which reads, "Facilities, equipment, and personnel provided to a school food authority for a program authorized under this Act or the Child Nutrition Act of 1966 (42 U.S.C. 1771 *et seq.*) may be used, as determined by a local educational agency, to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*)."

Since the legislative language simply formalizes the use of school meal facilities for nonprofit elderly nutrition programs, the Department does not foresee any significant changes to existing policy. The Department would, however, like to take this opportunity to restate that policy to ensure uniform interpretation.

If school meal facilities, equipment, and personnel are used for nonprofit elderly nutrition programs, the following requirements apply:

(1) Federal child nutrition reimbursement must be claimed only for meals or milk served in Child Nutrition Programs in accordance with program regulations.

(2) Child Nutrition Program costs and revenues must be clearly distinguishable from the costs and revenues of other nutrition activities.

(3) The use of United States Department of Agriculture donated foods for any purpose must conform with Department regulations and instructions. Since eligibility of programs for donated foods varies depending upon the nature of each program and the classes of recipient agencies or recipients, local schools considering the use of donated foods for

purposes other than Child Nutrition Programs should first contact the State Distributing Agency.

(4) Since the legislative language only covers the use of school meal facilities, equipment and personnel, food and other supplies purchased with nonprofit school food service funds must not be used for nonprofit elderly nutrition programs.

The Department wishes to emphasize that the provisions of this final rule are not intended to permit school food authorities to diminish the quality of the meals or milk served in the Child Nutrition Programs authorized under the National School Lunch Act or the Child Nutrition Act. Only when program integrity is ensured and all program requirements, including meal pattern specifications, are satisfied, may the facilities, equipment, and personnel supported with funds under these Acts be used to support nonprofit nutrition programs for the elderly including programs funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Special Milk Program, Grant programs—Social programs, Nutrition, Children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements.

7 CFR Part 225

Food assistance programs, Grant programs—Health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 226

Day care, Food assistance programs, Grant programs—Health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, Parts 210, 215, 220, 225 and 226 are amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for Part 210 continues to read as follows:

Authority: Secs. 2–12, 60 Stat. 230, as amended; Sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779 unless otherwise noted.

2. In § 210.14, paragraph (a) is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 210.14 Resource management.

(a) * * * School food authorities may use facilities, equipment, and personnel supported with nonprofit school food revenues to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

* * * * *

PART 215—SPECIAL MILK PROGRAM

1. The authority citation for Part 215 continues to read as follows:

Authority: Secs. 3, 10; 80 Stat. 885, 889, as amended (42 U.S.C. 1772, 1779), unless otherwise noted.

2. In § 215.7, paragraph (d)(1) is amended by adding a second sentence to read as follows:

§ 215.7 Requirements for participation.

* * * * *

(d) * * *

(1) * * * However, school food authorities may use facilities, equipment, and personnel supported with funds provided to a school food authority under this part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for Part 220 continues to read as follows:

Authority: Secs. 4 and 10, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779), unless otherwise noted.

§ 220.7 [Amended]

2. In § 220.7:

a. Paragraph (e)(1)(ii) is amended by removing the words "except that such revenues shall not be used to purchase land or buildings or to construct buildings;" and adding, in their place, ", *Except that,* facilities, equipment, and personnel support with funds provided to a school food authority under this part may be used to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*);"

b. Paragraphs (e)(1)(iii) and (e)(1)(iv) are redesignated as paragraphs (e)(1)(iv) and (e)(1)(v), respectively and a new paragraph (e)(1)(iii) is added to read as follows:

§ 220.7 Requirements for participation.

* * * * *

(e) * * *

(1) * * *

(iii) revenues received by the nonprofit school food service shall not be used to purchase land or buildings or to construct buildings;

* * * * *

PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for Part 225 revised to read as follows:

Authority: Sec. 326 of Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341, (42 U.S.C. 1760), secs. 803, 807, 809, 816 and 817, Pub. L. 97–35, secs. 203 and 206, Pub. L. 96–499, secs 5, 7, 10, Pub. L. 95–627, 95 Stat. 3603 (42 U.S.C. 1771); sec. 2, Pub. L. 95–166, 91 Stat. 1325 (42 U.S.C. 1761); sec. 7, Pub. L. 91–248, 84 Stat. 211 (42 U.S.C. 1859a), unless otherwise noted.

2. In§ 225.19, paragraph (j) is amended by adding a second sentence to read as follows:

§ 225.19 Operational responsibility of sponsors.

* * * * *

(j) * * * However, sponsors which are school food authorities may use facilities, equipment and personnel supported by funds provided under this part to support a nonprofit nutrition program for the elderly, including a program funded under the Older American Act of 1965 (42 U.S.C. 3001 *et seq.*).

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 is revised to read as follows:

Authority: Secs. 326 and 361 of Pub. L. 99–500 and 99–591, 100 Stat. 1783 and 3341 (42 U.S.C. 1760, 1766), secs. 803, 810 and 820, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); sec. 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); sec. 10, Pub. L. 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. In § 226.15, a new paragraph (j) is added to read as follows:

§ 226.15 Institution provisions

* * * * *

(j) *Elderly feeding programs.* Institutions which are school food

authorities (as defined in Part 210 of this chapter) may use facilities, equipment and personnel supported by funds provided under this part to support a nonprofit nutrition program for the elderly, including a program funded under the Older Americans Act of 1965 (42 U.S.C. 3001 *et seq.*).

Dated: April 21, 1987.

Sonia F. Crow,

Acting Administrator.

[FR Doc. 87-9512 Filed 4-27-87; 8:45 am]

BILLING CODE 3410-30-M

FEDERAL RESERVE SYSTEM

12 CFR Part 261

[Docket No. R-0597]

Freedom of Information; Rules on Availability of Information

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System has amended its Rules Regarding Availability of Information to implement the Freedom of Information Reform Act ("FOI Reform Act"), Pub. L. 99-570, by revising the schedule of fees applicable to requests for Board records pursuant to the Freedom of Information Act ("FOIA").

EFFECTIVE DATE: May 27, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law, Legal Division (202/452-3920); Elaine M. Boutilier, Senior Attorney, Legal Division (202/452-2418); or for the hearing impaired only, Telecommunications Device for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The FOI Reform Act requires each agency to "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under the Freedom of Information Act . . .". The Board published its proposed rule for comment on March 31, 1987 (52 FR 10233). Three comments were received. One comment was submitted by a bank holding company and stated that the features of the rulemaking considered by the commenter to be discriminatory stem from the statute and OMB's guidelines rather than from the Board's proposed action. Another comment was submitted by a freelance journalist who objected to the definition of "freelance journalist" in the section on news media. Again, this is a definition set by OMB, which has addressed in their final guidelines similar concerns raised by freelance journalists. This commenter and the third commenter also objected generally to considerations respecting fee waiver determinations set out in proposed § 261.8(h)(1), describing them as unnecessary and impermissible. These considerations are intended to provide guidance in interpretation of the statutory standards, however, and clearly do not amend or supersede those standards. One commenter also asked that the notice required by § 261.8(g)(2) be made applicable to the situation described in § 261.8(g)(5), but the Board believes this advance notice requirement is applicable as suggested without further amendment.

The third comment was submitted by a public citizens group which primarily reiterated that group's comments to OMB on its proposed guidelines, which have been addressed by OMB. This group also objected to the Board's proposal to require submission of certain information by persons seeking waiver of fees. However, the Board considers it necessary for a person requesting waiver of fees to establish his or her entitlement to such a waiver, and the Board understands that such showings will normally be made more easily by the news media and by educational institution requesters than by other types of requesters.

The schedule adopted by the Board must conform to the guidelines promulgated by the Office of Management of Budget ("OMB"). OMB published final guidelines on March 27, 1987 (52 FR 10018). The fee schedule and related items included in this rule have been modified to conform to those final guidelines. OMB made various modifications to its proposed guidelines as a result of the public comments received. These changes primarily addressed the public's concerns about some definitions of terms proposed by OMB. Accordingly, OMB modified many of the definitions published in the proposed guidelines. Most of the modifications were meant to merely clarify the proposed definition, however, two significant definitions were modified substantively: The scope of "educational institution" was enlarged to include educational institutions providing any level of education, from preschool to postgraduate research; and the definition of "news media" was redrafted to clarify the extent of the coverage.

OMB also added the requirement that a requester who has not indicated in advance his willingness to pay fees as high as are anticipated by the agency to be notified by the agency whenever fees are expected to exceed $25. This requirement has been added as section (g)(2) in the Board's rule.

Pursuant to the FOI Reform Act and the OMB guidelines, the Secretary has set fees to recover the full direct costs incurred by the Board in searching for, reviewing, and duplicating documents in response to FOIA requests. This rule sets forth the schedule of fees and the procedures for requesting a waiver of the fees. The fees are set forth in Appendix A. In compliance with the FOI Reform Act, requesters are classified into four different categories for fee assessment purposes: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters.

Commercial use requesters—A commercial use request is a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade or profit interests of the requester or the person on whose behalf the request is made. When the Board receives a request for documents appearing to be for commercial use, fees will be assessed for the total search time, review time, and all duplication of the documents. Requesters should note that the Board may assess fees for the search for and review of documents even if no documents are ultimately released.

Educational and noncommercial scientific institution requesters—An "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research. A "noncommercial scientific institution" is defined as an independent non-profit institution whose purpose is to conduct scientific research. The Board will provide documents to requesters in this category for the cost of duplication only, excluding charges for the first 100 pages. To be eligible for this reduction in fees, the requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are in furtherance of scholarly or scientific research. To be eligible for

free search time, the requester must reasonably describe the records sought.

Representative of the news media—This term is defined as any person that is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The Board will provide documents to requesters in this category for the cost of duplication only, excluding charges for the first 100 pages. To be eligible for free search time, the requester must reasonably describe the records sought.

All other requesters—The Board will assess fees for search and duplication to all requesters who do not fit in the above categories, except that the first 100 pages of duplication and the first two hours of search time will be furnished without charge. Requesters should note that the Board may assess fees for the search for documents even if no documents are ultimately released.

To prevent abuse of the provisions granting 100 pages of duplication and two hours of search time free of charge, subpart (f) permits the Secretary to aggregate requests that are reasonably believed to have been broken down to evade fees.

Subpart (g) provides that the Board may require advance payment of fees if the total fees are estimated to exceed $250, or where a requester has previously failed to make timely payment of fees due. This subpart also permits interest to be charged on fees over 30 days past due at the rate prescribed in 31 U.S.C. 3717 for an outstanding debt on a U.S. Government claim. This rate is set annually by the Secretary of the Treasury equal to the average 12-month investment rate on Treasury tax and loan accounts.

The FOI Reform Act requires that fees shall be waived or reduced (1) "if the disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government," and (2) such disclosure "is not primarily in the commercial interest of the requester." Subpart (h) sets forth the required contents of a request for a waiver or reduction of fees and the six factors the Secretary will consider in determining whether to grant the request. The six enumerated factors that reflect the new statutory standard which agencies are required to take into consideration in determining whether the two basic requirements for a fee waiver or reduction are met. The Secretary will apply those factors to fee waiver requests sequentially, on a case-by-case basis.

List of Subjects in 12 CFR Part 261

Freedom of Information Act, Federal Reserve System.

For the reasons set out in this notice, and pursuant to the Board's authority under section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)) to delegate functions to members and employees of the Board and to the Reserve Banks, the Board amends its Rules Regarding Availability of Information (12 CFR Part 261) as follows:

PART 261—[AMENDED]

1. The authority citation for Part 261 continues to read as follows:

Authority: 5 U.S.C. 552.

§ 261.4 [Amended]

2. In § 261.4, paragraph (g) is removed.

3. Section 261.8 is added to read as follows:

§ 261.8 Fee schedules; waiver of fees.

(a) *Fee schedules.* Records of the Board available for public inspection and copying are subject to a written Schedule of Fees for search, review, and duplication. (See the Appendix to this section for the Schedule of Fees.) The fees set forth in the Schedule of Fees reflect the full allowable direct costs of search, duplication, and review, and may be adjusted from time to time by the Secretary to reflect changes in direct costs.

(b) *Fees charged.* The fees charged only cover the full allowable direct costs of search, duplication, or review.

(1) "Direct costs" mean those expenditures which the Board actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request made under section 261.4 of this Part. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) "Duplication" refers to the process of making a copy of a document necessary to respond to a request for disclosure of records or for inspection of original records that contain exempt material or that otherwise cannot be inspected directly. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

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

(c) *Commercial use.* (1) The fees in the Schedule of Fees for document search, duplication, and review apply when records are requested for commercial use.

(2) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(3) In determining whether a requester properly belongs in this category, the Secretary shall look first to the use to which a requester will put the documents requested. Where a requester does not explain its purpose, or where its explanation is insufficient, the Secretary may seek additional clarification from the requester before categorizing the request as one for commercial use.

(d) *Educational, research, or media use.* (1) Only the fees in the Schedule of Fees for document duplication apply when records are not sought for commercial use and the requester is a representative of the news media, or an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research. However, there is no charge for the first one hundred pages of duplication.

(2) "Educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research.

(3) "Noncommercial scientific institution" refers to an independent nonprofit institution whose purpose is to conduct scientific research.

(4) "Representative of the news media" refers to any person that is actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that

would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(e) *Other uses.* For all other requests, the fees in the Schedule of Fees for document search and duplication apply. However, there is no charge for the first one hundred pages of duplication or the first two hours of search time.

(f) *Aggregated requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents solely in order to avoid payment of fees. If the Secretary reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Secretary may aggregate any such requests and charge accordingly. It is considered reasonable for the Secretary to presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(g) *Payment procedures*—(1) *Fee payment.* The Secretary may assume that a person requesting records pursuant to § 261.4 of this Part will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (h) of this section.

(2) *Advance notification.* If the Secretary estimates that charges are likely to exceed $25, the requester shall be notified of the estimated amount of fees, unless he has indicated in advance his willingness to pay fees as high as those anticipated. Upon receipt of such notice the requester may confer with the Secretary as to the possibility of reformulating the request in order to lower the costs.

(3) *Advance payment.* (i) The Secretary may require advance payment of any fee estimated to exceed $250. The Secretary may also require full payment in advance where a requester has previously failed to pay a fee in a timely fashion.

(ii) For purposes of computing the time period for responding to requests under section 261.4(d) of this Part, the running of the time period will begin only after the Secretary receives the required payment.

(4) *Late charges.* The Secretary may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.A. and will accrue from the date of the billing. This rate of interest is published by the Secretary of the Treasury before November 1 each year and is equal to the average investment rate for Treasury tax and loan accounts for the 12-month period ending on September 30 of each year. The rate is effective on the first day of the next calendar quarter after publication.

(5) *Fees for nonproductive search.* Fees for record searches and review may be charged even if no responsive documents are located or if the request is denied, particularly if the requester insists upon a search after being informed that it is likely to be nonproductive or that any records found are likely to be exempt from disclosure. The Secretary shall apply the standards set out in paragraph (h) of this section in determining whether to waive or reduce fees.

(h) *Waiver or reduction of fees*—(1) *Standards for determining waiver or reduction.* The Secretary or his or her designee shall grant a waiver or reduction of fees chargeable under paragraph (b) of this section where it is determined both that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and that the disclosure of information is not primarily in the commercial interest of the requester. The Secretary or his or her designee shall also waive fees that are less than the average cost of collecting fees. In determining whether disclosure is in the public interest, the following factors will be considered:

(i) *The subject of the request:* Whether the subject of the requested records concerns "the operations or activities of the government";

(ii) *The informative value of the information to be disclosed:* Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) *The contribution to an understanding of the subject by the general public likely to result from disclosure:* Whether disclosure of the requested information will contribute to "public understanding";

(iv) *The significance of the contribution to the public understanding:* Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(v) *The existence and magnitude of a commercial interest:* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) *The primary interest in disclosure:* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester".

(2) *Contents of request for waiver.* The Secretary will normally deny a request for a waiver of fees that does not include:

(i) A clear statement of the requester's interest in the requested documents;

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from such use and from the Board's release of the requested documents; and

(iv) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(3) *Burden of proof.* In all cases the burden shall be on the requester to present evidence or information in support of a request for a waiver of fees.

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

Appendix to § 261.8—Freedom of Information Fee Schedule

Duplication:	
Photocopy, per standard page	$.08
Paper copies of microfiche, per frame	.07
Duplicate microfiche, per microfiche	.10
Search and review:	
Clerical (Grades FR4–FR7), hourly rate	8.50
Technical (Grades FR8–FR11), hourly rate	12.80
Management/professional, hourly rate	25.90

Computer search and production: For each request the Secretary will separately determine the actual direct cost of providing the service, including computer search time, tape or printout production, and operator salary.

Special services: The Secretary of the Board may agree to provide, and set fees to recover the costs of, special services not covered by the Freedom of Information Act, such as certifying records or information and sending records by special methods such as express mail. The Secretary may provide self-service photocopy machines and microfiche printers as a convenience to requesters and set separate per-page fees reflecting the cost of operating and maintenance of those machines.

Fee waivers: For qualifying educational and noncommercial scientific institution requesters and representatives of the news media the Board will not assess fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other non-commercial use requests no fees will be assessed for review time, for the first 100 pages of reproduction, or for the first two hours of search time. For requesters qualifying for 100 free pages of reproduction, the fees for duplicate microfiche will be prorated to eliminate the charge for 100 frames.

The Board will waive in full fees that total less than $4.

The Secretary of the Board or his or her designee will also waive or reduce fees, upon proper request, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A fee reduction is available to employees, former employees, and applicants for employment who request records for use in prosecuting a grievance or complaint of discrimination against the Board.

By order of the Board of Governors, effective April 22, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-9496 Filed 4-27-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-CE-14-AD; Amdt. 39-5615]

Airworthiness Directives; Piper Aircraft Corporation Models PA-28 and PA-32 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Piper Aircraft Corporation Models PA-28 and PA-32 Series airplanes, which requires (1) a visual inspection with a 10-power magnifying glass and a dye-penetrant inspection of the lower spar cap for both wings, (2) replacement of any spars found to be cracked, and (3) visual inspection of the wing upper skin for cracks and repair as required. A fatigue crack has occurred in the wing lower spar cap attachment to the fuselage which resulted in an in-flight separation of the wing. The inspections and subsequent actions specified in the AD will preclude compromise of the structural integrity of the wing.

EFFECTIVE DATE: May 5, 1987.

ADDRESSES: Maintenance information applicable to this AD may be obtained from Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960. This information may be examined at the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Compliance: As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Charles L. Perry, ACE-120A, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, FAA, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia, 30349; Telephone (404) 991-2910.

SUPPLEMENTARY INFORMATION: A crack has occurred in the left wing lower spar cap attachment to the fuselage on a Piper Model PA-28-181 airplane. The left wing separated in flight and the airplane crashed. The airplane had approximately 7,488 hours total time-in-service. Subsequent investigations disclosed fatigue cracking in the lower spar cap at the forward face of the outboard attachment bolt holes to the fuselage. Propagation of a crack in that area will compromise the structural integrity of the wing lower spar cap fuselage attachment which could result in loss of the wing and of the airplane. The National Transportation Safety Board (NTSB) has recommended an immediate inspection of the main wing spars and upper wing skin on Piper Model PA-28 airplanes with over a specified number of service hours. The FAA has examined all factors currently available relating to the above accident and agrees with the NTSB recommendation. Therefore, an AD is being issued applicable to certain Model PA-28 and PA-32 airplanes which requires (1) a visual inspection with a 10-power magnifying glass and a dye-penetrant inspection of the wing lower spar cap attachments to the fuselage, (2) replacement of any spars found to be cracked, and (3) a visual inspection and repair of upper skin cracks forward of the spar adjacent to the fuselage. The AD also requires that a report be made to the FAA on the results of the inspection. The AD may be revised in the future based upon the results of the FAA's evaluation of these reports.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued applicable to certain Piper Models PA-28 and PA-32 Series airplanes requiring (1) a visual inspection with a 10-power magnifying glass and a dye-penetrant inspection of the wing lower spar cap attachment to the fuselage, (2) replacement of spars found to be cracked, and (3) a visual inspection of the wing upper skin for cracks and repair as required. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

List of Subjects in 14 CFR 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Piper Aircraft Corporation: Applies to Model PA-28 series (all serial numbers (S/N)) except the Model PA-28-236; Model PA-32-260 (S/N 32-1 through 32-7800008); and Model PA-32-300 (S/N 32-40000 through 32-7840202) airplanes certificated in any category.

Compliance: For airplanes with less than 5,000 hours time-in-service (TIS) on the effective date of this AD, prior to accumulating 5,050 hours TIS; and for airplanes with 5,000 hours or more TIS on the effective date of this AD, within the next 50 hours TIS, unless already accomplished.

To prevent the propagation of cracks in the wing lower spar cap fuselage attachments and subsequent separation of the wing, accomplish the following:

(a) Remove both wings in accordance with the applicable Piper Maintenance Manual for that airplane.

Note.—*CAUTION:* Use extreme care in removing and replacing the wing main spar to the fuselage attachment bolts (eighteeen per side) to preclude damaging the bolt holes. Do not drive the bolts in or out of the holes. As the bolts are removed, number each bolt and hole to ensure replacement in the same hole. Use proper torque values when installing bolts. If replacement of some of the bolts is required, ensure proper part number and grip length. Installation of new MS 20365-624C nuts on the main spar attach bolts during wing reinstallation is recommended.

(b) Visually inspect, using a 10-power minimum glass and a dye-penetrant method or equivalent, for cracks in the wing lower spar cap from two inches outboard of the outboard row of wing attach bolt holes to an area midway between the second and third row of bolt holes from the outboard row.

(1) If no cracks are found, prior to further flight, accomplish the actions specified in paragraph (c) below.

(2) If any cracks are found, prior to further flight, replace the spar or wing with a serviceable unit shown to be free of cracks when subjected to the inspections specified in this paragraph.

(c) Visually inspect for cracks in each upper wing skin adjacent to the fuselage and forward of each main spar.

(1) If no cracks are found, reinstall the wings in accordance with the instructions in the applicable Piper Maintenance Manual for that airplane.

(2) If cracks are found, prior to further flight, repair in accordance with AC 43.13-1A, and reinstall the wings in accordance with the instructions in the applicable Piper Maintenance Manual for that airplane.

(d) Within five days after the completion of the inspections specified in this AD, report the results of the inspections, both positive and negative findings, to the Atlanta ACO at the address shown under "**FOR FURTHER INFORMATION CONTACT.**" Reports can be made either by telephone or by letter, but must include the owner's name and telephone, airplane model and S/N, total airframe time, type of operation, and inspection results. (Reporting approved by the Office of Management and Budget under OMB No. 2120-0056.)

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) An equivalent means of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, FAA, Central Region, Suite 210, 1669 Phoenix Parkway, Atlanta, Georgia 30349.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (305) 567-4361; or may examine the documents referred to herein at FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on May 5, 1987.

Issued in Kansas City, Missouri, on April 20, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-9546 Filed 4-23-87; 3:08 pm]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Secretary

24 CFR Part 25

[Docket No. R-87-1333; FR-2350]

Mortgage and Loan Insurance Program Eligibility Requirements; Mortgage Approval; Technical Conforming Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule is technical in nature. In a final rule relating to HUD approval of mortgagees published on February 5, 1987 the time period within which a mortgagee must file an annual audit report with HUD was changed from 75 to 90 days after the close of its fiscal year. In this rule a similar change is made in 24 CFR Part 25 (Mortgagee Review Board). Section 25.9(e) of that Part makes failure to submit the audit report within the required time period a ground for administrative action by the Board.

EFFECTIVE DATE: June 2, 1987.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C., 20410, telephone (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 5, 1987 HUD published a rule adopting as final an earlier interim rule setting forth HUD approval requirements for mortgagees participating in its mortgagee insurance programs (52 FR 3606). Section 203.4(a)(4) of the final rule requires mortgagees to file an audit report with the FHA Commissoner within 90 days of the close of its fiscal year (or within an extended time if an extension is granted by the Commissioner). In the earlier interim rule the required time period was 75 days.

At the time this change was made, a conforming change was not made in 24 CFR 25.9(e). 24 CFR Part 25 establishes within HUD a Mortgagee Review Board and sets forth the procedures under which the Board will operate. Section 25.9 lists the grounds upon which the Board can take administrative action (letter or reprimand, order of probation or withdrawal of approval). Paragraph 25.9(e), as currently drafted, sets forth as one of those grounds "the failure of a nonsupervised mortgagee to submit the required annual audit reports of its financial condition prepared in accordance with instruction issued by the Secretary within 75 days of the close of its fiscal year or such longer period as the Assistant Secretary for Housing-Federal Housing Commissioner may authorize in writing prior to the expiration of the 75 days". This rule changes the 75-day time period in § 25.9(e) to 90 days in order to conform it to the new 90-day requirement promulgated in HUD's February 5, 1987 final rule on mortgagee approval.

This rule is technical in nature. It merely conforms the provisions of § 25.9(e) to the requirement promulgated earlier in § 203.4(a)(4). It is, therefore, being published as a final rule.

Procedural Requirements

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 by the President on February 17, 1981. Analysis of the proposed 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 cost 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 in domestic or export markets.

Under 5 U.S.C. section 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is technical in nature and reflects no change in HUD practice or policy.

The rule was not listed in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38424) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 25

Administrative practice and procedure, Mortgages, Organization and functions (Government agencies).

Accordingly, 24 CFR Part 25 is amended as follows:

PART 25—MORTGAGEE REVIEW BOARD

1. The authority citation for 24 CFR Part 25 continues to read as follows:

Authority: Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d), and sec. 211 of the National Housing Act of 1934, 12 U.S.C. 1715b.

2. Paragraph (e) of § 25.9 is revised to read as follows:

§ 25.9 Grounds for an administrative action.

* * * * *

(e) The failure of a nonsupervised mortgagee to submit the required annual audit report of its financial condition prepared in accordance with instructions issued by the Secretary within 90 days of the close of its fiscal year or such longer period as the Assistant Secretary for Housing-Federal Housing Commissioner may authorize in writing prior to the expiration of 90 days;

* * * * *

Dated: April 22, 1987.

Samuel R. Pierce,

Secretary.

[FR Doc. 87-9587 Filed 4-27-87; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 115

[Docket No. N-87-1674; FR-2317]

Recognition of Substantially Equivalent Laws

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of determination; request for public comment.

SUMMARY: Title 24, Part 115 of the Code of Federal Regulations describes the procedure for recognizing State and local fair housing laws that provide rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided by the Federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, (42 U.S.C. 3601–19)) ("the Act"). This notice: (A) Announces the Department's decision to recognize three additional jurisdictions in accordance with § 115.6(c); (B) Advises that determinations have been made that the fair housing laws of one State and two localities are on their face, substantially equivalent to the Act. The notice seeks public comment on these determinations and on present or past performance of each of the agencies administering and enforcing those State or local laws. In each instance the Department will consider all comments submitted in making its determination as to whether the local law provides rights and remedies which are substantially equivalent to the Act; and (C) Sets forth the lists required by § 115.6(e).

DATES: Comments due: (Part B of this notice) May 28, 1987.

Effective date: April 28, 1987.

ADDRESS: Interested persons are invited to submit comments to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Holbert, Acting Director, Office of Fair Housing Enforcement and Section 3 Compliance, Room 5208, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 426-3500. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: A. On July 9, 1986 (51 FR 24852) and September 19, 1986 (51 FR 33278) the Department published notices seeking public comment on the laws of Madison, Wisconsin and Elgin, Illinois (July 9) and Asheville, North Carolina (September 19). The notices invited comments on the Department's determination that the fair housing law of each jurisdiction "on its face" provides rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided under the Federal Fair Housing Act (the Act). Comment was also invited on the present and past performance of the agencies administering the law. No public comments were received with respect to any of these jurisdiction's laws.

This publication gives notice of the recognition of Elgin, Illinois, Asheville, North Carolina and Madison, Wisconsin in accordance with § 115.6(c).

B. On August 9, 1984 (49 FR 32042), the Department published a final rule that revised 24 CFR Part 115 to enable the Department to add or withdraw recognition of substantially equivalent laws through publication of a notice in the **Federal Register.** The purpose of this notice is to advise the public, in accordance with 24 CFR 115.6(b), that the laws of the following jurisdictions have, on their face, been determined to be substantially equivalent. The jurisdictions are: the State of Missouri; Broward County, Florida; and Des Moines, Iowa.

The evaluation of the laws of these jurisdictions have been conducted in accordance with 24 CFR 115.3(c). Under section 115.3(c), analysis of the adequacy of a State or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, the analysis is not limited to the literal text of the law, but must take into account necessary relevant matters of State or local law, or interpretations of the fair housing law by competent authorities.

Section 115.2 provides for two separate inquiries: (a) Whether the State or local law, on its face, provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Act, and (b) whether the current practices and past performance of the appropriate State or local agency charged with administration and enforcement of such law demonstrates that, in operation, the State or local law in fact provides rights

and remedies which are substantially equivalent to those provided in the Act.

Today's notice invites interested persons and organizations, during the next 30 days, to file written comments relevant to the determination whether the current practices and past performance of the State or local agency charged with administration and enforcement of the fair housing law of each of these jurisdictions demonstrate that, in operation, the law in fact provides rights and remedies substantially equivalent to those provided in the Act. This notice also invites comments on the Department's determination as to the adequacy of the law on its face.

C. On August 9, 1984 (49 FR 32042), the Department published a final rule that amended the recognition procedures under 24 CFR Part 115 to include, among other things, a requirement that HUD, not less frequently than annually, publish various lists informing the public of the recognition status of jurisdictions in accordance with § 115.6(e). The lists were published in the **Federal Register** on April 4, 1986 (51 FR 11577).

The lists required by § 115.6(e) are as follows:

(1) An updated, consolidated list of all State and local jurisdiction recognized as having substantially equivalent fair housing laws:

States

Alaska
California
Colorado
Connecticut
Delaware
Florida
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Dakota
Tennessee
Virginia
Washington
West Virginia
Wisconsin

Localities

Anchorage, Alaska
Phoenix, Arizona
New Haven, Connecticut
District of Columbia
Clearwater, Florida
Dade County (Metropolitan), Florida
Escambia County, Florida
Hillsborough County, Florida
Jacksonville, Florida
Orlando, Florida
Pensacola, Florida
Pinellas County, Florida
St. Petersburg, Florida
Tallahassee, Florida
Tampa, Florida
Bloomington, Illinois
Elgin, Illinois
Evanston, Illinois
Park Forest, Illinois
Springfield, Illinois
Urbana, Illinois
Columbus, Indiana
East Chicago, Indiana
Fort Wayne, Indiana
Gary, Indiana
South Bend, Indiana
Dubuque, Iowa
Iowa City, Iowa
Kansas City, Kansas
Lawrence, Kansas
Olathe, Kansas
Salina, Kansas
Jefferson County, Kentucky
Lexington-Fayette, Kentucky
Howard County, Maryland
Montgomery County, Maryland
Prince George's County, Maryland
Boston, Massachusetts
Minneapolis, Minnesota
St. Paul, Minnesota
Kansas City, Missouri
St. Louis, Missouri
Lincoln, Nebraska
Omaha, Nebraska
New York City, New York
Asheville, North Carolina
Charlotte, North Carolina
Mecklenburg County, North Carolina
New Hanover County, North Carolina
Raleigh, North Carolina
Winston-Salem, North Carolina
Dayton, Ohio
Allentown, Pennsylvania
Harrisburg, Pennsylvania
Philadelphia, Pennsylvania
Pittsburgh, Pennsylvania
Reading, Pennsylvania
York, Pennsylvania
Sioux Falls, South Dakota
Knoxville, Tennessee
Fort Worth, Texas
Arlington County, Virginia
King County, Washington
Seattle, Washington
Tacoma, Washington
Beckley, West Virginia
Charleston, West Virginia
Huntington, West Virginia
Beloit, Wisconsin
Madison, Wisconsin

(2) A list of all jurisdictions whose recognition under this Part has been withdrawn since publication of the previous notice:

None

(3) A list of jurisdictions with respect to which notice of denial of recognition has been published under § 115.7(c) since issuance of the previous notice:

None

(4) A list of jurisdictions with respect to which a notice of comment has been published under § 115.6(b) and for which requests for recognition remain pending:

States

Missouri

Localities

Meriden, Connecticut
Broward County, Florida
Country Club Hills, Illinois
Danville, Illinois
Glenwood, Illinois
Hazel Crest, Illinois
Maywood, Illinois
Marion, Indiana
Muncie, Indiana
Des Moines, Iowa
St. Joseph, Missouri
Glen Cove, New York
Rockland County, New York
Ashtabula, Ohio
Mansfied, Ohio
Farrell, Pennsylvania

(5) A list of jurisdictions for which notice of proposed withdrawal of recognition has been published under § 115.8(c) and remains pending:

None

(6) A list of jurisdictions with which a notice of entry into an agreement for interim referrals or other utilization of services has been published under § 115.11 and remains in effect:

Danville, Illinois
Marion, Indiana
St. Joseph, Missouri
Rockland County, New York

Dated: April 22, 1987.

Judith Y. Brachman,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 87-9586 Filed 4-27-87; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8138]

Income Taxes; Corporate Alternative Minimum Tax Book Income Adjustment

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides rules for computing the alternative minimum tax adjustment for the book income of corporations. This document also contains rules relating to the installment payment of estimated tax by corporations, taking into account the

alternative minimum tax and the environmental tax. Changes to the applicable law were made by the Tax Reform Act of 1986 and the Superfund Amendments and Reauthorization Act of 1986. These regulations affect corporate taxpayers and provide them with guidance neccessary to determine their alternative minimum tax liability and their estimated tax liability.

In addition, the text of the temporary regulations set forth in this document also serves as the text to the proposed regulations cross-referenced in the Notice of Proposed Rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

EFFECTIVE DATE: Taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Margaret M. O'Connor of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, Attention: CC:LR:T (LR–11–87) (202) 566–3287, not a toll free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the book income adjustment to the corporate alternative minium tax under section 56(c)(1) and section 56(f) of the Internal Revenue Code of 1986 (Code), as amended by section 701 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2320). The document also contains temporary regulations relating to the payment of estimated tax by corporations under sections 6154(c) and 6655 of the Code as amended by section 701 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2341) and by section 516 of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499, 100 Stat. 1770). The temporary regulations provided by this document remain in effect until superseded by final regulations on these subjects.

These temporary regulations are not intended to address comprehensively the issues raised by sections 56, 6154 and 6655 of the Code. Taxpayers may rely for guidance on these regulations in resolving issues arising under these sections. No inference, however, should be drawn regarding issues not expressly addressed in the regulations.

Explanation of Provisions—Corporate Alternative Minimum Tax

For taxable years beginning after December 31, 1986, section 55 of the Code imposes an alternative minimum tax on corporate taxpayers equal to the excess of the tentative minimum tax for the taxable year over the regular tax for the taxable year. The tentative minimum tax is defined in section 55(b)(1) as 20 percent of so much of the alternative minimum taxable income as exceeds the exemption amount (as determined under section 55(d)), reduced by the alternative minimum tax foreign tax credit for the taxable year. Alternative minimum taxable income is the taxable income of the taxpayer for the taxable year determined with the adjustments provided in section 56 and section 58, and increased by the amount of the items of tax preference described in section 57. For purposes of computing the alternative minimum tax, the term "regular tax" means the regular tax liability for the taxable year (as defined in section 26(b)) reduced by the foreign tax credit allowable under section 27(a). The term does not include any tax imposed by section 402(e) and does not include any increase in tax under section 47 or section 42(j).

Book Income Adjustment

In General

The computation of corporate alternative minimum taxable income for taxable years beginning in 1987, 1988, and 1989 includes, under section 56(c)(1) of the Code, and adjustment for the net book income of corporations (the "book income adjustment"). Section 56(f)(1) provides that the book income adjustment is computed by increasing alternative minimum taxable income by 50 percent of the amount (if any) by which the adjusted net book income of a corporation exceeds alternative minimum taxable income for the taxable year (determined without regard to the book income adjustment and the alternative minimum tax net operating loss).

Net Book Income

Section 1.56–1T(b) of the regulations provides rules for determining net book income. Generally, net book income is the net income or loss shown on the taxpayer's applicable financial statement. Net book income must take into account all items of revenue, expense, gain and loss for the taxable year, and includes any extraordinary items, income or loss from discontinued operations, and cumulative adjustments resulting from accounting method changes. If the taxpayer is an affiliated group of corporations filing a consolidated Federal income tax return (a "consolidated group"), consolidated net book income is the net income or loss shown on the applicable financial statement of the common parent. If consolidated net book income includes net book income that is not attributable to members of the consolidated group, § 1.56–1T(d)(6)(i)(C) requires an adjustment to consolidated net book income for purposes of calculating consolidated adjusted net book income. An adjustment will also be required under § 1.56–1T(d)(6)(i)(B) when consolidated net book income does not include the net book income attributable to all members of the consolidated group.

A taxpayer that does not have an applicable financial statement must use current earnings and profits for the taxable year instead of net book income in order to compute the book income adjustment. Additionally, in certain cases a taxpayer may elect to use current earnings and profits if its applicable financial statement is unaudited. If such an election is made, it may only be revoked with the consent of the District Director. Section 1.56–1T(b)(5) provides rules for computing current earnings and profits.

Applicable Financial Statement

Section 1.56–1T(c) provides rules relating to the determination of the applicable financial statement to be used by a taxpayer in order to determine net book income. In general, a taxpayer's applicable financial statement is its financial statement that has the highest priority, according to the following order: (1) A financial statement required to be filed with the Securities and Exchange Commission; (2) a certified audited financial statement used for credit purposes, for disclosure to shareholders, or for other substantial non-tax purposes; (3) a financial statement (but not a tax return) that is required to be provided to the Federal government or agency thereof, a state government or agency thereof, or a political subdivision of a state or an agency thereof; or (4) any other financial statement used as a statement for credit purposes, for reporting to shareholders, or for any other substantial non-tax purpose (an unaudited statement).

Section 1.56–1T(c)(1)(ii) provides that a statement will be a certified audited statement if it is certified by an independent Certified Public Accountant to be fairly presented. A statement subject to a qualified opinion is also considered a certified audited statement. However, a statement subject to an adverse opinion is considered certified only if the accountant discloses the amount of the disagreement with the statement.

In order to be an applicable financial statement, § 1.56–1T(c)(4) of the regulations requires that a financial

statement must be actually used for a substantial non-tax purpose. Thus, a statement used solely for purposes of computing the book income adjustment is not an applicable financial statement even if it is a certified audited statement.

If a taxpayer has more than one statement and the statements are of equal priority, § 1.56–1T(c)(3)(iii)(A) provides that the applicable financial statement is the statement that results in the greatest amount of adjusted net book income. However, under § 1.56–1T(c)(3)(iii)(B)(*1*) if a taxpayer has more than one statement that is required to be filed with the Securities and Exchange Commission, a statement that is a certified audited financial statement takes priority over a statement that is unaudited. In addition, under § 1.56–1T(c)(3)(iii)(B)(*2*) an unaudited statement that is accompanied by an accountant's review report has priority over other audited statements.

Section 1.56–1T(c)(5)(i) provides rules for determining the applicable financial statement of related corporations. Under § 1.56–1T(c)(5)(i)(A), the applicable financial statement of a consolidated group is generally the highest priority statement of the parent corporation of such group. If the parent has two or more financial statements of equal priority reporting on the same corporations, the rules of § 1.56–1T(c)(3)(iii) apply and the applicable financial statement is the statement that results in the greatest amount of adjusted net book income.

If the parent has two or more financial statements of equal priority, but the statements do not report on the same corporations, § 1.56–1T(c)(5)(i)(B) (*1*) and (*2*) provide special priority rules. The special priority rules provide that the applicable financial statement is the statement of the parent reflecting the greatest amount of gross receipts attributable to members of the consolidated group. If after applying this rule, the parent still has financial statements to equal priority, the applicable financial statement is that statement reflecting the greatest amount of gross receipts. If after applying the rules of § 1.56–1T(c)(5)(i)(B) (*1*) and (*2*) the parent still has financial statements of equal priority, the rules of § 1.56–1T(c)(3)(iii) apply and the applicable financial statement is the statement resulting in the greatest amount of adjusted net book income.

In addition, § 1.56–1T(c)(5)(i)(C) provides rules for determining the applicable financial statement of a related corporation that is not part of the consolidated group. Under this provision, the applicable financial statement is the statement of highest priority that is separately prepared by such corporation. For example, assume corporation B is 100 percent owned by corporation, A, but A and B do not file a consolidated Federal income tax return. However, in addition to preparing its own financial statement, B is included in the consolidated financial statement of A and B. Given these facts, § 1.56–1T(c)(5)(i)(C) provides that B's separate financial statement is its applicable financial statement.

If a taxpayer's corporate structure is rearranged, or its financial reporting is modified and the principal purpose of such action is to reduce adjusted net book income, § 1.56–1T(c)(5)(1)(D) provides that the District Director may, based on all the facts and circumstances, determine the taxpayer's applicable financial statement.

Computation of Adjusted Net Book Income When Taxable Year and Financial Accounting Year Differ

If a taxpayer's applicable financial statement is prepared on a year that is different from the year used for purposes of preparing its Federal income tax, § 1.56–1T(b)(4)(i) requires that adjusted net book income be computed based upon the taxpayer's taxable year. Thus, adjusted net book income is computed by including a pro rata portion of the adjusted net book income for each financial accounting year that includes any part of the taxpayer's taxable year. Under this rule, a taxpayer may be required to make a reasonable estimate of adjusted net book income for the portion of the taxable year that occurs after the close of the accounting year that ends within the taxpayer's taxable year. If actual adjusted net book income for the portion of the taxable year that occurs after the close of the accounting year exceeds the estimate and results in additional tax liability, the taxpayer must file an amended Federal income tax return reflecting such liability. *See* S. Rep. No. 99–313, 99th Con., 2nd Sess. 533 (1986). However, § 1.56–1T(b)(4)(iii) permits a taxpayer to elect to compute net book income based upon the net book income reported on an applicable financial statement prepared for the financial accounting year that ends within the taxpayer's taxable year. This election is available only if a taxpayer's accounting year ends five or more months after the end of its taxable year.

Adjustments to Net Book Income

The regulations under § 1.56–1T(d)(3) require an adjustment to net book income in order to exclude items of income and expense that relate to either Federal income taxes or foreign taxes that are eligible for the foreign tax credit under section 27(a) of the Code. In addition, items that are stated net of Federal income or foreign tax on the taxpayer's applicable financial statement must be grossed up to disregard that tax expense or benefit.

The regulations under § 1.56–1T(d)(4) provide rules requiring adjustments to net book income in order to prevent the omission or duplication of items of net book income. Adjustments may be required for depreciation in excess of basis, duplications of earnings and profits, and restatements of prior years' applicable financial statements. In addition, the regulations provide that the Commissioner may approve or require other adjustments to a taxpayer's net book income in order to prevent omission or duplication of items.

Section 1.56–1T(d)(5) requires the taxpayer to adjust net book income in order to include amounts reflected in certain disclosures (*e.g.*, footnotes, equity adjustments, and the accountant's opinion). Generally, if the taxpayer prepares its applicable financial statement using either generally accepted accounting principles (GAAP), or its historic practice of accounting, no adjustment for disclosure to its financial statement will be required. However, to the extent there is disclosure that deviates from GAAP and the taxpayer's historic practice, an adjustment to net book income may be required.

Under § 1.56–1T(c)(5)(iii) and (d)(4)(iv), net book income may be adjusted to include any amounts disclosed in supplements or amendments to the applicable financial statement prepared subsequent to the completion of the applicable financial statement but before the taxpayer's Federal income tax return for the taxable year would be due if the time for filing were extended under section 6081 of the Code (the "extended filing date"). In addition, if as a result of an error, the net book income for a taxable year is restated before the extended filing date for that taxable year, the restated net book income, and not the original net book income, must be used to compute the book income adjustment. If the net book income for a taxable year is restated after the extended filing date for that taxable year, net book income in the taxable year that the prior year's net book income is restated must be adjusted to reflect the cumulative effect of the restatement on net book income for taxable years beginning after December 31, 1986.

The regulations include rules under § 1.56–1T(d)(5)(iv) that may require an adjustment to net book income when a taxpayer includes the cumulative effect of an accounting method change in net book income. Such a change is treated in the same manner as a restatement prepared after the extended filing date. Thus, in the year that the accounting method change is made, the taxpayer must adjust net book income to exclude that portion of the cumulative effect that is attributable to taxable years beginning before January 1, 1987.

Section 1.56–1T(d)(6)(i) requires adjustments to the applicable financial statement of a consolidated group. Under § 1.56–1T(d)(6)(i)(A), net book income disclosed on the consolidated group's applicable financial statement must be adjusted to include net book income attributable to members of the group that are not included in the applicable financial statement. In making this adjustment, appropriate consolidating elimination entries must also be made. In addition, § 1.56–1T(d)(6)(i)(B)((*2*) requires that net book income of a consolidated group must be adjusted to include income or loss allocated to minority interests in members of the consolidated group. Additionally, § 1.56–1T(d)(6)(i)(C) provides that the net book income shown on the consolidated group's applicable financial statement must be adjusted to exclude any income or loss of a corporation that is included in the applicable financial statement but is not included in the consolidated group. Consolidating elimination entries attributable to the excluded member must also be reversed. Section 1.56–1T(d)(6)(ii) requires related corporations that are not members of the same consolidated group to allocate items relating to intercompany transactions under the principles of section 482 of the Code.

Payment of Estimated Taxes

In General

In making its installment payment of estimated tax a corporate taxpayer must take into account the alternative minimum tax imposed under section 55 of the Code. Certain corporate taxpayers must also pay estimated tax with respect to the environmental tax imposed by section 59A. The environmental tax is based upon a percentage of modified alternative minimum taxable income. In order to estimate these taxes, the taxpayer must estimate alternative minimum taxable income for the applicable installment. Thus, the taxpayer must also estimate the book income adjustment.

Estimating The Book Income Adjustment

The regulations contain rules for estimating the book income adjustment if the annualization exception under section 6655(d)(3) is used in order to determine the taxpayer's quarterly installment payment. Section 1.6655–7T(b) generally provides that the rules applicable for calculating the annual book income adjustment are also generally applicable to calculating the book income adjustment for the period being annualized under the rules of section 6655(d)(3) (the annualization period). The regulations also contain special rules relating to the applicable financial statement to be used in estimating the book income adjustment for an annualization period. Generally, under § 1.6655–7T(d), the estimated tax payment must be based upon the applicable financial statement (within the meaning of section 56(f) and the regulations thereunder) prepared for the annualization period on or before the due date of the installment payment. However, if a taxpayer reasonably expects to have a financial statement for the annualization period of higher priority no later than 30 days after the installment payment is due, the taxpayer must make a reasonable estimate of the adjusted net book income that will result from such statement, and such estimate shall be used as the taxpayer's adjusted net book income for that annualization period.

If the taxpayer does not reasonably expect to have an applicable financial statement within 30 days after the installment payment is due, the regulations require the taxpayer to deem net book income for the annualization period equal to the current earnings and profits for such period. In addition, a taxpayer may elect to use current earnings and profits for an annualization period if the taxpayer only has an unaudited statement for the period and has elected to use current earnings and profits to compute its book income adjustment when filing its Federal income tax return for the taxable year. The regulations provide special rules for the 1987 taxable year.

Thus, in order to compute its net book income for purposes of the annualization exception under section 6655(d)(3), a large corporation (as defined in section 6655(i)(2)) that does not prepare and use a quarterly financial statement must estimate earnings and profits on a quarterly basis, even though it may not use earnings and profits when filing its annual Federal income tax return. The Service invites comments on the frequency of this problem and suggestions regarding its solution.

Special Analyses

No general notice of proposed rulemaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule. The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these temporary regulations is Margaret M. O'Connor of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects

26 CFR 1.01–1.58–8

Income taxes, Tax liability, Tax rates, Credits.

26 CFR 1.6654–1.6696–1

Income taxes, Administration and procedure, Penalties, Additions to tax.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of amendments to the regulation

Accordingly 26 CFR Parts 1 and 602 are amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.56–1T is also issued under 26 U.S.C. 56(f)(2)(H).

Par. 2. Internal references to §§ 1.56–1 thru 1.56–5 are revised as follows:

§ 1.56–1 [Amended]

1. In § 1.56–1(b)(2)(ii), "§ 1.56–5" is revised to read "§ 1.56A–5".

§ 1.56–3 [Amended]

2. In § 1.56–3(b), second sentence, "§ 1.56–2" is revised to read "§ 1.56A–2".

3. In § 1.56–3(b), fourth sentence of the *Example*, "§ 1.56–2" is revised to read "§ 1.56A–2".

§ 1.56–5 [Amended]

4. In § 1.56–5(b), second sentence of the flush material that follows § 1.56–5(b)(2), "§ 1.56–1" is revised to read "§ 1.56A–1".

5. In § 1.56–5(e)(5), second sentence, "§ 1.56–1" is revised to read "§ 1.56A–1".

6. In § 1.56–5(h), *Example (4)*, last sentence "§ 1.56–5(e)(4)" is revised to read "§ 1.56A–5(e)(4)".

§ 1.57–4 [Amended]

7. In § 1.57–4(b), first sentence, "§ 1.56–1(a)" is revised to read "§ 1.56A–1(a)".

8. In § 1.57–4(b)(2), first sentence of the flush material that follows § 1.57–4(b)(2)(ii), "§ 1.56–2(a)(2)" is revised to read "§ 1.56A–2(a)(2)".

9. In § 1.57–4(e), *Example (5)*, in the second sentence of the text that follows the first set of figures, "§ 1.56–2" is revised to read "§ 1.56A–2".

§ 1.57–5 [Amended]

10. In § 1.57–5(b), first sentence, "§ 1.56–2(b)" is revised to read "§ 1.56A–2(b)".

§ 1.58–7 [Amended]

11. In § 1.58–7(c)(1)(iii), first sentence of subparagraph (a) under *Example (4)*, "§ 1.56–2" is revised to read "§ 1.56A–2".

12. In § 1.58–7(c)(1)(iii), subparagraph (b) under *Example (4)*, "§ 1.56–2" is revised to read "§ 1.56A–2".

13. In § 1.58–7(c)(2), second sentence of subparagraph (b) under *Example (3)*, "§ 1.56–2" is revised to read "§ 1.56A–2".

14. In § 1.58–7(c)(4), "§ 1.56–5(f)" is revised to read "§ 1.56A–5(f)".

§§ 1.56–1 through 1.56–5 [Redesignated as §§ 1.56A–1 through 1.56A–5]

Par. 3. Sections 1.56–1 thru 1.56–5 are redesignated §§ 1.56A–1 thru 1.56A–5, respectively.

Par. 4. A new § 1.56–0T is added immediately before § 1.56 A–1 to read as follows:

§ 1.56–0T Table of contents to § 1.56–1T, adjustment for book income of corporations (temporary).

(6) Adjustments applicable to related corporations.

(i) Consolidated returns.

(A) In general.

(B) Corporations included in the consolidated Federal income tax return but excluded from the applicable financial statement.

(C) Corporations included in the applicable financial statement but excluded from the consolidated tax return.

(Adjustment under principles of section 482.

(iii) Adjustment for dividends received from section 936 corporations.

(A) In general.

(B) Treatment as foreign taxes.

(C) Treatment of taxes imposed on section 936 corporations.

(iv) Adjustment to net book income on sale of certain investments.

(v) Examples.

(e) Special rules.

(1) Cooperatives.

(2) Alaska Native Corporations.

(3) Insurance companies.

(4) Estimating the net book income adjustment for purposes of estimated tax liability.

Par. 5. A new § 1.56–1T is added after § 1.56–0T to read as follows:

§ 1.56–1T Adjustment for the book income of corporations (temporary).

(a) *Computation of the book income adjustment—(1) In general.* For taxable years beginning in 1987, 1988, and 1989, the alternative minimum taxable income of any taxpayer is increased by the book income adjustment described in this paragraph (a)(1). The book income adjustment is 50 percent of the excess, if any, of—

(i) The adjusted net book income (as defined in paragraph (b) of this section) of the taxpayer, over

(ii) The pre-adjustment alternative minimum taxable income for the taxable year.

For purposes of this section, pre-adjustment alternative minimum taxable income is alternative minimum taxable income, determined without regard to the book income adjustment or the alternative tax net operating loss determined under section 56(a)(4). See paragraph (a)(4) of this section for examples relating to the computation of the book income adjustment.

(2) *Taxpayers subject to the book income adjustment.* The book income adjustment is applicable to any corporate taxpayer that is not an S corporation, regulated investment company (RIC), real estate investment trust (REIT), or real estate mortgage investment company (REMIC).

(3) *Consolidated returns.* In the case of a taxpayer that is a consolidated group, the book income adjustment equals 50 percent of the amount, if any, by which its consolidated adjusted net book income (as defined in paragraph (b)(3)(i) of this section) exceeds its consolidated pre-adjustment alternative minimum taxable income (as defined in paragraph (b)(3)(iii) of this section). See paragraph (a)(4), Example (4) of this section. For purposes of this section, with respect to any taxable year the term "consolidated group" means an affiliated group of corporations that files a consolidated Federal income tax return under the rules of section 1501 for such year. See paragraph (d)(6) of this section for rules relating to adjustments attributable to related corporations.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). Corporation A has adjusted net book income of $200 and pre-adjustment alternative minimum taxable income of $100. A must increase its pre-adjustment alternative minimum taxable income by $50 (($200 − $100) x .50).

Example (2). Corporation B has adjusted net book income of $200 and pre-adjustment alternative minimum taxable income of $300. B does not have a book income adjustment for the taxable year because its adjusted net book income does not exceed its pre-adjustment alternative minimum taxable income.

Example (3). Corporation C has adjusted net book income of negative $200 and pre-adjustment alternative minimum taxable income of negative $300. C must increase its pre-adjustment alternative minimum taxable income by $50 (($−200 − ($−300)) x .50). Thus, C's alternative minimum taxable income determined after the book income adjustment, but without regard to the alternative tax net operating loss, is negative $250 ($−300 + $50).

Example (4). Corporations D and E are a consolidated group for tax purposes. D and E do not have a consolidated financial statement. On their separate financial statements D and E have adjusted net book income of $100 and $50 respectively, and pre-adjustment alternative minimum taxable income of $50 and $80 respectively. Assuming there are no intercompany transactions, DE's consolidated adjusted net book income (as defined in paragraph (b)(3)(i) of this section) is $150 and its consolidated pre-adjustment alternative minimum taxable income (as defined in paragraph (b)(3)(iii) of this section) is $130. DE must increase its consolidated pre-adjustment alternative minimum taxable income by $10 (($150 − $130) x .50).

(b) *Adjusted net book income—(1) In general.* "Adjusted net book income" means the net book income (as defined in paragraph (b)(2) of this section) adjusted as provided in paragraph (d) of this section.

(2) *Net book income—(i) In general.* "Net book income" means the income or loss of a taxpayer reported in the taxpayer's applicable financial statement (as defined in paragraph (c) of this section). Net book income must take into account all items of income, expense, gain and loss for the taxable year, including extraordinary items, income or loss from discontinued operations, and cumulative adjustments resulting from accounting method changes.

(ii) *Measures of net book income.* Except as described in paragraph (b)(5) of this section, net book income is disclosed on the income statement included in a taxpayer's applicable financial statement. Such income statement must reconcile with the balance sheet, if any, that is included in the applicable financial statement and must be used in computing changes in owner's equity reflected in the applicable financial statement. See paragraph (c) of this section for the definition of an applicable financial statement.

(iii) *Tax-free transactions and tax-free income.* Net book income includes income or loss that is reported on a taxpayer's applicable financial statement regardless of whether such income or loss is taken into account for other Federal income tax purposes. See paragraph (b)(6), Examples (1) and (2) of this section.

(iv) *Treatment of dividends and other amounts.* The adjusted net book income of a taxpayer shall include the earnings of other corporations not filing a consolidated Federal income tax return with the taxpayer only to the extent that amounts are required to be included in the taxpayer's gross income under chapter 1 of the Code with respect to the earnings of such other corporation (*e.g.*, dividends received from such corporation and amounts included under subpart A). See paragraph (b)(6), Examples (3) and (4) of this section.

(3) *Additional rules for consolidated groups—(i) Consolidated adjusted net book income.* "Consolidated adjusted net book income" means the consolidated net book income (as defined in paragraph (b)(3)(ii) of this section), after taking into account the adjustments under the rules of paragraph (d) of this section.

(ii) *Consolidated net book income.* Consolidated net book income is the income or loss of a consolidated group as reported on its applicable financial statement as defined in paragraph (c)(5) of this section.

(iii) *Consolidated pre-adjustment alternative minimum taxable income.*

Consolidated pre-adjustment alternative minimum taxable income is the taxable income of the consolidated group for the taxable year, determined with the adjustments provided in sections 56 and 58 (except for the book income adjustment and the alternative tax net operating loss determined under section 54(a)(4)) and increased by the preference items described in section 57.

(iv) *Cross references.* See paragraph (c)(5) of this section for rules relating to the applicable financial statement of related corporations and paragraph (d)(6) of this section for rules relating to adjustments attributable to related corporations.

(4) *Computation of adjusted net book income when taxable year and financial accounting year differ*—(i) *In general.* If a taxpayer's applicable financial statement is prepared on the basis of a financial accounting year that differs from the year that the taxpayer uses for filing its Federal income tax return, adjusted net book income must be computed—

(A) By including a pro rata portion of the adjusted net book income for each financial accounting year that includes any part of the taxpayer's taxable year (see paragraph (b)(6), Example (5) of this section), or

(B) In accordance with the election described in paragraph (b)(4)(iii) of this section.

A method not described in paragraph (b)(4)(i)(A) or (B) of this section may not be used. See paragraph (b)(6), Example (6) of this section.

(ii) *Estimating adjusted net book income.* If a taxpayer is using the pro rata approach described in paragraph (b)(4)(i)(A) of this section and an applicable financial statement for part of the taxpayer's taxable year is not available when the taxpayer files its Federal income tax return, the taxpayer must make a reasonable estimate of adjusted net book income for the pro rata portion of the taxable year. If the actual pro rata portion of adjusted net book income that results from the taxpayer's applicable financial statement for the financial accounting year exceeds the estimate of adjusted net book income used on the original tax return and results in additional tax liability, the taxpayer must file an amended Federal income tax return reflecting such additional liability. The amended return must be filed within 90 days of the date the previously unavailable applicable financial statement is available.

(iii) *Election to compute adjusted net book income based on the financial statement for the year ending within the taxable year*—(A) *In general.* If a taxpayer's accounting year ends five or more months after the end of its taxable year, the taxpayer may elect for its first taxable year beginning after 1986 in which the financial accounting and taxable year differ to compute adjusted net book income based on the adjusted net book income reported on the applicable financial statement prepared for the financial accounting year ending within the taxpayer's taxable year. See paragraph (b)(6), Examples (6) and (7) of this section. For purposes of this paragraph (b)(4)(iii)(A), if a taxpayer uses a 52–53 week year for financial accounting or Federal income tax purposes, the last day of such year shall be deemed to occur on the last day of the calendar month ending closest to the end of such year.

(B) *Manner of making election.* An election under this paragraph (b)(4)(iii) is made by attaching a statement to the taxpayer's Federal income tax return for the taxable year in which the election is made. The statement must identify the election and set forth the electing taxpayer's name, address, taxpayer identification number, taxable year and financial accounting year. An election under this paragraph will apply for the taxable year when initially made and for all subsequent years until revoked with the consent of the District Director.

(iv) *Quarterly statement filed with the Securities and Exchange Commission (SEC).* A taxpayer with different financial accounting and taxable years that is required to file both annual and quarterly financial statements with the SEC may not aggregate quarterly statements filed with the SEC in order to obtain a statement covering the taxpayer's taxable year. See paragraph (b)(6), Example (8) of this section. See paragraph (c)(3)(iii)(B)(*1*) of this section for priority rules relating to statements required to be filed with the SEC.

(5) *Computation of net book income using current earnings and profits*—(i) *In general.* If a taxpayer does not have an applicable financial statement, or only has a statement described in paragraph (c)(1)(iv) of this section and makes the election described in paragraph (c)(2) of this section, net book income for purposes of this section is equal to the taxpayer's current earnings and profits for its taxable year. Generally, a taxpayer's current earnings and profits is computed under the rules of section 312 and the regulations thereunder. For purposes of this section, current earnings and profits is not reduced by any distribution to shareholders. Current earnings and profits is reduced by Federal income tax expense and any foreign tax expense for foreign taxes eligible for the foreign tax credit under section 27. See paragraph (d)(3) of this section for adjustments to net book income with respect to certain taxes. See paragraph (d)(3), Example (5) of this section.

(ii) *Current earnings and profits of a consolidated group.* For purposes of this paragraph (b)(5), current earnings and profits of a consolidated group is the aggregate of the current earnings and profits of each member of the group after making adjustments to exclude earnings and profits attributable to intercompany transactions as described in § 1.1502–33(a). See paragraph (d)(4) of this section for rules relating to adjustments to current earnings and profits.

(6) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). Corporation A owns 100 percent of corporation B and the AB affiliated group files a consolidated Federal income tax return. AB uses a calendar year for both financial accounting and tax purposes. During 1987, A transfers all of its stock in B for stock of an acquiring corporation in a transaction described in section 368(a)(1)(B). Although AB recognizes no taxable gain on the transfer pursuant to section 354, gain from the transfer is reported on AB's 1987 applicable financial statement. Pursuant to paragraph (b)(2)(iii) of this section, AB's net book income includes the book gain attributable to the transfer.

Example (2). Corporation C uses a calendar year for both financial accounting and tax purposes. C adopted a plan of liquidation prior to August 1, 1986. On June 1, 1987, C makes a bulk sale of all of its assets subject to liabilities and completely liquidates. Pursuant to section 633(c) of the Tax Reform Act of 1986 (the Act), section 337, as in effect prior to its amendment by the Act, applies. Thus, C will generally not recognize taxable gain upon the bulk sale. However, C's applicable financial statement for the period January 1, 1987, through June 1, 1987, reports net book income of $500, $400 of which is attributable to the bulk sale of assets on June 1, 1987. Pursuant to paragraph (b)(2)(iii) of this section, B's net book income includes the amount attributable to the bulk sale. Thus, assuming C has no other adjustments to net book income, its adjusted net book income for the period January 1, 1987 through June 1, 1987, is $500.

Example (3). Corporation D owns 100 percent of E, a controlled foreign corporation as defined in section 957. Both D and E use a calendar year for financial accounting and tax purposes. D's applicable financial statement includes E. Pursuant to section 951, D includes $100 of E's subpart F income in its gross income for 1987. Although D's applicable financial statement is adjusted to eliminate E's income, pursuant to paragraph (b)(2)(iv) of this section, D's adjusted net book income for 1987 includes the $100 of gross income included under section 951.

Example (4). Corporation F owns 20 percent of G, a foreign corporation. Both F

and G use a calendar year for financial accounting and tax purposes. During 1987, G pays F a $100 dividend. F's applicable financial statement accounts for F's investment in G by the equity method. F is eligible for a deemed paid foreign tax credit of $30 with respect to the dividend from G and must include the $130 in gross income pursuant to section 78 of the Code. Although F's applicable financial statement is adjusted to eliminate F's income from G under the equity method, pursuant to paragraph (b)(2)(iv) of this section, F's adjusted net book income for 1987 includes the $130 of gross income recognized with respect to the dividend from G.

Example (5). Corporation H files its Federal income tax return on a calendar year basis. However, its applicable financial statement is based on a fiscal year ending June 30. H does not make the election described in paragraph (b)(4)(iii) of this section. Pursuant to paragraph (b)(4)(i) of this section, H's adjusted net book income for calendar year 1987 is computed by adding 50 percent of adjusted net book income from the applicable financial statement for the year ending June 30, 1987 and 50 percent of adjusted net book income from the applicable financial statement for the year ending June 30, 1988.

Example (6). Corporation J files its Federal income tax returns for 1987, 1988, and 1989 on a calendar year basis. However, its applicable financial statement is based on a year ending May 31. Pursuant to paragraph (b)(4)(iii) of this section, J elects in 1987 to compute its adjusted net book income by using the applicable financial statement for the fiscal year ending May 31, 1987. Unless the District Director consents to revocation of the election, for calendar year 1988 or 1989, J's adjusted net book income for 1988 and 1989 is determined from its applicable financial statements for the years ending May 31, 1988 and May 31, 1989, respectively.

Example (7). The facts are the same as in Example (6), except that J's applicable financial statement is based on a year ending April 30. Since April 30 is less than 5 months after December 31, the end of J's taxable year, J is not permitted to make the election described in paragraph (b)(4)(iii) of this section.

Example (8). The facts are the same as in Example (5), except H files quarterly and annual financial statements with the Securities and Exchange Commission (SEC). The fourth quarter statement is included as a footnote to the annual statement that it files with the SEC. Pursuant to paragraph (b)(4)(iv) of this section, H may not determine its net book income by aggregating its four quarterly statements for 1987. Thus, H's net book income is computed as described in Example (5).

(c) *Applicable financial statement*—(1) *In general.* A taxpayer's applicable financial statement is the statement described in this paragraph (c)(1) that has the highest priority, as determined under paragraph (c)(3) of this section. Generally, such statement includes an income statement, a balance sheet listing assets, liabilities, owner's equity (including changes thereto), and other appropriate information. An income statement alone may constitute an applicable financial statement for purposes of this section if the other materials described in this paragraph are not prepared or used by the taxpayer. However, an income statement that does not reconcile with financial materials otherwise issued will not qualify as an applicable financial statement. For purposes of determining the book income adjustment, the following may be considered applicable financial statements (subject to the rules relating to priority among statements under paragraph (c)(3) of this section—

(i) *Statement required to be filed with the Securities and Exchange Commission (SEC).* A financial statement that is required to be filed with the Securities and Exchange Commission.

(ii) *Certified audited financial statement.* A certified audited financial statement that is used for credit purposes, for reporting to shareholders or for any other substantial non-tax purpose. Such statement must be certified by an independent (as defined in the American Institute of Certified Public Accountants Professional Standards, Code of Ethics (ET), section 101) Certified Public Accountant. A financial statement is "certified audited" for purposes of this section if it is—

(A) Certified to be fairly presented (a "clean" opinion),

(B) Subject to a qualified opinion that such financial statement is fairly presented subject to a concern about a contingency (a qualified "subject to" opinion),

(C) Subject to a qualified opinion that such financial statement is fairly presented, except for a method of accounting with which the accountant disagrees (a qualified "except for" opinion), or

(D) Subject to an adverse opinion, but only if the accountant discloses the amount of the disagreement with the statement.

Any other statement or report, such as a review statement or a compilation report that is not subject to a full audit is not a certified audited statement. See paragraph (c)(3)(iii)(B)(*2*) of this section for a special rule for a statement accompanied by a review report when there are statements of equal priority. See also paragraph (d)(5)(iii) of this section for rules relating to adjustments for information disclosed in an accountant's opinion to a certified audited statement.

(iii) *Financial statement provided to a government regulator.* A financial statement that is required to be provided to the Federal Government or any agency thereof (other than the Securities and Exchange Commission), a state government or any agency thereof, or a political subdivision of a state or any agency thereof. An income tax return, franchise tax return or other tax return prepared for the purpose of determining any tax liability that is filed with a Federal, state or local government or agency cannot be an applicable financial statement.

(iv) *Other financial statements.* A financial statement that is used for credit purposes, for reporting to shareholders, or for any other substantial non-tax purpose, even though such financial statement is not described in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

If a taxpayer does not have a financial statement described in paragraphs (c)(1)(i) through (c)(1)(iv) of this section, the taxpayer does not have an applicable financial statement. In such a case, net book income for the taxable year will be treated as being equal to the taxpayer's current earnings and profits for the taxable year. See paragraph (b)(5) of this section for rules relating to the computation of current earnings and profits for the taxable year. See paragraph (c)(4) of this section for rules relating to use of a financial statement for a substantial non-tax purpose.

(2) *Election to treat net book income as equal to current earnings and profits for the taxable year*—(i) *In general.* If a taxpayer's only financial statement is a statement described in paragraph (c)(1)(iv) of this section, the taxpayer may elect to treat net book income as equal to the taxpayer's current earnings and profits for all taxable years in which the taxpayer is eligible to make the election.

(ii) *Manner and time of making election.* An election under this paragraph is made by attaching a statement to the taxpayer's Federal income tax return for the first taxable year the taxpayer is eligible to make the election. The statement must set forth the electing taxpayer's name, address and taxpayer identification number, state that the election is being made under the provisions of section 56(f)(3)(B), and state that the only financial statement of the taxpayer is described in paragraph (c)(1)(iv) of this section. An election under this paragraph is effective for every taxable year in which the taxpayer does not have a financial statement described in paragraphs (c)(1)(i) through (c)(1)(iii) of this section and may be revoked only with the consent of the District Director.

See paragraph (c)(6), Example (1) of this section.

(3) *Priority among statements*—(i) *In general.* If a taxpayer has more than one financial statement described in paragraph (c)(1)(i) through (c)(1)(iv) of this section, the taxpayer's applicable financial statement is the statement with the highest priority. Priority is determined in the following order—

(A) A financial statement described in paragraph (c)(1)(i) of this section.

(B) A certified audited statement described in paragraph (c)(1)(ii) of this section.

(C) A financial statement required to be provided to a Federal or other government regulator described in paragraph (c)(1)(iii) of this section.

(D) Any other financial statement described in paragraph (c)(1)(iv) of this section. For example, corporation A, which uses a calendar year for both financial accounting and tax purposes, prepares a financial statement for calendar year 1987 that is provided to a state regulator and an unaudited financial statement that is provided to A's creditors. The statement provided to the state regulator is A's financial statement with the highest priority and thus is A's applicable financial statement.

(ii) *Special priority rules for use of certified audited financial statements and other financial statements.* In the case of financial statements described paragraphs (c)(1)(ii) and (c)(1)(iv) of this section, within each of these categories the taxpayer's applicable financial statement is determined according to the following priority—

(A) A statement used for credit purposes,

(B) A statement used for disclosure to shareholders, and

(C) Any other statement used for other substantial non-tax purposes.

For example, corporation B uses a calendar year for both financial accounting and tax purposes. B prepares a financial statement for calendar year 1987 that it uses for credit purposes and prepares another financial statement for calendar year 1987 that it uses for disclosure to shareholders. Both financial statements are unaudited. The statement used for credit purposes is B's financial statement with the highest priority and thus is B's applicable financial statement.

(iii) *Statements of equal priority*—(A) *In general.* Except as provided in paragraph (c)(3)(iii)(B) and paragraph (c)(5)(i)(B) of this section, if a taxpayer has two or more financial statements of equal priority (determined under paragraphs (c)(3)(i) and (c)(3)(ii) of this section), the taxpayer's applicable financial statement is the statement that results in the greatest amount of adjusted net book income.

(B) *Exceptions to the general rule in paragraph (c)(3)(iii)(A)—(1)* In the case of two or more financial statements described in paragraph (c)(1)(i) of this section (relating to financial statements required to be filed with the SEC) that are of equal priority, a certified audited financial statement has a higher priority than an unaudited financial statement.

(*2*) In the case of two or more financial statements described in paragraph (c)(1)(iv) of this section (relating to other financial statements) that are of equal priority, a financial statement accompanied by an auditor's "review report" has a higher priority than another financial statement of otherwise equal priority. For purposes of this section, an auditor's review report is defined in the American Institute of Certified Public Accountant Professional Standards, AR section 100.32. See paragraph (c)(6), Examples (2) and (3) of this section.

(4) *Use of financial statement for a substantial non-tax purpose.* In order to be an applicable financial statement for purposes of computing the book income adjustment, a financial statement described in paragraph (c)(ii) or (c)(iv) must be used by the taxpayer for credit purposes, for disclosure to shareholders, or for any other substantial non-tax purpose. A financial statement is used by a taxpayer if the taxpayer reasonably anticipates that users of the statement will rely on it for non-tax purposes. Thus, a financial statement used for the purpose of computing the book income adjustment is not an applicable financial statement even if it is provided to shareholders or creditors, unless the taxpayer reasonably anticipates that users of the statement will rely on it for non-tax purposes. See paragraph (c)(6), Examples (4) and (5) of this section.

(5) *Special rules*—(i) *Applicable financial statement of related corporations*—(A) *Applicable financial statement of a consolidated group.* The applicable financial statement of a consolidated group (as defined in paragraph (a)(3) of this section) is the financial statement of the common parent (within the meaning of section 1504(a)(1)) of the consolidated group that has the highest priority under the rules of paragraphs (c)(3)(i), (c)(3)(ii) and (c)(5)(i)(B) of this section. See paragraph (d)(6)(i) of this section for rules relating to adjustments to net book income of a consolidated group. See paragraph (6), Example (6) of this section.

(B) *Special rule for statements of equal priority.* If a consolidated group has two or more financial statements of equal priority (determined under paragraphs (c)(3)(i) and (c)(3)(ii) of this section and this paragraph (c)(5)), the consolidated group's applicable financial statement is determined under either paragraph (c)(5)(i)(B) (*1*) or (*2*), whichever is applicable.

(*1*) *Two or more financial statements reporting on the same corporations.* If two or more financial statements of equal priority report on the same corporations, the consolidated group's applicable financial statement is determined under the rules of paragraph (c)(3)(iii) of this section. Thus, the financial statement that results in the greatest consolidated adjusted net book income is the consolidated group's applicable financial statement.

(*2*) *Two or more financial statements reporting on different corporations.* If two or more financial statements of equal priority report on different corporations, the consolidated group's applicable financial statement is—

(*i*) The statement that reflects the greatest amount of gross receipts attributable to members of the consolidated group, or

(*ii*) The statement that reflects the greatest amount of gross receipts (including gross receipts attributable to corporations that are not members of the consolidated group), but only if the consolidated group has financial statements of equal priority after applying the rules of paragraph (c)(5)(i)(B)(*2*)(*i*).

If, after applying the rules of paragraphs (c)(5)(i)(B)(*2*) (*i*) and (*ii*) of this section, the consolidated group still has financial statements of equal priority, the rules of paragraph (c)(3)(iii) of this section apply. See paragraph (6), Examples (7) and (8) of this section.

(C) *Special rule for related corporations.* If any portion of the net book income of a corporation the ("first corporation") is included on the applicable financial statement of a second corporation, but the first and second corporations are not members of the same consolidated group, the applicable financial statement of the second corporation is disregarded when determining the applicable financial statement of the first corporation. Thus, the applicable financial statement of the first corporation is the financial statement of highest priority determined under the rules of paragraph (c)(3) of this section without regard to the financial statment of the second corporation. Pursuant to paragraph (c)(1) of this section, if a separate financial statement is not prepared by the first corporation, the rules of paragraph (b)(5)

(relating to current earnings and profits) apply. See paragraph (c)(6), Examples (9) and (10) of this section.

(D) *Anti-abuse rule.* The special rules of this paragraph (c)(5)(i) will not apply if the taxpayer rearranges its corporate structure or modifies its financial reporting and the principal purpose of such action is to use the special rules of this paragraph (c)(5)(i) to reduce the amount of the book income adjustment. In such cases, the District Director may, based upon all the facts and circumstances, determine the taxpayer's applicable financial statement. See paragraph (c)(6), Examples (13) and (14) of this section.

(*ii*) *Applicable financial statement of a foreign corporation with a United States trade or business.* [Reserved.]

(*iii*) *Supplement or amendment to an applicable financial statement*—(A) *Excluding a restatement of net book income.* An applicable financial statement includes any supplement or amendment thereto (excluding a restatement of net book income) for the taxable year that is prepared and used for a substantial non-tax purpose (within the meaning of paragraph (c)(4) of this section) prior to the date the taxpayer's Federal income tax return for the taxable year would be due if the time for filing were extended under section 6081.

For example, a calendar year taxpayer's applicable financial statement includes any supplement or amendment prepared and used prior to September 15 of the year immediately following its taxable year. A supplement or amendment (excluding restatements of net book income) to an applicable financial statementafter the date specified in section 6081 is disregarded for purposes of the book income adjustment.

(B) *Restatement of net book income.* If a taxpayer restates net book income in what otherwise would have been its applicable financial statement (its "original financial statement"), referred to in this section as a "restatement of net book income", prior to the date that the taxpayer's Federal income tax return for such taxable year would be due if the time for filing were extended under section 6081, then—

(*1*) If the financial statement that includes the restated net book income is of a higher priority than the original financial statement, the restated financial statement is the taxpayer's applicable financial statment.

(*2*) If the financial statement that includes the restated net book income is of equal priority to the original financial statement and—

(*i*) The restatement is attributable to an error (as described in Accounting Principles Board Opinion No. 20, paragraph 13), the restated financial statement is the taxpayer's applicable financial statement, or

(*ii*) The restatement is not attributable to an error, the original and restated financial statements will be considered of equal priority, and paragraph (c) (3) (iii) will apply. Thus, the taxpayer's applicable financial statement is the financial statement that results in the greatest amount of adjusted net book income.

See paragraph (d)(4)(iv) of this section for rules that apply to restatements occurring after the due date (including the extension under section 6081) of the return for the taxable year to which the applicable financial statement relates. See paragraph (c)(6), Examples (11) and (12) of this section.

(6) *Example.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). In 1987, Corporation A only has a financial statement described in paragraph (c)(1)(iv) of this section and elects to treat net book income as equal to its current earnings and profits. In 1988, A has a certified audited financial statement (as described in paragraph (c)(1)(ii) of this section). In 1989, A only has a statement described in paragraph (c)(1)(iv) of this section. In 1988, A's certified audited financial statement is its applicable financial statement. However, in 1989, A is bound by the election it made in 1987 (unless revoked with the consent of the District Director) and must treat net book income as equal to its current earnings and profits.

Example (2). Corporation B prepares two unaudited financial statements. Both statements are distributed to creditors and are used for substantial non-tax purposes. The first financial statement is accompanied by an auditor's review report while the second statement has no auditor's review report. B has no other financial statement. Pursuant to paragraph (c)(3)(iii)(B)(*2*) of this section, the financial statement accompanied by the auditor's review report is B's applicable financial statement.

Example (3). Assume the same facts as in Example (2), except the financial statement accompanied by an auditor's review report is distributed to shareholders while the other statement is distributed to creditors, and both statement are used for substantial non-tax purposes. Pursuant to paragraph (c)(3)(ii) of this section, B's applicable financial statement is the statement distributed to its creditors. Paragraph (c)(3)(iii)(B)(*2*) of this section does not apply because the two statements are not of equal priority after applying paragraphs (c)(3)(i) and (ii) of this section.

Example (4). Corporation C is a closely held corporation with two shareholders. Both shareholders participate in the business on a day-to-day basis and are aware of the financial status of the business. C prepares a financial statement that is used by C's two shareholders to calculate bonuses. The financial statement prepared by C is used for a substantial non-tax purpose.

Example (5). Corporation D prepares a financial statement that it only sends to banks with which D is neither currently doing business nor negotiating. Given these facts, the financial statement is not intended to be reasonably relied on by the banks, and therefore, for purposes of computing net book income, is not used for a substantial non-tax purpose. The result would be the same if D sent the statement to a bank whose only relationship to D is that it holds a mortgage on D's property and D's rights and obligations under the mortgage are not affected by changes in its financial condition. The result would also be the same if D sent the statement to a bank with which D is doing business, and the statement is not reasonably expected to come to the attention of the bank's employees who are responsible for D's account.

Example (6). Corporation E and its subsidiaries, F and G are a consolidated group. Certified audited financial statements are prepared by EF and FG. Both statements are used for substantial non-tax purposes. Pursuant to paragraph (c)(5)(i)(A) of this section, the financial statement that is prepared by EF is the applicable financial statement of the consolidated group. However, pursuant to paragraph (d)(6)(i)(B) of this section, an adjustment will be required to include the adjusted net book income attributable to G. The result would be the same even if the financial statement prepared by FG is of higher priority (under the rules of paragraph (c)(3) of this section) than the statement prepared by E and F.

Example (7). Corporation H and its subsidiaries, I, J, and K are a consolidated group. Certified audited financial statements are prepared by H and I and by H, J, and K. Both statements are used for substantial non-tax purposes. The financial statement prepared by H, J, and K includes the greater amount of gross receipts attributable to members of the consolidated group and thus, pursuant to paragraph (c) (5) (i) (B) (*2*) (*i*) of this section, it is the consolidated group's applicable financial statement.

Example (8). Corporation L and its subsidiary M are a consolidated group. Corporation L also owns 100 percent of N, a foreign corporation that is not part of the consolidated group. A certified audited financial statement prepared by L, M and N discloses gross receipts of $200, of which $150 is attributable to L and M, and a separate certified audited financial statement prepared by L and M discloses gross receipts of $150. Both statements are used for substantial non-tax purposes. Pursuant to paragraph (c)(5)(i)(B) of this section, the consolidated group's applicable financial statement is the statement prepared by L, M and N.

Example (9). Corporation O is 60 percent owned by corporation P and 40 percent owned by corporation Q. Both P and Q prepare financial statements that are required to be filed with the SEC reflecting their respective interests in O. O also separately prepares a certified audited

financial statement. Under paragraph (c)(5)(i)(C), O's separate statement is its applicable financial statement.

Example (10). Assume the same facts as in Example (9) except that O does not prepare a separate financial statement. Pursuant to paragraph (c)(5)(i)(C) of this section, O must treat its net book income as equal to its current earnings and profits.

Example (11). Corporation R uses a calendar year for both financial accounting and tax purposes. Initially, R issue its calendar year 1987 financial statement on March 1, 1988. R's adjusted net book income resulting from this statement is $80. This would be R's applicable financial statement for 1987, but for the restatement described in the next sentence. On September 1, 1988, R restates its 1987 financial statement to correct an error (as described in Accounting Principles Board Opinion No. 20, paragraph 13). The restated financial statement is of the same priority as the initial financial statement. The restatement results in adjusted net book income for calendar year 1987 of $50. Pursuant to paragraph (c)(5)(iii)(B)(*2*)(*i*) of this section, the restated financial statement is treated as R's 1987 applicable financial statement.

Example (12). Assume the same facts as in Example (11), except that R restates its financial statement in order to reflect a change in accounting method. Since the restatement does not result from an error, paragraph (c)(5)(iii)(B)(*2*)(*i*) of this section does not apply. Pursuant to paragraph (c)(3)(iii)(B)(*2*)(*ii*) of this section, R's 1987 applicable financial statement is the financial statement for 1987 that results in the greater amount of adjusted net book income. Thus, R's March 1, 1988 financial statement is treated as its 1987 applicable financial statement.

Example (13). Corporation S, which is not a member of an affiliated group, uses a calendar year for both financial accounting and tax purposes. S's 1987 applicable financial statement is a certified audited financial statement. On January 1, 1988, S transfers all of its assets subject to liabilities to T, a newely created subsidiary that is 100 percent owned by S. The principal purpose of the transfer is to use the special rules of paragraph (c)(5)(i) of this section to reduce the adjusted net book income of S. For calendar year 1988, T prepares and uses a certified audited financial statement. Since S's only asset is its investment in T, S does not prepare a financial statement for calendar year 1988. In addition, since S is only a holding company, T's 1988 certified audited financial statement reports the same net book income that would have been reported on a consolidated ST financial statement. If paragraph (c)(5)(i)(D) of this section does not apply, ST's 1988 applicable financial statement is the financial statement of S (the parent of the consolidated group) with the highest priority. Under paragraph (c)(1) of this section, since S does not have a financial statement in 1988, the net book income of the ST consolidated group is ordinarily deemed to equal the aggregated earnings and profits of the members of the consolidated group. However, given these facts, the District Director may determine that the 1988 certified audited financial statement of T is the 1988 applicable financial statement of the ST consolidated group.

Example (14). The facts are the same as in Example 13, except that S has owned 100 percent of T for several years prior to calendar year 1987. In addition, prior to 1987, ST prepared a consolidated certified audited financial statement. For calendar year 1987, St does not prepare a consolidated certified audited financial statement. Instead, T prepares and uses a certified audited financial statement while S does not prepare a financial statement. The principal purpose of the change in financial reporting is to use the special rules of paragraph (c)(5)(i) of this section to reduce the adjusted net book income of the St consolidated group. Given these facts, the District Director may determine that the 1987 certified audited financial statement of T is the 1987 applicable financial statement of the ST consolidated group.

(d) *Adjustments to net book income*—(1) *In general.* Adjusted net book income is computed by making the adjustments described in this paragraph (d) to net book income (as defined in paragraph (b)(2) of this section).

(2) *Definitions*—(i) *Historic practice.* For purposes of this paragraph (d), historic practice is defined as an accounting practice that—

(A) Was used consistently by the taxpayer for each of the 2 years immediately preceding its first taxable year beginning after 1986, and

(B) Was used on the financial statement that would have been the taxpayer's applicable financial statement (as determined under paragraph (c) of this section) for each of the 2 years immediately preceding its first taxable year beginning after 1986 if section 56(f), as amended by the Tax Reform Act of 1986, had been in effect.

Thus, in order for a calendar year corporation to have an historic practice, the corporation must have used the accounting practice in its 1985 and 1986 financial statements. However, to be treated as used for purposes of this paragraph, an accounting practice must have been used prior to April 23, 1987. For example, an accounting practice that is first used after April 23, 1987, in a restatement of a taxpayer's 1985 and 1986 financial statements is not the taxpayer's historic practice.

(ii) *Accounting literature.* For purposes of this paragraph (d), the term "accounting literature" means—

(A) Generally accepted accounting principles (GAAP) as defined in the American Institute of Certified Public Accountants Professional Standards, AU section 411.05, paragraphs (a) through (c), and

(B) Pronouncements by the SEC including, but not limited to, Regulation S–X, SEC Financial Reporting Releases, and SEC Staff Accounting Bulletins, that are effective for the accounting period covered by the applicable financial statement.

(3) *Adjustments for certain taxes*—(i) *In general.* Net book income for purposes of this paragraph (d) must be adjusted to disregard any Federal income taxes or income, war profits, or excess profits taxes imposed by any foreign country or possession of the United States, that are directly or indirectly taken into account on the taxpayer's applicable financial statement. No adjustment is made for taxes not described in the preceding sentence. Taxes directly or indirectly taken into account consist of the taxpayer's total income tax expense that includes both current and deferred income tax expense. In addition, items of income and expense, including extraordinary items that are stated net of tax, must be adjusted to disregard the taxes described in this paragraph (d)(3)(i).

(ii) *Exception for certain foreign taxes.* Net book income is not adjusted for taxes imposed by a foreign country or possession of the United States if the taxpayer does not choose to take the benefits of section 901 (relating to the foreign tax credit) for the taxable year. This exception is limited to the amount of taxes the taxpayer deducts in the current taxable year under section 164(a). See paragraph (d)(3)(iv), Example (4) of this section.

(iii) *Certain valuation adjustments.* Income tax expense includes the effects of valuation adjustments such as the valuation adjustments related to purchase accounting described in Accounting Principles Board (APB) Opinion No. 16, paragraph 89. See paragraph (d)(3)(iv), Example (6) of this section.

(iv) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). Corporation A has $120 of net book income. In calculating net book income, A has $20 of state income tax expense and $60 of Federal income tax expense. Assuming there are no other adjustments to net book income, A's adjusted net book income is $180 ($120 of net book income +$60 of Federal income tax expense). Pursuant to paragraph (d)(3)(i) of this section, no adjustment is made for the state income tax expense.

Example (2). Assume the same facts as in Example (1), except that A also has a net extraordinary item of $40. Thus, A has net book income of $160 ($120+$40). The $40 net extraordinary item is composed of a $70 gross extraordinary item less $30 of Federal income tax expense. Assuming there are no other adjustments to net book income, A's adjusted net book income is $250 ($160 of net book income +$60 of Federal income tax expense

on book income other than the extraordinary item +$30 of Federal income tax expense on the extraordinary item).

Example (3). Assume the same facts as in Example (1), except that in calculating A's $120 of net book income, A has $50 of Federal income tax expense and $10 of foreign income tax expense. The $10 of foreign income tax expense results from a foreign branch and is composed of $7 of current foreign income tax expense and $3 of deferred foreign income tax expense. A chooses to take the benefits of the foreign tax credit under section 901 for the current taxable year. Assuming there are no other adjustments to net book income, A's adjusted net book income is $180 ($120 of net book income +$50 of Federal income tax expense +$10 of foreign income tax expense).

Example (4). Assume the same facts as in Example (3), except that A does not choose to take the benefits of the foreign tax credit in the current taxable year and instead deducts the $7 of current foreign income tax paid. Pursuant to paragraph (d)(3)(ii) of this section, net book income is not adjusted for the $7 of current foreign income tax expense. However, net book income is adjusted for the $3 of deferred foreign income tax expense. Thus, assuming there are no other adjustments to net book income, D's adjusted net book income is $173 ($120 of net book income +$50 of Federal income tax expense +$3 of deferred foreign income tax expense).

Example (5). In 1987, corporation B only has a financial statement described in paragraph (c)(1)(iv) of this section. B elects pursuant to paragraph (c)(2) of this section to treat net book income as equal to its current earnings and profits. B's current earnings and profits in 1987 is $60, after reduction for $40 of Federal income tax (see paragraph (b)(5)(i) of this section). Pursuant to paragraph (d)(3) of this section, B must make a $40 adjustment to net book income. Thus, assuming no other adjustments to net book income, B's 1987 adjusted net book income is $100 ($60 of net book income +$40 adjustment for Federal income taxes).

Example (6). Corporation A acquires assets from corporation B in a transaction where the tax basis of B's assets will carry over to A. For financial accounting purposes, A will account for the acquisition in accordance with Accounting Principles Board (APB) Opinion No. 16. One of the assets acquired from B has an appraised value of $10,000. However, because the tax basis of B's assets will carry over to A, A's tax basis in the asset is only $7,000. Given these facts, APB Opinion No. 16, paragraph 89 requires that the asset be recorded at $10,000 less the tax effect of the difference between the appraised value and the tax basis. Assuming a 30 percent tax rate for A, the asset would be recorded at $9,100 ($10,000 appraised value—($3,000 difference between the appraised value and the tax basis × 30 percent)). If A sells the asset for $10,000, A will recognize a book gain of $900 with respect to the sale (assuming the asset is not amortized for book purposes). However, A will also have income tax expense of $900 (($10,000 sales proceeds—$7,000 tax basis) × 30 percent) with respect to the sale. Thus, A will have no net book income from the sale. Pursuant to paragraph (d)(3)(iii) of this section, A's income tax expense includes the $900 of income tax expense attributable to the effects of the valuation adjustment made in accordance with APB Opinion No. 16, paragraph 89. As a result, A's adjusted net book income with respect to its asset sale is $900 ($0 of net book income +$900 adjustment for income tax expense).

(4) *Adjustments to prevent omission or duplication*—(i) *In general.* In order to prevent omissions or duplications, net book income must be adjusted for the items described in paragraph (d)(4)(ii) through (d)(4)(iv) of this section and such other items as approved or required by the Commissioner. Except as provided in this paragraph (d), a taxpayer may not adjust net book income to prevent omission or duplication of items. See paragraph (d)(4)(v), Example (1) of this section.

(ii) *Special rule for depreciating an asset below its cost.* Net book income must be adjusted to exclude depreciation or amortization expense to the extent such expense exceeds the asset's cost ("excess depreciation"). However, no adjustment is required if excess depreciation has been the taxpayer's historic practice (as defined in paragraph (d)(2)(i) of this section) or if the excess depreciation is properly attributable to negative salvage value (*i.e.*, where the cost of removal or clean-up exceeds the salvage value).

(iii) *Consolidated group using current earnings and profits.* In the case of a consolidated group that uses aggregate current earnings and profits as net book income (as determined under the rules of paragraph (b)(5)(ii) of this section), the adjustments described in § 1.1502–33 apply except for the investment adjustment described in § 1.1502–33 (c)(4)(ii)(*a*).

(iv) *Restatement of a prior year's applicable financial statement*—(A) *In general.* If a taxpayer restates an applicable financial statement and as a result, the net book income for a taxable year is restated after the last date that the taxpayer could have filed its Federal income tax return for such taxable year (if it had obtained an extension of time under section 6081 of the Code), net book income for the first successor year (as defined in paragraph (d)(4)(iv)(D) of this section) must be adjusted by that part of the cumulative effect of the restatement on net book income attributable to taxable years beginning after 1986. To the extent that the cumulative effect of the restatement on net book income includes a tax component, paragraph (d)(3) of this section may apply. See paragraph (c)(5)(iii) of this section for rules relating to the restatement of an applicable financial statement prior to the date the taxpayer's tax return for the taxable year would be due if the time for filing the return is extended.

(B) *Reconciliation of owner's equity in applicable financial statements.* If—

(*1*) The beginning balance of owner's equity on the taxpayer's applicable financial statement for the current taxable year is different than the ending balance of owner's equity on the taxpayer's applicable financial statement for the preceding taxable year, and

(*2*) The taxpayer is not otherwise subject to the restatement rules in paragraph (d)(4)(iv)(A) of this section, the taxpayer will be deemed to have restated its applicable financial statement for the preceding year and paragraph (d)(4)(iv)(A) of this section will apply.

(C) *Use of different priority applicable financial statements in consecutive taxable years.* If the priority of a taxpayer's applicable financial statement (as determined under the rules of paragraph (c)(3) of this section) for the current taxable year is different than the priority of the taxpayer's applicable financial statement for the preceding taxable year, the taxpayer shall be required to adjust net book income to the extent required under the rules of either paragraph (d)(4)(iv) (A) or (B) of this section.

(D) *First successor year defined.* The "first successor year" is the first taxable year for which the taxpayer could have timely filed a return if it had obtained an extension of time under section 6081 of the Code after the restatement occurs. For example, if a calendar year corporation restates and uses its 1987 applicable financial statement between September 16, 1988 and September 15, 1989, any adjustment resulting from the restatement will be made in the taxpayer's 1988 Federal income tax return. If the restatement occurs prior to September 15, 1988, and results from an error, the rules of paragraph (c)(5)(iii) of this section will apply. If the restatement occurs prior to September 15, 1988, but does not result from an error, it is treated as a separate financial statement and the rules of paragraph (c)(3)(iii) of this section apply.

(E) *Exceptions.* (1) No adjustment is made under paragraph (d)(4)(iv)(A) of this section for a restatement prepared in accordance with APB Opinion No. 16, paragraph 53, requiring restatements of financial statements to reflect the combined operation of corporations combined in a pooling transaction.

(2) In order to prevent duplication of an adjustment, an adjustment otherwise

required under paragraph (d)(4)(iv)(A) of this section may be decreased to take into account an adjustment previously made under the disclosure rules described in paragraph (d)(5) of the section. See paragraph (d)(4)(v), Example (3) of this section.

(v) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). Corporation A uses a calendar year for both financial accounting and tax purposes. In 1986, A's financial statement included a $100 financial accounting loss for a plant shutdown. A could not deduct the loss on its 1986 Federal income tax return. In 1987, A deducts the loss from the 1986 plant shutdown on its 1987 Federal income tax return. As a result, A's 1987 adjusted net book income exceeds its 1987 pre-adjustment alternative minimum taxable income by $100 (an amount equal to the deduction for the 1986 plant shutdown). Pursuant to paragraph (d)(4)(i) of this section, A cannot make an adjustment to net book income.

Example (2). Corporation B uses a calendar year for both financial accounting and tax purposes. B issues its calendar year 1987 applicable financial statement on March 1, 1988. The applicable financial statement reports net book income for the calendar years 1985 through 1987 of $50, $70, and $80, respectively. On March 1, 1989 when it issues its calendar year 1988 applicable financial statement, B restates its 1985, 1986 and 1987 applicable financial statements. The restatement results from a change in accounting method that is made during calendar year 1988. After restatement, B's net book income for 1985, 1986, and 1987 is $60, $80, and $90, respectively. Based upon these facts, the cumulative effect of the restatement on B's net book income for years prior to 1988 is $30. However, since $20 of the cumulative effective is attributable to years beginning before 1987, B's 1988 net book income is increased by only $10 ($30–$20). If the cumulative effect includes a tax adjustment, see paragraph (d)(3) of this section.

Example (3). Assume the same facts for Corporation B as in Example (2), except that B's 1987 net book income of $80 is increased by $10 for purposes of B's 1987 Federal income tax return. The $10 adjustment is made pursuant to paragraph (d)(5)(iv) of this section relating to disclosure in the accountant's opinion. Specifically, the accountant's opinion on B's 1987 applicable financial statement disclosed that if D had used a certain accounting method, B's 1987 net book income would have been $90 rather than $80. The restatement of B's 1987 applicable financial statement on March 1, 1988 results entirely from B changing to the accounting method referred to in the 1987 accountant's opinion. Pursuant to paragraph (d)(4)(iv)(E)(*2*) of this section, no adjustment is made to B's 1988 net book income as a result of the restatement of B's 1987 applicable financial statement.

Example (4). Assume the same facts as in Example (1), except that when A issues its 1987 applicable financial statement it also restates the net book income reported on its 1986 financial statement to exclude the $100 loss attributable to the plant shutdown. Furthermore, the $100 loss from the plant shutdown is included in A's 1987 net book income as reported on its 1987 applicable financial statement. Pursuant to paragraph (d)(4) of this section, no adjustment is made to A's 1987 net book income as a result of the restatement of A's 1986 net book income.

(5) *Adjustments resulting from disclosure)—(i) Adjustment for footnote disclosure or other supplementary information*—(A) *In general.* Except as described in this paragraph (d)(5)(i), net book income must be increased by any amount disclosed in a footnote or other supplementary information to the applicable financial statement if the disclosure supports a calculation of a net book income amount that would be greater than the net book income reported on the taxpayer's applicable financial statement. However, net book income will not be increased if the disclosure—

(*1*) Is specifically authorized by the accounting literature described in paragraph (d)(2)(ii) of this section, or

(*2*) Is in accordance with the taxpayer's historic practice as defined in paragraph (d)(2)(i).

See paragraph (d)(5)(v), Examples (1) and (2) of this section.

(B) *Disclosures not specifically authorized in the accounting literature.* The following footnote or other supplementary disclosure will not be considered specifically authorized in the accounting literature—

(*1*) Disclosure of what the taxpayer's net book income would have been if GAAP had been used in preparing the applicable financial statement instead of tax accounting rules (or disclosure of the adjustment necessary to determine net book income on a GAAP basis), and

(*2*) Disclosure of what the taxpayer's net book income would have been if the accrual method had been used in preparing the applicable financial statement instead of the cash method (or disclosure of the adjustment necessary to determine net book income on the accrual method).

(ii) *Equity adjustments*—(A) *In general.* Except as described in this paragraph (d)(5)(ii), net book income must be increased by the amount of any equity adjustment (as defined in paragraph (d)(5)(ii)(B) of this section) included in the applicable financial statement if the equity adjustment increases owner's equity as reported on the taxpayer's applicable financial statement and the increase is attributable to the taxpayer or a member of the taxpayer's consolidated group. However, net book income will not be increased if the equity adjustment—

(*1*) Is specifically authorized by the accounting literature described in paragraph (d)(2)(ii) of this section, or

(*2*) Is in accordance with the taxpayer's historic practice, as defined in paragraph (d)(2)(i) of this section.

See paragraph (d)(5)(v), Examples (3) and (4) of this section.

(B) *Definition of equity adjustment.* An equity adjustment is any reconciling item between beginning and ending owner's equity as reported on the taxpayer's applicable financial statement for the current taxable year. However, if properly accounted for, the following reconciling items are not considered equity adjustments and do not require adjustment under paragraph (d) (5) (ii) (A)—

(*1*) Net book income,

(*2*) Non-liquidating dividend distributions, and

(*3*) Contributions to capital.

(iii) *Amounts disclosed in an accountant's opinion.* Net book income must be increased by the amount of any item disclosed in the accountant's opinion (as described in paragraphs (c)(1)(ii)(C) and (c)(1)(ii)(D) of this section) if the disclosure supports a calculation of a net book income amount that would be greater than the net book income reported on the taxpayer's applicable financial statement. However, net book income will not be increased if the disclosure is in accordance with the taxpayer's historic practice, as defined in paragraph (d)(2)(i) of this section.

(iv) *Accounting method changes that result in cumulative adjustments to the current year's applicable financial statement*—(A) *In general.* If net book income for the current taxable year includes a cumulative adjustment attributable to an accounting method change and the amount of the cumulative adjustment may be determined upon review of the applicable financial statement (including footnotes) or other supplementary disclosure, net book income for the current taxable year shall be adjusted to exclude that portion of the cumulative adjustment attributable to taxable years beginning after 1987. To the extent the cumulative adjustment is reported net of a tax, paragraph (d)(3) of this section may apply. See paragraph (d)(5)(v), Example (5) of this section. If an accounting method change results in a restatement of an applicable financial statement, paragraph (c)(3)(iii), (c)(5)(iii), or (d)(4)(iv)(A) of this section may apply.

(B) *Exception.* In order to prevent duplication of an adjustment, the adjustment required under paragraph

(d)(5)(iv)(A) of this section may be decreased to take into account any adjustment for the accounting method change previously made under the rules described in paragraph (d)(5) of this section (relating to adjustments resulting from disclosure).

(v) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). Corporation A uses a calendar year for both financial accounting and tax purposes. For calendar years 1984 through 1986, A used the cash method of accounting on its financial statement and disclosed in a footnote the net income or loss that would have resulted if the accrual method of accounting had been used. A's 1987 net book income, as reported on its 1987 applicable financial statement, is $100 and is calculated on the cash method of accounting. In addition, a footnote in A's 1987 applicable financial statement states that A's 1987 net book income would have been $30 greater had the accrual method of accounting been used. Pursuant to paragraph (d)(5)(i)(B)(*2*) of this section, A's 1987 footnote disclosure is not considered specifically authorized by the accounting literature. However, since A made such disclosure for calendar years 1985 and 1986, the 1987 disclosure is in accordance with A's historic practice, as defined in paragraph (d)(2)(i) of this section. Since A satisfies the exception described in paragraph (d)(5)(i)(A) (*2*) of this section, no adjustment is made to A's in 1987 net book income for the footnote disclosure.

Example (2). Assume the same facts for corporation B as in Example (1), except that B's 1985 and 1986 financial statements did not disclose the amount of income or loss that would result if the accrual method of accounting (rather than the cash method of accounting) were used. Since B does not satisfy either of the exceptions described in paragraph (d)(5)(i)(A) of this section, B's 1987 adjusted net book income is $130 ($100 of net book income + $30 adjustment for footnote disclosure).

Example (3). Corporation C uses a calendar year for both financial accounting and tax purposes. C's 1987 net book income, as reported on its 1987 applicable financial statement, is $200. However, as specifically authorized in FASB Statement of Standards No. 52, C's 1987 applicable financial statement also includes a $50 equity adjustment (as defined in paragraph (d)(5)(ii)(B) of this section) for foreign currency translation gains. Since the equity adjustment is specifically authorized in the accounting literature, C satisfies the exception described in paragraph (d)(5)(ii)(A)(*1*) of this section, and no adjustment is made to C's 1987 net book income for the $50 equity adjustment.

Example (4). Assume the same facts for corporation D as in Example (3), except that D's equity adjustment is for foreign currency transaction gains instead of foreign currency translation gains. Pursuant to FASB Statement of Standards No. 52, foreign currency transaction gains (as compared with foreign currency translation gains) are included in the income statement rather than in equity. In addition, in 1985 and 1986, D included foreign currency transaction gains in its income statement. Since D does not satisfy either of the exceptions described in paragraph (d)(5)(ii)(A) of this section, D's 1987 adjusted net book income is $250 ($200 of net book income + $50 equity adjustment).

Example (5). Corporation E uses a calendar year for both financial accounting and tax purposes. E's net book income for 1988 is $100. The $100 of net book income includes $30 of financial accounting loss attributable to a cumulative adjustment as of January 1, 1988, resulting from a change in E's accounting method. The $30 cumulative loss is disclosed in E's 1988 applicable financial statement. If E had made the accounting method change in calendar year 1987, the cumulative loss as of January 1, 1987 would have been $20. Based upon the above facts, E must increase net book income by $20 to disregard that portion of the cumulative adjustment, attributable to years beginning before 1987. Thus, assuming no other adjustments to net book income, E's adjusted net book income for 1988 is $120($100+$20).

(6) *Adjustments applicable to related corporations*—(i) *Consolidated returns*—(A) *In general.* Pursuant to paragraphs (a)(3) and (b)(3) of this section, the book income adjustment with respect to a consolidated group (as described under paragraph (a)(3) of this section) is computed based on the consolidated adjusted net book income (as defined in paragraph (b)(3)(i) of this section). In the case of any corporation that is not included in the consolidated group, consolidated adjusted net book income of the consolidated group shall include only the sum of the dividends received from such other corporation and other amounts includable in gross income under this chapter with respect to the earnings of such other corporation. See paragraph (b)(6)(v), Example (4) of this section.

(B) *Corporations included in the consolidated Federal income tax return but excluded from the applicable financial statement*—(*1*) *In general.* Consolidated net book income reported on the applicable financial statement (as determined under paragraph (c)(5) of this section) shall be adjusted to include net book income attributable to a corporation that is included in the consolidated group but is not included in the applicable financial statement. Net book income for the corporation not included in the applicable financial statement of the consolidated group is the net book income reported on such corporation's applicable financial statement (determined under the rules of paragraph (c) and adjusted under the rules of this paragraph (d)). The adjusted net book income of such corporation must be consolidated with the adjusted net book income of other members of the consolidated group and appropriate consolidating elimination entries must be made.

(*2*) *Adjustments to net book income for minority interests.* Consolidated net book income must be adjusted to include income or loss allocated to minority interests in members of the consolidated group. Failure to include income or loss allocated to minority interests shall be treated as an omission of net book income. See paragraph (d)(6)(v), Example (1) of this section.

(*3*) *Corporations included in the consolidated group that are accounted for under the equity method of accounting.* No adjustment is required to consolidated net book income for income or loss of a member of the consolidated group that is reported in the applicable financial statement under the equity method of accounting (as described in APB No. 18, paragraph (6). However, consolidated adjusted net book income (as defined in paragraph (b)(3)(i) of this section) must include 100 percent of the net book income attributable to such member. See paragraph (d)(6)(i)(B)(*2*) of this section. For example, if consolidated net book income (as defined in paragraph (b)(3)(ii) of this section) only includes 85 percent of the equity income attributable to a member of the consolidated group, an adjustment will be required to include the 15 percent of equity income excluded from consolidated net book income. In addition, to the extent the equity income reflects an adjustment for tax expense or benefit, paragraph (d)(3) may apply. See paragraph (d)(6)(v), Examples (2) and (3) of this section.

(C) *Corporations included in the applicable financial statement but excluded from the consolidated tax return.* Net book income or consolidated net book income must be adjusted to eliminate the income or loss of a corporation that is included in the applicable financial statement, but is not included in the consolidated group. When net book income attributable to a corportation that is not a member of the consolidated group is removed from the computation of net book income in the applicable financial statement, consolidating elimination entries attributable to the excluded member must also be removed.

(ii) *Adjustment under the principles of section 482.* In order to fairly allocate items relating to intercompany transactions between corporations that are owned or controlled directly or indirectly by the same interests but are not members of a consolidated group, adjustments must be made to the net book income reported on the applicable

financial statement of each corporation under the principles of section 482 and the regulations thereunder (relating to allocation of income and deductions among related taxpayers). For example, assume corporation A owns 100 percent of F, a foreign subsidiary, but A and F are not members of a consolidated group. However, A and F prepare a consolidated financial statement. In adjusting A's applicable financial statement to eliminate the net book income attributable to F, A must apply the principles of section 482. If a corporation fails to make appropriate adjustments to its applicable financial statement under the rules of this paragraph (d)(6)(ii), the District Director may make such adjustments under the principles of section 482 and the regulations thereunder.

(iii) *Adjustment of dividends received from section 936 corporations*—(A) *In general.* Any dividend received from a corporation eligible for the credit provided by section 936 (relating to the possession tax credit) shall be included in adjusted net book income. For example, assume corporation A owns 100 percent of B, a section 936 corporation, and B pay a $100 dividend to A. Furthermore, assume that of the $100 dividend, $15 of withholding tax is paid to a possession of the United States, so that A only receives $85 from the dividend. Given these facts, A's adjusted net book income includes $100 with respect to the dividend from B.

(B) *Treatment as foreign taxes.* Fifty percent of any withholding tax paid to a possession of the United States with respect to dividends referred to in paragraph (d)(6)(iii)(A) of this section may be treated for all purposes of the alternative minimum tax as a tax paid to a foreign country by the corporation receiving the dividend. However, the amount of taxes so treated in a taxable year may not exceed 50 percent of the amount of such taxes (*1*) multiplied by the excess of the taxpayer's adjusted net book income (determined with the adjustment described in paragraph (d)(6)(iii)(A) of this section) over its pre-adjustment alternative minimum taxable income determined without the adjustment described in paragraph (d)(6)(iii)(A) of this section, and (*2*) divided by the amount of dividends described in paragraph (d)(6)(iii)(A) of this section.

(C) *Treatment of taxes imposed on section 936 corporations.* Taxes paid by any corporation eligible for the credit provided under section 936 shall be treated as a withholding tax paid with respect to any dividend paid by such corporation, and thus subject to the rules of this paragraph (d)(6)(iii), but only to the extent such taxes would be treated as paid by the corporation receiving the dividend under rules similar to the rules of section 902.

(iv) *Adjustment to net book income on sale of certain investments.* If a taxpayer accounts for an investment under any method equivalent to the equity method of accounting (as described in APB Opinion No. 18, paragraph 6) and pursuant to paragraphs (b)(2)(iv) or (d)(6)(i) of this section the taxpayer excludes net book income attributable to that investment, the taxpayer must adjust its net book income in the year the investment is sold (or partially sold). The adjustment equals the amount of net book income previously excluded under paragraphs (b)(2)(iv) or (d)(6)(i)(A) of this section). See paragraph (d)(6)(v), Example (4) of this section.

(v) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). Corporation A and its 100 percent owned subsidiary B and its 90 percent owned subsidiary C are a consolidated group. A also owns 100 percent of D, a foreign corporation. ABC's applicable financial statement is a certified audited financial statement that included A, B, C and D. The net book income reported on the statement excludes $10 of C's net book income that is attributable to the 10 percent minority interest in C held outside of the consolidated group. Pursuant to paragraph (d)(6)(i)(B)(*2*) of this section, net book income of the consolidated group must be adjusted to include the $10 of net book income attributable to the minority interest in C. In addition, pursuant to paragraph (d)(6)(i)(C) of this section, net book income shown on the applicable financial statement must be adjusted to eliminate the net book income attributable to D.

Example (2). Corporation E owns 100 percent of F, a finance subsidiary, and EF are a consolidated group. Since F is a finance subsidiary, E's applicable financial statement accounts for F under the equity method of accounting. F also prepares a separate financial statement that is of equal or higher priority than E's applicable financial statement. In 1987, E's applicable financial statement includes $60 of equity income from F. The $60 of equity income reflects a reduction for $40 of Federal income tax expense. Thus, E's equity income from F prior to the reduction for Federal income tax expense, is $100 ($60 + $40). Since E's applicable financial statement includes E's equity income in F, F's separate financial statement is not relevant for determining the adjusted net book income of the EF consolidated group. However, pursuant to paragraphs (d)(3) and (d)(6)(i)(B)(*3*) of this section, E is required to adjust its equity income in F by the $40 of Federal income tax expense attributable to F. Thus, assuming there are no other adjustments, E's adjusted net book income with respect to F is $100.

Example (3). The facts are the same as Example (2), except that E reports its equity income in F without reduction for F's Federal income tax expense. The $40 of Federal income tax expense attributable to F is combined with E's Federal income tax expense. Assuming no other adjustments, E's adjusted net book income with respect to F is $100. Thus, E's adjusted net book income with respect to F will be the same regardless of whether E's equity income in F is reported before or after taxes.

Example (4). A, a domestic corporation, uses a calendar year for both financial accounting and tax purposes. On January 1, 1987, A purchases 100 percent of F, a foreign corporation, for $100. F does not file a Federal income tax return and A does not recognize any taxable income with respect to F under section 951 (relating to controlled foreign corporations). In its applicable financial statement, A accounts for its investment in F under the equity method of accounting. Thus, A's initial investment in F is $100. During calendar year 1987, F has $50 of net book income but makes no dividend payments to A. Under the equity method of accounting, A's net book income includes the $50 of net book income attributable to A's net book investment in F. Thus, A's investment in F is increased to $150. Pursuant to paragraph (d)(6)(i)(C) of this section, A's net book income unadjusted to eliminate the $50 of net book income attributable to F. On January 1, 1988, A sells F or $150. Since A's investment in F under the equity method of accounting is $150, A's net book income for 1988 will not include any gain on the sale of F. However, pursuant to paragraph (d)(6)(iv), A's 1988 net book income must be increased by $50, the amount of net book income previously eliminated with respect to A's investment in F. The result would be the same if instead of accounting for its investment in F under the equity method of accounting, A and F prepare a consolidated financial statement.

(e) *Special rules*—(1) *Cooperatives.* For purposes of computing the book income adjustment, net book income of a cooperative to which section 1381 applies is reduced by patronage dividends and per-unit retain allocations under section 1382(b) that are paid by the cooperative to the extent such amounts are deductible for regular income tax and general alternative minimum tax purposes under section 1382, and not otherwise taken into account in determining adjusted net book income.

(2) *Alaska Native Corporations.* In computing the net book income of an Alaska Native Corporation, cost recovery and depletion are computed using the asset basis determined under section 21(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1620(c)). In addition, net book income is reduced by expenses payable under either section 7(i) or section 7(j) of the Alaska Native Claims Settlement Act (43 U.S.C. 1606(i) and (j)) only when deductions for such expenses are allowed for tax purposes.

(3) *Insurance companies.* In the case of an insurance company whose applicable financial statement is a statement described in paragraph (c)(1)(iii) of this section (relating to

statements provided to a government regulator), net book income for purposes of the book income adjustment is the net income or loss from operations, after reduction for dividends paid to policyholders, but without reduction for Federal income taxes.

(4) *Estimating the book income adjustment for purposes of the estimates tax liability.* See § 1.6655–7T for special rules for estimating the corporate alternative minimum tax book income adjustment under the annualization exception.

Par. 6. A new § 1.6655–7T is added to read as follows:

§ 1.6655–7T Special rules for estimating the corporate alternative minimum tax book income adjustment under the annualization exception (temporary).

(a) *In general.* For purposes of section 6655(d)(3) (relating to the "annualization exception") a corporate taxpayer must take into account the tax imposed by section 55 (relating to the alternative minimum tax) and the tax imposed by section 59A (relating to the environmental tax). Thus, a taxpayer using the annualization exception must estimate alternative minimum taxable income, including the book income adjustment, for the period of the taxable year that is annualized (the "annualization period").

(b) *Estimating the book income adjustment.* The book income adjustment for the annualization period is determined in accordance with the rules of § 1.56–1T, except as otherwise provided in this section.

(c) *Applicable financial statement for the annualization period.*—(1) *In general.* A taxpayer's applicable financial statement for an annualization period is the financial statement of highest priority described in section 56(f)(3)(A) and § 1.56–1T(c) that is prepared for such period by the date the installment payment is due. However, if a taxpayer reasonably expects to have a financial statement of higher priority for such period no later than 30 days after the date the installment payment is due, the taxpayer shall make a reasonable estimate of the adjusted net book income that will result from such statement, and such estimate shall be used as the taxpayer's adjusted net book income for that annualization period. If the date that is 30 days after the due date of the installment falls on a Saturday, Sunday or legal holiday, the 30-day period is extended to the immediately following day that is not a Saturday, Sunday or legal holiday. For example, an event arising subsequent to the installment due date that causes the taxpayer's estimate of net book income to be understated will not result in a recomputation of the book income adjustment for the annualization period, if, based on all the facts and circumstances at the time the installment payment was made, it was not reasonably foreseeable that the subsequent event would occur.

(2) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. A is a public corporation that is a calendar year taxpayer. A's first installment payment of estimated tax is due April 15. A uses the annualization exception under section 6655(d)(3) in order to determine whether it is liable for an addition to tax due to an underpayment of estimated tax. In the case of the first installment, the applicable annualization period is the first three months of the taxable year. On April 15, A has an unaudited financial statement for the first three-month period that is used for credit purposes. By May 15, A will file a quarterly report, Form 10–Q, with the Securities and Exchange Commission. Since the financial statement filed with the SEC has higher priority than the unaudited statement and A can reasonably expect to have such statement no later than 30 days after the installment due date, A must make a reasonable estimate of the adjusted net book income that will result from such statement. This estimate shall be used as A's adjusted net book income for the annualization period.

(d) *Earnings and profits*—(1) *In general.* If an applicable financial statement is not available by the date a payment is due for an annualization period or reasonably expected to be available no later than 30 days after the payment is due under the rules of paragraph (c) of this section, current earnings and profits for the applicable annualization period must be used in lieu of net book income. See § 1.56–1T(b)(5) for rules relating to computing current earnings and profits for purposes of computing the book income adjustment.

(2) *Election to use earnings and profits*—(i) *In general.* A taxpayer may elect to use current earnings and profits for the applicable annualization period if the taxpayer has only a statement for such period that is described in section 56(f)(3)(A)(iv) and § 1.56–1T(c)(1)(iv) and the taxpayer has elected under the rules of section 56(f)(3)(B)(ii) and § 1.56–1T(c)(2) to use current earnings and profits to compute the book income adjustment for purposes of filing its annual Federal income tax return. Once the election has been made, current earnings and profits must be used for any annualization period for which the taxpayer has only an applicable financial statement described in section 56(f)(3)(A)(iv) and § 1.56–1T(c)(1)(iv).

(ii) *Election during 1987 taxable year.* During its taxable year beginning in 1987, a taxpayer may elect to use current earnings and profits for an applicable annualization period even if the taxpayer has not elected to use current earnings and profits for purposes of computing its annual Federal income tax liability under section 56(f)(3)(B)(ii) and § 1.56–1T(c)(2). In addition, a taxpayer electing in 1987 to use current earnings and profits for purposes of its installment payments of estimated tax is not required to use current earnings and profits to compute the book income adjustment when filing its annual Federal income tax return. However, unless an annual election under section 56(f)(3)(B)(ii) is made when filing the taxpayer's 1987 Federal income tax return, the election to use current earnings and profits for purposes of computing its estimated tax liability in taxable years beginning after 1987 is terminated.

(iii) *Manner of making election.* If a taxpayer elects to use current earnings and profits for the applicable annualization period under the rules of this section, the taxpayer must attach a statement to its Federal income tax return for the taxable year in which the election was made. The statement must include the electing taxpayer's name, address and taxpayer identification number, identify the election and indicate that it was made under the provisions of § 1.6655–7T, state that the only financial statement of the taxpayer available for the annualization period is described in § 1.56–1T(c)(1)(iv).

PART 602—[AMENDED]

Par. 7. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 8. Section 602.101(c) is amended by:

1. Redesignating "§ 1.56–1 through 1.56–5" in the table as "§ 1.56A–1 through 1.56A–5".

2. Inserting in the appropriate places in the table "§ 1.56–1T . . . . . 1545–0123" and "§ 1.6655–7T . . . . . 1545–0123".

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved April 16, 1987.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 87–9441 Filed 4–23–87; 10:43 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 300 and 355

[FRL-3193-3]

Extremely Hazardous Substances List and Threshold Planning Quantities; Emergency Planning and Release Notification Requirements; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Agency published two Appendices to a final regulation at 52 FR 13378 (April 22, 1987). This document corrects an error in Appendix A to Part 355.

FOR FURTHER INFORMATION CONTACT: Richard A. Horner at (202) 382-7945.

Dated: April 24, 1987.

David Speights,

Preparedness Staff

Accordingly, in FRL-3173-6 published in Federal Register, April 22, 1987, we make the following correction to Appendix A of Part 355. In the entry on page 13402, for CAS No. 7664-93-9, "Sulfur Acid" should read "Sulfuric Acid."

Please note that additional corrections to this document are published elsewhere in the Corrections Section of this issue of the Federal Register.

[FR Doc. 87-9640 Filed 4-27-87; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

49 CFR Part 701

Freedom of Information Act; Schedule of Fees and Other Administrative Changes

AGENCY: National Railroad Passenger Corporation (Amtrak or the Corporation).

ACTION: Final rule.

SUMMARY: The National Railroad Passenger Corporation (NRPC), also known as Amtrak, proposed amendments to its rules concerning the Freedom of Information Act (FOIA) to incorporate recent changes to the Act regarding the establishment of fees charged for the search, review, and duplication of records in response to FOIA requests. The rules follow the guidelines established by the Office of Management and Budget and the Department of Justice. In addition, Amtrak proposed to amend its regulations to reflect certain administrative changes within the Corporation. Amtrak is adopting the proposed rule changes as final.

EFFECTIVE DATE: May 25, 1987.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) requires agencies to amend their regulations of FOIA fees in conformance with OMB guidelines on uniform FOIA fees issued pursuant to this act. The terms, definitions, and fee schedules of this rule are fully consistent with OMB's notice (52 FR 1992, January 16, 1987) and final publication of fee schedule and guidelines (52 FR 10012, March 27, 1987), and guidelines issued by the Department of Justice in its "New Fee Waiver Policy Guidance" issued on April 2, 1987. In addition, NRPC amended its regulations to reflect certain administrative changes within the Corporation. NRPC is adopting its proposed rule changes published on pages 13066-68 in the Federal Register since no comments were received during the designated comment period. Only minor technical changes have been made in the final rules from the proposed rules published by NRPC.

FOR FURTHER INFORMATION CONTACT: Medaris Oliveri, FOIA Officer, (202) 383-3991.

List of Subjects in 49 CFR Part 701

Freedom of Information.

49 CFR Part 701 is amended as follows:

PART 701—[AMENDED]

1. The authority citation for Part 701 is revised to read as follows:

Authority: 5 U.S.C. 552 as amended by sections 1801-1804 of the Omnibus Anti-Drug Abuse Act of 1986 (Pub. L. 99-570) which contains the Freedom of Information Reform Act of 1986 and Sec. 306(g) of the Rail Passenger Service Act, 45 U.S.C. 546(g).

§ 701.2 [Amended]

2. In § 701.2, the definition of "President" in paragraph (b) is revised to read as follows: "President means the President of the Corporation or his delegee."

§ 701.3 [Amended]

3. In § 701.3(a), remove the expressions "the FOIA" and "the Freedom of Information Act" and substitute in its place the word "law."

4. § 701.3, paragraph (b) is revised to read as follows: "(b) A requested record of the Corporation may be withheld from disclosure if it comes within one or more of the exemptions in 5 U.S.C. 552(b) or is otherwise exempted by law."

§ 701.4 [Amended]

5. In § 701.4, paragraph (a)(4) is revised to read as follows: "(4) The request shall be addressed to the Freedom of Information Officer, National Railroad Passenger Corporation, 400 North Capitol Street, NW., Washington, DC 20001."

6. In § 701.4, paragraph (c), remove the expression "employee handling the request" and substitute in its place the expression "Freedom of Information Officer."

7. In § 701.4, paragraph (d) is revised to read as follows: "(d) The submission of a FOIA request constitutes an agreement by the requester to pay the fees specified in § 701.7 unless the requester is entitled to a fee waiver or specifies in the request a different amount to which the Corporation agrees in writing."

8. In § 701.4, a new paragraph (e) is added to read as follows: "(e) Searches will be made for requested records in order of receipt. Each so-called 'continuing request' will be treated as a one-time request."

9. Section 701.7 is revised to read as follows:

§ 701.7 Fees.

(a) *Categories of requesters.* There are four categories of FOIA requesters: commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The time limits for processing requests shall begin upon receipt of a proper request by the Freedom of Information Office which reasonably describes the records sought and which identifies the specific category of the requester. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories.

(1) *Commercial use requester.* When records are requested for commercial use, the fee policy of NRPC is to levy full allowable direct costs for search, review for release, and duplication of records sought. Commercial users are not entitled to two hours of free search time nor 100 free pages of reproduction of documents nor waiver or reduction of fees based on an assertion that disclosure would be in the public interest. Commercial use is defined as use that furthers the commercial, trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, NRPC shall first look to the use to which a requester will put the documents requested. Where a requester does not explain the use or where explanation is insufficient, NRPC may draw reasonable inferences from

the requester's identity and charge fees accordingly.

(2) *Representatives of the news media.* When records are requested by representatives of the news media, the fee policy of NRPC is to levy reproduction charges only, excluding charges for the first 100 pages. The term "representatives of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through an organization, even though not actually employed by that entity. To be eligible for inclusion in this category, requesters must meet the criteria specified in this section, and the request must not be made for commercial use as this term is defined under paragraph (a)(1) of this section.

(3) *Educational and noncommercial scientific institution requesters.* When records are requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of NRPC is to levy reproduction charges only, excluding charges for the first 100 pages. Educational institution referes to a preschool, a public or private elementary or secondary school, an institution of graduate higher eduation, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research. Noncommercial scientific institution refers to an institution that is not operated on a commercial basis as defined under paragraph (a)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use or to further an individual goal, but are sought in furtherance of scholarly or scientific research.

(4) *All other requesters.* For other requesters who do not come under the purview of paragraphs (a)(1) through (a)(3) of this section, the fee policy of NRPC is to levy full reasonable direct cost of search for and duplication of records sought, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

(b) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a document or documents, in order to avoid payment of fees. When NRPC believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series or requests for the purpose of evading the assessment of fees, NRPC may aggregate any such requests and charge accordingly. Before aggregating requests from more than one requester, NRPC must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may NRPC aggregate multiple requests on unrelated subjects from one requester.

(c) *Waiver or reduction of fees.* (1) NRPC may waive all fees or levy a reduced fee when disclosure of the information is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of NRPC and is not primarily in the commercial interest of the requester.

(2) In determining whether disclosure is in the public interest, the following factors may be considered:

(i) The relation of the records to the operations or activities of the NRPC;

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of that contribution to the public understanding of the subject;

(v) The nature of the requester's personal interest, if any, in the information requested; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

(3) In all cases, the burden shall be on the requester to present evidence or information in support of a request for a waiver of fees.

(d) *Advance payment.* (1) When NRPC estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250, NRPC may require a requester to make an advance payment of the entire fee before continuing to process the request.

(2) When a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing), NRPC may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (h) and make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(3) When NRPC acts under paragraph (d)(1) or (d)(2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial plus permissible extensions of these time limits) will begin only after NRPC has received fee payments under paragraph (d)(1) or (d)(2) of this section.

(e) *Fee schedule.* (1) *Manual searches for records.* NRPC will charge $27 per hour for the salary and fringe benefits of personnel conducting the search. NRPC may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(2) *Computer searches for records.* For each request, NRPC will charge the actual direct cost of providing this service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to search for records responsive to the request and operator/programmer salary apportionable to the search. NRPC may assess charges for time spent searching, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(3) *Duplication costs.* (i) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ x 14 inches, the charges will be $.25 per page.

(ii) The fee for reproducing copies of records over 8½ x 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of

reproducing the records through NRPC or commercial sources.

(iii) For copies prepared by computer such as tapes or printouts, NRPC shall charge the actual cost, including operator time, of production of the tape or printout.

(4) *Other forms of duplication.* For other methods of reproduction or duplication, NRPC shall charge the actual direct costs of producing the document(s).

(f) *Restrictions in accessing fees.* (1) In accordance with section (4)(A)(iv) of the Freedom of Information Act, as amended, with the exception of requesters seeking documents for a commercial use, NRPC shall provide the first 100 pages of duplication and the first two hours of search time without charge.

(2) NRPC shall not charge fees to any requester, including commercial-use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(3) With the exception of requesters seeking documents for a commercial use, NRPC shall not charge fees for computer search until the cost of the search equals the equivalent dollar amount of two hours of the salary of the operator performing the search.

(g) *Payment procedures.* (1) A request will not be deemed to have been received by the Freedom of Information Office until the requester has agreed to pay the anticipated fees and has made an advance deposit if one is required.

(2) Remittances shall be in the form of either a personal check or bank draft drawn on a bank in the United States, or a money order.

(3) Remittances shall be made payable to National Railroad Passenger Corporation and mailed to the Freedom of Information Office.

(h) *Late charges.* Interest may be charged those requesters who fail to pay fees charged. NRPC may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(i) *Other procedures.* NRPC shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. NRPC may choose to contract with outside services to locate, reproduce and disseminate the records in response to FOIA requests when deemed the most efficient and least costly method. When documents responsive to a request are maintained for distribution by government agencies operating statutory-based fee schedule programs, such as, but not limited to, the Government Printing Office or the National Technical Information Service, NRPC will inform requesters of the steps necessary to obtain records from those sources.

Harold R. Henderson,

Vice President-Law.

[FR Doc. 87-9605 Filed 4-24-87; 11:52 am]

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Proposed Rules

Federal Register
Vol. 52, No. 81
Tuesday, April 28, 1987

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 ENERGY

10 CFR Part 725

Permits for Access to Restricted Data

AGENCY: Office of Uranium Enrichment, Department of Energy (DOE).

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) is proposing to amend the regulation concerning permits for access to uranium isotope separation Restricted Data. The regulation establishes procedures and standards for the issuance of access permits to those private sector persons or groups who require access to Restricted Data for use in their business. Access permits are divided into separate technology categories. Category C–24 pertains to access to the gaseous diffusion and gas centrifuge processes for the separation of uranium isotopes for participating in the construction and operation of additional production facilities utilizing those technologies. The purpose of this rulemaking is to update Category C–24 to take into account events that have occurred since the last amendment in 1979.

Specifically, this rulemaking would authorize access to Category C–24 Restricted Data by persons interested in acquiring centrifuge machines and related equipment and materials for commercial purposes involving uranium enrichment and for purposes other than uranium enrichment. Such machines and equipment have been made surplus to DOE's needs as a result of DOE's cancellation of its Gas Centrifuge Enrichment Plant and advanced Gas Centrifuge Development Program in June 1985.

In addition, this rulemaking recognizes a new category of information known as "government confidential commercial information."

DATES: Written comments on the proposed rulemaking must be received no later than June 2, 1987. Eight copies should be provided. DOE will hold a public hearing on the proposed rulemaking on May 21, 1987. Requests for an opportunity to speak at the public hearing must be received by DOE on or before May 18, 1987. Eight copies of oral statements are also requested.

ADDRESSES: All written comments and requests to speak at the public hearing should be addressed to: U.S. Department of Energy, Philip Sewell, Director, Office of Technology Deployment and Strategic Planning (NE–34), Washington, DC 20545. (301) 353–4610. The public hearing will begin at 9:30 a.m. and will be held at the following location:

Hearing Location: U.S. Department of Energy, Forrestal Building, Roon IE–245, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Philip Sewell, Director, Office of Technology Deployment and Strategic Planning (NE–34), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20545, (301) 353–4610 or Lawrence Leiken, Attorney, Office of General Counsel (GC–31), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–6975.

SUPPLEMENTARY INFORMATION:

I. Background

Category C–24 defines the terms and conditions which must be satisfied to obtain uranium isotope separation information. Applicants may apply for two subcategories of permits, A or B. Subcategory A includes technical information in summary form concerning the status and potential of Government funded processes for separation of uranium isotopes. Subcategory B provides for up to full technical disclosure on any technical aspect of the uranium isotope separation process, including equipment and facility design, construction, and operation. To qualify for an access permit under existing regulations, an applicant is required to (1) demonstrate adequate technical, managerial, and financial qualifications, and (2) agree to determine its interest in (subcategory A) or propose to participate in (subcategory B) an effort leading to the construction of additional or operating existing gas centrifuge or gaseous diffusion production facilities.

Regulations pertinent to this category were last amended in 1979. See 44 FR 37938 (June 29, 1979)

The primary purpose of this Rulemaking is to revise Category C–24, subcategory B, to permit access by persons interested in acquiring surplus centrifuge machines for commercial use involving uranium enrichment and for purposes other than uranium enrichment. Section 725.15, Requirements for Approval of Applications, is expanded to include such potential use.

In addition, a further purpose of this Rulemaking is to recognize the need for protection of a category of information, which is not restricted data, known as "government confidential commercial information." This information as described by the United States Supreme Court in *Federal Open Market Committee* v. *Merrill*, 443 U.S. 360 (1979) and in subsequent cases is sensitive commercial information generated by the government, the release of which could put the government at a competitive disadvantage. See also *United States* v. *Weber Aircraft Corp.*, 465 U.S. at 799–800 (1984) and *FTC* v. *Grolier, Inc.* 462 U.S. at 26–27 (1983). DOE believes that it may be necessary to provide limited access to this category of sensitive information as a part of its continuing efforts to ensure a sound and competitive industrial base exists to support or operate uranium enrichment facilities. DOE will provide this information to permittees in support of the Administration's privatization objectives. However, this action will not constitute a waiver of the confidentiality of the information or give to permittees the right to release this information to any third party without the prior consent of DOE. For this purpose, revisions are proposed in §§ 725.3, 725.22 and 725.23, which include a definition of the term "government confidential commercial information" and provide a basis for limited access by permittee only.

II. Public Comment Procedures

A. Written Comments

The public is invited to participate in this rulemaking by submitting data, views or arguments with respect to the changes set forth in this Notice. All comments should be submitted by 5:00 p.m., on the day specified in the **"DATES"** section to the address

indicated in the "ADDRESSES" section of this notice and should be identified on the outside envelope and on documents submitted with the designation "Comments on Permits for Access to Restricted Data." Eight copies should be submitted. All comments received by DOE will be made available for public inspection in the DOE Freedom of Information Office, Room IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Pursuant to the provisions of 10 CFR 1004.11, any information or data submitted which is considered to be Business Confidential and exempt by law from public disclosure, must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information or data and to treat it according to DOE's determination.

B. Public Hearing

1. *Procedure for submitting requests to make oral presentations.* Requests to speak should be in writing and contain a telephone number where the requestor can be contacted during working hours. Requests must be submitted to the address indicated in the "ADDRESS" section of this Notice and received by DOE by the date indicated in the "DATES" section of this Notice.

2. *Conduct of the hearing.* DOE reserves the right to select the persons to be heard at the hearing (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement subject to time limitations. The rebuttal statements will be given in the order in which the initial statements were made.

If the speaker wishes to ask a question at the hearing, submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made. The entire record, including the transcript and public written documents, will be retained by the DOE and made available for inspection in the DOE Freedom of Information Office, Room IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00am and 4:00pm, Monday through Friday, except Federal holidays. A copy of the transcript may be purchased from the reporter.

III. Procedural Requirements

A. Executive Order 12291

Executive Order 12291 (46 FR 13193, February 19, 1981), requires an agency to prepare a regulatory impact analysis for any proposed major rule. DOE has determined that this proposal does not constitute a "major rule," as defined in the Executive order, because: (1) the proposed revisions in the access program will not directly result in the level of impact necessary to meet the definition of a "major rule" and (2) in keeping with the purpose and intent of the Executive Order, the proposed revisions will not increase the regulatory burdens on American society. The Director of the Office of Management and Budget has reviewed this proposed rule pursuant to section 3 of Executive Order 12291.

B. Review Under the Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., DOE certifies that the proposal will not have a significant economic impact on a substantial number of small entities because: (1) The proposed criteria will not directly result in the level of impact required to meet the standard set forth in the Regulatory Flexibility Act, (2) to the extent the proposed criteria may have any direct impact, such impact will not be adverse to small entities, and (3) the number of small entities that may be affected by the proposed criteria is not large enough to meet the standard set forth in the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The proposed change in the regulation does not directly provide for the collection of new information. DOE will submit the collection of any new information requests concerning the proposed rulemaking amendments to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

D. National Environmental Policy Act

The Department of Energy has determined that this proposed rulemaking, which permits additional access to the enrichment information data base, and does not involve alteration of existing facilities, clearly will not significantly affect the quality of the human environment. Further, as information dissemination, the proposed rulemaking is within a category of actions specifically excluded from preparation of either an Environmental Assessment or an Environmental Impact Statement by DOE's Guidelines for Compliance with the National Environmental Policy Act. Since the proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and is within a categorial exclusion provided by DOE's NEPA Guidelines, neither an Environmental Assessment nor an Environmental Impact Statement is Required.

For reasons set forth in the preamble, Part 725 of Chapter III of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC, on April 21, 1987.

A. David Rossin,

Assistant Secretary for Nuclear Energy.

PART 725—PERMITS FOR ACCESS TO RESTRICTED DATA

1. The authority citation for Part 725 continues to read as follows:

Authority: Sec. 161, 68 Stat. 943, 42 U.S.C. 2201.

2. Section 725.3 is amended by adding a new paragraph (i) to read as follows:

§ 725.3 Definitions.

* * * * *

(i) "Government Confidential Commercial Information" means sensitive commercial information generated by the government, the release of which could put the government at a competitive disadvantage in providing enrichment services.

3. Section 725.15 is amended by revising paragraph (b)(3) to read as follows:

§ 725.15 Requirements for approval of applications.

* * * * *

(b) * * *

(3) An application for an access permit authorizing access to restricted

data in category C–24, isotope separation—subcategory A or B—will be approved only if the application demonstrates also that the applicant:

(i) Possesses technical, managerial and financial qualifications demonstrating that the applicant is potentially capable of undertaking or participating significantly in the construction and/or operation of production or manufacturing facilities and offers reasonable assurance of adequacy of resources to carry on, alone or with others, uranium enrichment on a production basis or the large-scale manufacture or assembly of precision equipment systems, or potentially capable of utilizing centrifuge machines in its business for uranium enrichment or for purposes other than uranium enrichment; and is not subject to foreign ownership, control, or influence; and

(A) For subcategory A, desires to determine its interest in participating significantly in a substantial effort to develop, design, build, and operate a uranium enrichment facility or a facility for the manufacture of uranium enrichment equipment.

(B) For subcategory B, proposes to *(1)* participate significantly in, or is directly participating significantly in, a substantial effort to evaluate alternative processes, develop, design, build, and operate a uranium enrichment facility or a facility for the manufacture of uranium enrichment equipment, or *(2)* utilize centrifuge machines and related equipment in its business for uranium enrichment or for purposes other than uranium enrichment, or

(ii) Is furnishing to a permittee having access to Category C–24 under the paragraph (b)(3)(i) of this section substantial scientific, engineering, or other professional services to be used by said permittee in carrying out the activities for which said permittee received access to Category C–24.

4. Section 725.22 is amended by adding a new paragraph (c) to read as follows:

§ 725.22 Scope of permit.

* * * * *

(c) In addition, access permits may authorize access, subject to the terms and conditions of the access permit, to such government confidential commercial information as is included within the particular category or categories specified in the permit.

5. Section 725.23 is amended by revising paragraph (d)(9) as follows:

§ 725.23 Terms and conditions of access

* * * * *

(d) * * *

(9) Except as may be otherwise authorized by DOE, the permittee agrees not to disseminate to persons not granted access by DOE, restricted data or government confidential commercial information made available to the permittee by DOE or restricted data developed by the permittee, its employees, or others engaged by the permittee in the course of the permittee's work under the access permit or as a result of data or information made available by DOE.

* * * * *

[FR Doc. 87–9520 Filed 4–27–87; 8:45 am]
BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 73

[Airspace Docket No. 86–ANM–30]

Proposed Establishment of Restricted Area R–6404D, Hill AFB, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Restricted Area R–6404D located near Hill AFB, UT. After reviewing their overall training and operational requirements, the United States Air Force (USAF) has requested additional restricted airspace to accommodate planned flight activities. This action will provide the USAF additional airspace to conduct its training and operational requirements.

DATES: Comments must be received on or before June 15, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Northwest Mountain Region, Attention: Manager, Air Traffic Division, Docket No. 86–ANM–30, 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, 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: Andrew B. Oltmanns, Airspace Branch (ATO–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaing 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 proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic and energy aspects of the proposals. Send comments on environmental and land use aspects to: Headquaters AFSC/DEMV, Andrews AFB, MD 20331. 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. 86–ANM–30." 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 proposals 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.

Availabiity of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. 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 Proposals

The FAA is considering amendments to Parts 71 and 73 of the Federal

Aviation Regulations (14 CFR Parts 71 and 73) to establish a new Restricted Area R-6404D located near Hill AFB, UT, and also to add R-6404D to the Continental Control Area. the USAF has requested additional restriced airspace to accommodate their overall training and operational requirements. This proposed action will provide the additional airspace needed by the USAF to fulfill their flying requirements. Sections 71.151 and 73.64 of Parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

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 regultory 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 nothave 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 Parts 71 and 73

Aviation safety, Continental control area, Restricted areas.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as follows:

PART 71—[AMENDED]

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.

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R-6404D Hill AFB, UT [New]

PART 73—[AMENDED]

3. The authority citation for Part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a) 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.64 [Amended]

4. Section 73.64 is amended as follows:

R-6404D Hill AFB, UT [New]

Boundaries. Beginning at lat. 40°55'00" N., long. 112°50'30" W.; to lat. 40°55'00" N., long. 114°00'00" W.; to lat. 40°49'00" N., long. 113°40'00" W.; to lat. 40°52'00" N., long. 112°57'00" W.; to the point of beginning.

Designated altitudes. 13,000 feet MSL to FL 250.

Time of designation. By NOTAM.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. USAF, Commander, 6501st Range Squadron (AFSC), Hill AFB, UT.

Issued in Washington, DC, on April 22, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-9548 Filed 4-27-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 4

[Docket No. 70473-7073]

Public Information; Freedom of Information Reform Act of 1986

AGENCY: Office of the Secretary, Commerce.

ACTION: Proposed rule.

SUMMARY: The Department of Commerce is proposing to revise 15 CFR Part 4 titled, PUBLIC INFORMATION, which implements the Freedom of Information Act, as amended (5 U.S.C. 552) within Commerce. Section 4.10 of this proposed revision would also implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) which prescribes the adoption of a government-wide uniform schedule of fees in conformance with the Office of Management and Budget guidelines published at 52 FR 10012-10020. A separate and shorter public comment period has been set for comments on § 4.10.

DATES: Comments on § 4.10 must be submitted on or before May 13, 1987. Comments on sections other than Section 4.10 must be submitted on or before June 12, 1987.

ADDRESS: Send written comments to: Gerri LeBoo, Freedom of Information Act Officer, Department of Commerce, Room H-6628, Washington, DC 20230; Telephone, 202-377-3271.

FOR FURTHER INFORMATION CONTACT: Gerri LeBoo, Freedom of Information Act Officer; Telephone, 202-377-3271.

SUPPLEMENTARY INFORMATION: The Commerce Department's policies and procedures for handling requests for information under the Freedom of Information Act (FOIA) appear in 15 CFR Part 4. The Department proposes to amend the regulation which was promulgated at 40 FR 11553, March 12, 1975. Since that time, a number of issues have developed which affect the Department's processing practices not heretofore formally adopted. Set forth below are specific policies and procedures for incorporation into the original regulation which will enhance efficient processing of requests consistent with the FOIA. The proposed additions to the rule include policies and procedures involving: (1) business information (§ 4.7); (2) referral of third agency records (§ 4.6); (3) special copying requirements (§ 4.8); (4) other charges (§ 4.11); and (5) request cut-off date (§ 4.6.)

The Department also proposes to amend its FOIA fee schedule in compliance with pertinent sections of the Freedom of Information Reform Act (FOIRA) of 1986 (Pub. L. 99-570). FOIRA requires that all agencies conform to a uniform charging system as established by the Office of Management and Budget (OMB). Hence, the Department's proposed fee schedule, as set forth in § 4.10, is based on the OMB guidelines issued March 27, 1987 (52 FR 10012), certain Justice Department guidance described below, and the approved recommendations of the Department's 1986 Fee Study Team. The 1986 Study found that the Department's fee schedule, which has been in effect over a decade, was not comparable in some categories with current costs. The proposed schedule reflects the recommended adjustments for agency-wide charges that are permitted by law, and the remaining charges are based on the government-wide schedule. The fee schedule appears at § 4.10. Additionally, FOIRA specifies two basic requirements to be met for qualification for a waiver or reduction of chargeable fees. This proposal includes the factors, based on the Justice Department's April 2, 1987 guidance, which will be used in considering waiver determinations.

FOIRA also requires that we publish our regulations specifying a schedule of fees to be charged for processing FOIA requests only after public notice and opportunity for comment. Because FOIRA requires that our fees conform to guidelines promulgated by the Director, Office of Management and Budget, we

had to await OMB issuance of final guidelines on March 27, 1987 (52 FR 10012) before begining this proceeding. The Department has determined that a 15 day comment period on the fee schedule (§ 4.10) is appropriate because the Department's proposed rule follows the OMB guidelines on uniform fee schedule on which the public had an opportunity to comment, and because of the short deadline in FOIRA for issuing these regulations. However, comments on all proposed changes other than the fee schedule (§ 4.10) will be accepted for 45 days. The Department will issue a final rule on § 4.10 pursuant to FOIRA as soon as is possible, and publish a final rule on the remainder of 15 CFR Part 4 at a later date. Between May 26 and the date that revised § 4.10 becomes effective, the Department intends to exercise its discretion to waive or reduce fees, upon request, to confer the benefits intended by FOIRA as closely as is practicable under the circumstances.

Other changes made throughout the amended regulation are editorial and/or reflect necessary organizational designations.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more:

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because only a very small percentage of that group will likely be affected by this regulation; i.e., those entities that choose to submit requests for records under the Freedom of Information Act, 5 U.S.C 552. As a result, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 4

Public information, Freedom of information.

For the reasons set forth in the preamble, 15 CFR Part 4 is revised as follows:

PART 4—PUBLIC INFORMATION

Sec.

Authority: 5 U.S.C. 552 as amended; 5 U.S.C. 553; 5 U.S.C. 301i; Reorg. Plan No. 5 of 1950; the Budget and Accounting Act of 1921 (31 U.S.C. 1 et seq.); the Budget and Accounting Procedure Act (31 U.S.C. 67 et seq.); the Debt Collection Act of 1982 (Pub. L. 97–365).

§ 4.1 Scope and purpose.

(a) This part revises the rules of the Department of Commerce whereby the Department and its organizational units are to make publicly available the materials and indexes specified in 5 U.S.C. 552(a)(2) and the records requested under 5 U.S.C. 552(a)(3). This revision is to conform the rules to the requirements of the Freedom of Information Act (5 U.S.C. 552), as amended by Pub. L. 93–502, 88 Stat. 1561, effective February 19, 1975 and Pub. L. 99–570, October 27, 1986.

(b) These rules supplement Department Administrative Order 205–12, which contains policies, delegations of authority, and other rules implementing 5 U.S.C. 552. DAO 205–12 is attached as Appendix A to this part.

(c) Certain units of the Department other than those identified in § 4.4(d) have, pursuant to delegated authority and for appropriate reasons, established their own facilities for the public inspection and copying of records. The units have provided for separate places to which requests for records are to be made and received. These facilities and places are identified in Appendix B to this part. The units may publish supplementary rules in addition to but not inconsistent with this part, DAO 205–12, and the law in their respective chapters of the Code of Federal Regulations or otherwise in the Federal Register. All of such rules shall be maintained in the central public reference facility identified in § 4.4(c), where information about them may be obtained.

§ 4.2 Policies.

(a) Department Administrative Order 205–12 contains the basic policies and other criteria to be considered in issuing and administering these rules. To the extent that these policies and criteria are not specified in this part or in any supplemental rules of the units, they are incorporated by reference.

(b) Requests for records made under 5 U.S.C. 552(a)(3) apply only to existing records, and the Department is not required, in response to a request, to create records by combining or compiling information contained in existing records, or otherwise to prepare new records. However, Departmental officials may, upon request, provide or create new information in record form pursuant to user charge statutes, such as 15 U.S.C. 1525–27, or in accord with authority otherwise provided by law.

§ 4.3 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 551 shall have the same meaning herein.

(b) As used in this part, "Act" means the "Freedom of Information Act," as amended, 5 U.S.C. 552.

(c) The terms "Office of the Secretary" and "operating unit" are defined in Department Organization Order 1–1. "Mission and Organization of the Department of Commerce" (35 FR 19704, December 27, 1970).

(d) The term "unit" as used in this part means (1) an operating unit of the Department, and (2) each Secretarial officer and the persons and the Departmental officers under each.

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

(f) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of

material within documents. Such activity should be distinguished, however, from "review" of material in order to determine whether the material is exempt from disclosure (see subparagraph 3(h) below). Searches may be done manually or by computer using *existing* programming.

(g) The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g. magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(h) The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see subparagraph 3(i) below) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(i) The term "commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Department must determine the use to which a requester will put the documents requested. Moreover, where the Department has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Department shall seek additional clarification before assigning the request to a specific category.

(j) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

(k) The term "non-commericial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in 3(i) above, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(l) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the Department may also look to the past publication record of a requester in making this determination.

§ 4.4 Availability of materials for inspection and copying; indexes.

(a) The Assistant Secretary for Administration has established and maintains a central public reference facility available to units of the Department, at which place the following materials of those units utilizing the facility shall be made available for public inspection and copying:

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

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

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

(4) Current indexes providing identifying information for the public as to any matter which was issued, adopted, or promulgated after July 4, 1967, and is required by 5 U.S.C. 552(a)(2) to be made available or published;

(5) Records of the final votes of each member in every proceeding of an agency comprised of more than one member.

(6) Rules and decisions denying requests for records which otherwise implement or relate to the Act; and

(7) Materials published in the **Federal Register** pursuant to 5 U.S.C. 552 (a)(1) and such other materials which each unit may consider desirable and practical to make available for the convenience of the public.

(b) The Secretary of Commerce has determined (DAO 205–12, subparagraph 5.02a.5), that it is unnecessary and impracticable to publish quarterly or more frequently and distribute (by sale or otherwise) copies of each index and supplements thereto, as provided in 5 U.S.C. 552(a)(2). Upon request, copies of such indexes shall be provided at the public reference facility at a cost not to exceed the direct cost of duplication.

(c) The central facility established by the Assistant Secretary for Administration is the Central Reference and Records Inspection Facility, Room H6628, Department of Commerce Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC 20230. The facility is open to the public Monday through Friday of each week, except on official holidays of the Federal Government, between the hours of 9 a.m. and 4:30 p.m. There are no fees or formal requirements for inspection of materials. Equipment for making copies of these materials is available nearby for use by the public. Copies of various Commerce Department materials regularly available for sale by the Department may be purchased at the facility or information about them obtained. Correspondence concerning materials available at the facility or information about the rules implementing the Act may be sent to the above address. The telephone number of the facility is Area Code 202–377–3271.

(d) The following units of the Department are participating in the use of this central facility: all components of the Office of the Secretary of Commerce.

(e) Other units of the Department which have established separate public reference facilities, listed in Appendix B to this part, may publish rules applicable to the services provided therein, not inconsistent with this part, for public inspection and copying of materials.

§ 4.5 Requests for records.

(a) A request for a record of the Department (or information contained therein) which is not customarily made available to the public as part of the Department's regular informational services (see § 4.11 *infra.*), or which is

not available in a public reference facility described in § 4.4(c) or Appendix B to this part, shall be made in writing, with the envelope and the letter clearly marked "Freedom of Information Request" or "Request for Records" or the equivalent, to distinguish it from other mail to the Department. Each such request, so marked, shall be addressed to the unit of the Department identified in Appendix B to this part which the requester knows or has reason to believe is responsible for the records requested. If the requester is not sure which is the responsible addressee unit, it shall address the request to the central facility identified in § 4.4(c), or obtain advance information from that facility as to which is the responsible addressee unit.

(b) Any request for records which is not marked and addressed as specified in paragraph (a) of this section will be so marked and addressed by Department personnel and forwarded immediately to the responsible unit having possession or control of the records requested or having primary concern with such records. A request which is improperly addressed by the requester will not be deemed to have been "received" for purposes of the time period for a request for records set forth in 5 U.S.C. 552(a)(6), until the earlier of the time that (1) forwarding of the request to the responsible unit has been effected, or (2) such forwarding would have been effected with the exercise of due diligence by Department personnel. In each instance when a request is forwarded, the responsible unit receiving it shall notify the requester that its request was improperly addressed and of the date the request was received by the unit.

(c) Requesters must reasonably describe the records sought. A request for records shall sufficiently identify the records requested to enable Department personnel familiar with the subject matter to locate them with a reasonable amount of effort. The requester shall, to the extent possible, furnish specific descriptive information regarding dates and place the records were made, the file descriptions, subject matter, persons involved, and other pertinent details that will help identify the records. If the request relates to a matter in pending litigation, the court, location and case shall be identified. When more than one record is requested, the request shall clearly describe each specific record, and the specific information requested which is contained in a record, so that its availability may be separately determined. When appropriate, the requester shall describe the intended use of the requested records. Employees at a facility or at a specific address listed in Appendix B will assist the public to a reasonable extent in framing a request.

§ 4.6 Initial determinations of availability of records.

(a) The responsible unit which receives a request for records shall promptly log the receipt of the request, and within ten days of its receipt (excepting Saturdays, Sundays, and legal public holidays) shall initially determine:

(1) Whether the request is for records under the Act, is for materials available otherwise than under the Act, or is for information not contained in existing records and, therefore, not under the Act. The requester shall be promptly notified in writing how the request is being handled when it does not come within the Act.

(2) Whether the records requested are reasonably described and can be located on the basis of the information supplied by the requester. If any of the records requested cannot be identified and located from the information furnished, the unit shall promptly so inform the requester in writing, specifying what additional identification is needed to assist the unit in locating the record, and offering to assist the requester to reformulate its request.

(3) Whether the records no longer exist, or are not in the unit's possession. The unit should, if it knows which unit of the Department or other agency may have the records, forward the request to it. In each instance, the unit shall promptly notify the requester in writing.

(4) Whether the requested records are the exclusive or primary concern of another executive agency. If so, the unit shall promptly refer the request and the responsive records to that other agency for further action under its rules, and promptly notify the requester in writing of this referral. When the subject matter of a classified record originated by another agency indicates that disclosure of the identity of originating agency might itself compromise national security, that agency shall be consulted prior to any referral of the responsive records.

(5) Whether the request is a categorical one. A categorical request, i.e., one for all records falling within a reasonably specific but broad category, shall be regarded as conforming to the statutory requirement that records be reasonably described, if the particular records can be identified, searched for, collected and produced without unduly burdening or disrupting the unit's operations. If the categorical request does not reasonably describe the records requested, the unit shall promptly notify the requester in writing specifying what additional identification is needed, and extend to the requester an opportunity to confer with Department personnel to attempt to reformulate the request so as to reasonably describe the records.

(6) In determining records responsive to a request a unit shall include only those records within a unit's possession and control as of the date of its receipt of the request.

(7) In each of the situations set forth in paragraphs (a) and (b) of this section, the procedures relating to fees described in § 4.10 shall also be applied and coordinated as appropriate.

(b) An authorized official in the responsible unit shall review the request to determine the availability of the records requested.

(1) The determination shall be made within ten days (excluding Saturdays, Sundays and legal public holidays) of the receipt of the request (as defined in § 4.5(b) of this part), unless the time is extended as provided in paragraph (b)(2) of this section.

(2) In unusual circumstances, an appropriate official authorized to make initial denials of requests may extend the time for initial determination for up to ten days (excluding Saturdays, Sundays and legal public holidays) by written notice to the requester setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. Extensions of time for the initial determination and extensions of time on appeal may not exceed a total of ten days, and time taken for the former counts against available appeal extension time. "Unusual circumstances" means, but only to the extent reasonably necessary to the processing of a particular request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request, or (iii) the need for consultation, which shall be conducted with all practical speed, with another agency or unit having a substantial interest in the determination of the request, or among two or more components of the responsible unit having substantial subject-matter interest in the pertinent documents.

(3) If no determination has been sent to the requester at the end of the initial ten day period, or the last extension

date, the requester may consider the request to be initially denied, and exercise a right of appeal of the denial. When no determination can be made within the applicable time period, the responsible unit shall nevertheless exercise due dilligence in continuing to process the request. It shall, on expiration of the applicable time period, inform the requester of the reason for the delay, of the date a determination is expected to be sent, and of the requester's right to treat the delay as a denial and to appeal. It may ask the requester to forego an appeal until a determination is made.

(4) If it is determined that the records requested are to be made available, and there are no further fees to be paid, the responsible official shall promptly notify the requester as to where and when the disclosable records may be obtained or otherwise provide them as agreed. If there are fees still to be paid by the requester, the requester shall be notified that upon payment the records will immediately be made available.

(5) Appendix C lists the limited number of officials who have been authorized to make initial denials of requests for records, except as may be subsequently authorized. A reply initially denying, in whole or in part, a request for records shall be in writing, signed by an authorized official, and it shall include:

(i) A reference to the specific exemptions of the Act authorizing the withholding of the records, stating briefly why the exemption applies and, where relevant, why a discretionary release is not appropriate.

(ii) The name and title or position of each official responsible for the denial.

(iii) A statement of the manner in which any reasonably segregable portion of a record shall be provided to the requester after deletion of the portion which is determined to be exempt.

(iv) A brief statement of the right of the requester to appeal the determination to the General Counsel and the address to which the appeal should be sent, in accordance with § 4.9 (a) and (b).

(6) A copy of each initial denial and its incoming request for records shall be provided to the Assistant General Counsel for Administration.

§ 4.7 Business information.

(a) *General policy.* Business information provided to the Department of Commerce by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Definitions.* (1) The term "business information" means trade secrets or any other commercial or financial information. (2) The term "business submitter" means any commercial entity which provides proprietary business information to the Department of Commerce.

(c) *Notice to business submitters.* A unit of the Department of Commerce shall provide a business submitter with prompt written notice of a request encompassing its business information whenever required under paragraph (d) of this section. Such written notice shall be sent via certified mail, return receipt requested, and shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information.

(d) *When notice is required.* (1) For business information submitted to the Department prior to April 25, 1987, the unit shall provide a business submitter with notice of a request whenever: (i) the information is less than ten years old; (ii) the information is subject to a prior express commitment of confidentiality given by the unit to the business submitter; or (iii) the unit has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(2) For business information submitted to the Department on or after April 25, 1987, the unit shall provide a business submitter with notice of a request whenever: (i) the business submitter has in good faith designated the information as commercially or financially sensitive information; or (ii) the unit has reason to believe that disclosure of the information may result in commercial or financial injury to the business submitter.

(3) When a business submitter has designated business information as commercially or financially sensitive, notice of a request for such information shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for a specific notice period of greater duration. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter that the information at issue is in fact confidential commercial or financial information which has not been disclosed to the public.

(4) The notice requirements of this paragraph shall not apply if (i) the unit determines that the information should not be disclosed; (ii) the information has been lawfully published or otherwise made available to the public; or (iii) disclosure of the information is required by law (other than 5 U.S.C. § 552).

(5) The requester shall be given written notice whenever notice to the business submitter is required under this paragraph.

(e) *Opportunity to object to disclosure.* Through the notice described in paragraph (c) of this section, a unit shall afford a business submitter 10 calendar days from date of receipt of such notice within which to provide the unit with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of exemption 4, shall demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA. The 10 day period for providing a statement may be extended by the unit upon a request and justification for an extension by the submitter.

(f) *Notice of intent to disclose.* A unit shall carefully consider a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a unit decides to disclose business information over the objection of a business submitter, the unit shall forward a written notice to the business submitter which includes: (1) A statement of the reasons for which the business submitter's objections to disclosure were not sustained;

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

(3) *A specified disclosure date.* Notice of intent to disclose shall be forwarded to the business submitter via certified mail, return receipt requested. Such notice shall state the unit's intent to disclose the business information on the expiration of 10 days from the date of the submitter's receipt of the notice. A copy of such disclosure notice shall be forwarded to the requester at the same time.

(g) *Notice of FOIA Lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information subject to the notice requirements of paragraph (d) of this section, the unit shall promptly notify the business submitter.

§ 4.8 Inspection and copying of disclosable records.

(a) Copies of disclosable records, rather than the original records, should ordinarily be made available for inspection.

(b) Unless the requester has otherwise indicated, disclosable records shall be sent to the appropriate facility to be held for a reasonable time for inspection by the requester, after any fees due, including copying fees required to make the record available for inspection, are paid. If a requester does not want to inspect a record by personal visit to the facility, a copy shall be mailed to the requester upon payment of copying and postage fees as set forth in § 4.10 of this part, and other fees due.

(c) When original records are made available for inspection the requester may copy by hand any portion of the record, or may use the copying equipment to make copies or may make other arrangements for copying at specified fees. No change or alteration of any kind may be made to the original records being inspected, nor may any matter be added to or deleted from the record. Papers bound or otherwise assembled in a record file may not be disassembled by the requester. Title 18, United States Code, section 2701(a) makes it a crime to conceal, mutilate, obliterate, or destroy any record filed in any public office, or to attempt to do any of the foregoing. Staff of the facility are authorized to supervise inspection as necessary to protect the records of the Department, and they shall provide assistance if disassembly of a record is necessary for copying purposes.

(d) A copy of transcripts of public hearings held by a unit of the Department may be made available for inspection when it is not in actual official use.

§ 4.9 Appeals from initial determinations or untimely delays.

(a) When a request for records has been initially denied in whole or in part, or has not been timely determined, or when a requester has received an adverse initial determination regarding any other matter under this regulation, the requester may submit a written appeal within thirty calendar days after the date of the written denial or, if there has been no determination, on the last day of the applicable time limit. The appeal shall include a copy of the original request, the initial denial, if any, and a statement of the reasons why the records requested should be made available and why the initial denial, if any, was in error. No personal appearance, oral argument or hearing on appeal is provided.

(b) An appeal shall be addressed to the General Counsel, Department of Commerce, Room 5882, 14th and Constitution Avenue NW., Washington, DC 20230. Both the appeal envelope and the letter shall be clearly marked "Freedom of Information Appeal" or "Appeal for Records" or the equivalent. An appeal not addressed and marked as provided herein will be so marked by Department personnel when it is so identified, and will be forwarded immediately to the General Counsel. An appeal incorrectly addressed will not be deemed to have been "received" for purposes of the time period for appeal set forth in 5 U.S.C. 552(a)(6), until the earlier of the time that forwarding to the General Counsel has been effected; or such forwarding would have been effected with the exercise of due diligence by Department personnel. In each instance when an appeal is so forwarded, the Office of General Counsel shall notify the requester that the appeal was improperly addressed and of the date the appeal was received by the office.

(c) The General Counsel shall act upon an appeal within twenty days (excluding Saturdays, Sundays and legal public holidays) of its receipt, unless an extension of time is made in unusual circumstances, when the time for action may be extended up to ten days (excluding Saturdays, Sundays and legal public holidays) minus any days of extension granted at the initial request level. A notice of such extension shall be sent to the requester, setting forth the reasons and the date on which a determination of the appeal is expected to be sent. As used in this paragraph, "unusual circumstances" are defined in § 4.6(b)(2).

(d) If a decision on appeal is to make the records available to the requester in part or in whole, such records shall be promptly made available as provided in § 4.6.

(e) If no determination of an appeal has been sent to the requester within the twenty day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies with respect to such request, giving rise to a right of judicial review as specified in 5 U.S.C. 552(e)(4). When no determination can be sent to the requester within the time limit, the General Counsel shall nonetheless exercise due diligence in continuing to process the appeal. When the time limit expires, the requester shall be informed of the reason for the delay, of the date when a determination may be expected to be made, and of his right to seek judicial review. The requester may be asked to forego judicial review until the appeal is determined.

(f) A determination on appeal shall be in writing and, when it denies records in whole or in part, the notice to the requester shall include: (1) Notation of the specific exemption or exemptions of the Act authorizing the withholding, a brief explanation of how the exemption applies, and, when relevant, a statement as to why a discretionary release is not appropriate; (2) a statement that the decision is final for the Department; (3) advice that judicial review of the denial is available in the district in which the requester resides or has his principal place of business, the district in which the agency records are situated, or the District of Columbia; and (4) the names and titles or positions of each official responsible for the denial of the request.

(g) The General Counsel shall send a copy of each determination on appeal to the central public reference facility referred to in § 4.4.(c) where it will be indexed and kept available for public inspection and copying.

§ 4.10 Fees.

(a) *Application—Uniform Fee Schedule.* (1) The fees described in this section apply to FOIA requests processed by all units of the Department. They reflect rates for the full allocable direct cost of search, review, and duplication. The terms of the categories chargeable under this section are defined in § 4.3 (e) through (l). The fees to be charged shall be based on the requester category. The four specific categories and chargeable fees are:

Category	Chargeable Service
(i) Commercial Use Requesters.	Search; Review; and Reproduction.
(ii) Educational and Non-Commercial Scientific Institution Requesters.	Reproduction (excluding the cost of the first 100 pages).
(iii) Representatives of the News Media.	Reproduction (excluding the cost of the first 100 pages).
(iv) All Other Requesters	Search and reproduction (excluding the cost of the first 2 hours of search and 100 pages).

(2) *Uniform fee schedule.*

Category	Rate
Manual search	Actual salary rate of employee involved, plus 16 percent of salary rate.
Computerized search	$4.50 per minute, or $270 per hour, plus operator salary.
Duplication of records	
Paper copy reproduction	$.07 per page.
Computer tape or printout reproduction.	Actual cost, including operator time.
Other reproduction (i.e. microfilm, microfiche, microform).	Actual direct cost plus salary rate of operator.

Category	Rate
Review of records (includes preparation for release, i.e. excising).	Actual salary rate of employee involved, plus 16 percent of salary rate.

(3) *Charging interest.* Interest may be charged to those requesters who fail to pay fees charged in a timely fashion. Interest will accrue commencing on the 31st day following the day on which the billing was sent. Interest will be charged at the rate specified in Section 3717 of Title 31 U.S.C. The Department reserves the right to utilize consumer reporting agencies, and collection agencies, when appropriate, to encourage repayment as authorized by the Debt Collection Act of 1982 (Pub. L. 97-365).

(b) *Waiver or reduction of fees.* (1) Documents shall be furnished without charge, or at reduced charges if disclosure of the information is in the public interest, because it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester. To assure that the two basic requirements for waiver are met, Commerce shall rely on the following factors in making a determination on the fee waiver request: (i) The subject of the request (whether the subject of the requested records concerns the operations or activities of the government); (ii) The informative value of the information to be disclosed (whether the disclosure is likely to contribute to an understanding of government operations or activities); (iii) The contribution to an understanding of the subject by the general public likely to result from disclosure (whether disclosure of the requested information will contribute to public understanding); (iv) The significance of the contribution to public understanding (whether the disclosure is likely to contribute significantly to public understanding of government operations or activities); (v) The existence and magnitude of a commercial interest (whether the requester has a commercial interest that would be furthered by the requested disclosure); (vi) The primary interest in disclosure (whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester).

(2) Additionally, a fee shall not be charged, or alternatively it may be reduced, in the following instances:

(i) Requests for Department records made by a Federal agency, Federal court (excluding parties), Congressional committee or subcommittee, the General Accounting Office, or the Library of Congress, are not made under the Act, and fees payable under this part do not apply.

(ii) The records are requested by a State or local government, an intergovernmental agency, a foreign government, a public international organization, or an agency thereof, and when it is determined by a responsible Departmental official that it is an appropriate courtesy, or the records are for purposes that are in the public interest and will promote the objectives of the Act and of the Department.

(iii) A fee shall not be charged if the allowable charges are less than or equal to the cost of routine collection and processing of the fee. Therefore, if the total of charges due for making records available pursuant to a request is $20 or less, no fee will be charged.

(c) *Payment of fees.* The following conditions shall apply to payment of fees charged under this part.

(1) A search fee provided in paragraph (a) of this section is chargeable even when no records responsive to the request are found, or when the records requested are determined by the responsible Department official to be totally exempt from disclosure. If the estimated search charges exceed $25 the requester shall be notified of the estimated amount of search fees, unless the requester has previously advised the Department of a willingness to pay an amount sufficient to cover the necessary search fee.

(2) If the estimated or determined allowable charges that a requester may be required to pay exceed $250; or if the requester in any instance has previously failed to pay a fee charged in a timely manner (i.e. within 30 days of the date of the billing), the requester shall be notified immediately (by telephone if possible) and provided with written confirmation of the estimated or determined total fees due and may be asked to pay such fees before the request will be processed. When appropriate, the notice shall advise the requester that it may confer with specified Department personnel as to possible reformation of the request in order to reduce the fee.

(3) The administrative time limitations prescribed in 5 U.S.C. 552(a)(6) shall be tolled from the time the notice described in paragraph (c)(2) of this section is sent to the requester until the time that the unit receives payment of the estimated fee from the requester.

(4) When a specific fee is determined to be payable and appropriate notice has been given to the requester, the payment of such fee shall be received before the requested records or a portion of the records are made available to the requester.

(5) Payment of fees shall be made in cash or preferably by check or money order payable to "U.S. Department of Commerce", and, they shall be paid or sent to the unit stated in the billing notice or, if none, to the unit handling the request. Where appropriate, the responsible official may require that payment be made in the form of a certified check.

(6) If an advance payment of an estimated fee exceeds the actual total fee by $1 or more, the difference shall be refunded to the requester.

(7) When the responsible official reasonably believes that a requester or group of requesters acting in concert is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, the unit may aggregate any such requests and charge accordingly.

§ 4.11 Other charges.

(a) This part does not apply to any special statistical compilation, study, or other record requested pursuant to statutes specifically providing for setting the level of fees for particular types of records such as 15 U.S.C. sections 1525-27. The fee for the performance of such service is the actual cost of the work involved in compiling the record. All monies received by the Department in payment of the cost of this work are deposited in a separate account administered under the direction of the Secretary, and may be used to defray the ordinary expenses incidental to the work.

(b) The full cost of other special services will be assessed. Such services would include:

(1) Certifying that records are true copies; and

(2) Sending records by special methods such as express mail, etc.

Appendix A—Public Information

[DAO 205-12]

Section 1. *Purpose*—.01 This order, and the rules and other materials which implement it, are designed to carry out the responsibilities of the Department of Commerce under the Freedom of Information Act, as amended (5 U.S.C. 552), hereinafter referred to as "the Act."

.02 This revision updates and clarifies the provisions of the order (dated June 29, 1967) which it supersedes, in light of the amendments to the Act which become effective February 19, 1975. Section 7, "Compulsory Process Requesting Documents or Testimony" contained in the superseded order, is now found in Department

Administrative Order 218–5, to be published separately in the Federal Register.

Sec. 2 *Authorities*—This order is issued pursuant to the Act: 5 U.S.C. 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; and other authority vested by law in the Secretary applicable to the dissemination of records and other information of the Department and charges for services related thereto.

Sec. 3. *Policies*—.01 The Department of Commerce, in fulfilling its statutory missions to foster, promote and develop the foreign and domestic commerce of the United States and to administer the specific programs entrusted to it, regularly develops, collects, analyzes, and disseminates facts, statistics, consensus, charts, scientific findings, technology, and other information, and performs other services, in order to assist the business community and other segments of the public, according to their needs and interest. This information which the Department develops, collates, and disseminates is generally made readily available, either without charge or by purchase, to the affected persons and to anyone else who may be interested, through publications, reprints of regulations (by subscription or otherwise), press releases, special reports, correspondence and personal interviews or conferences with staff, speeches, and other media. It is the policy of the Department to continue its regular practices of disseminating information to the public prepared as a part of its program responsibilities, to the fullest extent legally permissible and economically feasible, and to continue to handle public requests for such information (which may include records) in the usual manner through its regular facilities and channels, as distinguished from those requests for records subject to 5 U.S.C. 552(a)(3) which are to be made and handled in accord with the rules established in and pursuant to subsections 5.03 and 5.04 of this order.

In carrying out this policy, the officials designated in subsection 4.01 of this order shall: (a) establish and continue an effective program of communicating to the public the useful information obtained or developed in the fulfillment of their organizational missions; (b) publicize the availability of such informational materials in their rules or by other practical means so that the public shall utilize the regular informational programs of the Department, rather than resorting to the formal procedures for requesting records established pursuant to 5 U.S.C. 552(a)(3); and (c) insure that any such information which is given to individuals or special groups shall also be made available to the general public in accord with subsections 5.01 and 5.02 of this order, when and to the extent such information is subject to publication or inspection under 5 U.S.C. 552(a)(1),(2), or (5).

.02 Officials responsible for determining, in accord with the Act and this order:

(a) What materials are to be published in the **Federal Register**; (b) What and how materials are to be made available for public inspection and copying, including indexing; and (c) What and how records which are requested are to be made available; shall, where discretion exists in making such determinations, take an affirmative and constructive view of the requirements of the Act. Accordingly, in making rules and specific determinations, they shall among other factors: (1) Provide such information to the affected public as well as enable it to deal effectively and knowledgeably with their organizations; (2) keep within the limits of demonstrable need the use of the legal authorities which permit the withholding of information and records; (3) apply principles of equal treatment to requests for records; (4) consider disclosure to be the rule rather than the exception; (5) consider the public convenience as well as the efficient conduct of their organizations' business; (6) act in a timely manner; and (7) be guided by materials prepared by the Department of Justice and the Office of General Counsel of the Department, and by applicable court decisions.

Sec. 4. *Delegation of authority.*

.01 The Secretary of Commerce is responsible for the effective administration of the Act and other laws applicable to the dissemination of records and other information of the Department. Aside from the Secretary's retaining authority for his immediate office, or as he otherwise may act, authority is hereby delegated to the following officials of the Department to decide initially whether or not to make publicly available records and other information subject to the Act which are in the possession of their organizations, in accord with the provisions of the Act, this order and rules supplementing it, other applicable law, and as may be otherwise provided by the Secretary:

a. Secretarial Officers, for their respective offices and for the Department staff units reporting to them (as defined in Department Organization Order 1–1, "Mission and Organization of the Department of Commerce" (35 FR 19704, December 27, 1970)), as amended.

b. Heads of operating units of the Department (as defined in Department Organization Order 1–1).

.02 Although the officials having authority under subsection 4.01 of this section may permit employees within their organizations to make records and information publicly available under the Act, they shall redelegate authority initially to deny such records and information only to a limited number of officers or employees under them without power of further redelegation.

.03 The authority to make final decisions on appeal of initially denied requests for records is hereby delegated to the General Counsel of the Department without power of further redelegation.

.04 The General Counsel of the Department, and his designees, shall provide legal services to enable the officials designated in subsections 4.01 and 4.02 of this section to discharge their respective duties and responsibilities under and pursuant to this order, and shall make legal interpretations of questions arising thereunder. The General Counsel shall also act as the focal point within the Department for consultation or other communication with the Department of Justice with respect to any actions to be taken in connections with the Act, this order, and rules implementing it.

.05 Program officials shall provide all support and assistance necessary to enable the General Counsel to perform the functions delegated in this order. This shall include (i) keeping the Office of the General Counsel informed of Freedom of Information Act requests received by the unit; (ii) providing prompt responses to Office of the General Counsel instructions, or requests for assistance; (iii) as requested, allowing the Office of the General Counsel access to relevant records; and (iv) promptly consulting with the Office of the General Counsel regarding any legal issues which arise during the processing of a request.

b. The Office of the Inspector General shall comply with the provisions of this order except that Office of the Inspector General need not allow the Office of the General Counsel access to records to the extent that (i) information contained therein might reveal the identity of a confidential source, or (ii) the Inspector General determines that disclosure to Office of the General Counsel would interfere with an audit, investigation, or prosecution.

Sec. 5. *Functions and responsibilities*—.01 Publication in the **Federal Register** (5 U.S.C. 552(a)(1) of the Act).

a. The following information of the Department and its component organizations shall be separately stated and currently published in the **Federal Register** for the guidance of the public.

1. Descriptions of the central and field organizations and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may secure information, make submittals or request, or obtain decisions;

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

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

4. Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by their agencies; and

5. Each amendment, revision, or repeal of the foregoing. b. The information contained in paragraph 5.01a of this subsection shall be published in the **Federal Register** in the form of or included in:

1. Department Organization Orders, including any supplements and appendices thereto. The Assistant Secretary for Administration shall cause such materials to be published in the **Federal Register**. The Department Organization Orders and their supplements and appendices contain, among other information, the descriptions of the various organizations, the descriptions of the various organizations of the Department, and in many instances the other information indicated in subparagraphs 5.01a.1 and 2. of this subsection.

2. Department Administrative Orders, including any supplements or appendices thereto.

3. Other Office of the Secretary or operating unit directives.

4. Rules and orders contained in the various Titles of the Code of Federal Regulations assigned to the Office of the Secretary and to the operating units of the Department.

5. General notices.

6. Other forms of publications when incorporated by reference in the **Federal Register** with the approval of the Director of the Federal Register.

c. Officials responsible for determining what materials are to be submitted for publication in the **Federal Register** pursuant to 5 U.S.C. 552(a)(1) shall consider, among other factors, in making such determinations:

1. That those matters which fall within one or more of the exemptions contained in 5 U.S.C. 552(b) need not be published. However, it may be decided, in accord with subsection 3.02 of this order, that publication even of such matters should in some instances and respects be made.

2. That matters which are reasonably available to the class of persons affected thereby and which have been or are to be incorporated by reference in the **Federal Register** with the approval of the Director of the Federal Register are deemed to be published in the **Federal Register**. In such cases, the standards and procedures for incorporation by reference established by the Director of the Federal Register (See 1 CFR Part 51; 37 FR 23614, November 4, 1972) shall be followed.

3. That matters to which members of the public do not have to resort or by which they are not to be adversely affected, or which do not impose burdens, obligations, conditions, or limitations upon persons affected, need not be published in the **Federal Register** under 5 U.S.C. 552(a)(1). However, the policy considerations expressed in subsection 3.02 of this order may in certain instances suggest the publication of such matters.

4. That no person shall in any manner be required to resort to or be adversely affected by any matter required to be published in the **Federal Register** under 5 U.S.C. 552(a)(1) when it is not so published. However, actual and timely notice given to such a person having such actual notice is equally bound as one having such actual notice is equally bound as one having constructive notice by **Federal Register** publication. Nevertheless, such actual notice should as a matter of policy be in addition to, rather than instead of, publication.

5. That "currently publish" as provided in 5 U.S.C. 552(a)(1) means promptly at the time that the action occurs.

.02 Availability of materials for inspection and copying; indexing (5 U.S.C. 552(a) (2) and (5) of the Act).

a. The head of each operating unit of the Department shall for his unit, and the Assistant Secretary for Administration shall for the officials, officers and units referred to in paragraph 4.01a. of this order, in accordance with rules which they shall cause to be published in the **Federal Register**, make available for public inspection and copying the following materials, unless such materials are promptly published and copies offered for sale:

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

2. Those statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register.**

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

4. Where applicable, a record of the final votes of each member of an agency in every agency proceeding when the agency has more than one number. (The terms "agency proceeding" and "agency" are defined in 5 U.S.C. 551, as amended by 5 U.S.C. 552(e).

5. An index, currently maintained, which provides identifying information for the public as to any matter (a) which has been issued, adopted, or promulgated since July 4, 1967, and (b) which is required to be made available or published pursuant to 5 U.S.C. 552(a)(2). It is hereby determined, subject to subsequent redetermination by the Assistant Secretary for Administration pursuant to changed circumstances, that it is unnecessary and impracticable to publish quarterly or more frequently and distribute (by sale or otherwise) copies of each such index and supplements thereto. Copies of such indexes shall be provided upon request at a cost not to exceed the direct cost of duplication.

b. The rules published in the **Federal Register** under paragraph 5.02a of this subsection shall include provisions for the time, place, copying fees, and any procedures applicable to making such materials available at facilities or otherwise for public inspection and copying.

c. The Assistant Secretary for Administration shall establish and maintain a centralized public reference facility for the inspection and copying of materials subject to 5 U.S.C. 552(a) (2) and (5). The head of an operating unit may, with the approval of the Assistant Secretary for Administration, establish for this organization a separate place for making the materials subject to 5 U.S.C. 552(a) (2) and (5) available to the public for inspection and copying, and publish appropriate rules applicable thereto approved by the Assistant Secretary for Administration.

d. The officials responsible for determining the materials to be available for public inspection and copying under paragraph 5.02a. of this subsection shall consider, among other factors, in promulgating the published rules or in making such determinations:

1. That those matters which fall within one or more of the exemptions contained in 5 U.S.C. 552(b) are not required to be made available. Nonetheless, they may be made available in any particular respect if it is determined that this would better serve the public interest.

2. That they may, to the extent required to prevent a clearly unwarranted invasion of personal privacy, delete identifying details from an opinion, statement of policy, interpretation, staff manual or instruction, or other materials, when it is made available or published. However, in each case the justification for the deletion shall be explained fully in writing. Such action is to be taken in order to provide the public with those informational materials called for under 5 U.S.C. 552(a)(2), while at the same time protecting the medical, family, or other personal privacy rights of the individuals involved in such agency materials. Agency explanations for deletions of identifying details should provide such information as can be furnished without defeating the purpose of the deletion provision. When an agency has a number of recurring deletion situations, it may in its implementing rules or other public notice specify the applicable reasons for such deletions, and cite the rule in the preamble to each of the covered documents, rather than contain the complete explanation in each document.

3. That distinction should be made between those materials (a) which do and which do not affect any member of the public, and (b) which are and which are not to be relied upon, used or cited as precedent by the agency against any private person or party. Those materials specified in 5 U.S.C. 552(a)(2) which affect the public and which have presidential effect shall be made available for inspection and copying, and also included in the index, as provided in this order. However, since the basic purpose of this section of the Act is to disclose to the interested members of the public essential information which will enable them to deal effectively and knowingly with an agency, materials which provide such information should be included in the appropriate facilities.

4. That an advisory interpretation made by an agency on a specific set of facts which is requested by and addressed to a particular person need not be made generally available under paragraph 5.02a. of this subsection if it is not to be cited or relied upon by any official of the agency as a precedent in the disposition of other cases. Nonetheless, if it may serve any useful public purpose, any such interpretation may be made publicly available upon the deletion of identifying details to the extent necessary to protect personal privacy.

5. That the agency is not precluded using as precedent against any affected person those matters specified in subparagraphs 1.3. of paragraph 5.02a of this subsection as to which a person has actual and timely notice of the terms thereof, even though they have not been indexed and either made available or published. If the agency practice is to furnish such notices, it is more desirable that it do so in addition to, rather than instead of, indexing and making them publicly available hereunder, in recognition of the purpose of 5 U.S.C. 552(a)(2) to make the end product materials of the administrative process available to the public.

6. That matters which are published in the **Federal Register** in accordance with 5 U.S.C. 552(a)(1) are not required to be made available under 5 U.S.C. 552(a)(2) for public inspection and copying nor need they be indexed (the **Federal Register** has its own index). However, to the extent that it would be useful and practicable to index and

provide such published information to the public for ready reference, it should be included.

7. That an index provides sufficient identifying information for the public if a person who exercises diligence may familiarize himself with the materials through use of the index.

8. That an alternative to making materials available to the public for inspection and copying is to promptly publish and offer them for sale to the public. Such published materials, however, are subject to the indexing requirement. If it would help the public and it is practical to do so, a copy of such published materials should also be made available in any facilities established for public inspection, and if permissible, copies of the publications should be made available for sale therein.

9. That materials required to be made available or published under 5 U.S.C. 552(a)(2), but which were adopted or issued by an agency prior to July 4, 1967, may at any time be used, relied upon or cited as precedent by the agency irrespective of whether they are listed in the agency's index. Officials, however, may, to the extent they deem it practicable and helpful to the public, also index such materials in whole or in part.

03. Availability of records upon request (5 U.S.C. 552(a) (3), (4), and (6) of the Act).

a. The Assistant Secretary for Administration shall cause to be published in the **Federal Register** rules stating the time, place, fees and procedures to be followed, with respect to making records of the Department promptly available to any person requesting them, as provided in 5 U.S.C. 552(a) (3), (4) and (6).

b. The rules published in the **Federal Register** pursuant to paragraph 5.03a. of this subsection shall, insofar as is practicable, be complete, precise, and workable, suitable for the information of agency personnel and the public alike, and shall include provisions, among other matters, for the following:

1. Information as to the place to make requests, when requests will be deemed received by the Department for purposes of the time limits contained in 5 U.S.C. 552(a)(6), the timely handling of requests, and the making of initial determinations concerning the availability of the records requested.

2. Timely notice to the requester, as applicable, that a requested record does not exist, has been disposed of as provided by law, or is not in the possession or control of the Department.

3. A procedure whereby the time limits for responding to requests for records or appeals from denials may be extended, as authorized by 5 U.S.C. 552(a)(6)(B), and wherein a failure of the agency to respond in a timely manner may be considered a denial of the request.

4. Consultation with other operating units or offices within the Department, or with other Federal executive agencies, when there is a mutual agency interest or concern in the record or its contents and there is a question as to its availability. The determination as to availability should be made by the predominantly interested agency, if there is one. When a record requested from the Department is the exclusive concern of another executive agency, the request shall be promptly referred to that other agency, and the requester so notified.

5. A procedure for administrative appeal of a request for a record initially denied in whole or in part. The appeal procedure shall include provisions which insure that: (i) The requester may file an appeal, in writing, within thirty days of receipt of an initial denial; (ii) an appeal shall be considered received when properly addressed to the General Counsel; (iii) appeals shall be decided without right of the requester for a personal appearance, oral argument, or hearing; (iv) timely decisions on appeals or other notices concerning them shall be made in writing, and communicated to the requester; (v) if the decision is wholly or partly in favor of the requester, the General Counsel shall make the particular records of information available to the requester or order that such be done; and to the extent that the decision is adverse to the requester, it shall briefly state the reason for the decision and the identity of the official responsible for making it, (vi) whenever applicable, requesters shall be effectively notified of their right to seek judicial review.

6. A schedule of fees as authorized by the Act, with procedures which (i) put requesters of records on timely notice as to substantial search and copying fees estimated to be incurred with respect to a request; (ii) attempt to insure that requester pay the chargeable fees for work to be done; (iii) which provide for appropriate waiver or reduction of fees; and (iv) which do not intend to discourage requests for records under the Act. Work, services, publications, or documents which the agency as part of its regular mission has been performing or producing or will be performed or produced for members of the public or for those who are engaged in the transaction of official business of or with the Government, without charge, by user charge, or by publication or subscription charge, are to be distinguished from those records properly requested under 5 U.S.C. 552(a)(3) and the fees charged thereunder.

c. The officials designated in subsections 4.01 and 4.02 of this order who are responsible for initially determining whether any records properly requested under the Act may be made available, shall include in their consideration:

1. Whether the records are of the type referred to in subsection 3.01 of this order, and the request is to be handled in accord with the policy set forth therein;

2. Whether the records are subject to 5 U.S.C. 552(a) (1), (2), or (5) and have been otherwise made publicly available pursuant to paragraphs 5.01a or 5.02a of this section;

3. Whether the requester has complied with the published rules covering the making of requests and the payment of fees;

4. Whether the records or information contained in them are matters which fall within one or more of the exemptions contained in 5 U.S.C. 552(b), and if so whether they are not to be disclosed or whether, if such discretion exists, it would nevertheless be in the public interest to make the record or information available in whole or in part;

5. Whether any reasonably segregable portion of the record can be disclosed after deletion of the portions which it is determined should not be disclosed.

d. The officials who establish a facility as provided in paragraph 5.02 of this section may utilize the facility to:

1. Receive and assist in processing requests for records;

2. Receive from officials the requested records which are made available, maintain custody of them and supervise their inspection and copying by requesters;

3. Arrange for making certified and other copies of available records;

4. Collect and account for fees established for services connected with the requests;

5. Return records after inspection to their place of custody;

6. Act as a central communication center between the requesters and the organizations involved in recordkeeping and officials making determinations as to their availability; and

7. Provide reasonable assistance to persons requesting records, including explanations of the applicable procedure and other rules, and making referrals to sources of information available under regular informational programs of the Department.

e. The Assistant Secretary for Administration shall establish such standard forms, procedures and instructions as he deems necessary for processing requests for records, maintaining records of related expenditures, and obtaining information for the Departmental report required by 5 U.S.C. 552(d).

04. Special review requirements.—a. The General Counsel or one of his designees shall be consulted before any initial denial is issued.

b. As provided in paragraph 7.03c. of DAO 205–12, the Operating Unit Public Affairs Office shall receive a copy of each request at the same time as the Action Office. If the Public Affairs Officer wishes to monitor and/or comment on any response to a particular request prior to transmittal, the Officer shall notify the Action Office within three (3) working days after receiving a copy of the request. The Action Office shall cooperate with the Public Affairs Officer in this effort; and give due consideration to any recommendations or comments from the Officer. In addition, the Director of the Office of Public Affairs or his or her designee shall be informed before any decision on an appeal from an initial denial is issued.

c. As provided in Part B, Chapter IV, subsection 5.06f. of the Department's Handbook of Security Regulations and Procedures, appeals of initial denials based, even in part, on the ground that the matter is exempted from disclosure under 5 U.S.C. 552(b)(1) (classified information) shall be referred to the Departmental Information Security Program Committee. That Committee shall conduct a declassification review and determine if the record(s) involved may be made available to the public.

d. Whenever, on appeal from an initially denied request, the General Counsel and the concerned Secretarial Officer or operating unit head cannot agree on whether applicable exemptions should be waived, as proved in

subsection. 03c.4. of this section, the matter shall be promptly referred to the Secretary for resolution.

.05 Annual Report (5 U.S.C. 552(d) of the Act).—a. The Assistant Secretary for Administration shall prepare and transmit to the Congress on or before March 1 of each year the annual report required by the Act.

b. To assist in the preparation of the report, each official specified in subsection 4.01 of this order, shall, no later than January 31 of each year, provide the Assistant Secretary for Administration with the information specified in the Act and such other information as he may require.

Sec. 6. *Supplementary rules.*—01 The Secretary may from time to time issue such supplementary rules or instructions as he deems appropriate to carry out the purposes of this order.

.02 Each duly authorized official may issue rules covering his respective area of responsibility designed to implement this order, and which are consistent herewith and with any rules issued by the Assistant Secretary for Administration.

Sec. 7. *Effect on other orders.* This order supersedes Department Administrative Order 205–12 of June 29, 1967, as amended. Any other prior orders, rules, or instructions, or parts thereof, the provisions of which are inconsistent or in conflict with the provisions of this order, are hereby constructively amended or superseded.

Appendix B—Freedom of Information Public Facilities and Addresses for Requests for Records

The following public reference facilities have been established within the Department of Commerce (a) of the public inspection and copying of materials of particular units of the Department under 5 U.S.C. 552(a)(2), or determined to be available for response to requests made under 5 U.S.C. 552(a)(3); (b) for furnishing information and otherwise assisting the public concerning Departmental operations under the Freedom of Information Act; and (c) as addresses, in some instances, for the receipt and processing of requests for records under 5 U.S.C. 552(a)(3). Units having separate mailing addresses are noted below. Requests should be addressed to the unit which the requestor knows or has reason to believe has possession or control or has primary concern with the records sought. Otherwise, requests should be addressed to the Central Reference and Records Inspection Facility.

Department of Commerce Freedom of Information Central Reference and Records Inspection Facility, Room 6628, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377–3212. This facility serves the Office of the Secretary and all other units of the Department not identified below as explained at Section 15 CFR 4.4 (c) and (d).

Bureau of the Census, Freedom of Information Request Control Desk, Room 2428, Federal Building 3, Washington, DC 20233. Phone (301) 763–5262.

The Bureau of the Census maintains a separate facility for inspection of (a)(2) records. The location is Room 2455, Federal Building 3, Washington, DC 20233.

Bureau of Economic Analysis, Public Reference Facility, Room 1115, Tower Building, 1401 K Street, NW., Washington, DC. Mailing address: Freedom of Information Control Desk, Office of Administration, Office of Economic Affairs, Room 4079 Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone 377–5161.

Economic Development Administration, Freedom of Information Records Inspection Facility, Room 7001, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377–4687. Mailing address of Regional EDA offices:

Philadelphia Regional Office, EDA U.S. Department of Commerce, Freedom of Information Request Control Desk, Liberty Square Building first floor, 105 South 7th Street, Philadelphia, Pennsylvania 19106.

Atlanta Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Suite 750, 1365 Peachtree Street, NE., Atlanta, Georgia 30309.

Denver Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Suite 200, 333 West Colfax, Denver, Colorado 80204.

Chicago Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, 175 West Jackson Boulevard, Suite A–1630, Chicago, Illinois 60604.

Seattle Regional Office, EDA, U.S.C. Department of Commerce, Freedom of Information Request Control Desk, Jackson Federal Building, Room 1856 915 Second Avenue Seattle, Washington 98174.

Austin Regional Office, EDA, U.S. Department of Commerce, Freedom of Information Request Control Desk, Grant Building, Suite 201, 611 East 6th Street, Austin, TX 78701.

International Trade Administration, Freedom of Information Records Inspection Facility, Room 4102, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377–3031.

Minority Business Development Agency, Freedom of Information Office. Room 6723, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377–8015.

The Minority Business Development Agency maintains a separate facility for public inspection of (a)(2) records. The location is Room 5078B, Herbert C. Hoover Building, Washington, DC 20230.

National Bureau of Standards, Freedom of Information Records Inspection Facility, Room E106, Administration Building Gaithersburg, Maryland. Phone (301) 921–3444. Mailing address: National Bureau of Standards, Freedom of Information Request Control Desk, Room A1105, U.S. Department of Commerce, Washington, DC 20234 (Gaithersburg, Maryland).

The National Bureau of Standards maintains a separate facility for public inspection of (a)(2) records. The location is Room E–106 Administration Building, Gaithersburg, Maryland 20899.

National Oceanic and Atmospheric Administration, Public Reference Facility, Room 716 WSC–5, Rockville, MD. 20852. Phone (301) 443–8967.

National Technical Information Service, Freedom of Information Records Inspection Facility, 5285 Port Royal Road, Springfield, Virginia 22161. Phone (703) 487–4634.

National Telecommunications and Information Administration, Freedom of Information Request Control Desk, Room 4717, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20504. Phone (202) 377–1816.

Patent and Trademark Office, Freedom of Information Records Inspection Facility, Room 12C08, Building 2, Crystal Gateway 2, Arlington, Virginia. Phone (703) 557–4035. Mailing address: Patent and Trademark Office, Freedom of Information Request Control Desk, Box 50, Washington, DC 20231.

United States Travel and Tourism Administration, Freedom of Information Request Control Desk, Room 1524, Department of Commerce, Herbert C. Hoover Building, 14th Street between Constitution Avenue and Pennsylvania Avenue, NW., Washington, DC 20230. Phone (202) 377–3811.

Appendix C—Officials Authorized To Make Initial Denials of Requests for Records

The following officials of the Department have been delegated authority to initially deny requests for records of their respective units for which they are responsible. (The listings are subject to change because of organizational changes or new delegations. Accordingly, the Director, Office of Management and Organization, is specifically authorized to amend or revise this Appendix from time to time in order to reflect such changes).

Office for the Secretary:

Office of the Deputy Secretary:
  Associate Deputy Secretary
Office of Business Liaison:
  Director
Office of Consumer Affairs:
  Director
Office of the Assistant Secretary for Congressional and Intergovernmental Affairs:
  Deputy Assistant Secretary for Congressional Affairs
Office of the Inspector General:
  Counsel to the Inspector General
  Deputy Counsel to the Inspector General
Office of the General Counsel:
  Deputy General Counsel
  Assistant General Counsel for Administration
  Director, Office of Intelligence Liaison
Office of the Under Secretary for Economic Affairs
  Administrative Officer

Office of the Assistant Secretary for Administration:

Office of the Administrative Law Judge:
Office Manager
Office of Finance and Federal Assistance:
Director
Office of, Federal Assistance
Director
Office of, Financial Management
Office of Management and Organization:
Chief, Management Support Division
Director
Office of the Director for Planning, Budget and Evaluation:
Director
Office of Budget:
Director
Office of Program Planning and Evaluation:
Director
Office of the Director for Personnel and Civil Rights:
Director
Office of Personnel:
Director
Office of Personnel Operations:
Director
Office of Civil Rights:
Director
Office of the Director for Management and Information Systems:
Director
Office of the Director for Procurement and Administration Services:
Director
Office of Procurement Management:
Director
Office of Procurement Operations:
Director
Office of Administration Services Operations:
Director
Office of Real Property Programs:
Director
Office of Security:
Director
Office of Small and Disadvantaged Business Utilization:

Bureau of the Census:

Associate Director for Management Services

Bureau of Economic Analysis:

Director

Economic Development Administration:

Chief Counsel
Assistant Chief Counsel
Regional Counsels

International Trade Administration:

International Economic Policy:
Director, Office of Policy Coordination
Director, Office of Multilateral Affairs
Director, Office of Africa
Director, Office of the Near East
Director, Office of South Asia
Director, Office of Western Europe
Director, Office of European Community Affairs
Director, Office of Eastern Europe and Soviet Affairs
Director, Office of South America
Director, Office of Mexico and the Caribean Basin
Director, Office of Canada
Director, Office of the PRC and Hong Kong
Director, Office of the Pacific Basin
Director, Office of Japan
Trade Development:
Director, Office of World Fairs and International Exposition
Director, Office of Planning and Coordination
Director, Office of Computers and Business Equipment
Director, Office of Microelectronics and Instrumentation
Director, Office of Telecommunications
Director, Office of General Industrial Machinery
Director, Office of Special Industrial Machinery
Director, Office of International Major Projects
Director, Office of Trade and Investment Analysis
Director, Office of Industry Assessment
Director, Office of Trade Finance
Director, Office of Program and Resources Management
Director, Office of Service Industries
Director, Office of Export Trading Company Affairs
Director, Office of Forest Products and Domestic Construction
Director, Office of Metals, Minerals and Commodities
Director, Office of Energy
Director, Office of Chemicals and Allied Products
Director, Office of Automotive Industry Affairs
Director, Office of Consumer Goods
Director, Office of Textiles and Apparel
Deputy Assistant Secretary for Trade Adjustment Assistance
Director, Office of Aerospace Market Development
Director, Office of Aerospace Policy and Analysis
Trade Administration:
Director, Program Review Staff/Export Administration
Director, Office of Technology and Policy Analysis
Director, Office of Foreign Availability
Director, Office of Export Licensing
Director, Office of Industrial Resource Administration
Director, Office of Export Enforcement
Director, Office of Antiboycott Compliance
Director, Foreign Trade Zone Staff
Director, Statutory Import Programs Staff
Director, Office of Compliance
Director, Office of Investigations
Director, Office of Policy
Director, Office of Agreements Compliance
U.S. and Foreign Commercial Service:
Director, Caribean Basin Business Information Center
Director, Office of Foreign Service Personnel
Deputy Assistant Secretary for Foreign Operations
Director, Office of Planning and Management
Director, Office of Marketing Programs
Director, Office of Information Product Development and Distribution
Manager of Export Promotion Services
Deputy Assistant Secretary for Domestic Operations Administration:
Director, Office of Organization and Management Support
Director, Office of Personnel
Director, Office of Financial Management
Director, Office of Information Resources Management
Deputy Under Secretary for International Trade:
Director, Office of Public Affairs
Director, Congressional Affairs Staff

Minority Business Development Agency:

Assistant Director for Operations

National Oceanic and Atmospheric Administration:

Under Secretary
Assistant Secretary
Director, Office of Public Affairs
Director, NOAA Corps
General Counsel
Assistant Administrator for Ocean Services and Coastal Zone Management
Assistant Administrator for Fisheries
Assistant Administrator for Weather Service
Assistant Administrator for Environmental Satellite, Data, and Information Service
Assistant Administrator for Oceanic and Atmospheric Research
Director, Environmental Research Laboratories
Director, Office of Administration
Director, National Capital Administrative Support Center
Director, Eastern Administrative Support Center
Director, Central Administrative Support Center
Director, Western Administrative Support Center
Director, Mountain Administrative Support Center

National Technical Information Service:

Director
Associate Director for Administration
Director, Office of Administrative Management
Manager, Management Analysis Division

National Telecommunications and Information Administration:

Deputy Assistant Secretary
Chief Counsel

Patent and Trademark Office:

Solicitor of Patents
Deputy Solicitor of Patents

United States Travel and Tourism Administration:

Under Secretary
Director, Office of Management and Administration

Dated: April 22, 1987.

Kay Bulow,

Assistant Secretary for Administration.

[FR Doc. 87-9453 Filed 4-24-87; 11:34 am]

BILLING CODE 3510-CW-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-107-86]

Corporate Alternative Minimum tax Book Income Adjustment

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the corporate alternative minimum tax book income adjustment and the payment of estimated tax by corporations taking into account the alternative minimum tax and the environmental tax. The temporary regulations also serves as the text for this Notice of Proposed Rulemaking.

DATE: Written comments and requests for a public hearing must be delivered or mailed June 29, 1987.

ADDRESS: Send comments and request for a public hearing to Commissioner of Internal Revenue, Attention: CC:LR:T (LR-107-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Margaret M. O'Connor of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington DC 20224, Attention: CC:LR:T (LR-107-86). Telephone 202-566-3287 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations. The temporary regulations are designated by a "T" following their section citation. The final regulations which are proposed to be based on the temporary regulations would amend Part 1 of Title 26 of the Code of Federal Regulations. The regulations provide rules relating to the book income adjustment to the corporation alternative minimum tax under section 56(c)(1) and 56(f) of the Internal Revenue Code of 1986 (Code) as added by section 701 of the Tax Reform Act of 1986 (Pub. L. 99-514; 100 Stat. 2320). The regulations also provide guidance relating to the payment of estimated tax by corporations under sections 6154(c) and 6655 of the Code as amended by section 701 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2341), and section 516 of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, 100 Stat. 1770). For the text of the temporary regulations see T.D. 8138 published in the Rules and Regulations portions of this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules.

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Office for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Margaret M. O'Connor of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.01-1.58-8

Income taxes, Tax liabilitly, Tax rates, Credits.

26 CFR 1.6654-1—1.6696-1

Income taxes, Administration and procedure, Penalties, Additions to tax.

26 CFR Part 602

Reporting and recordkeeping requirements.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-9442 Filed 4-23-87; 10:43 am]

BILLING CODE 4830-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-70

Implementation of the Program Fraud Civil Remedies Act of 1986

AGENCY: Office of General Counsel, General Services Administration.

ACTION: Proposed rulemaking.

SUMMARY: The Administrator of General Services proposes to adopt regulations governing the administrative process and procedures to implement the Program Fraud Civil Remedies Act of 1986, Pub. L. 99-509, October 21, 1986. These regulations set forth the General Services Administration's administrative process and procedures to recompense the Government for false, fictitious and fraudulent claims and statements. The regulations also provide for due process protection for all persons subject to the adminstrative process.

DATES: Comments must be received on or before May 29, 1987. The effective date of these regulations will be June 15, 1987.

ADDRESS: All comments concerning these proposed regulations should be addressed to Mr. Clyde C. Pearce, Jr., General Counsel, Office of General Counsel, General Services Administration, 18th & F Streets NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick P. Hink, Associate General Counsel, Personal Property Division (LP), Office of General Counsel, General Services Administration, 18th & F Streets, NW., Washington, DC 20405. Telephone No. (202) 566-1156.

SUPPLEMENTARY INFORMATION: In October 1986, Congress enacted the Program Fraud Civil Remedies Act to establish a new administrative procedure as a remedy against those who knowingly make false claims or statements. The statute requires specified Federal agencies to follow certain procedures to recover penalties and assessments against persons who file false claims or statements. The statute provides for designated investigative and reviewing officials, an administrative hearing process, and an agency appeal procedure with limited judicial review. The statute requires implementation of the administrative process through the agency's regulatory procedures. To facilitate the new process and promote uniformity in the Government, the President's Council on Integrity and Efficiency distributed a draft model regulation to its membership requesting comments. After receipt of the comments, including the General Services Administration's, the Vice Chairman of the Council on March 11, 1987, furnished to the agencies the final draft regulation. The General Services Administration, with minor variations, has adopted the model regulations set forth in the Council's final draft. In keeping with the statute's requirements, the agency's proposed regulations provide for the Inspector General or his designee to act as the Investigating Official, the General Counsel or his designee to be the Reviewing Official, an administrative law judge to be the Presiding Official, and the Administrator or the Deputy Administrator to act as Authority Head on appeals. The new administrative process should enhance the Government's ability to deter fraud in those cases where the costs of litigation in the past have exceeded the amount of recovery, thus making it uneconomical to pursue such claims. The statute provides for a jurisdictional limit of $150,000.00 and a maximum penalty of $5,000.00 for each false claim or statement. The proposed regulation should provide the agency with an effective remedy against a person alleged to have submitted false claims or statements while providing due process to that person.

Executive Order 12291

The General Services Administration has determined that this rule is not a major rule for the purposes of E.O. 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequence of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the new benefits; and has chosen the alternative approach involving the least net cost to society.

Paperwork Reduction Act of 1980

These regulations contain no information collection or record keeping requirements as defined by the Paperwork Reduction Act of 1980, and fall within the exceptions to coverage.

List of Subjects in 41 CFR Part 105–70

Claims, Program fraud, Administrative hearing.

It is proposed to add Part 105–70 to Chapter 105 to read as follows:

PART 105–70—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

Sec.

Authority: 40 U.S.C. 486(c); 31 U.S.C. 3809.

§ 105–70.000 Scope.

This part (a) establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and (b) specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

§ 105–70.001 Basis.

This part implements the Program Fraud Civil Remedies Act of 1986, Pub. L. No. 99–509, §§ 6101–6104, 100 Stat. 1874 (October 21, 1986), to be codified at 31 U.S.C. 3801–3812. 31 U.S.C. 3809 of the statute requires each authority head to promulgate regulations necessary to implement the provisions of the statute.

§ 105–70.002 Definitions.

The following shall have the meanings ascribed to them below unless the context clearly indicates otherwise:

(a) "ALJ" means an Administrative Law Judge in the Authority appointed pursuant to 5 U.S.C. 3105 or detailed to the authority pursuant to 5 U.S.C. 3344.

(b) "Authority" means the General Services Administration.

(c) "Authority Head" means the Administrator or Deputy Administrator of General Services.

(d) "Benefits" means, except as the context otherwise requires, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(e) "Claim" means any request, demand or submission—

(1) Made to the Authority for property, services, or money (including money representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from the Authority or to a party to a contract with the Authority—

(i) For property or services if the United States—

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(A) Provided any portion of the money requested or demanded, or

(B) Will reimburse such recipient or party for any portion of the money paid on such request of demand; or

(3) Made to the Authority which has the effect of decreasing an obligation to pay or account for property, services, or money.

(f) "Complaint" means the administrative complaint served by the reviewing official on the defendant under § 105–70.007.

(g) "Defendant" means any person alleged in a complaint under § 105–70.007 to be liable for a civil penalty or assessment under § 105–70.003.

(h) "Individual" means a natural person.

(i) "Initial Decision" means the written decision of the ALJ required by § 105–70.010 or § 105–70.037, and includes a revised initial decision issued following a remand or a motion for reconsideration.

(j) "Investigating Official" means the Inspector General of the General Services Administration or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(k) "Knows or has reason to know" means that a person, with respect to a claim or statement—

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth of falsity of the claim or statement.

(l) "Makes," wherever it appears, shall include the terms presents, submits, and causes to be made, presented, or submitted. As the context requires, "making" or "made", shall likewise include the corresponding forms of such terms.

(m) "Person" means any individual, partnership, corporation, association, or private organization.

(n) "Representative" means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico.

(o) "Reviewing Official" means the General Counsel of the General Services Administration or his designee who is—

(1) Not subject to supervision by, or required to report to, the investigating official; and

(2) Not employed in the organizational unit of the authority in which the investigating official is employed.

(p) "Statement" means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from, the Authority, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

§ 105–70.003 Basis for civil penalties and assessments.

(a) *Claims.* (1) Any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made to an authority, recipient, or party when such claim is actually made to an agency, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority, recipient, or party.

(4) Each claim for property, services, or money is subject to a civil penalty regardless of whether such property, services, or money is actually delivered or paid.

(5) If the Government has made any payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) Statements.

(1) Any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement has a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement,

shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to an Authority when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of such authority.

(c) No proof of specific intent to defraud is required to establish liability under this section.

(d) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each such person

may be held liable for a civil penalty under this section.

(e) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons.

§ 105–70.004 Investigation.

(a) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted—

(1) The subpoena so issued shall notify the person to whom it is addressed of the authority under which the subpoena is issued and shall identify the records or documents sought;

(2) The investigating official may designate a person to act on his or her behalf to receive the documents sought; and

(3) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents sought have been produced, or that such documents are not available and the reasons therefor, or that such documents, suitably identified, have been withheld based upon the assertion of an identified privilege, or any combination of the foregoing.

(b) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing the findings and conclusions of such investigation to the reviewing official.

(c) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, or to preclude or limit such official's discretion to defer or postpone a report or referral to avoid interference with a criminal investigation or prosecution.

(d) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 105–70.005 Review by the reviewing official.

(a) If, based on the report of the investigating official under § 105–70.004(b), the reviewing official determines that there is adequate evidence to believe that a person is liable under § 105–70.003 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under § 105–70.007.

(b) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement specifying the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of § 105–70.003 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements known by the reviewing official or the investigating official; and

(6) A statement that there is a reasonable prospect of collecting an appropriate amount of penalties and assessments. Such a statement may be based upon information then known or an absence of any information indicating that the person may be unable to pay such an amount.

§ 105–70.006 Prerequisites for issuing a complaint.

(a) The reviewing official may issue a complaint under § 105–70.007 only if—

(1) The Department of Justice approves the issuance of a complaint in a written statement described in 31 U.S.C. 3803(b)(1), and

(2) In the case of allegations of liability under § 105–70.003(a) with respect to a claim, the reviewing official determines that, with respect to such claim or a group of related claims submitted at the same time such claim is submitted (as defined in (b)), the amount of money or the value of property or services demanded or requested in violation of § 105–70.003(a) does not exceed $150,000.

(b) For the purposes of this section, a related group of claims submitted at the same time shall include only those claims arising from the same transaction (e.g., grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission.

(c) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of money or the value of property or services demanded or requested.

§ 105–70.007 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the defendant, as provided in § 105–70.008.

(b) The complaint shall state—

(1) The allegations of liability against the defendant, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the defendant may be held liable;

(3) Instructions for filing an answer including a specific statement of the defendant's right to request a hearing by filing an answer and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint will result in the imposition of the maximum amount of penalties and assessments without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the defendant with a copy of these regulations.

§ 105–70.008 Service of complaint.

(a) Service of a complaint must be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the complaint was served, and the manner and date of service, may be made by—

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment of the defendant or his representative.

§ 105–70.009 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within 30 days of service of the complaint. An answer shall be deemed to be a request for hearing.

(b) In the answer, the defendant—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense on which the defendant intends to rely;

(3) May state any reasons why the defendant contends that the penalties and assessments should be less than the statutory maximum; and

(4) Shall state the name, address, and telephone number of the person authorized by the defendant to act as defendant's representative, if any.

§ 105–70.010 Default upon failure to file an answer.

(a) If the defendant does not file an answer within the time prescribed in § 105–70.009(a), the reviewing official may refer the complaint to the ALJ.

(b) Upon the referral of the complaint, the ALJ shall promptly serve on the defendant in the manner prescribed in § 105–70.008, a notice that an initial decision will be issued under this section.

(c) The ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 105–70.003, the ALJ shall issue an initial decision imposing the maximum amount of penalties and assessments allowed under the statute.

(d) Except as otherwise provided in this section, by failing to file a timely answer, the defendant waives any right to further review of the penalties and assessments imposed under (c), and the initial decision shall become final and binding upon the parties 30 days after it is issued.

(e) If, before such an initial decision becomes final, the defendant files a motion with the ALJ seeking to reopen on the grounds that extraordinary circumstances prevented the defendant from filing an answer, the initial decision shall be stayed pending the ALJ's decision on the motion.

(f) If, on such motion, the defendant can demonstrate extraordinary circumstances excusing the failure to file a timely answer, the ALJ shall withdraw the initial decision in (c), if such a decision has been issued, and shall grant the defendant an opportunity to answer the complaint.

(g) A decision of the ALJ denying a defendant's motion under paragraph (e) is not subject to reconsideration under § 105–70.038.

(h) The defendant may appeal to the Authority Head the decision denying a motion to reopen a filing a notice of appeal with the Authority Head within 15 days after the ALJ denies the motion. The timely filing of a notice of appeal shall stay the initial decision until the Authority Head decides the issue.

(i) If the defendant files a timely notice of appeal with the Authority Head, the ALJ shall forward the record of the proceeding to the Authority Head.

(j) The Authority Head shall decide expeditiously whether extraordinary circumstances excuse the defendant's failure to file a timely answer based solely on the record before the ALJ.

(k) If the Authority Head decides that extraordinary circumstances excused the defendant's failure to file a timely answer, the Authority Head shall remand the case to the ALJ with instructions to grant the defendant an opportunity to answer.

(l) If the Authority Head decides that the defendant's failure to file a timely answer is not excused, the Authority Head shall reinstate the initial decision of the ALJ, which shall become final and binding upon the parties 30 days after the Authority Head issues such decision.

§ 105–70.011 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall file the complaint and answer with the ALJ.

§ 105–70.012 Notice of hearing.

(a) When the ALJ receives the complaint and answer, the ALJ shall promptly serve a notice of hearing upon the defendant in the manner prescribed by § 105–70.008. At the same time, the ALJ shall send a copy of such notice to the representative for the Government.

(b) Such notice shall include—

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative of the Government and of the defendant, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 105–70.013 Parties to the hearing.

(a) The parties to the hearing shall be the defendant and the Authority.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private plaintiff under the False Claims Act may participate in these proceedings to the extent authorized by the provisions of that Act.

§ 105–70.014 Separation of functions.

(a) The investigating official, the reviewing official, and any employee or agent of the Authority who takes part in investigating, preparing, or presenting a particular case may not, in such case or a factually related case—

(1) Participate in the hearing as the ALJ;

(2) Participate or advise in the initial decision or the review of the initial decision by the Authority Head, except as a witness or a representative in public proceedings; or

(3) Make the collection of penalties and assessments under 31 U.S.C. 3806.

(b) The ALJ shall not be responsible to, or subject to the supervision or direction of the investigating official or the reviewing official.

(c) Except as provided in (a), the representative for the Government may be employed anywhere in the Authority, including in the offices of either the investigating official or the reviewing official.

§ 105–70.015 Ex parte contacts.

No party or person (except employees of the ALJ's office) shall communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for all parties to participate. This provision does not prohibit a person or party from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 105–70.016 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed not further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f).

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 105–70.017 Rights of parties.

Except as otherwise limited by this part, all parties may—

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any conference held by the ALJ;

(c) Conduct discovery;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues as the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral argument at the hearing as permitted by the ALJ; and

(h) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

§ 105–70.018 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The ALJ has the authority to—

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibility of the ALJ under this part.

(c) The ALJ does not have the authority to decide upon the validity of Federal statutes or regulations.

§ 105–70.019 Prehearing conferences.

(a) The ALJ may schedule prehearing conferences as appropriate.

(b) Upon the motion of any party, the ALJ shall schedule at least one prehearing conference at a reasonable time in advance of the hearing.

(c) The ALJ may use prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a mote definite statement;

(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument;

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ may issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 105–70.020 Disclosure of documents.

(a) Upon written request to the reviewing official, the defendant may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 105–70.004(b) are based unless such documents are subject to a privilege under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the defendant also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 105–70.005 is not discoverable under any circumstances.

(d) The defendant may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may only be filed with the ALJ following the filing of an answer pursuant to § 105–70.009.

§ 105–70.021 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production of documents for inspection and copying;

(2) Requests for admissions of the authenticity of any relevant document or of the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) For the purpose of this section and §§ 105–70.022 and 105–70.023, the term "documents" includes information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence. Nothing contained herein shall be interpreted to require the creation of a document.

(c) Unless mutually agreed to by the parties, discovery is available only as ordered by the ALJ. The ALJ shall regulate the timing of discovery.

(d) *Motions for discovery.* (1) A party seeking discovery may file a motion with the ALJ. Such a motion shall be accompanied by a copy of the requested discovery, or in the case of depositions, a summary of the scope of the proposed deposition.

(2) Within ten days of service, a party may file an opposition to the motion and/or a motion for protective order as provided in § 105–70.024.

(3) The ALJ may grant a motion for discovery only if he finds that the discovery sought—

(i) Is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) Is not unduly costly or burdensome;

(iii) Will not unduly delay the proceeding; and

(iv) Does not seek privileged information.

(4) The burden of showing that discovery should be allowed is on the party seeking discovery;

(5) The ALJ may grant discovery subject to a protective order under § 105–70.024.

(e) *Depositions.* (1) If a motion for deposition is granted, the ALJ shall issue a subpoena for the deponent, which may require the deponent to produce documents. The subpoena shall specify the time and place at which the deposition will be held.

(2) The party seeking to depose shall serve the subpoena in the manner prescribed in § 105–70.008.

(3) The deponent may file with the ALJ a motion to quash the subpoena or a motion for a protective order within ten days of service.

(4) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(f) Each party shall bear its own costs of discovery.

§ 105–70.022 Exchange of witness lists, statements and exhibits.

(a) At least 15 days before the hearing or at such other time as may be ordered by the ALJ, the parties shall exchange witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 105–70.033(b). At the time the above documents are exchanged, any party that intends to rely on the transcript of deposition testimony in lieu of live testimony at the hearing, if permitted by the ALJ, shall provide each party with a copy of the specific pages of the transcript it intends to introduce into evidence.

(b) If a party objects, the ALJ shall not admit into evidence the testimony of any witness whose name does not appear on the witness list or any exhibit not provided to the opposing party as provided above unless the ALJ finds good cause for the failure or that there is no prejudice to the objecting party.

(c) Unless another party objects within the time set by the ALJ, documents exchanged in accordance with paragraph (a) shall be deemed to be authentic for the purpose of admissibility at the hearing.

§ 105–70.023 Subpoena for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any individual at the hearing may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at the hearing.

(c) A party seeking a subpoena shall file a written request therefor not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses and describe the address and location thereof with sufficient particularity to permit such witnesses to be found.

(d) The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is to produce.

(e) The party seeking the subpoena shall serve it in the manner prescribed in § 105–70.008. A subpoena on a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within ten days after service or on or before the time specified in the subpoena for compliance if it is less than ten days after service.

§ 105–70.024 Protective order.

(a) A party or a prospective witness or deponent may file a motion for a protective order with respect to discovery sought by an opposing party or with respect to the hearing, seeking to limit the availability or disclosure of evidence.

(b) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information, or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

§ 105–70.025 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of the Authority, a check for witness fees and mileage need not accompany the subpoena.

§ 105–70.026 Form, filing and service of papers.

(a) *Form.*

(1) Documents filed with the ALJ shall include an original and two copies.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by, and shall contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or its representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the individual serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 105–70.027 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day.

(b) When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government shall be excluded from the computation.

(c) Where a document has been served or issued by mail, an additional five days will be added to the time permitted for any response.

§ 105–70.028 Motions.

(a) Any application to the ALJ for an order or ruling shall be by motion. Motions shall state the relief sought, the authority relied upon, and the facts

alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(d) The ALJ may not grant a written motion before the time for filing responses thereto has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny such motion without awaiting a response.

(e) The ALJ shall make a reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 105–70.029 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for—

(1) Failing to comply with an order, rule, or procedure governing the proceeding;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e), shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may—

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem each matter of which an admission is requested to be admitted;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) If a party fails to prosecute or defend an action under this part commenced by service of a notice of hearing, the ALJ may dismiss the action or may issue an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion, request, response, brief or other document which is not filed in a timely fashion.

§ 105–70.030 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the defendant is liable for a civil penalty or assessment under § 105–70.003 and, if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The authority shall prove defendant's liability and any aggravating factors by a preponderance of the evidence.

(c) The defendant shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 105–70.031 Determining the amount of penalties and assessments.

In determining an appropriate amount of civil penalties and assessments, the ALJ and the Authority Head, upon appeal, should evaluate any circumstances presented that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

§ 105–70.032 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the defendant resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the defendant and the ALJ.

(b) Each party shall have the opportunity to present arguments with respect to the location of the hearing.

(c) The hearing shall be held at the place and at the time ordered by the ALJ.

§ 105–70.033 Witnesses.

(a) Except as provided in paragraph (b), testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allowes sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses propcsed to testify at the hearing and deposition transcripts shall be exchanged as provided in § 105–70.022(a).

(c) The ALJ shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harrassment or undue embarrassment.

(d) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(e) To the extent permitted by the ALJ, cross-examination on matters outside the scope of direct examination shall be conducted in the manner of direct examination and may proceed by leading questions only if the witness is a hostile witness, an adverse party, or a witness identified with an adverse party.

(f) Upon motion of any party, the ALJ shall order witnesses excluded so that they cnanot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the party's representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the Government engaged in assisting the representative for the Government.

§ 105–70.034 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ shall not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, e.g., to exclude unreliable evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties, unless otherwise ordered by the ALJ pursuant to § 105–70.024.

§ 105–70.035 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the Authority Head.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone, unless otherwise ordered by the ALJ pursuant to § 105–70.024.

§ 105–70.036 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 105–70.037 Initial decision.

(a) The ALJ shall issue an initial decision based only on the record, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues:

(1) Whether the claims or statements identified in the complaint, or any portions thereof, violate § 105–70.003.

(2) If the person is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors that he or she finds in the case.

(c) The ALJ shall promptly serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall at the same time serve all defendants with a statement describing the right of any defendant determined to be liable for a civil penalty or assessment to file a motion for reconsideration with the ALJ or a notice of appeal with the Authority Head. If the ALJ fails to meet the deadline contained in this paragraph, he or she shall notify the parties of the reason for the delay and shall set a new deadline.

(d) Unless the initial decision of the ALJ is timely appealed to the Authority Head, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Authority Head and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 105–70.038 Reconsideration of initial decision.

(a) Except as provided in paragraph (d), any party may file a motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the Authority Head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Authority Head in accordance with § 105–70.039.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Authority Head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Authority Head in accordance with § 105–70.039.

§ 105–70.039 Appeal to authority head.

(a) Any defendant who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Authority Head by filing a notice of appeal with the Authority Head in accordance with this section.

(b)(1) No notice of appeal may be filed until the time period for filing a motion for reconsideration under § 105–70.038 has expired.

(2) If a motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) If no motion for reconsideration is timely filed, a notice of appeal must be filed within 30 days after the ALJ issues the initial decision.

(4) The Authority Head may extend the initial 30 day period for an additional 30 days if the defendant files with the Authority Head a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Authority Head, the ALJ shall forward the record of the proceeding to the Authority Head.

(d) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Authority may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Authority Head.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Authority Head shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Authority Head that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Authority Head shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The Authority Head may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment, determined by the ALJ in any initial decision.

(k) The Authority Head shall promptly serve each party to the appeal with a copy of the decision of the Authority Head. At the same time the Authority Head shall serve the defendant with a statement describing the defendant's right to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Authority Head serves the defendant with a copy of the Authority Head's decision, a determination that a defendant is liable under § 105–70.003 is final and is not subject to judicial review.

§ 105–70.040 Stays ordered by the Department of Justice.

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Authority Head a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the Authority Head shall stay the process immediately. The Authority Head may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 105–70.041 Stay pending appeal.

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Authority Head.

(b) No administrative stay is available following a final decision of the Authority Head.

§ 105–70.042 Judicial review.

Section 3805 of Title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the Authority Head imposing penalties or assessments under this part and specifies the procedures for such review.

§ 105–70.043 Collection of civil penalities and assessments.

Section 3806 and 3808(b) of Title 31, United States Code, authorize action for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

§ 105–70.044 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under §§ 105–70.042 or 105–70.043, or any amount agreed upon in a compromise or settlement under § 105–70.046, may be collected by administrative offset under 30 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

§ 105–70.045 Deposit in Treasury of United States.

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

§ 105–70.046 Compromise or settlement.

(a) Parties may make offers of compromise or settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Authority Head has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 105–70.042 or during the pendency of any action to collect penalties and assessments under § 105–70.043.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 105–70.042 or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Authority Head, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Authority Head, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

§ 105–70.047 Limitations.

(a) The Program Fraud Civil Remedies Act of 1986 provides that a hearing shall be commenced within 6 years after the date on which a claim or statement is made. 31 U.S.C. 3808(a). The statute also provides that the hearing is commenced by the mailing or delivery of the presiding officer's (ALJ's) notice. 31 U.S.C. 3803(d)(2)(B). Accordingly, the notice of hearing provided for in § 105–70.012 herein shall be served within 6 years after the date on which a claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 105–70.010(b) shall be deemed a notice of hearing for purposes of this section.

Dated: April 22, 1987.

Joel C. Mandelman,

Acting General Counsel.

[FR Doc. 87–9485 Filed 4–23–87; 11:00 am]

BILLING CODE 6820–38–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Disaster Assistance; Community Disaster Loans

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This subpart provides FEMA policy and guidance concerning the Community Disaster Loan program under Section 414 of the Disaster Relief Act of 1974, Pub. L. 93–288, as amended. The proposed changes incorporate a number of revisions designed to upgrade and clarify the regulations.

DATE: Comments due date June 29, 1987.

ADDRESS: Send comments to Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Gene Morath, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street, SW., Washington, DC 20472, Telephone (202) 646–3683.

SUPPLEMENTARY INFORMATION: The proposed rule involves changes to §§ 205.90 through 205.97 resulting from 10 years experience in administering section 414 of the Disaster Relief Act of 1974.

The program had its origin in the Community Disaster Grant authorized by section 241 of the Disaster Relief Act of 1970, Pub. L. 91–606, which was enacted after Hurricane Camille in 1969. Under the grant program, any local government which had suffered a substantial loss of property tax revenue as a result of a major disaster could apply for community disaster grants "after the fact" for the tax year in which the disaster occurred and for each of the two tax years following the disaster. A total of 23 requests were submitted, of which 11 were approved for a total of $1.0 million. One of the principal inconsistencies of the former grant program was that funds were approved several years after the disaster occurred, whereas the local governments claimed that disaster grant applications were based on after the fact assertions of

immediate post disaster needs. By contrast, the current Community Disaster Loan program authorized by section 414 of the Disaster Relief Act of 1974 (the Act), 42 U.S.C. 5184, provides funds "up front" as a loan and, under the cancellation feature, any decision to cancel a loan is deferred to a later date.

Upon enactment of the Act in 1974, discussions were held with the Treasury Department, the Office of Management and Budget, and Office of General Counsel of the Department of Housing and Urban Development, the agency which was responsible for administration of the Act prior to the creation of FEMA in 1979, to develop program policies. In addition, a contract was awarded to a Washington, DC, based CPA firm to develop procedures and guidelines for administering the loan program.

No loans were made during the first several years following enactment of Pub. L. 93–288. The initial thrust was to deny any request for a loan unless it could be determined in advance that the loan would be eventually cancelled. Following a reassessment of the program in 1976, it was concluded that subsequent loan applications should be considered on their own merits on the basis of "substantial loss" and "demonstrated need", with consideration of the loan cancellation provision deferred until after "the full three fiscal year period."

There have been 29 requests by local governments for Community Disaster Loans of which 20 were approved for $7.7 million with $5.8 million disbursed to date. Five loans have been repaid in full, including principal plus interest, totalling $1.2 million. Five loans totalling $2.8 million have been cancelled in whole or in part.

Based on a recent review of FEMA's experience in administering the Community Disaster Loan program, FEMA decided that some changes are necessary to improve the program and clarify the regulations. We also have considered OMB Circular A–70, "Policies and Guidelines for Federal Credit Programs", and OMB Circular A–128, the Single Audit Act of 1984.

(1) FEMA has not required a local government to first apply for credit elsewhere before being determined eligible for a Community Disaster Loan and no change is being proposed in the regulations. FEMA has concluded that such a requirement would limit the program to "poor" credit risks and deny an applicant who obtained a commercial loan the benefit of potential loan cancellation as was intended in the legislation. Therefore, we have determined that a credit elsewhere test should not be required.

(2) FEMA has used the current Treasury rate for 3 year maturities in the Promissory Note to calculate the interest on Community Disaster Loans. This rate is considerably higher than the rates used in some other Federal programs. There is justification for automatically extending the loan to enable applicants to compile their financial records for the third fiscal year following the disaster, to prepare and submit the application for loan cancellation, and to enable FEMA to review such applications including any appeals.

Consequently, § 205.91(e) is being changed to extend loan repayment terms to 5 years as opposed to the current 3 years. The current regulation authorizes the extension of the term to a maximum of 10 years, which remaina the same. This proposed change will reduce administrative burdens involved in processing requests for extension of the loan during the initial 5 year period.

(3) FEMA's current Community Disaster Loan regulation does not address action which can be taken under Federal debt collection regulations when loan cancellation is denied and the local government either refuses or is financially unable to repay the debt (principal and interest). FEMA does not require any collateral to secure the note as is required in most other Federal loan programs. Other Federal loan programs normally require the pledge of some tangible asset which could be sold to satisfy the indebtedness. By contrast, the Community Disaster Loan program provides a loan of only "working capital" which has no residual benefit once it is spent. Consequently, FEMA is proposing to amend the regulation to require that States co-sign the Community Disaster Loan promissory note. In those cases in which a State is prohibited from co-signing a Community Disaster Loan, the loan recipient must pledge acceptable collateral against the note. Consequently, FEMA proposes to amend § 205.92(b) accordingly.

(4) FEMA has in the past required that audits of the applicant's annual financial records and reports must accompany the application for loan cancellation. FEMA has determined that an audit of the local government's financial reports for each of the three post-disaster fiscal years, plus the base year (i.e. year of the disaster), is the only feasible way to determine whether all or part of the loan should be cancelled as provided in section 414(a), Pub. L. 93–288. This does not impose a requirement for separate Community Disaster Loan program audits, but requires the submission of a copy of annual audit reports of the local government's financial operations which are normally routinely prepared pursuant to State or local laws. Consequently, this requirement has been maintained. However, FEMA proposes to modify this requirement to provide that FEMA Inspector General will be requested to perform Federal audits when the local government is exempt from the requirements of the Single Audit Act and OMB Circular A–128, "Audits of State and Local Governments". Consequently, FEMA proposes to amend § 205.96(c)(1)(iv) accordingly.

(5) A number of local governments have requested an extension beyond the 10 year maximum term of their Community Disaster Loan promissory notes to repay their outstanding loans. FEMA has determined that provision should be made in the regulation to accommodate such situations in unusual circumstances. As a result, a new § 205.97(c) has been added to the regulation to provide for an extended period to repay the loans.

The remaining changes either clarify the existing regulations or incorporate existing supplementary program guidance from the FEMA Community Disaster Loan Handbook, DRR–5, including identifying specific financial information to be submitted with a loan application in § 205.94, and for loan administration in § 205.95, expanding loan cancellation criteria in § 205.96, and prescribing the method for computing interest in § 205.97.

Environmental Considerations

FEMA regulations at 44 CFR Part 10, Environmental Considerations, which implement the National Environmental Policy Act (NEPA) identify Community Disaster Loans as subject to a categorical exclusion from NEPA. See 44 CFR 10.8(c)(2)(vii)(G). In addition, 44 CFR 10.8(c)(2)(i) states that the preparation of regulations related to an action which is a categorical exclusion is also a categorical exclusion. Thus, the preparation of an environmental assessment for the issuance of these regulations is not required.

Executive Order 12291, "Federal Regulations"

This rule is not a "major rule" within the context of Executive Order 12291. It will not have an annual effect on the economy of $100 million or more.

The rule will not have a significant economic impact on small entities, within the meaning of 5 U.S.C. 601 et. seq. (the Regulatory Flexibility Act). Our experience over the past 10 years

indicates that less than 0.1% of all applicants for public assistance request Community Disaster Loans. Therefore, no regulatory analysis will be prepared.

The information collection requirement contained in this rule has been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et. seq., and has been assigned OMB control numbers 3067–0026 and 3067–0034.

List of Subjects in 44 CFR Part 205

Disaster assistance, Grants programs, Housing and community development.

PART 205—[AMENDED]

Accordingly, FEMA proposes to amend Chapter I of Title 44, Code of Federal Regulations, Part 205 as follows:

1. The authority citation for Part 205 continues to read as follows:

Authority: 42 U.S.C. 5201; Reorganization Plan No. 3 of 1978; and E.O. 12148.

2. Subpart F of Part 205 is revised to read as follows:

* * * * *

Subpart F—Community Disaster Loans

Sec.

* * * * *

Subpart F—Community Disaster Loans

§ 205.90 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 414 of the Act.

§ 205.91 Loan program.

(a) *General.* The Associate Director, State and Local Programs and Support (the Associate Director) may make a Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency and which demonstrates a need for Federal financial assistance in order to perform its governmental fuuctions.

(b) *Amount of loan.* The amount of the loan is based on need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term "fiscal year" as used in this subpart means the local government's fiscal year.

(c) *Interest rate.* The interest rate is the rate determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This Treasury rate takes into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity adjusted to the nearest ⅛ percent. The interest rate used shall be the Treasury rate for 5 year maturities in effect for the month the Promissory Note is executed by the Associate Director.

(d) *Time limitation.* The Associate Director may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year. Only one loan may be approved under section 414(a) for any local government as the result of a single disaster.

(e) *Term of loan.* The term of the loan is 5 years, unless otherwise extended by the Associate Director. The Associate Director may consider requests for an extensions of loans based on the local government's financial condition. The total term of any loan under section 414(a) usually may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the Community Disaster Loan recipient demonstrates an inability to repay the loan within the 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment. See § 205.97(c) of this part.

(f) *Use of loan funds.* The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the non-Federal share of any Federal program, including those under the Act.

(g) *Cancellation.* The Associate Director shall cancel repayment of all or part of a Community Disaster Loan to the extent that he/she determines that revenues of the local government during the three fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

(h) Any community disaster loans including cancellations made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance under the Act or these regulations.

§ 205.92 Responsibilities.

(a) The local government shall submit the financial information required by FEMA and, in the application for a Community Disaster Loan and in the application for loan cancellation, if submitted, comply with the assurances on the application, the terms and conditions of the Promissory Note, and these regulations.

(b) The Governor's Authorized Representative shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster or emergency. The Governor's Authorized Representative or another authorized State official shall co-sign the Promissory Note on behalf of the State. In those cases in which a State is prohibited from co-signing a Community Disaster Loan, the loan recipient must pledge acceptable collateral against the Note.

(c) The Regional Director or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Associate Director. He/she may submit appropriate recommendations to the Associate Director.

(d) The Associate Director, or a designee, shall execute a Promissory Note with the local government, and the Office of Disaster Assistance Programs in Headquarters, FEMA, shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Associate Director or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the Governor's Authorized Representative and the Regional Director. The Associate Director or designee shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

(f) The Comptroller shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

§ 205.93 Eligibility criteria.

(a) *Local government.* The local government must be located within the area designated by the Associate Director as eligible for assistance under a major disaster or emergency declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan. Factors considered by FEMA in determining the eligibility of a local government for a Community Disaster Loan include the loss of tax and other revenues as a result of a major disaster or emergency, a demonstrated need for financial assistance in order to perform its governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential municipal operating services to the community. Eligibility for other assistance under the Act does not, of itself, establish entitlement to such a loan.

(b) *Loan eligibility*—(1) *General.* To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency and must demonstrate a need for financial assistance in order to perform its governmental functions. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting justification accompanying the application.

(2) *Substantial loss of tax and other revenues.* The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue.

Guidelines used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:

(i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential municipal services provided prior to the disaster.

(ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year.

(3) *Demonstrated need for financial assistance.* The local government must demonstrate a need for financial assistance in order to perform its governmental functions. The guidelines used in making this determination include the following:

(i) Whether there is sufficient funds to meet current fiscal year operating requirements;

(ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;

(iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;

(iv) Fixed debt requirements;

(v) Debt ratio (relationship of annual receipts to debt service);

(vi) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(vii) Displacement of revenue-producing business due to property destruction;

(viii) Necessity to reduce or eliminate essential municipal services; and

(ix) Danger of municipal insolvency.

§ 205.94 Loan application.

(a) *Application.* (1) The local government shall submit an application for a Community Disaster Loan through the Governor's Authorized Representative. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the three succeeding fiscal years. This loan application shall be prepared by the affected local government and approved by the Governor's Authorized Representative. The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy of the submission.

(2) *Waiver of State review.* The Regional Director may be requested by the Governor's Authorized Representative to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administrative authority and the State cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the local government's annual operating budget [§ 205.94(b)(2) of this part] and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Position, a Debt History, Tax Assessment Data, Financial Projections, Other Information, a Certification, and the Assurances listed on the application.

(i) Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the three fiscal years prior to the fiscal year of the disaster and the applicant's most recent financial statement must accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official financial documents, including operating statements, balance sheets, and related financial presentations for the General Fund and all other funds maintained by the local government.

(ii) Each application for a Community Disaster Loan must also include:

(A) A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its Annual Operating Budget, and

(B) A copy of the pertinent State statutes, ordinance, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.

(2) *Operating budget.* For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures. For loan cancellation purposes, FEMA interprets the term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(3) *Operating budget increases.* Budget increases due to increases in the level of, or additions to, municipal services not rendered at the time of the disaster or not directly related to the disaster shall be identified.

(4) *Revenue and assessment information.* The applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due. Tax revenues assessed but not collected, or other revenues which the local government chooses to forgive, stay, or otherwise not exercise the right to collect, are not a legitimate revenue loss for purposes of evaluating the loan application.

(5) *Estimated disaster-related expenses.* Unreimbursed disaster-related expenses of a municipal operation character should be estimated. These are discussed in Sec. 205.96(b) of this part.

(c) *Federal review.* (1) The Associate Director or designee shall approve a

community disaster loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance to perform its governmental function as the result of the disaster.

(2) Resubmission of Application. If a loan application is disapproved, in whole or in part, by the Associate Director because of inadequacy of information, a revised application may be resubmitted by the local government within sixty days of the date of the disapproval. Decision by the Associate Director on the resubmission is final.

(d) *Community disaster loan.* (1) The loan shall not exceed the lesser of:

(i) The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent three fiscal years or

(ii) 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.

(2) *Promissory note.* Upon approval of the loan by the Associate Director or designee, a designated Loan Officer will execute a Promissory Note with the applicant and the Note must be co-signed by the State. The applicant should indicate its funding requirements on the Schedule of Loan Increments on the note. In those instances in which the State eatablishes that it cannot legally co-sign the note, the loan recipient must pledge along with the Note collateral security acceptable to the Associate Director.

§ 205.95 Loan administration.

(a) *Funding.* (1) FEMA will disburse funds to the local government when requested, in accordance with the Schedule of Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue.

(2) When each incremental payment is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds. A sinking fund should be established to amortize the debt whenever feasible.

(b) *Financial management.* (1) Each local government with an approved Community Disaster Loan shall establish necessary accounting records, consistent with the local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.

(2) FEMA auditors, State auditors, the Governor's Authorized Representative, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall for the purpose of audits and examination have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under these regulations.

(c) *Loan servicing.* (1) The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the three subsequent fiscal years.

(2) The Headquarters, FEMA Office of Disaster Assistance Programs, will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant adjustment of the scheduled payments of the loan proceeds.

(3) The Headquarters, FEMA Office of Disaster Assistance Programs, shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.

(d) *Inactive Loans.* If no funds have been disbursed from the Treasury, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request to FEMA. However, since only one loan may be approved, cancellation precludes submission of a second loan application request by the same local government for the same disaster.

§ 205.96 Loan cancellation.

(a) *Policies.* (1) FEMA shall cancel repayment of all or any part of a Community Disaster Loan to the extent that the Associate Director determines that revenues of the local government during the full three fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget of the local government, including additional unreimbursed disaster-related expenses of a municipal operating character. For loan cancellation purposes, FEMA interprets the term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statement of the local government.

(2) If the tax and other revenue rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster is reduced during the three fiscal years subsequent to the major disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster or emergency shall be used without reduction for purposes of computing revenues received. This may result in decreasing the potential for loan cancellations.

(3) If the local government's fiscal year is changed during the "full three year period following the disaster" the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period.

(4) If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures not disaster related, except increases due to inflation, the annual operating budget or operating statement expenditures will be reduced accordingly for purposes of evaluating any request for loan cancellation.

(5) It is not the purpose of this loan program to underwrite pre-disaster budget or actual deficits of the local government. Consequently, such deficits carried forward will reduce any amounts otherwise eligible for loan cancellation.

(b) *Disaster-related expenses of a municipal operation character.* (1) For purposes of this loan, unreimbursed expenses of a municipal operating character are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and other expenses normally budgeted for in special revenue, enterprise, and general funds, as defined by the Municipal Finance Officers Association.

(2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under project

applications or other Federal programs are not eligible for loan cancellation.

(3) Each applicant shall also maintain records including documentation necessary to identify expenditures for unreimbursed disaster related expenses. Examples of such expenses include but are not limited to:

(i) Interest paid on money borrowed to pay amounts FEMA does not advance toward completion of approved Project Applications.

(ii) Unreimbursed costs to local governments for providing usable sites with utilities for mobile homes used to meet disaster temporary housing requirements.

(iii) Unreimbursed costs required for police and fire protection and other community services for mobile home parks established as the result of or for use following a disaster.

(iv) The cost to the applicant of flood insurance required under Pub. L. 93–234 and other hazard insurance required under Section 314, Pub. L. 93–288, as a condition of Federal disaster assistance for the disaster under which the loan is authorized.

(4) The following expenses are not considered to be disaster-related for Community Disaster Loan purposes.

(i) The local government's share for assistance provided under the Act including flexible funding under section 402(f) of the Act.

(ii) Improvements related to the repair or restoration of disaster damaged public facilities approved on Project Applications.

(iii) Otherwise eligible costs for which no Federal reimbursement is requested as a part of the applicant's disaster response commitment, or cost sharing as specified in the FEMA-State Agreement for the disaster.

(c) *Cancellation application.* A local government which has drawn loan funds from the Treasury may request cancellation of the principal and related interest by submitting an Application for Loan Cancellation through the Governor's Authorized Representative to the Regional Director prior to the expiration date of the loan.

(1) Financial information submitted with the application shall include the following:

(i) Annual Operating Budgets for the fiscal year of the disaster and the three subsequent fiscal years;

(ii) Financial Reports (Revenue and Expense and Balance Sheet) for each of the above fiscal years. Such financial records must include copies of the local government's annual financial reports, including operating statements balance sheets and related consolidated and individual presentations for each fund account. In addition, the local government must include an explanatory statement when figures in the Application for Loan Cancellation form differ from those in the supporting financial reports.

(iii) The following additional information concerning annual real estate property taxes pertaining to the community for each of the above fiscal years:

(A) The market value of the tax base (dollars),

(B) The assessment ratio (percent),

(C) The assessed valuation (dollars),

(D) The tax levy rate (mils),

(E) Taxes levied and collected (dollars).

(iv) Audit reports for each of the above fiscal years certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants. The report should not include recommendations concerning loan cancellation or repayment.

(v) Other financial information specified in the Application for Loan Cancellation.

(2) *Narrative justification.* The application may include a narrative presentation to amplify the financial material accompanying the application and to present any extenuating circumstances which the local government wants the Associate Director to consider in rendering a decision on the cancellation request.

(d) *Determination.* (1) If, based on a review of the Application for Loan Cancellation and FEMA audit, when determined necessary, the Associate Director determines that all or part of the Community Disaster Loan funds should be cancelled, the principal amount which is cancelled will become a grant, and the related interest will be forgiven. The Associate Director's determination concerning loan cancellation will specify that any uncancelled principal and related interest must be repaid immediately and that, if immediate repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on a timely basis. Such repayments must be made to the Treasurer of the United States and be sent to FEMA, Attention: Office of the Comptroller.

(2) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.

(3) The uncancelled portion of the loan must be repaid in accordance with Section 205.97 of this part.

(4) Appeals. If an Application for Loan Cancellation is disapproved, in whole or in part, by the Associate Director or designee, the local government may submit any additional information in support of the application within sixty days of the date of disapproval. The decision by the Associate Director or designee on the submission is final.

§ 205.97 Loan repayment.

(a) *Prepayments.* The local government may make prepayments against the loan at any time without any prepayment penalty.

(b) *Repayment.* To the extent not otherwise cancelled, Community Disaster Loan funds become due and payable in accordance with the terms and conditions of the promissory note. The note shall include the following provisions:

(1) The term of a loan made under this program is five years, unless extended by the Associate Director. Interest will accrue on outstanding cash from the actual date of its disbursement by the Treasury.

(2) The interest amount due will be computed separately for each Treasury disbursement as follows: $I=P\times R\times T$, where I=the amount of simple interest, P=the principal amount disbursed; R=the interest rate of the loan; and, T=the outstanding term in years from the date of disbursement to date of repayment, with periods less than one year computed on the basis of 365/year. If any portion of the loan is cancelled, the interest amount due will be computed on the remaining principal with the shortest outstanding term.

(3) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(4) The Associate Director may defer payments of principal and interest until FEMA makes its final determination with respect to any Application for Loan Cancellation which the borrower may submit. However, interest will continue to accrue.

(5) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the

loan, bear interest at the same rate as the loan, and be immediately due without demand.

(6) In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal Debt Collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

(c) In unusual circumstances involving financial hardship, the local government may request an additional period of time to repay the indebtedness. Such requests may be approved by the Associate Director subject to the following conditions:

(1) The principal amount shall be the original uncancelled principal plus related interest.

(2) The interest rate shall be the Treasury rate in effect at the time the new Promissory Note is executed but in no case less than the original interest rate.

(3) The term of the new Promissory Note shall be for the settlement period requested by the local government but not greater than ten years from the date the new note is executed.

Dated: February 24, 1987.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 87-9509 Filed 4-27-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 80-286; FCC 87J-3]

Common Carrier Services: Allocation of Costs Between the State and Interstate Jurisdictions

AGENCY: Federal Communications Commission; Federal-State Joint Board.

ACTION: Recommended decision and order by the Federal-Joint Board.

SUMMARY: This action recommends the amendment of Part 67 of the Commission's Rules concerning the jurisdictional separations procedures for Central Office Equipment (COE) costs. The recommended changes in the jurisdictional procedures would further the goal of simplifying the currently complex separations process and would reduce administrative costs to benefit ratepayers.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Wilson or Cindy Schonhaut, Accounting and Audits Division, Common Carrier Bureau, (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal-State Joint Board *Recommended Decision and Order*, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286. FCC 87J-3 adopted March 12, 1987, and released April 8, 1987. The full text is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Recommended Decision and Order

1. The Federal State Joint Board adopted recommendations for revisions of the Commission's rules regarding the jurisdictional separations procedures for Central Office Equipment (COE) investment. The present system assigns COE investment to eight categories which may be further subdivided into subcategories. The investment in each category is allocated between the jurisdictions according to specific procedures.

2. An *Order Inviting Comments*, Amendment of Part 67 of the Commissions's Rules and Establishment of a Joint Board CC Docket No. 80-286, FCC 86J-1, released May 7, 1986, sought comments and data on alternative procedures for categorization and allocation of COE investment with the objective of developing a complete record concerning COE separations issues which would allow a comprehensive revision of this portion of the separations rules.

3. The parties generally agreed that the separations process for COE should be simplified not only to better reflect the current telecommunications technology but also to reduce the operating expense and the administration burden of the carriers.

4. Based on the comments and data received, the Joint Board recommended three major changes in the separation procedures for COE, Amendment of Part 67 of the Commission's rules and Establishment of a Joint Board, CC Docket No. 80-286. FCC 87J-3, released April 8, 1987. First, it recommended that Category 6, Local Dial Switching Equipment, no longer be segregated into nontraffic sensitive and traffic sensitive portions. Additionally, all the Category 6 investment would be separated on the basis of study area dial equipment minutes (DEM) and this new allocation procedure would be phased in over a five year period. To assist small carriers with fewer than 50,000 access lines, the DEM allocator would be weighted according to a simplified weighting methodology.

5. Second, the Joint Board recommended the allocation of the local exchange carriers' (LECs) Category 8.23, All Other Interexchange Circuit Equipment, on the basis of conversation-minutes, a nondistance sensitive allocator. Category 8.23 is currently allocated based on conversation-minute miles, a distance sensitive factor. It recommended that for LECs certain changes be made in the subcategorization of Category 8.23 investment and that these new allocation procedures be implemented on a flash-cut basis. For interexchange carriers, the Joint Board recommended a freeze of the 1985 allocation factors for Category 8.23.

6. Third, the Joint Board recommended the consolidation of the current eight COE categories into four categories. This approach would retain the current Categories 1 and 8, combine Categories 2 and 3 into a new category, Tandem Switching Equipment and combine Categories 4, 5 and 7 with the current Category 6 in a new category, Local Switching Equipment. This consolidation would simplify the current procedures, recognize the changes in technology as well as result in a separations process that would be easier and less costly to administer. The Joint Board also recommended that the current separations procedures be modified to require LECs to study COE investment on the basis of study areas.

7. Finally, the Joint Board recommended that further comment be sought on certain remaining issues regarding an appropriate allocator for Local Switching Equipment, as well as the appropriate categorization of Circuit Equipment.

8. The Joint Board recommended that the COE separations revisions, whether flash-cut or phased-in, be implemented beginning January 1, 1988, concurrent with the implementation of the new separations procedures necessary to conform to the revised Uniform System of Accounts.

Ordering Clause

Accordingly, this Joint Board recommends, That the Commission

adopt the proposals presented herein and the suggested revisions of Part 67 of the Commission's rules contained in Appendix D.[1]

List of Subjects in 47 CFR Part 67

Communications common carriers, Telephone, Uniform system of accounts, Jurisdictional separations procedures.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-8957 Filed 4-27-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 67

[CC Docket 86-297; FCC 87J-4]

Common Carrier Services; Allocation of Costs Between the State and Interstate Jurisdictions

AGENCY: Federal Communications Commission; Federal-State Joint Board.

ACTION: Recommended decision and order.

SUMMARY: The Joint Board recommended revisions of the jurisdictional separations rules to conform them to the Commission's recently revised Uniform System of Accounts and to simplify them for all carriers.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Wilson or Charles Needy, Audits Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal-State Joint Board's *Recommended Decision and Order*, CC Docket No. 86-297, adopted March 17, 1987, and released April 8, 1987.

The full text of Joint Board recommended decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this recommended decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

[1] This recommendation is adopted pursuant to sections 4 (i) and (j), 201-205, 221(c) and 410 of the Communications Act of 1934, as amended. 47 U.S.C. Sec. 4 (i) and (j), 201-205, 221(c) and 410. The proposed amendments to Part 67 are not included here but are contained in the full text of this action.

Summary of Recommended Decision and Order

1. On July 25, 1986, the Joint Board issued an *Order Inviting Comments*, CC Docket No. 86-297, FCC 86J-4, proposing two-tiered separations procedures to coincide with the two-tiered accounting system of the revised Uniform System of Accounts (USOA). The Joint Board stated that its objectives were to (1) conform the current separations procedures to the recently revised USOA, (2) simplify the current separations procedures, (3) improve the practical application of separations procedures, and (4) minimize the revenue requirement impact of these suggested revisions. The revised USOA establishes two classes of carriers: Class A companies with annual gross operating revenues of $100 million or more and Class B companies with annual gross operating revenues of less than $100 million. Under the Joint Board's original proposal, the Class A carriers would use a Class A Manual while smaller Class B carriers would use a Class B Manual that reflects the less burdensome level of accounting detail required of Class B carriers by the revised USOA. For example, the proposed Class A Manual would require carriers to segregate buildings investment into eleven categories, and the proposed Class B Manual would combine this investment into a single category.

2. In addition to inviting comments on the two proposed manuals, the Joint Board asked interested parties to provide data identifying any revenue requirement shifts expected to result from implementation of the proposed manuals. Moreover, the Joint Board, recognizing that the current separations rules may be unduly burdensome for all carriers, specifically requested proposals to allow the larger Class A carriers to use the simplified Class B Manual. The Joint Board further stated that it was coordinating with the Joint Board in CC Docket No. 80-286 to ensure that the recommendations in this proceeding incorporate that Joint Board's recommendations concerning all changes in separations procedures including changes in the apportionment of Central Office Equipment and revenue accounting expense. *MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules*, CC Docket Nos. 78-72 and 80-286, FCC 87J-2, released April 9, 1987; *Amendment of Part 67 of the Commission's Rules*, CC Docket No. 80-286, FCC 87J-3, released April 8, 1987; *MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72 and 80-286, FCC 87J-1, released March 31, 1987 *(Monitoring Plan Recommended Decision and Order)*.

3. On March 17, 1987, the Joint Board adopted recommendations concerning the revision of current separations procedures. Most importantly, it recommended that this Commission adopt only one revised separations manual, a modified version of the Class B Manual that it had initially proposed, for use by all carriers. The majority of the parties commenting in this proceeding supported the adoption of a single manual modified to reduce, to the extent possible, jurisdictional shifts in revenue requirements. The Joint Board agreed with these parties that the use of a Class B Manual or modified Class B Manual by all carriers would provide separations simplification with no apparent change in the accuracy of cost allocations and would reduce some of the carriers' administrative costs. The Joint Board concluded that the reduction of administrative costs would, in turn, reduce overall revenue requirements for both large and small carriers.

4. Based on its analysis of the data submitted, the Joint Board found that use of the initially proposed Class B Manual by all carriers would result in an unacceptable level of revenue requirement shifts between the state and interstate jurisdictions. The Joint Board also found, however, that the industry-wide use of a certain modified Class B Manual, in which the separations procedures addressed by the Joint Board in CC Docket Nos. 78-72 and 80-286 were retained in their current form, would result in only a minimal level of revenue requirement shifts.

5. The Joint Board stated that its recommended manual includes, in addition to all revisions contained in that modified Class B Manual, all revisions to Part 67 recommended by the Joint Board in CC Docket Nos. 78-72 and 80-286. The Joint Board noted that the recommended manual would treat large and small carriers differently in only one respect. The large Class A carriers would allocate General Support Facilities, which include land and buildings and motor vehicles, on the basis of the "Big Three Expense" factor, which includes most of the accounts in Plant Specific Operations Expenses, Plant Nonspecific Operations Expenses and Customer Operations Expenses. The smaller Class B carriers, on the other hand, would allocate General Support Facilities on the basis of the carrier's investment in certain plant accounts,

i.e., Central Office Equipment, Cable and Wire Facilities and Information Origination/Termination Equipment.

6. The Joint Board concluded that the recommended manual would achieve the best balance between the goals of simplification and minimization of revenue requirement shifts and the need to reasonably reflect cost causation principles. The Joint Board determined that the recommended manual would provide clear, simple and auditable procedures that would not reduce the accuracy of cost assignment. It also determined that the ability of larger carriers to comply with complex procedures does not justify the imposition of costly and burdensome requirements on those carriers. Moreover, the Joint Board rejected the two-manual approach because it would not provide uniformity in either separations or access charges and because the comments and data submitted indicate that the recommended manual would meet all four goals in this proceeding.

7. The Joint Board decided that the need for further refinement of the recommended manual should not delay implementation of the revised USOA on January 1, 1988. It determined that, because the industry had provided increasingly refined and reasonably accurate information, an adequate record exists on which it was able to make a reasoned determination that the recommend manual can be implemented with minimal revenue requirement shifts. Because the recommended manual would have a minimal impact on overall revenue requirements, the Joint Board declined to recommend the adoption of a transition mechanism to ameliorate the impact of the new rules on small carriers.

8. Nonetheless, to ensure that the recommended manual would not produce unanticipated results, the Joint Board recommended that the Commission establish a monitoring program that would evaluate the effects of the new manual on the industry and public. It also recommended that this monitoring effort be conducted as part of the monitoring program recommended in the *Monitoring Plan Recommended Decision and Order*. The Joint Board further recommended that, to avoid confusion between the new and old Separations Manuals, these revised separations procedures be set forth in the Commission's rules as a new Part 36 instead of as a revised Part 67. Finally, the Joint Board recommended that these revised procedures become effective January 1, 1988, to coincide with the effective date of the revised accounting rules.

Ordering Clause

Accordingly, this Joint Board recommends, That the Commission adopt the proposals presented herein and the suggested revisions of Part 67 of the Commission's rules contained in Appendix D to establish a new Part 36 of the Commission's rules.[1]

List of Subjects in 47 CFR Part 67

Communications common carriers, Jurisdictional separations procedures, Telephone, Uniform system of accounts.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-8959 Filed 4-27-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 94

[PR Docket No. 87-5; DA 87-485]

Private Operational-Fixed Microwave Radio Service; Multiple Address Systems; Order Extending Time To File Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; Order Extending Time to File Reply Comments.

SUMMARY: The Commission has received motions from Digital Radio Networks, Inc. and Motorola, Inc. seeking an extension of time to file reply comments in the *Notice of Proposed Rulemaking*, Docket No. 87-5, 52 FR 4,161 (February 10, 1987). Concerning Multiple Address Systems.

DATES: Reply comments are now due by May 29, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Molly Nichols or Herb Zeiler, Rules Branch, Land, Mobile, and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

In the Matter of

Amendments of §§ 22.5501(g)(2) and 94.65(a)(1) of the Rules and Regulations to Re-Channel the 900 MHz Multiple Address Frequencies; PR Docket No. 87-5, RM-5206.

Amendment of § 94.65(a)(1) of the Rules to Revise Footnote 3 in the Frequency Table to Make the Frequencies Available for use by any Part 94 Eligible; RM-5362.

Amendment of Part 2 and §§ 94.63(d)(5) and 94.65(a)(1) Footnote 3 of the Rules to Permit Operation of Mobile Remote Meter Reading Systems on a Primary Basis on the Exclusive Power Radio Service Frequencies in the 952.3625-952.8375 MHz Band; RM-5178.

Amendment of Part 94 of the Rules to Permit Intrasystem Communications Among Multiple Address System Master Stations; RM-5383.

Adopted: April 17, 1987.

By the Chief, Private Radio Bureau:

1. On January 15, 1987, the Commission adopted a *Notice of Proposed Rulemaking* (Notice) in the above mentioned proceeding. The *Notice* was released on January 29, 1987, and a summary was published at 52 FR 4,161 (February 10, 1987). Comments on the *Notice* were due April 7, 1987. Reply comments are due April 22, 1987.

2. On April 13, 1987, Motorola, Inc. (Motorola) filed a Motion for Extension of Time requesting that the time in which to file reply comments be extended to May 29, 1987. In support of its request, Motorola states that key personnel needed to prepare its reply are unavailable at this time.

3. The Commission also received a Motion for Extension of Time from Digital Radio Networks, Inc. (DRN) on April 15, 1987. DRN requests that we extend the time in which to submit reply comments to May 6, 1987. DRN contends that numerous initial comments have been filed containing detailed discussions of the Commission's proposals in this proceeding. DRN states that an extension of time is needed to allow interested parties to fully analyze the initial comments and to prepare detailed replies.

4. It appears that good cause has been shown and that the public interest would be served by granting additional time to file reply comments.

5. Accordingly, IT IS ORDERED pursuant to § 0.331 of the Commission's Rules that interested parties have until May 29, 1987 to file reply comments in this proceeding.

Federal Communications Commission.

Michael T.N. Fitch,

Chief, Private Radio Bureau.

[FR Doc. 87-9459 Filed 4-29-87; 8:45 am]

BILLING CODE 6712-01-M

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[1] This recommendation was adopted pursuant to sections 4 (i) and (j), 201-205, 221(c) and 410 of the Communications Act of 1934, as amended, 47 U.S.C. Secs. 4 (i) and (j), 201-205, 221(c) and 410. The proposed amendments to Part 67 are not included here but are contained in the full text of this action.

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1041, 1048, and 1049

[Ex Parte No. MC-37 (Sub-No. 40]

Commercial Zones and Terminal Areas

AGENCY: Interstate Commercial Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is instituting this proceeding to consider amending regulations to redescribe and expand commercial zones of municipalities and terminal areas. The Commission last examined and expanded commercial zones and terminal areas in 1976. The purpose of this proceeding is to reexamine those regulations in the light of economic and demographic changes that have occurred since then.

DATE: Comments are due by May 28, 1987.

ADDRESSES: The original and 10 copies of comments referring to Ex Parte No. MC-37 (Sub. No. 40) should be sent to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Thomas J. Barry, (202) 275-7540; or Mark Shaffer, (202) 275-7292.

SUPPLEMENTARY INFORMATION: The Commission is instituting this proceeding to consider amending the regulations at 49 CFR 1048 and 1049 and 49 CFR 1041.21 to redescribe and expand commercial zones of municipalities and terminal areas. A commercial zone is the geographic area around a municipality within which motor carrier operations may be performed exempt from regulation by the Commission. See 49 U.S.C. 10526. A terminal area is the geographic area within which exempt pickup and delivery operations may be performed in connection with a motor carrier's regulated line-haul movement. See 49 U.S.C. 10523. Terminal areas are coextensive with commercial zones of municipalities carriers may serve in their line-haul operations. Terminal areas for unincorporated communities are defined by the formula at 49 CFR 1049.2 and 1041.21.

The Commission last examined and expanded commercial zones and terminal areas in 1976. See Commercial Zones and Terminal Areas, 128 M.C.C. 422 (1976). The purpose of this proceeding is to reexamine those regulations in the light of economic and demographic changes that have occurred since then. We wish to consider such changes as: expanding the population-mileage formula (49 CFR 1048.101) to enlarge all commercial zones; adopting the use of Standard Metropolitan Statistical Areas to define commercial zones and terminal areas; adopting regulations defining commercial zones that reflect economic development in regions containing two or more major cities; and any other options suggested by interested parties.

We anticipate that this proceeding will generate many questions. We encourage anyone interested to submit comments. Upon consideration of the comments, we will determine whether to proceed and, if so, we will propose specific rule changes.

Additional information is contained in the Commission's decision. A copy may be obtained from the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423.

Environmental and Energy Considerations

We preliminarily conclude that expansion of commercial zones and terminal areas would not significantly affect either the quality of the human environment or conservation of energy resources.

Initial Regulatory Flexibility Analysis

We preliminarily conclude that adoption of commercial zone modifications will not have a significant economic impact on a substantial number of small entities. While proposed amendments could expand exemptions from economic regulation we do not see any impact as significant. We specifically request comments on this issue to help us in making an initial finding when we formulate specific proposals for publication in a future notice of proposed rulemaking.

List of Subjects in 49 CFR Parts 1041, 1048 and 1049

Motor carrier, Freight forwarders.

Notice is given under the authority of 49 U.S.C. 10101, 10321, 10523, and 10526, and 5 U.S.C. 553.

Decided: April 16, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Commissioners Simmons concurred.

Noreta R. McGee,

Secretary.

[FR Doc. 87-9523 Filed 4-27-87; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 52, No. 81
Tuesday, April 28, 1987

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

Commodity Credit Corporation

1988 Wheat Program; Proposed Determinations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the 1988 crop of wheat: (a) The loan and purchase level; (b) whether a marketing loan program should be implemented; (c) the established "target" price; (d) the percentage reduction under an acreage limitation program (ALP); (e) whether an optional land diversion program should be established and, if so, the percentage of diversion under the program; (f) if a marketing loan program is implemented, whether the inventory reduction program should also be implemented; (g) whether a portion or all of the deficiency or diversion payments, and if such payments are made, should they be made in the form of commodity certificates; (h) provisions of the farmer-owned reserve (FOR) program; (i) whether a wheat export certificate program should be implemented; (j) whether the special wheat grazing and hay program should be implemented; and (k) other related provisions. These determinations are made pursuant to the Agricultural Act of 1949, as amended, (the "1949 Act") and the Commodity Credit Corporation (CCC) Charter Act, as amended.

DATE: Comments must be received on or before May 15, 1987 in order to be assured of consideration.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Bradley Karmen, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, Room 3740, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–4635. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The title and number of the Federal assistance programs to which this notice applies are: Title-Wheat Production Stabilization: Number 10.058 and Title-Commodity Loans and Purchases: Number 10.051, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the CCC is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject of this notice.

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).

Certain determinations set forth in this notice with respect to the 1988 Wheat Program are required to be made by the Secretary by June 1, 1987. In addition, it is necessary that the determinations for the 1988 crop be made in sufficient time to permit wheat producers to make plans to plant their 1988 crop. Accordingly, the public comment period is limited to 21 days from the date this notice is filed with the **Federal Register.** This will allow the Secretary time to consider the comments received before the final program determinations are made.

A notice of proposed determinations is being published concurrently with this notice which set forth provisions common to the 1988 wheat, feed grain, upland cotton, ELS cotton, and rice price support and production adjustment programs.

The comments received with respect to such notice and this notice of proposed determination will be reviewed in determining the provisions of the 1988 Wheat Program.

Accordingly, the following program determinations are proposed to be made by the Secretary with respect to the 1988 crop of wheat.

Proposed Determinations

a. *Loan and Purchase:* Sections 107D(a) (1), (3) and (4) of the 1949 Act provide that the Secretary shall make available to producers loans and purchases for the 1988 crop of wheat at such level as the Secretary determines will maintain the competitive relationship of wheat to other grains in domestic and export markets after taking into consideration the cost of producing wheat, supply and demand conditions, and world prices for wheat.

For any crop of wheat for which marketing quotas are not in effect, the basic loan and purchase level that is determined shall not be less than 75 percent, nor more than 85 percent, of the simple average price received by producers of wheat, as determined by the Secretary, during the marketing years for the immediately preceding 5 crops of wheat, excluding the year in which the average price was the highest and the year in which the average price was the lowest in such period, except that the loan and purchase level for a crop may not be reduced by more than 5 percent from the level determined for the preceding crop.

Also, if the Secretary determines that the average price received by producers for wheat in the previous marketing year was not more than 110 percent of the loan and purchase level for wheat for such marketing year or determines that such action is necessary to maintain a competitive market position for wheat, the Secretary may reduce the 1988-crop loan and purchase level for wheat by the amount the Secretary determines necessary to maintain domestic and export markets for grain. The basic loan and purchase level may not be reduced by more than 20 percent. Any reduction in the loan and purchase level for wheat shall not be considered in determining the loan and purchase level for wheat for subsequent years.

The 1988-crop basic loan and purchase level for wheat will be determined based upon the simple average of marketing year prices received by producers during the 1983 through 1987 crops of wheat. These prices are:

Crop year	Average market price/ bushel
1983	$3.51
1984	3.39
1985	3.08
1986 (Estimated)	2.35
1987 (Projected)	2.25

Crop year prices for 1983 and 1987 would not be considered in making this determination since they are the highest and lowest prices during the 5-year base period. The average of the remaining pices would be $2.94 per bushel with 75–85 percent of such amount equal to $2.21–$2.50 per bushel. Since these levels are below 95 percent of the 1987 basic loan and purchase level of $2.85 per bushel, the 1987 basic loan and purchase level for wheat may not be less than $2.71 per bushel.

If it is determined necessary to maintain domestic and export markets for grain, the Secretary proposes to reduce the basic 1988-crop loan and purchase level for wheat to the level deemed necessary. This adjusted level can be no lower than $2.17 per bushel ($2.71 per bushel times 0.8). Comments on the level of loans and purchases for the 1988 crop of wheat are requested.

b. *Marketing Loans and Loan Deficiency Payments:* Sections 107D(5)(a) and (b) of the 1949 Act provide that the Secretary may permit a producer to repay a loan at a level that is the lesser of: (1) The announced loan level or (2) the higher of: (i) 70 percent of the basic loan level or (ii) the prevailing world market price for wheat, as determined by the Secretary.

If the Secretary permits a producer to repay a loan as described above, the Secretary shall prescribe by regulation (1) a formula to define the prevailing world market price for wheat and (2) a mechanism by which the Secretary shall announce periodically the prevailing world market price for wheat.

Additionally, the Secretary may, for the 1988 crop of wheat, make payments available to producers who, although eligible to obtain a loan or purchase agreement, agree to forgo obtaining such loan or agreement in return for such payments. The payment shall be computed by multiplying: (1) The loan payment rate by (2) the quantity of wheat the producer is eligible to place under loan.

For purposes of this section, the quantity of wheat eligible to be placed under loan may not exceed the product obtained by multiplying: (1) The individual farm program acreage for the crop by (2) the farm program payment yield established for the farm. The loan payment rate shall be the amount by which the announced loan level exceeds the level at which a loan may be repaid.

Comments on whether the Secretary should implement marketing loans and "loan deficiency" payments for the 1988 crop of wheat and the formula and methodology for determining the prevailing world market price to be used if marketing loans are implemented are requested.

c. *Established "Target" Price:* Section 107D(c)(1)(A) of the 1949 Act provides that the Secretary shall make available to producers payments for the 1988 crop of wheat in an amount computed by multiplying: (1) The payment rate by (2) the individual farm program acreage by (3) the farm program payment yield.

Section 107D(c)(1)(D)(i) of the 1949 Act provides that the payment rate for the 1988 crop of wheat shall be an amount by which the established "target" price for such crop exceeds the higher of (1) the national weighted average market price received by producers during the first five months of the marketing year for such crop and (2) the basic loan level for such crop. Section 107D(c)(1)(E) provides that if the level of basic loan is adjusted, the Secretary shall provide emergency compensation by increasing the established price "deficiency" payments by an amount determined necessary to provide the same total return to producers as if the adjustment in the basic loan level had not been made. In determining the "deficiency" payment rate, the Secretary shall use the national weighted average market price of wheat received by producers during the marketing year for such crop. Section 107D(c)(i)(G) provides that the established "target" price for the 1988 crop of wheat shall not be less than $4.29 per bushel.

Section 107D(c)(1)(H) of the 1949 Act provides that the Secretary may determine the established "target" price on the basis of: (1) The percentage by which producers reduce the acreage planted to wheat on the farm in accordance with an acreage limitation program or (2) a graduated scale of production under which the amount of the payments made to producers would vary for specified quanties of wheat produced by producers and such payments would be targeted to commercial family farmers who have annual gross sales in excess of $20,000.

Section 107D(c)(1)(D) of the 1949 Act provides that, at the option of the Secretary, with respect to the 1988 crop of wheat, if the national weighted average market price received by producers during the first 5 months of the marketing year exceeds $2.82 per bushel), the "deficiency" payment rate shall be determined based upon the difference between the established "target" price, (i.e., $4.29 per bushel) and $2.82 which is $1.47 per bushel.

Section 107D(c)(1)(E) of the 1949 Act provices that, notwithstanding the provisions of sections 107D(c)(1)(A)–(D), if the Secretary exercises the discretionary authority to adjust the loan and purchase level the Secretary shall increase the established price payments in such amount as the Secretary determines necessary to provide the same total return to producers as if such adjustment had not been made. This second payment rate level will be determined based upon the difference between the basic loan level, (i.e., $2.71 per bushel), and the higher of (1) the weighted national average market price of wheat received by producers during the 1988–89 marketing year (June, 1988-May, 1989) and (2) the adjusted loan level, but not less than $2.17 per bushel). The maximum payment rate would be $0.54 per bushel. Payments that are made based upon this payment rate would not be subject to the $50,000 payment limitation but would subject to the overall $250,000 payment limitation.

Comments are requested whether the Secretary should make a portion of the 1988 wheat crop deficiency payment in the form of in-kind compensaton and whether the established "target" price should be determined in accordance with section 107D(c)(I)(H) of the 1949 Act.

d. *Acreage Limitation Program (ALP):* Secton 107D(f) of the 1949 Act provide, with respect to the 1988 crop of wheat, that if the Secretary estimates, not later than June 1, 1987, that the quanity of wheat on hand in the United States on the first day of the marketing year (June 1, 1988) for such crop (not including any quantity of wheat of such crop) will be more than 1 billion bushels, the Secretary shall provide for an ALP under which the acreage planted to wheat for harvest on a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not less than 20 percent but not more than 30 percent.

If the quantity is estmated to be 1 billion bushels or less, the Secretary may provide for an ALP under which the acreage planted to wheat for harvest on

a farm would be limited to the wheat crop acreage base for the farm for the crop reduced by not more 20 percent.

If a wheat ALP is announced, such limitation shall be achieved by applying a uniform percentage reduction to the wheat crop acreage base for the crop for each wheat-producing farm. Producers who knowingly produce wheat in excess of the permitted wheat acreage for the farm shall be neligible for wheat loans, purchases, and payments with respect to wheat produced on that farm. An acreage on the farm shall be devoted to conservation uses determined by dividing (1) the product obtained by multiplying the number of acres required to be withdrawn from the production of wheat times the number of acres planted to such commodity by (2) the number of acres authorized to be planted to such commodity under the limitation established by the Secretary. This acreage is referred to as "reduced acreage".

The quantity of wheat on hand on June 1, 1987, is currently estimated to exceed 1 billion bushels and may approach or exceed 2 billion bushels. Based upon such estimates, the Secretary would be required to implement an ALP of 20–30 percent.

Comments are requested as to the percentage level, if any, at which an ALP should be implemented for the 1988 crop of wheat.

e. *Land Diversion Program:* Section 107D(f)(5)(A) of the 1949 Act provides that the Secretary may make land diversion payments to producers of wheat, whether or not an ALP, set-aside program, or marketing quotas for wheat are in effect, if the Secretary determines that such land diversion payments are necessary to assist in adjusting the total national acreage of wheat to desirable goals. Such land diversion payments shall be made to producers who, to the extent prescribed by the Secretary, devoted to approved conservation uses an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers.

The amounts payable to producers under land diversion contracts may be determined through the submission of bids for such contracts by producers in such manner as the Secretary may prescribe or through such other means as the Secretary determines appropriate. In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diversion to be undertaken by the producers and the productivity of the acreage diverted. The secretary shall limit the total acreage to be diverted under agreements in any county or local community so as not to affect adversely the economy of the county or local community.

Any additonal acreage reduction under a land diversion program (LDP) would be at a producer's option. If such a program were implemented, payments for such diversion would be in cash or commodity certificates.

Comments are requested with respect to the need for an optional paid LDP and, if implemented, the provisions of such program.

f. *Inventory Reduction Program (IRP):* Section 107D(g) of the 1949 Act provides that the Secretary may, for the 1988 crop of wheat, make payments available to producers who: (1) Agree to forgo obtaining a loan or purchase agreement; (2) agree to forgo receiving deficiency payments; and (3) do not plant wheat for harvest in excess of the crop acreage base reduced by one-half of any acreage required to be diverted from production under the announced ALP. Such payments shall be made in the form of wheat owned by CCC. Payments under this program shall be determined in the same manner as established with respect to the marketing loan program.

Accordingly, the implementation of this program is considered to be dependent on whether a marketing loan program is also instituted. Comments are requested on whether the IRP should be implemented for the 1988 crop of wheat.

g. *Commodity Certificates:* Section 107E of the 1949 Act provides that, in making in-kind payments under any wheat program, the Secretary may (1) acquire and use commodities that have been pledged to the CCC as security for price support loans, including loans made to producers under the farmer-owned reserve program and (2) use other commodities owned by the CCC.

The Secretary may make in-kind payments: (1) By delivery of the commodity to the producer at a warehouse or other similar facility, as determined by the Secretary; (2) by the transfer of negotiable warehouse receipts; (3) by the issuance of certificates that CCC shall redeem for a commodity; and (4) by such other methods as the Secretary determines appropriate to enable the producer to receive payments in an efficient, equitable, and expeditious manner so as to ensure that the producer receives the same total return as if the payments had been made in cash.

Commodity certificates were issued with respect to the 1986 and 1987 price support and production adjustments programs. The use of such certificates included payments for deficiency and diversion payments. The Secretary proposes to use commodity certificates with respect to the 1988 Wheat Program, subject to the availability of commodities pledged as collateral for CCC loans and CCC-owned stocks.

Accordingly, comments are requested with respect to the use of commodity certificates in making payments under the 1988 Wheat Program.

h. *Farmer-owned Reserve (FOR) Program:* Section 110 of the 1949 Act provides that, effective with the 1986 crop of wheat, the Secretary shall formulate and administer a program under which producers will be able to store wheat when an abundant supply, extend the time period for its orderly marketing, and provide for adequate, but not excessive, carryover stocks in order to ensure a reliable supply. The Secretary is required to establish safeguards to assure that wheat held under the program shall not be utilized in any manner to unduly depress, manipulate, or curtail the free market.

Such a program is required to be established whenever the total quantity of wheat stored under such program is less than 17 percent of the estimated total domestic and export usage during the then current marketing year. In establishing such a program, original or extended price support loans for wheat are to be made available under terms and conditions designed to encourage participation by producers. Loans made in accordance with this program shall be made at such level of support as the Secretary determines appropriate, but not less than that the current level of support available under the wheat program. The program may provide for: (1) Repayment of such loans is not less than three years, with extensions as warranted by market conditions; (2) payments to producers for storage in such amounts and under such conditions as the Secretary determines as appropriate to encourage producers to participate in the program; (3) a rate of interest not less than the rate charged CCC by the United States Treasury, except the Secretary may waive or adjust such interest as the Secretary deems appropriate to effectuate the purposes of section 110; (4) recovery of amounts paid for storage, and for the payment of additional interest or other charges if such loans are repaid by producers when the total amount of wheat in storage under this program is below the maximum limits for such storage and the market price for wheat is below the higher of: (i) 140 percent of the nonrecourse loan rate for wheat or (ii) the established "target" price; and (5) conditions designed to induce producers to redeem and market the

wheat securing such loans without regard to the maturity dates thereof whenever the Secretary determines that the market price for the commodity has attained the higher of: (i) 140 percent of the nonrecourse loan rate for the commodity or (ii) the established price for such commodity.

The rate of interest applicable to loans made under this program shall not be less than the rate of interest charged CCC by the United States Treasury. However, the Secretary may (1) waive or adjust the rate of interest to effectuate the puposes of the program and (2) increase the applicable rate of interest as determined appropriate to encourage the orderly marketing of wheat securing such loans if the market price for wheat exceeds the higher of 140 percent of the nonrecourse loan rate or the established "target" price.

The Secretary may require producers to repay the principal amount of loans obtained under this program, plus accured interest and other related charges, prior to the maturity date of such loans, if the Secretary (1) determines that emergency conditions exists which require that wheat be made available to meet urgent domestic or international needs and (2) reports such determination to the President, the Committee on Agriculture Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives at least 14 days before taking such action.

Announcement of the terms and conditions of the program are to be made as far in advance of making loans as practicable and shall specify the quantity of wheat to be stored under the program that is determined appropriate to promote the orderly marketing of wheat. Prior to the harvest of each crop of wheat upper limits on the total quantity of wheat that may be stored under such program during the marketing year for such crop are to be established. The upper limit for wheat shall not exceed 30 percent of the estimated total domestic and export usage during the marketing year of such crop. Such upper limit may be increased, but not in excess of 110 percent, if the Secretary determines that the higher limits are necessary to achieve the purposes of the program.

Based on estimated total domestic and export usage of wheat for the 1987/88 marketing year of about 2.1–2.2 billion bushels, the minimum FOR quantity would be 357–374 million bushels and the maximum quantity would be 630–660 million bushels. As of February 25, 1987, the quantity of wheat in the FOR was 496 million bushels. Based upon: (1) No entry of 1986-crop loans into the FOR; (2) removals from the FOR; and (3) FOR contract maturities, it is estimated that the FOR quantity on hand during the 1987/88 marketing year could fall below the statutory minmum. Accordingly, the Secretary would permit entry of maturing 1987-crop wheat price support loans into the FOR if the estimated FOR quantities during the 1987/88 marketing year is below the statutory minimum. A similar determination would be made for the 1988 crop.

Comments on FOR program provisions are requested including whether 1987 and 1988-crop wheat regular CCC price support loans should be permitted entry into the FOR.

i. *Wheat Export Certificate Program.* Section 107F(a)(1) of the 1949 Act provides that the Secretary may establish a program for the 1988 crop of wheat to provide incentives for the export of wheat from private stocks. Under such a program, export certificates would be issued to producers who comply with the terms and conditions of the 1988 wheat price support and production adjustment programs. Each certificate would bear a monetary amount and specify a quantity of wheat. The aggregate quantity of wheat specified on the certificate would be equal to the quantity that is determined by multiplying: (1) The wheat acreage planted on the farm by, (2) the farm program payment yield by, (3) an export production factor. Such factor for a crop is determined by dividing (1) the estimated quantity of wheat harvested domestically that will not be used domestically and will be available for export less the portion of the crop expected to be added to carryover stocks by (2) the estimated quantity of the crop that will be harvested domestically.

Wheat export certificates would be distributed among eligible producers in a manner that would ensure that each producer receive certificates having an aggregate face value representing an equal rate of return per bushel of wheat produced. In determining such rate of return, regional variations in costs incurred to market wheat, including transportation costs, shall be considered.

The face value of the export certificates shall be redeemed by the Secretary for cash or a quantity of the commodity involved having a current fair market value equal to the amount of the face value of the certificate upon presentation of such certificate by a holder who exports the quantity of wheat shown on the certificate.

The totla value of the wheat export certificate would be equal to an amount that is not less than the product determined by multiplying: (1) 21 cents per bushel by, (2) the acreage planted for harvest by 1988 Wheat Program participants by, (3) the average of program yields for the crop.

The following example illustrates how a wheat export certificate value and quantity would be determined:

1. Estimated Total Production (mil. bu.)	2400
2. Estimated Quantity Available For Export (mil. bu.)	1200
3. Participating Acreage For Harvest (mil. ac.)	50
4. Program Yield (bu./ac.)	33.5
5. Export Production Factor [#2–#1] (%)	0.5000
6. Total Certificate Quantity [#3x#4x#5] (mil. bu.)	838
7. Total Certificate Value [$0.21x#3x#4] (mil. $)	352
8. Certificate Value Per Bushel [#7–#6] ($/bu.)	0.42

With the above example, a producer participating in the 1988 Wheat Program would be issued export certificates in a quantity that is equal to a quantity which is determined by multiplying: (1) The producer's program acreage by, (2) program yield by, (3) the export production factor. The monetary value of these certificates would be the bushel quantity times the unit value ($0.42). These certificates would be redeemed after the marketing of such quantity of wheat. If this program were implemented, it is expected that wheat accompanined by an export certificate would be traded at a premium compared with noncertificate wheat.

Comments are requested on whether an export certificate program should be implemented for the 1988 crop of wheat.

j. *Special Wheat Grazing and Hay Program.* Section 109 of the 1949 Act provides that the Secretary may implement for the 1988 crop of wheat a special grazing and hay program. Under this special program, a producer is permitted to designate a portion of the acreage on the farm intended to be planted to wheat, feed grains of upland cotton for harvest, in an amount not to exceed 40 percent of such acreage or 50 acres whichever is greater. The designated acreage must be planted to wheat and used by the producer for grazing or hay. Payments under this program would be determined by multiplying: (1) the special program acreage by, (2) the farm program payment yield by, (3) a fair and reasonable rate of payment.

Comments are requested on whether a special grazing and hay program should be implemented for the 1988 crop of wheat and, if so, the rate of payment.

k. *Other Related Provisions:* A number of other determinations must be made in order to carry out the wheat loan and purchase programs such as: (1) Commodity eligibility; (2) premiums and discounts for grades, classes, and other qualities; (3) establishment of county loan and purchase rates; and (4) such other provisions as may be necessary to carry out the programs.

Consideration will be given to any data, views and recommendations that may be received relating to these issues.

Authority: Secs. 107C, 107D, 107E, 107F, 109, and 110 of the Agricultural Act of 1949, as amended, 99 Stat. 1446, 1382, as amended, 1448, 91 Stat. 950, as amended, 951, as amended (7 U.S.C. 1445b–2, 1446b–3, 1445b–5, 1445d and 1445e); Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070, 1072, as amended (15 U.S.C. 714b and 714c)

Signed at Washington, DC, on April 23, 1987

Milton J. Hertz,

Exective Vice President, Commodity Credit Corporation.

[FR Doc. 87–9601 Filed 4–24–87; 10:32 am]

BILLING CODE 3410–05–M

Common Program Provisions for the 1988 Crops of Wheat, Feed Grains, Upland Cotton, ELS Cotton and Rice; Proposed Determinations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed determinations.

SUMMARY: The Secretary of Agriculture proposes to make the following determinations with respect to the common program provisions that are applicable to the 1988 crops of wheat; feed grains, upland cotton, ELS cotton and rice: (a) Whether the production of approved nonprogram crops (ANPC) or haying and grazing should be allowed on underplanted program crop permitted acreage; (b) whether to permit the production of alternative crops on reduced acreage; (c) whether to require offsetting or cross compliance; (d) whether advance payments (deficiency or diversion) should be offered; (e) whether advance recourse commodity loans should be made available; (f) whether a multiyear set-aside program should be implemented; (g) whether producers should be permitted to increase a crop acreage base by an amount not to exceed 10 percent of farm acreage base if such producers decrease one or more other crop acreage bases on such farm by a corresponding amount; and (h) whether interest payment certificates in an amount equal to the interest paid should be issued to producers who repay loans with interest. These determinations are made pursuant to the Agricultural Act of 1949, as amended (the "1949 Act"), the Food Security Act of 1985, as amended and the Commodity Credit Corporation (CCC) Charter Act, as amended.

DATE: Comments must be received on or before May 15, 1987 in order to be assured of considerations.

ADDRESS: Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Bradley Karmen, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013 or call (202) 447–4635. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major". It has been determined that these program provisions will result in an annual effect on the economy of $100 million or more.

The title and number of the Federal assistance programs to which this notice applies are: Commodity Loans and Purchases—Number 10.051; Cotton Production Stabilzation—10.052; Feed Grains Production Stabilization—10.055; Wheat Production Stabilization—10.058; Rice Production Stabilization—10.065, as found in the catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject of this notice.

These programs are 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).

Determinations with respect to the common program provisions pertaining to the 1988 crops of wheat, feed grains, upland cotton, ELS cotton and rice should be made in sufficient time to permit producers, especially wheat producers, to make timely plans for the 1988 crops. It has been determined that the public comment period should be limited to a period of 21 days from the date this notice is filed with the **Federal Register.** This will allow the Secretary time to consider the comments received before the final program determinations are made.

The following program determinations are proposed to be made by the Secretary with respect to the common program provisions that are applicable to the 1988 crops of wheat, feed grains, upland cotton, ELS cotton and rice:

Proposed Determinations

1. *Approved Nonprogram Crops (ANPC) and Haying and Grazing on Underplanted Program Permitted Acreage (50/92 Provisions):* Sections 107D(c)(1)(C) and (K), 105(c)(1)(B) and (I), 103A(c)(1)(B) and (G), and 101A(c)(1)(B) and (G) of the 1949 Act provide that if an acreage limitation program (ALP) is in effect for a crop of wheat, feed grains, upland cotton, or rice and the producers on a farm: (1) devote a portion of the permitted commodity acreage of the farm equal to more than 8 percent of the permitted commodity acreage of the farm for the crop to conservation uses or approved nonprogram crops and (2) actually plant on the farm the respective program crop for harvest on an acreage equal to at least 50 percent of the permitted acreage for such crop, such portion of the permitted program commodity acreage of the farm (i.e., the crop acreage base minus reduced and diverted acreage), in excess of 8 percent of such acreage which is devoted to conservation uses or approved nonprogram crops shall be considered to be planted to such program commodity for the purpose of determining the individual farm program acreage and for the purpose of determining the acreage on the farm required to be devoted to conservation uses.

If a State or local agency has imposed in an area of a State or county a quarantine on the planting of a program commodity for harvest on farms in such area, the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) may recommend to the Secretary that deficiency payments be made, without regard to the 50-percent planting requirement, to producers in such area who were required to forgo the planting of the program commodity for harvest on acreage in order to alleviate or eliminate the condition requiring such quarantine. If the Secretary determines that such condition exists, the Secretary may make such payments to such producers. To be eligible for such payments such

producers must devote such acreage to conservation uses or approved nonprogram crops.

Any acreage considered to be planted to a program commodity may not also be designated as conservation use acreage for the purpose of fulfilling any provisions under any acreage limitation, set-aside program, or land diversion program requiring that the producers devote a specified acreage to conservation uses.

The Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of acreage otherwise required to be devoted to conservation uses as a condition of qualifying for payments to be devoted to sweet sorghum or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago ovato, flaxseed, triticale, rye, commodities for which no substantial domestic production or market exists but that could yield industrial raw material that is being imported, or likely to be imported, into the United States, or commodities grown for experimental purposes (including kenaf), except that the Secretary may permit such acreage to be devoted to such production only if the Secretary determines that:

(1) The production is not likely to increase the cost of the price support program and will not affect farm income adversely; and

(2) The production is needed to provide an adequate supply of the commodity or, in the case of commodities for which no substantial domestic production or market exists but that could yield industrial raw materials, the production is needed to encourage domestic manufacture of such raw material and could lead to increased industrial use of such raw materal to the long-term benefit of United States industry.

The Secretary shall permit, at the request of the State committee established under section 8(b) of he Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State and subject to such terms and conditions as the Secretary may prescribe, all or any part of acreage otherwise required to be devoted to conservation uses as a condition of qualifying for payments in such State to be devoted to haying and grazing if the Secretary determines that haying and grazing would not have an adverse economic effect.

Comments are requested as to whether the Secretary should permit haying and grazing of acreage otherwise required to be devoted to conservation use as a condition of qualifying for deficiency payments and whether nonprogram crops should be approved for production on such acreage.

b. *Uses of Reduced And Diverted Acreage:* Section 107D(f)(4), 105C(f)(4), 103A(f)(3), 103(h)(8)(A), and 101A(f)(3) of the 1949 Act provide that the regulations issued by the Secretary with respect to acreage required to be devoted to conservation uses under the acreage limitation and diversion programs shall assure protection of such acreage from weeds and wind and water erosion.

The Secretary may permit, subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage to be devoted to sweet sorghum, hay and grazing, or the production of guar, sesame, safflower, sunflower, castor beans, mustard seed, crambe, plantago, ovato, flaxseed, triticale, rye, or other commodity, if the Secretary determines that such production is needed to provide an adequate supply of such commodities, is not likely to increase the cost of the price support program, and will not affect farm income adversely.

The Secretary shall permit, at the request of the State committee established under section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) for a State and subject to such terms and conditions as the Secretary may prescribe, all or any part of such acreage diverted from production by participating producers in such State to be devoted to grazing in the case of the 1988 crops of wheat, feed grains, upland cotton, and rice. Grazing shall not be permitted for any crop during any 5-consecutive-month period that is established for such crop by the State committee.

In determining the amount of land to be devoted to conservation uses under an ALP for wheat and feed grains with respect to land that has been farmed utilizing summer fallow practices, as defined by the Secretary, the Secretary shall consider the effects of soil erosion and such other factors as the Secretary considers appropriate.

The Secretary proposes: (1) That the planting of alternative crops on acreage required to be devoled to approved conservation uses for the 1988 wheat, feed grains, cotton and rice ALP and diversion programs would not be permitted and (2) that nationally approved conservation uses on reduced or diverted acreage remain unchanged from those in effect for the 1987 crops, including summer-fallow rules. These rules provided that land in an area determined by ASCS to be an area in which summer fallowing is a common practice is eligible for designation as acreage conservation reserve (ACR) if such land has been planted to a crop in at least one of the previous two years. For all other areas, land is eligible for designation as ACR if it has been planted to a crop in at least two of the previous three years.

Comments on the planting of alternative crops and approved conservation uses on the reduced or diverted acreage are requested.

c. *Cross and Offsetting Compliance Requirements:* Sections 107D(n)(1–2), 105C(n)(1–2), 103A(n)(1–2), 103(h)(16), and 101A(n)(1–2), of the 1949 Act provide with respect to wheat, feed grains, upland cotton, ELS cotton and rice, that the Secretary may not require as a condition of eligibility for loans, purchases, or payments, compliance on a farm with the terms and conditions of any other commodity program (strict cross compliance). However, if an ALP is established for a crop of wheat, feed grains, upland cotton, or rice, the Secretary may require that, as a condition of eligibility of producers on a farm for loans, purchases, or payments for such crops, the acreage planted for harvest on the farm to such commodities, if an ALP is in effect for such crops, shall not exceed the crop acreage base for that commodity. This requirement is referred to as limited cross compliance.

Sections 103A(n)(3) and 101A(n)(3), which are applicable to upland cotton and rice, provide that the Secretary may not require producers on a farm, as a condition of eligibility for loans, purchases, or payments to compy with the terms and conditions of the upland cotton and rice programs with respect to any other farm operated by such producers (offsetting compliance). No similar requirements are applicable to wheat, feed grains, and ELS cotton. However, in accordance with sections 107D(i), 105C(i) and 103(h)(13) of the 1949 Act, the Secretary may issue regulations the Secretary determines necessary to carry out the wheat, feed grains, and ELS cotton programs In some prior crop years, the Secretary has promulgated regulations providing for offsetting compliance requirements. If offsetting compliance is required, operators and owners of farms would have to ensure that all of the farms in which they have an interest were either in compliance with the program requirements or the acreages of wheat, feed grains or ELS cotton planted to harvest on each of such farms did not exceed the wheat, feed grain or ELS cotton crop acreage base established for such farms.

The Secretary intends to implement limited cross compliance requirements for the 1988 crops of wheat, feed grains,

upland cotton, and rice and does not intend to impose offsetting compliance requirements for wheat, feed grains and ELS cotton.

Comments are requested concerning the limited cross compliance requirements for wheat, feed grains, upland cotton, and rice and does not intend to impose offsetting compliance requirements for wheat, feed grains and ELS cotton.Comments are requested concerning the limited cross compliance requirements for wheat, feed grains, upland cotton and rice and the offsetting compliance requirements for wheat, feed grains and ELS cotton.

d. *Advance Recourse Loans.* Section 424 of the 1949 Act provides that the Secretary may make advance recourse loans to producers of those commodities for which nonrecourse loans are available if it is determined such a program is necessary to ensure adequate operating credit is available to producers. These recourse loans may be made available under terms and conditions prescribed by the Secretary, except that the producers shall be required to obtain crop insurance for the crop as a condition of eligibility for a loan.

Comments are requested as to whether advance recourse loans should be offered for those commodities for which nonrecourse loans are available for the 1988 crops.

e. *Multiyear Set-Asides.* Section 1010 of the 1985 Act provides that the Secretary may enter into multiyear set-aside contracts for a period not to extend beyond the 1990 crops. Such contracts may be entered into only as a part of the programs in effect for wheat, feed grains, upland cotton, and rice are available only to producers participating in one or more of such programs. Producers agreeing to a multiyear set-aside agreement would be required to devote the set-aside acreage to vegetative cover capable of maintaining itself through the contract period, to provide soil protection, water quality enhancement, wildlife production, and natural beauty. Grazing of such acreage is prohibited except under major disaster conditions. Cost-share assistance must be provided for the establishment of vegetative cover.

The Secretary does not intend to implement a multiyear set-aside program. The acreage required to be devoted to approved conservation uses under the annual acreage limitation and, if authorized, paid land diversion programs combined with acreage placed into the conservation reserve program are considered to be adequate for the purposes of supply management of program commodities.

Comments as to whether a multiyear set-aside program should be implemented are requested.

f. *Advance Payments.* Sections 107C and 103(h)(3)(C) of the 1949 Act provide that, if the Secretary establishes an acreage limitation for the 1988 crops of wheat, feed grains, upland cotton, ELS cotton and rice and determines that deficiency payments will likely be made for such crop, the Secretary may make advance deficiency payments available to producers for the 1988 crops.

Advance deficiency payments for wheat, feed grains, upland cotton and rice may be made available as the Secretary determines appropriate to encourage adequate participation in the programs, except that the amount of such payments may not exceed an amount that is determined by multiplying: (1) The estimated farm program acreage for the crop, by (2) the farm program payment yield for the crop, by (3) 50 percent of the projected payment rate, as determined by the Secretary.

Advance deficiency payments for wheat, feed grains, upland cotton and rice may be made available to producers in the form of (1) cash, (2) commodities owned by CCC, or (3) certificates redeemable in a commodity owned by the CCC, except that not more that 50 percent of the advance deficiency payments may be made in commodities or certificates to any producer.

If the Secretary makes paid land diversion payments to assist in adjusting the total national acreages of the 1988 crops of wheat, feed grains, upland cotton, and rice to desirable goals, the Secretary may make at least 50 percent of such payments available to a producer as soon as possible after the producer agrees to undertake the diversion of land in return for such payments.

Under the 1987 wheat and feed grains programs producers were offered advance deficiency payments equal to 40 percent of the estimated total deficiency payments (50 percent in cash and 50 percent in generic commodity certificates). For upland cotton and rice, advance deficiency payments were offered in an amount equal to 30 percent of the total estimated deficiency payments (50 percent in cash and 50 percent in generic commodity certificates). With respect to the 1987 feed grains program, producers were offered one-half of the diversion payment in advance (50 percent in cash and 50 percent in generic commodity certificates).

Comments are requested as to whether advance deficiency and diversion payments should be made for the 1988 crops of wheat, feed grains, upland cotton, ELS cotton and rice and, if so, in what amount and the manner of payment.

g. *Adjusting Crop Acreage Bases By Up To 10 Percent of Farm Acreage Base.* Section 503(b)(2) of the 1949 Act requires the establishment of a farm acreage base (FAB) for the 1988 crops of wheat, feed grains, upland cotton, and rice.

The FAB shall include: (1) The sum of the crop acreage bases (CAB) established for a farm and (2) the sum of (a) the average of the acreage planted to soyeans in 1986 and 1987 and (b) the average of the acreage on the farm devoted to a conserving use in the normal course of farming operations in 1986 and 1987.

Section 505(a) of the 1949 Act provides that the Secretary may allow an upward adjustment of any CAB except such adjustment may not exceed 10 percent of the FAB. Any upward adjustment in a CAB established for a farm must be offset by an equivalent downward adjustment in one or more other CAB's established for such farm.

The Secretary proposes not to implement the option of adjusting CAB's by an amount not to exceed 10 percent of the FAB. Comments are requested on whether this option should be implemented.

h. *Interest Payment Certificates.* Section 405(b)(1) of the 1949 Act provides that the Secretary may issue a commodity certificate to any producer who repays, together with interest a price support loan made available to such producer under any of annual programs for wheat, feed grains, upland cotton or rice. The amount of such certificates is equal to the amount of interest paid by the producer with respect to the loan.

Comments are requested as to whether the Secretary should authorize interest payment certificates for the 1988 crops of wheat, feed grains, upland cotton or rice.

Authority: Sections 101A, 103, 103A, 105C, 107C, 107D, 424, 504, 505, and 506 of the Agricultural Act of 1949, as amended; 99 Stat. 1419, as amended, 1407, as amended, 1398, as amended, 1446, 1383, as amended, 1447, 1461, as amended 1462, 1463, as amended (7 U.S.C. 1441–1, 1444, 1444–1, 1444c, 1445b–2, 1445b–3, 1443c, 1464, 1465, and 1466); Section 1010 of the Food Security Act of 1985, as amended; 99 Stat. 1454 (7 U.S.C. 1445i).

Signed at Washington, DC.

Milton J. Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–9602 Filed 4–24–87; 10:35 am]

BILLING CODE 3410–05–M

SOIL CONSERVATION SERVICE

Teter Creek Watershed, WV.; Environmental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Teter Creek Watershed, Barbour and Tucker Counties, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, Room 301, Morgantown, West Virginia 26505, Telephone: 304–291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project wil not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include the adoption of soil conservation practices on pastureland in the watershed area.

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

No administrative action on implementation of the proposal will be taken until May 28, 1987.

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

Rollin N. Swank,

State Conservationist.

April 20, 1987.

[FR. Doc. 87–9487 Filed 4–27–87; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council will sponsor a public meeting, May 17, 1987, in the Dillingham Room of the Anchorage Westward Hilton Hotel, 500 West Third Avenue, Anchorage, AK, from 10 a.m. to 5 p.m., to discuss formation of a private non-profit fisheries foundation to fund fishery research and data gathering. Fishing industry representatives will discuss the need for a foundation and consider a resolution calling for the creation of such a foundation. For further information contact Ron Miller, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: April 23, 1987.

Richard B. Roe,

Director, Office of Fisheries Management National Marine Fisheries Serivice.

[FR Doc. 87–9538 Filed 4–27–87; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council will convene May 20–22, 1987, at the Hilton Hotel in Anchorage, AK. On May 20 at 9 a.m., the Council will review proposed amendments to the groundfish fishery management plans (FMPs) for the Gulf of Alaska and Bering Sea and Aleutian Islands, submitting those they approve to the Secretary of Commerce. The Council also will review current Council operating procedures based on a report from their Policy and Planning Committee. The Crab Management Committee will report on progress in developing a combined king and Tanner crab FMP for the Bering Sea/Aleutian Islands. There will be a status report on the current revision of the Salmon FMP and reports on the Pacific Salmon Commission meeting and troll salmon fishery actions taken by the Alaska Board of Fisheries. A review of pollock resources in the Gulf of Alaska and the requirements of the U.S. industry for that species will be made, and a recommendation to the National Marine Fisheries Service developed on changes from the Council's December recommendations, if any.

In addition to the regular reports on domestic and foreign fisheries, enforcement, and legislation, the Council will also receive status reports on two surveys: a mail survey of sablefish fishermen in the Gulf of Alaska soliciting their opinions in limited access management options for the sablefish fishery; and a telephone survey that will sample all groundfish fishermen about management options for the Gulf of Alaska and Bering Sea/Aleutian Islands. A report on the extent of unrecorded discards in trawl operations will also be presented. The Council will convene a closed session (not open to the public) at least once to review ongoing litigation, personnel matters, etc. The Council's public meeting will adjourn at approximately midday on May 22.

The Council's Scientific and Statistical Committee and Advisory Panel also will convene at the Anchorage Hilton May 18 at 10 a.m., and continue on May 19. The Council's Crab Management and Finance Committees also will convene during the week, with dates and times to be announced, and other plan team and workgroup meetings may be held during the week on short notice. For further information contact Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274–4563.

Dated: April 23, 1987.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 87–9539 Filed 4–27–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the Export Visa Requirement and the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement With Hong Kong

April 20, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority

contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on April 28, 1987. For further information contact Ann Fields, International Trade Specialist (202) 377–4212.

Background

A CITA directive was published in the **Federal Register** (48 FR 2400), on January 19, 1983, as amended, which established export visa requirements for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported to the United States.

As a result of agreement reached during consultations held on March 26, 1987 between the Governments of the United States and Hong Kong, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to further amend the export visa requirement and the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 23, 1982, as amended, to exempt shipments of inked ribbons in Category 627 (only TSUSA numbers 389.6260 and 389.6265) from the terms of the export visa requirements and the bilateral agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

April 23, 1987.

Committe for the Implementation of Textile Agreements

April 20, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1983, as amended, by the Chairman of the Committee for the Implementation of Textile Agreements that directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Hong Kong and exported on and after January 1, 1983, for which the Government of Hong Kong had not issued an appropriate visa.

Effective on April 28, 1987, you are directed to further amend the directive of January 14, 1983, as amended, to exempt shipments of inked ribbons in Category 627 (only TSUSA numbers 389.6260 and 389.6265) from the export visa requirement.

Sincerely,

Donald R. Foote,

Acting Chairman of Textile Agreements.

[FR Doc. 87–9568 Filed 4–27–87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: Monday through Saturday, 1–6 June 1987, 9:00 a.m. to 5:00 p.m. each day.

ADDRESS: HQ USEUCOM.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20340–1328 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on intelligence support systems.

Patricia H. Means,

OSD Federal Register Liaison Officer Department of Defense.

April 23, 1987.

[FR Doc. 87–9569 Filed 4–27–87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Availability of the Draft Supplemental Environmental Impact Statement for Binary Chemical Munitions Project, QL and DC Production Facilities

April 22, 1987.

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability of the draft supplemental Envrionmental Impact Statement for the Binary Chemical Munitions Project, QL and DC produciton facilities. QL is a nonlethal chemical component used in the VX2 family of binary munitions. DC is a feedstock chemical used to manufacture DF. DF is a nonlethal chemical component used in the G-agent family of binary munitions.

1. Summary: The Original Notice of Intent (51 FR 26291–26292, July 17, 1986) provided notice that the Army, pursuant to the National Environmental Policy Act (NEPA), and its implementing regulations, was to prepare a Supplemental Environmental Impact Statement, (SEIS) tiered to the Final Programmatic Environmental Impact Statement, Binary Chemical Munitions Program (47 FR 6318). The SEIS analyzes the potential environmental impacts associated with alternatives for providing production facilities to manufacture phosphorus chemical precursors for binary chemical munitions. A combined acquisition strategy is being pursued in support of the Department of Defense's Binary Munitions Project. This includes production of QL, a nonlethal binary precursor chemical, and DC, a Feedstock intermediate chemical used to manufacture DF, another nonlethal binary precursor chemical.

2. The draft SEIS cover five sites under consideration as production alternatives for the intermediate chemical DC. The sites are the U.S. Army Newport Army Ammunition Plant, Newport, Indiana; U.S. Army Pine Bluff Arsenal, Pine Bluff, Arkansas; U.S. Army Phosphate Development Works, Muscle Shoals, Alabama; a commercial site in West Helena, Arkansas; and a commercial site in Lake Charles, Louisiana. Three of the sites, in Newport Army Ammunition Plant, Pine Bluff arsenal, and West Helena, are also under consideration as production alternatives for the precursor chemical, QL, and as candidates for dual QL and DC production.

3. This SEIS combines the analysis for QL and DC in one document and supersedes prior notices 50 FR 12853 (QL) and 50 FR 21916 (DC) which announced separate analyses for the production of these chemicals.

4. The draft SEIS for the Binary Munitions Project, QL and DC Production Facilities, is available for public reveiw and comment. A copy of the document may be obtained from the Office of the Program Manager for Chemcial Munitions (Demilitarization and Binary) by contacting Ms. Marilyn Tischbin at commercial telepone (301)

671–3629, or by writing to the following address: Office of the Program Manager for Chemical Munitions (Demalitarization and Binary), Attn: AMCPM–CMI (Ms. Marilyn Tischbin), Aberdeen Proving Ground, MD 21010–5401. Written comments and any request for a public meeting should be submitted to the same address.

5. The time period for providing written comments for consideration in preparing the final SEIS or submitting request for a public meeting will end 45 days from the date of the Environmental Protection Agency publishes this Notice of Availability in the **Federal Register.**

Lewis D. Walker,

Deputy for Environment, Safety and Occupational Health, OSDA (I&L).

[FR Doc. 87–9533 Filed 4–27–87; 8:45 am]

BILLING CODE 3710–92–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of meeting: 18, 19, & 20 May 1987.

Times of meeting:

0800–100, 18 May 1987, Ft. Lee, VA
1230–1600, 18 May 1987, Ft. Eustis, VA
0800–1200, 19 May 1987, Alexandria, VA
1300–1600, 19 May 1987, Pentagon, Wash, DC
0800–1600, 20 May 1987, Pentagon, Wash, DC

Agenda: The Army Science Board 1987 Summer Study on Lightening the Force (Logistic, Subgroup) will meet for the purpose of discussing lightening logistic support with personnel from the U.S. Army Logistic Center, the Army Transportation Center, Army Materiel Command, and Headquarters, Department of the Army. This meeting will be closed to the public in accordance with section 552(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–9525 Filed 4–27–87; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 19 and 20 May 1987.

Times of meeting:

0800–1600, 19 May 1987.
0800–1500, 20 May 1987.

Place: Army Materials Technology Lab, Watertown, MA, and Natick: RD&E Center, Natick, MA, 19 May Pentagon, Washington, DC, 20 May

Agenda: The Army Science Board 1987 Summer Study on Lightening the Force (Technology Subgroup) will meet for the purpose of receiving briefings on materials, equipment worn or carried by the soldier, armor and anti-armor technology, and next generation rotorcraft. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C. specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters and proprietary information to be discusssed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–9526 Filed 4–27–87; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Panel on Outer ASW Battle will meet on May 7 and 8, 1987. The meeting will be held the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. the meeting will commence at 8:30 A.M. and terminate at 4:30 P.M. on May 7; and commence at 8:30 A.M. and terminate at 5:00 P.M. on May 8, 1987. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to compare the elements of the Outer ASW Battle with the elements of the Outer Air Battle and determine if platforms and sensors can be coordinated to provide information to ASW forces; review and address command, control and communication aspects; review information received from sensor systems, and assess efforts in defensive systems. The agenda will include technical briefings and discussions related to the Outer Air Battle Study, sensor correlation and networking, intelligence support and Soviet concept of operations. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclasssified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. 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: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: April 21, 1987.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87–9534 Filed 4–27–87; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Notice Extending the Closing Date for Transmittal of Full Applications for New Awards Under the Comprehensive Program of the Fund for the Improvement of Postsecondary Education (FIPSE) for Fiscal Year 1987 (CFDA No. 84.116A).

Deadline for transmittal of applications: The closing date for full applications is extended from May 5, 1987 to May 8, 1987.

On December 12, 1986, a Notice was published that established the closing dates for transmittal of preapplications and applications for the fiscal year 1987 competition under the Comprehensive Program (51 FR 44829). Detailed information concerning this program is included in that Notice. The purpose of this Notice is to extend the closing date for transmittal of full applications due to a delay in mailing the notifications to applicants invited to submit full applications. Only those applicants who submitted a preapplication on or before

the February 10, 1987, closing date for preapplications are eligible to submit full applications.

For applications or information contact: The Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue SW. (Room 3100, ROB–3), Washington, DC 20202. Telephone (202) 245–8091/8100.

Program authority: 20 U.S.C. 1135.

Dated: April 22, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–9529 Filed 4–27–87; 8:45 am]

BILLING CODE 4000–01–M

National Center for Research in Vocational Education Advisory Committee; Meeting

AGENCY: National Center for Research in Vocational Education Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Center for Research in Vocational Education Advisory Committee. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: May 18, 1987.

ADDRESS: The National Center for Research in Vocational Education, Ohio State University, 1960 Kenny Road, Columbus, Ohio 43210.

FOR FURTHER INFORMATION CONTACT: Dr. Howard F. Hjelm, Director, Office of Vocational and Adult Education, Division of Innovation and Development, 300 7th Street SW., Rm. 519, Reporters Building, Washington, DC 20202–5516, (202) 732–2350.

SUPPLEMENTARY INFORMATION: The National Center for Research in Vocational Education Advisory Committee is established under section 404 of the Carl D. Perkins Vocational Education Act of 1984 (Pub. L. 98–524). The committee is established to advise the Secretary and the National Center's Director with respect to policy issues in the administration of the National Center and in the selection and conduct of major research and demonstration projects and activities of the National Center. Meetings held at the request of the Secretary are conducted in accordance with the Federal Advisory Committee Act (FACA).

The meeting of the Committee is governed by FACA and is open to the public on May 18, 1987 from 1:00 p.m. to 4:00 p.m. The proposed agenda includes:

1:00–1:45—Report from the Assistant Secretary for Vocational and Adult Education

1:45–2:30—The Secretary of Education's priorities for Fiscal Year 1987

2:30–3:15—The Office of Vocational and Adult Education's goals and objectives

3:15–4:00— The Advisory Committee's recommendations to the Department of Education.

This meeting will be held in conjunction with a regular meeting of the Committee to advise the Center Director.

Records are kept of all Committee proceedings and are available for public inspection in the Program Improvement Systems Branch, 300 7th Street SW., Rm. 519, Reporters Building, Washington, DC 20202–5516, (202) 732–2367.

Dated: April 21, 1987.

John G. Pucciano,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc 87–9532 Filed 4–27–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center Financial Assistance Award (Grant)

AGENCY: U.S. Department of Energy, Morgantown Energy Technology Center.

ACTION: Notice of Restricted Eligibility for Grant Award.

SUMMARY: The Department of Energy (DOE), Morgantown Energy Technology Center, in accordance with 10 CFR 600.7(b), hereby gives notice of intent to restrict grant award eligibility for development of a process demonstration unit (PDU), to access commercial feasibility of the Calderon coal gasification process (Process), to Calderon Energy Company of Bowling Green, Inc. (Calderon).

DOE considers this restriction necessary and justified in light of the company's extensive steel industry experience, coal coking expertise, development of the process, and successful performance of pilot studies utilizing the same. The research and development efforts of the company in creating the process, have provided it with expertise and technical resources which are unique and obtainable from no other source. Accordingly, and so as to expedite assessment of the commercial feasibility of the process in conformance with the congressional mandate with respect thereto, DOE intends to award a financial assistance grant to Calderon. The total project cost is estimated to be $9,937,500. As congressionally mandated, Calderon's cost share is at least 20 percent and the DOE cost share will not exceed $8,000 000.

FOR FURTHER INFORMATION CONTACT: Donald O. Heslop, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26505, Telephone: (304) 291–4085 or FTS 923–4685, Procurement Request No. 21–87MC24138.000.

Issued in Morgantown, West Virginia, April 16, 1987.

Ronald E. Cone,

Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 87–9518 Filed 4–27–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

[Special Research Grant Program Notice 87–3]

Complex Carbohydrates Research, Training and Service Program; Extension of Application Deadline

AGENCY: Department of Energy.

ACTION: Extension of receipt date for applications.

SUMMARY: The Office of Energy Research of the Department of Energy has determined that the originally published receipt date for submission of applications for Special Research Grants supporting a multi-disciplinary research, training and service program for characterization of chemical structures of complex carbohydrates did not provide adequate time for respondents to complete the required submission documentation. The original notice was published in the **Federal Register** dated January 26, 1987, Volume 52, No. 16, page 2762. Therefore, the submission date is now extended to June 1, 1987, and all applications for the activity must be received by the Acquisition and Assistance Management Division, ER–64, Washington, DC 20545, by that date.

Issued in Washington, DC, on April 20, 1987.

Ira M. Adler,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 87–9519 Filed 4–27–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87-20-NG]

ANR Gathering Co.; Application To Import Natural Gas from Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 25, 1987, of an application from ANR Gathering Company (ANR Gathering) for blanket authorization to import, for its own account, Canadian natural gas for short-term and spot market sales to customers in the United States. Authorization is requested to import up to 100 Bcf for a two-year period beginning on the date of first delivery. ANR Gathering, a Delaware corporation, proposes to purchase natural gas from various Canadian suppliers in Alberta, Canada, on a short-term basis for resale to markets in the United States. ANR Gathering intends to use existing pipeline facilities for the transportation of the proposed imports. ANR Gathering also states that it will advise the ERA of the date of first delivery of the import and submit quarterly reports giving details of individual transactions.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than May 28, 1987.

FOR FURTHER INFORMATION CONTACT:

Chuck Boehl, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6050

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: The decision in this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.s.t., May 28, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties, written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ANR Gathering's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 20, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–9579 Filed 4–27–87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-16-NG]

Peoples Natural Gas Co.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 24, 1987, of the application of Peoples Natural Gas Company (Peoples) for blanket authorization to import Canadian natural gas for use in its own system. Authorization is requested to import up to 100 Bcf per year of Canadian natural gas for a two-year term beginning on the date of first delivery of the import. Peoples, a division of UtiliCorp United Inc., a Missouri corporation with its principal place of business in Kansas City, Missouri, has its principal place of business in Council Bluff, Iowa. Peoples plans to import the gas from various reliable Canadian producers. Peoples intends to utilize existing pipeline facilities for the transportation of the volumes imported. Peoples will advise the ERA of the date of first delivery of the import and submit quarterly reports giving details of individual transactions.

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than May 28, 1987.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9622

Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667

SUPPLEMENTARY INFORMATION: The decision in this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. May 28, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Peoples' application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, April 20, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–9578 Filed 4–27–87; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA C&E–82–32; OFP Case No. 65046–9358–20–24]

Acceptance of Petition for Exemption and Availability of Certification by McKittrick Cogen, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of acceptance.

SUMMARY: On March 6, 1987, McKittrick Cogen, Inc., (McKittrick or petitioner) filed a petition with the Economic Regulatory Administration (ERAW) of the Department of Energy (DOE) requesting a permanent exemption from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) for its gas-fired combined cycle unit to be located west of Bakersfield, California

Title II of the Act prohibits the use of petroleum or natural gas as a primary energy source in a new powerplant and prohibits the construction of any such facility without the capability to use an alternate fuel as a primary energy source. The exemption petition was based on a lack of an alternative fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. Final rules containing the criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules setting forth criteria and procedures for petitioning for this type exemption are found at 10 CFR 503.32.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFDR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final rule granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the perioid for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before June 12, 1987. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case

Control Unit, Office of Fuels Programs, Room GA-093, Forrestal Building, 1000 Independence Ave SW., Washington, DC 20585.

Docket No. ERA C&E-87-32 Should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:.

Frank Duchaine, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Idependence Avenue SW., Room GA-093,. Washington DC 20585. Telephone (202) 586-8233

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Room 6A-113, 1000 Independence Avenue SW., Washington, DC 20585. Telephone (202) 586-6947

SUPPLEMENTARY INFORMATION: The proposed 44 megawatt facility is a gas-fired combined cycle unit consisting of a gas turbine and a waste heat boiler. All of the electricity will be sold to Pacific Gas and Electric and steam generated will be used in an enhanced oil recovery operation.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum.

To qualify, the petitioner, pursuant to 10 CFR 503.32(a), must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternate sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), the petitioner has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.;* and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that the petitioner is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on April 20, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-9575 Filed 4-27-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy slicits comments concerning the appropriate procedures to be followed in refunding a $206,764.89 consent order fund to members of the pubic. This money is being held in escrow following the settlement of an enforcement proceeding involving Eastern Oil Company of Tampa, Florida (Case No. KEF-0085).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to Eastern Oil Company, Sonsent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to Case No. FEF-0085.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a consent order entered into by Eastern Oil Company of Tampa Florida and the DOE which settled possible regulatory violations in the firm's sales of motor gasoline, diesel fuel, and kerosene during the consent order period, November 1, 1973 through October 31, 1974.

The Proposed Decisions sets forth the procedures and standards that the DOE has tentatively formulated to distribute the escrow account funded by Eastern pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Eastern covered products during the consent order period may file claims for refunds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may subit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, Except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals located in Room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585

Dated: April 21, 1987.

George B. Breznay,

Director Office of Hearings and Appeals.

April 21, 1987.

Proposed Decision and Order

Name of Case: **Eastern Oil Company.**

Date of Filing: **December 3, 1986.**

Case Number: **KEF-0085.**

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration

(ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on December 3, 1986, requesting that OHA implement a special refund proceeding to distribute the funds received pursuant to a Consent Order entered into by the DOE and Eastern Oil Company (Eastern).

The general guidelines which the Office of Hearings and Appeals may use to formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding are set forth in 10 CFR Part 205, Subpart V. It is the DOE policy to use Subpart V to distribute such funds. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

We have considered the ERA's request to implement Subpart V procedures with respect to the funds received from Eastern and have determined that such procedures are appropriate. Accordingly, we will grant the ERA's request. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

I. Background

Eastern sells motor gasoline, diesel fuel, and kerosene in the states of Florida, Kentucky, and Tennessee. The firm distributes these products on a wholesale basis and to end-users through 57 retail service stations which it owns and operates. As a result of these activities, Eastern was a "reseller-retailer" of covered products as that term was defined at 10 CFR 212.31. The ERA initially issued a Remedial Order to Eastern on November 17, 1977 in which it found that the firm had overcharged its retail and wholesale customers in sales of motor gasoline, diesel fuel, and kerosene during the period November 1, 1973 through October 31, 1974. Eastern appealed the Order in November 1977. The OHA denied the appeal in large part but remanded the case to the ERA for reconsideration of specified issues and recalculation of the violation amount. *Eastern Oil Co.*, 3 DOE ¶ 80,108 (1979). The ERA then issued a Revised Remedial Order on January 18, 1980. The OHA denied an appeal filed by Eastern and affirmed the Revised Remedial Order, with certain modifications regarding the disposition of the refunds, on January 25, 1982. *Eastern Oil Co.*, 9 DOE ¶ 80,129 (1982). On July 22, 1985, the ERA issued an Order for Disposition of Refunds (Disposition Order) which required Eastern to (i) remit a sum of money to the DOE for overcharges attributable to its retail motor gasoline, diesel fuel, and kerosene sales and (ii) make direct payment to seven identified wholesale customers. Eastern appealed the Disposition Order, alleging that it had made restitution to its retail motor gasoline customers through a price rollback.

On February 5, 1986, a Consent Order was finalized between Eastern and the DOE which settled all claims and disputes regarding Eastern's refund obligations under the Revised Remedial Order, as modified by the Disposition Order. Eastern agreed in the Consent Order to remit to the DOE $115,383 for alleged overcharges in sales to its retail customers of diesel fuel and kerosene and the seven identified wholesale customers who purchased motor gasoline, diesel fuel, and kerosene during the period November 1, 1973 through October 31, 1974 (the consent order period). (That sum includes interest through December 31, 1985.) [1] In addition, Eastern agreed to remit $85,000 to the DOE to make restitution for overcharges in retail sales of motor gasoline during the consent order period. The Consent Order states that Eastern does not admit any regulatory violations. The monies which Eastern has remitted to the DOE are currently being held in an interest-bearing escrow account maintained by the Department of the Treasury pending distribution.

II. Proposed Refund Procedures

A. Eligible Claimants

Insofar as possible, the consent order fund should be distributed to Eastern customers who were adversely affected by the firm's overcharges. Exhibit B to the Revised Remedial Order issued to Eastern lists the names of the seven identifed wholesale customers of Eastern and the amounts by which they were overcharged. This exhibit also lists the total overcharge amounts in retail sales of motor gasoline, diesel fuel, and kerosene. In our view, the identified customers, listed in the Appendix to this Decision and Order, and the unidentified retail customers of motor gasoline, diesel fuel, and kerosene are most likely to be the parties who were adversely affected by any Eastern overcharges during the consent order period. We therefore proposed to establish a claims procedure in which we will accept applications from these customers.[2]

B. Showing of Injury

In order to be eligible for a refund, an applicant must establish that it was injured as a result of Eastern's overcharges. To demonstrate injury, a reseller claimant (including refiners and retailers) must provide evidence that it would have maintained its prices for the various covered products purchased from Eastern at the same level had the overcharges not occurred.[3] Accordingly, a reseller claimant should show that at the time of its purchases from Eastern, market conditions would not permit it to increase its prices to pass through the additional costs associated with the overcharges. *Office of Enforcement*, 10 DOE ¶ 85,056 (1983); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982). In addition, the reseller must show that it maintained a "bank" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron, U.S.A.*, 10 DOE ¶ 85,014 (1982).

1. *Applicants claiming a refund of $5,000 or less.* Making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of covered products from Eastern. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore

[1] The terms of the Consent Order actually state that Eastern agrees to pay $150,598, the total amount (including interest) which it allegedly overcharged the customers referred to above, minus any payments already made by Eastern to identified customers. The firm was given credit by the ERA for two payments totalling $35,215 which it made prior to the execution of the Consent Order to two of the seven identified customers, Martin Oil Company and Unoco Oil Company. These customers have signed releases attesting that their claims against Eastern under the terms of the Disposition Order have been satisfied in full and waiving any further claim to a refund. The firm has thus remitted $115,383 ($150,598 minus $35,215) to the DOE for the specified overcharges.

[2] The two identified Eastern customers who have already received direct payments from the firm (Martin Oil Co. and Unoco Oil Co.) will not be eligible to receive refunds in this proceeding. *See* n.1.

[3] We propose that resellers that made spot purchases from Eastern be ineligible to receive a refund, even a refund below the small claims threshold level proposed in Section II.B.1, unless they can make a showing that rebuts the presumption that they were not injured. Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Vickers*, 4 DOE at 85,396–97.

be unable to produce the records necessary to prove that they did not pass on the overcharges to their own customers. The cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury should also not exceed the amount of the refund to be gained. We thus propose to adopt a small claims presumption in this case. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Any reseller applicant claiming a refund of $5,000 or less, based upon the refund amounts proposed below, need not make a detailed showing of injury in order to be eligible to receive a refund. Thus, these applicants need only document their purchases from Eastern.

2. *End-users.* We also propose to adopt a finding that end-users and ultimate consumers of Eastern covered products whose businesses are unrelated to the petroleum industry were injured by the overcharges addressed in this proceeding. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the time covered by the Consent Order, and thus were not required to keep records which justified selling price increases by reference to cost increases. For thes reasons, an analysis of the impact of the overcharges on the final price of non-petroleum goods and services would be beyond the scope of a special proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (9183); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), and cases cited therein. Thus, in order to qualify for a refund from the Eastern consent order fund, end-users who purchased covered products from the firm need only document their purchases.

III. Calculation of Refund Amounts

We must further determine the proper method for dividing the Eastern consent order fund among the applicants who are found to be eligible for refunds. As we stated earlier, the Eastern Consent Order states that Eastern has remitted $85,000 to complete its obligation to make restitution for overcharges in retail motor gasoline sales. In addition, the firm has remitted $115,383 for overcharges attributable to its retail sales of kerosene and diesel fuel and its sales to the five identified wholesale customers who have not yet received a refund. *See* n.1. As we stated earlier, this amount represents 100 percent of the amount by which Eastern overcharged these customers, plus interest, through December 31, 1985. Based on the ERA's calculations contained in the audit file, it appears that $97,909.34 of this sum is attributable to overcharges experienced by the identified wholesale customers, $10,881.01 was paid in settlement of overcharges in Eastern's retail sales of diesel fuel, and $6,592.65 is attributable to overcharges in retail sales of kerosene.[4] After examining the record in this proceeding, we have tentatively concluded that the use of the information in the Revised Remedial Order and the Disposition Order will result in refunds which most closely correspond to the injuries which the Eastern customers probably experienced. Specifically, we note that (i) the ERA audit of Eastern was thorough and relatively narrow in scope; (ii) the Consent Order is limited to the same time period and the same products as the audit; and (iii) the Consent Order states that it is intended to resolve the disputes concerning Eastern's compliance with the remedial provisions of the Revised Remedial Order, as modified by the Disposition Order.

We thus propose that the maximum refund for each identified Eastern customer who successfully meets the requirements established in Section II be equal to the amount by which it was overcharged plus the interest on this amount through December 31, 1985, plus a proportional amount of the installment interest. The maximum refund for each identified customer is listed in the Appendix to this Decision. In addition, the interest which has accrued on the money in the escrow account will be added to the refund of each successful applicant in proportion to the size of its refund.

We further propose to use a volumetric refund methodology to distribute the funds attributable to Eastern's alleged overcharges in its retail motor gasoline, diesel fuel, and kerosene sales. In this case, there will be a separate volumetric refund amount for each of the three products. We have chosen to use three separate volumetric amounts because the overcharge amounts listed in the Revised Remedial Order, when considered in conjunction with Eastern sales volume data, lead us to the conclusion that the per gallon amount of overcharges for the three products varies widely. We thus propose to utilize three different volumetric refund amounts in order to distribute the refund monies to firms in a manner which more closely approximates the claimants' actual injury. *See, e.g., E.B. Lynn Oil Co.*, 14 DOE ¶85,228 (1986); *Blex Oil, Inc.*, 13 DOE ¶85,019 (1985).

We have determined that volumetric refund factors by dividing the three product pools by the estimated total volume of the relevant product sold by Eastern to its retail customers during the consent order period. Thus results in refund amounts of $0.005417 for each gallon of motor gasoline, $0.01876 for each gallon of diesel fuel, and $0.004612 for each gallon of kerosene purchased. A successful claimant's refund will be based on the number of gallons of the product(s) it purchased from Eastern during the consent order period multiplied by the applicable volumetric refund amount(s). In addition, the interest which has accrued on the money in escrow will be added to each successful applicant's refund in proportion to the size of its refund.

As in prior cases, we propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶82,541 at 85,225 (1982). *See, also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order in this proceeding. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the Eastern Consent Order, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing a copy of the Proposed and Final Decision in the Federal Register, copies will be provided to the Eastern customers listed in the Appendix for which we have addresses.

In the event that money remains after all first stage claims have been disposed of, it will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L 99–509, Title III, Fed. Energy Guidelines ¶11,700.

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[4] Eastern remitted a total of $206,764.89 to the DOE. This amount includes $6,381.89 in interest on the firm's installment payments of the consent order amount. We have proportionally increased the sums of money attributable to the various customer groups to reflect these additional funds. These amounts are listed below:

Identified customers: $101,026.66.

Retail diesel sales: $11,228.43.

Retail kerosene sales: $6,803.52.

Retail motor gasoline sales: $87,706.28.

[1] The Consent Order was entered into with Bernard A. Krouse d/b/a BAK LTD. and the following related firms: Krouse Fuel Company, Allan Fuel Company, Kealy Fuel Company, and Walter T. Hoff & Son.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Eastern Oil Company pursuant to the Consent Order executed on February 5, 1986 will be distributed in accordance with the foregoing determination.

I. Identified Customers	Potential Refund
Northside Propane Gas Co	$3,846.12
Robert South	12,865.97
United Petroleum, Inc	75,824.23
Anthony Llanes	5,441.49
Highway Transport Co	3,048.85
Martin Oil Co	[1] Ineligible
Unoco Oil Co	[1] Ineligible

[1] See n.2.

II. Unidentified Customers	Volumetric Refund Amount
Diesel Retail Customers	$0.01876
Kerosene Retail Customers	0.004612
Gasoline Retail Customers	0.005417

[FR Doc. 87-9576 Filed 4-27-87; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a $250,000 consent order fund to members of the public. This money is being held in escrow following the settlement of enforcement proceedings involving Bernard A. Krouse d/b/a BAK LTD., and four related firms: Krouse Fuel Company, Allan Fuel Company, Kealy Oil Company, and Walter T. Hoff & Son. BAK LTD. is located in Narberth, Pennsylvania.

DATE AND ADDRESS: Comments must be filed withn 30 days of publication of this notice in the **Federal Register** and should be addressed to BAK LTD. Consent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case No. HEF-0034.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a consent order entered into by Bernard A. Krouse d.b.a. BAK LTD. (BAK) and the DOE which settled possible regulatory violations in the firm's sales of No. 2 heating oil during the consent order period, November 1, 1973 through July 31, 1974.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the escrow account funded by BAK pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of BAK No. 2 heating oil during the consent order period may file claims for refunds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to sumbit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: April 21, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

April 21, 1987.

Proposed Decision and Order

Name of Case: Bernard A. Krouse d.b.a. BAK LTD., Krouse Fuel Company, Allan Fuel Company, Kealy Fuel Company, Walter T. Hoff & Son.

Date of Filing: October 13, 1983.

Case Number: HEF-0034.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that OHA implement a special refund proceeding to distribute the funds received pursuant to a Consent Order entered into by the DOE and BAK LTD. et al. (BAK).[1]

The general guidelines which the Office of Hearigs and Appeals may use to formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding are set forth in 10 CFR Part 205, Subpart V. It is the DOE policy to use Subpart V to distribute such funds. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,587 (1981) (*Vickers*).

We have considered the ERA's request to implement Subpart V procedures with respect to the funds received from BAK and have determined that such procedures are appropriate. Accordingly, we will grant the ERA's request. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

I. Background

BAK is a "reseller-retailer" of No. 2 heating oil as that term was defined in 10 CFR 212.31 and 6 CFR 150.352, and is located in Narberth, Pennsylvania. An audit of BAK's business records by the Federal Energy Administration (FEA), a predecessory of the DOE, revealed possible pricing violations with respect to the firm's sales of No. 2 hearing oil during the period November 1, 1973 through July 31, 1974 (the audit period). In a Notice of Probable Violation (NOPV) issued to BAK on July 27, 1977, the FEA tentatively concluded that, during the audit period, BAK overcharged its customers in sales of No. 2 heating oil by $497,948. In order to settle all claims and disputes between BAK and the DOE regarding the firm's compliance with the price regulations in sales of No. 2 hearing oil during the nine-month audit period, BAK and the DOE entered into a Consent Order on August 16, 1979, in which BAK agreed to remit $250,000 to the DOE. This sum is currently being held in an interest-bearing escrow account maintained by

[1] The Consent Order was entered into with Bernard A. Krouse d/b/a BAK LTD. and the following related firms: Krouse Fuel Company, Allan Fuel Company, Kealy Fuel Company, and Walter T. Hoff & Son.

the Department of the Treasury pending distribution by the DOE.

II. Proposed Refund Procedures

A. Eligible Claimants

Insofar as possible, the $250,000 consent order fund should be distributed to BAK customers who were adversely affected by the alleged BAK overcharges. The exhibits attached to the NOPV that was issued to BAK list the names and, in some cases, the addresses of 10 BAK customers, the volumes of heating oil they purchased from BAK during the audit period, and the amounts they were allegedly overcharged. These exhibits also list the total volume of heating oil BAK sold during the audit period to its class of residential consumers and the total amount BAK allegedly overcharged this class of purchaser, but do not identify individual residential customers.[2] In our view, the 10 identified customers who are listed in the Appendix to this Decision and Order and the unidentified residential customers are most likely to be the parties who were adversely affected by any overcharges by BAK during the consent order period.[3] We therefore propose to establish a claims procedure in which we will accept applications from these customers.

B. Showing of Injury

In order to be eligible for a refund, an applicant must establish that it was injured as a result of BAK's alleged overcharges. To demonstrate injury, a reseller claimant (including refiners and retailers) must provide evidence that it would have maintained its prices for the heating oil purchaseed from BAK at the same level had the alleged overcharges not occurred. Accordingly, a reseller claimant should show that at the time it purchased the No. 2 heating oil from BAK, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *Office of Enforcement*, 10 DOE ¶ 85,056 (1983); *Office of Enforcement*, 10 DOE ¶ 85,029 (1982). In addition, the reseller must show that it maintained a "bank" of unrecovered increased product costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A.*, 10 DOE ¶ 85,014 (1982).

1. Applicants Claiming a Refund of $5,000 or Less

Making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of No. 2 heating oil from BAK. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove that they did not pass on the alleged overcharges to their own customers. The cost to the applicant and to the government of compiling and and analyzing information sufficient to make a detailed showing of injury should also not exceed the amount of the refund to be gained. We thus propose to adopt a small claims presumption in this case. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Marion Corp.* 12 DOE ¶ 85,014 (1984) (*Marion*). Any reseller applicant claiming a refund of $5,000 or less, based upon the refund amounts established below, need not make a detailed showing of injury in order to be eligible to receive a refund.

2. Spot Purchasers

We further propose that resellers that made spot purchases from BAK be ineligible to receive a refund, even a refund below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured.[4] Spot purchasers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases unless they were able to pass through the full amount of the alleged overcharges to their own customers. *See Vickers*, 8 DOE at 85,396–97. Accordingly, any reseller claimant who was a spot purchaser must submit evidence to rebut the spot purchaser presumption and establish the extent to which it was injured as a result of its spot purchase(s).

3. End-Users

We also propose to adopt a finding that end-users and ultimate consumers of BAK heating oil whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges addressed in this proceeding. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the time covered by the Consent Order, and thus were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final price of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), and cases cited therein. Thus, in order to qualify for a refund from the BAK consent order fund, end-users who purchased heating oil from the firm need only document their purchases.

III. Calculation of Refund Amounts

We must further determine the proper method for dividing the BAK consent order fund among those applicants who are found to be eligible for refunds. We propose that the maximum refund for the identified BAK customers be based on the amount they were allegedly overcharged, as indicated by the BAK NOPV and subsequent audit workpapers (*see* n.2, *supra*). We recognize that an NOPV does not provide conclusive evidence as to the identity of the refund recipients or the amount they should receive in a Subpart V proceeding. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). After examining the record in this proceeding, however, we have concluded that the use of this information will result in refunds which most closely correspond to the injuries the BAK customers probably experienced. Specifically, we note that (1) the ERA audit of BAK is thorough and relatively narrow in scope; (2) the Consent Order is limited to the same time period and the same product as the audit; (3) it appears that all of the non-residential purchasers of No. 2 heating oil from BAK during the consent order period are specifically identified in the ERA audit file; and (4) ERA's computation of the amount BAK allegedly overcharged each customer was made after a careful and thorough examination of BAK's business records. With these factors in mind, we have tentatively determined that it is appropriate to base these applicants' maximum refund on the amount an applicant was allegedly overcharged, according to the BAK audit. *See Marion.*

To calculate the maximum refund amount for each identified BAK customer and for the residential class of customers as a whole, we will therefore multiply the alleged overcharge amount

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[2] Subsequent to the issuance of the BAK NOPV, the ERA revised some of the alleged overcharge figures. These corrections were made as a result of adjustments to BAK's weighted average intentory cost during the consent order period.

[3] In the present case, the consent order period is the same as the audit period, November 1, 1973 through July 31, 1974.

[4] We propose that this showing also be required of the Commonwealth of Virginia, one of the BAK customers identified in the Appendix. It appears from the ERA audit files that the Commonwealth purchased heating oil from BAK on a spot basis and resold it to jobbers within Virginia.

for each firm and the class by a pro rata factor, determined by dividing the consent order amount ($250,000) by the total alleged overcharges ($497,948). This yields a pro rata factor of 0.50206. The potential refund for each identified customer is set forth in the Appendix to this Decision. The interest which has accrued on the money in the escrow account will be added to the refund of each successful applicant in proportion to the size of its refund.

We propose to use a volumetric refund methodology to distribute the pro rata share of the alleged overcharges attributable to BAK's sales to residential customers ($30,144.21). As previously mentioned, the exhibits to the NOPV do not list the names of these customers. It is thus impossible to assign specific overcharge amounts to specific residential customers. The volumetric refund method presumes that the alleged overcharges of a consent order firm were spread equally over all gallons of product marketed by that particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining the prices. Accordingly, in calculating a refund for a successful residential claimant, we propose to multiply the number of gallons of BAK products purchased by the claimant by a volumetric refund factor derived by dividing the $30,144.21 figure by BAK's total volume of sales of No. 2 heating oil to residential customers during the consent order period (3,069,393 gallons). This results in a volumetric refund amount of $0.009820 per gallon. Thus, the successful residential customer's refund share will be equal to the number of gallons of No. 2 heating oil purchased from BAK during the consent order period multiplied by $0.009820 plus a proportionate share of the accrued interest.

As in prior cases, we propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order in this proceeding. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the BAK Consent Order, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing a copy of the proposed and final decision in the **Federal Register**, copies will be provided to the BAK customers listed in the Appendix for which we have addresses.

In the event that money remains after all first stage claims have been disposed of, it will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. 99-509, Title III, Fed. Energy Guidelines ¶ 11,700.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by BAK, LTD. pursuant to the Consent Order executed on August 16, 1979 will be distributed in accordance with the foregoing determination.

Appendix

Name and address	Potential refund
Acme Fuel [1]	$61
Amoco Oil Co. 200 East Randolph Dr. P.O. Box 87703 Chicago, IL 60680-0703	32,347
Commonwealth of Virginia State Treasurer's Office P.O. Box 6H Richmond, VA 23215	139,768
Delany Oil Co.[1]	11,790
Marchese Interstate Trucking 500 N. Egg Handley Rd. Hammonton, NJ	10,371
Portland Oil Co. 1601 W. Cumberland Philadelphia, PA	1,377
Solcar, Inc. 310 Rt. 206 South Somerville, NJ 08876	18,222
Supreme Petroleum P.O. Box 756 Somerville, NJ 08876	5,009
Thompson [1]	732
Vitale [1]	179
Retail/Residential Class	[2]30,144
Total	$250,000

[1] No address available.
[2] $0.009820 per gallon.

[FR Doc. 87-9577 Filed 4-27-87; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3192-7]

Availability of Study on Effects of Using Unleaded and Low-Lead Gasoline, and Non-Lead Additives on Agricultural Engines Designed for Leaded Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of study; hearings and request for comments.

SUMMARY: This notice announces the availability of a study performed by EPA and the U.S. Department of Agriculture (USDA) which examines the effects of unleaded and low-lead gasoline and non-lead additives on agricultural engines designed to use leaded gasoline.

DATES: Pursuant to the Food Security Act of 1985, Pub. L. 99-198 (December 23, 1985), the EPA will provide an opportunity for oral presentations of data, views, or arguments concerning the study. Accordingly, three public hearings will be held. The first will be on Monday, June 1, 1987 in Washington, DC at the Rosslyn Westpark Hotel, 1900 Ft. Myer Drive, Arlington, Virginia. The second will be on Thursday, June 4, 1987 in Indianapolis, Indiana at the Hilton at the Circle, 31 W. Ohio Drive. The third hearing will be held on Tuesday, June 9, 1987 in Des Moines, Iowa, at the Hotel Fort Des Moines, Walnut at Tenth. All hearings will be held from 9 am to 5 pm. Written comments should be submitted no later than July 10, 1987.

ADDRESSES: Written comments other than those presented at the hearing should be submitted to: Central Docket Section (LE-131A), U.S. Environmental Protection Agency, Docket Number EN-87-03, West Tower Lobby, Gallery 1, telephone (202) 382-7548, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 9 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

Copies of the study, and all materials relevant to it, are available from the Central Docket at the above address. Copies of the study are also available from Richard G. Kozlowski, Director, Field Operations and Support Division (EN-397F), 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John A. Garbak, Environmental Engineer, Field Operations and Support Division (EN-397F), EPA, 401 M Street SW., Washington, DC 20460. Telephone (202) 382-2635.

SUPPLEMENTARY INFORMATION:

I. Background

On March 7, 1985, EPA promulgated new lead phasedown regulations, which lowered the lead content of leaded gasoline from 1.10 grams per leaded gallon (gplg) to 0.10 gplg effective January 1, 1986, with an interim standard of 0.50 gplg effective July 1, 1985. At the same time, a supplementary Notice of Proposed Rulemaking was

published, proposing to ban leaded gasoline as early as January 1, 1988. The Agency has not proceeded with the consideration of a ban because of a concern that older engines designed for leaded gasoline may suffer premature valve seat wear if required to use unleaded gasoline exclusively and because a major health effect study of lead exposure required further review.

The farming community also expressed concern that older farm engines designed to operate on leaded gasoline may experience engine damage if operated on low-lead or unleaded gasoline. In response to these concerns, the Congress required a study to be conducted under section 1765 of the Food Security Act (Act) of 1985 (Pub. L. 99–198).

The Act required the Administrator of EPA, and the Secretary of Agriculture to "jointly conduct a study of the use of fuels containing lead additives and alternative lubricating additives," on gasoline-powered agricultural machinery. The study was to analyze the potential for mechanical problems (including but not limited to valve seat recession) that may be associated with the use of other fuels in such engines. The Secretary of Agriculture was to specify the types and items of agricultural machinery to be included in the study, and such types and items were to be representative of the types and items of agricultural machinery used on farms in the United States. About 1,800,000 tractor, 271,000 combines and 750,000 trucks larger than one-ton capacity on farms have gasoline engines.

Seven agricultural engines and one recreational vehicle engine were tested on leaded, low-lead, and unleaded gasoline and two non-lead alternative lubricating additives. Engines performed satisfactorily on both leaded and low-lead gasolines. While some of the engines performed satisfactorily on the unleaded gasoline, most experienced excessive valve seat wear. The alternative lubricating additives demonstrated varrying ability to reduce valve seat wear. Although further development work is essential, the additivies may have potential as substitutes for lead.

The Study also included surveys of farm engine-use and tractor valve seat hardness. The engine-use survey found that about 42 percent of gasoline-powered farm tractors are used exclusively in light duty tasks and, therefore, have little risk of valve seat recession if operated on unleaded gasoline. The other 58 percent of tractors see some medium and heavy uses which potentially make them vulnerable to excessive valve seat wear if fueled with unleaded gasoline, unless they are low-rpm engines or have hardened exhaust valve seats. The valve seat hardness survey suggests that 33 percent of all gasoline-powered tractors may have hard valve seat inserts. These would not be vulnerable to valve seat recession with unleaded gasoline. The remaining 67 percent of the tractors have cast iron valve seats. These tractors are potentially vulnerable to valve seat recession with unleaded fuel if the engines are operated under medium-duty and/or heavy-duty conditions.

All combine engines receive hard use and are likely to experience excessive valve seat recession if they have cast iron valve seats and are operated on unleaded gasoline. Trucks receive a range of light to hard use. Based on the engine tests, it appears that a large number of farm trucks could be vulnerable to excessive valve seat recession if operated on unleaded gasoline.

II. Request for Public Comments

Under the terms of the Act, the EPA Administrator must make findings and recommendations to the Congress on the need for lead additives in gasoline to be used on a farm for farming purposes not later than six months after publication of this study. To aid the Agency in making the appropriate findings and recommendations to the Congress, we are requesting public comments on this study and encourage all interested parties to comment at the public hearings or through written comments, regarding the issues raised in the study. For those addressing the specific questions listed below and other technical aspects of the study, a request needs to be made for a copy of the contractor's report (NIPER report) in addition to a request for a copy of the EPA–USDA study. The NIPER report will not be sent unless specifically requested. The EPA and USDA encourage comments on the following issues:

(1) Suitability of the engine tests:

(a) Were the number and types of engines tested adequate to assess valve seat recession on farm machinery?

(b) What is the suitability of the duty cycles used and application of the test results to actual in-use conditions?

(c) What is the adequacy of 0.10 gplg of gasoline to protect farm machinery from valve seat recession?

(d) What is the potential usefulness of non-lead additives to protect engines from valve seat recession or other problems which may occur if the engines are operated with unleaded fuel?

(2) The GM 292 engine experienced most of its recession during the unleaded fuel test in cylinders number 5 and 6. Is there anything in the design of this engine that would cause these cylinders to recede more than others? Does the problem relate to the cooling system, carburetion system and/or valve train design? Would these designs be considered typical of other truck engines used for farming purposes?

(3) The unleaded test results showed little or no recession on tractor engines which did not have valve rotators, while other engines tested which used valve rotators showed other engines tested which used valve rotators showed substantial recession. If engines were designed to use valve rotators and they were removed, what effect on engine performance or durabilty would result? What is the importance of valve rotators regarding valves seat recessions?

(4) Valve guide wear appeared to increase while operating on unleaded fuel. Were the increases experienced typical of valve guide wear during 200 hours of use? Would one expect the wear to continue if additional hours were accumulated or was this wear due to initial break-in of the guides? What performance problems would be expected with the level of valve guide wear found in this study?

(5) The GM 292–A engine when tested on 0.1 gplg gasoline, experienced a head gasket problem and an increase in recession. Can the intake and exhaust valve seat recession before and after the gasket was replaced be attributable to the head gasket problem? In general, is a head gasket failure likely to cause valve seat recession?

(6) What other problems may contribute to valve seat recession besides fuel type? Specifically address the role of air-fuel ratio and the role of other factors that affect heat in the engine.

(7) During the additive testing, increases in sodium, sulfur, and phosphorus content in the oil were experienced. Will these elevated levels have an impact on engine components or performance?

(8) Additives tested increased deposits in the combustion chamber and on the valves. What effect might these deposits have on engines?

(9) Two additives demonstrated an ability to reduce valve seat recession. Are there any other additives that may also reduce recession?

(10) Other parameters measured, including valve spring force and height, showed greater changes from their

original levels when operated on unleaded gasoline than when operated on leaded gasoline. Were any of these changes outside acceptable limits? What performance problems would be expected if any? What is the normal deterioration of valve spring force and height?

(11) Other factors to be considered:

(a) What is the cost of rebuilding engines to repair valve assemblies due to valve recession?

(b) How much wear can a valve seat withstand before the cylinder head will need to be replaced or valve seat inserts installed? Is this amount of wear normally limited by available material in the valve seat area or by the amount of valve lash adjustment available?

(c) What is the future availability and cost of non-lead additives to protect engines against valve seat recession?

(d) What is the assessment of future sales and prices of leaded gasoline?

(e) How viable (availability, safety, and cost) are leaded additives marketed in consumer sized packages?

Parties wishing to present testimony at the hearing should notify Sylvia I. Correa at (202) 382–2635 of such intent at least 15 days prior to the hearing date. At that time, any requests for overhead projectors or other special equipment needed for your testimony should be made. The contact person above should also be given an estimate of the time required for the presentation of the testimony.

It is suggested that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, it would be helpful for EPA to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. Such advance copies should be submitted to the contact person listed above.

The hearing will be conducted informally and technical rules of evidence will not apply. A written transcript of the hearings will be taken. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

Dated: April 22, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87–9555 Filed 4–27–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3192–4; EPA Project Number SJ 85–09]

Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Sycamore Cogeneration Co.

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice.

SUMMARY: Notice is hereby given that on March 6, 1987 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 300 MW cogeneration facility to be located in the Kern River Oil Field (Section 31, T28S, R28E). The permit is subject to certain conditions, including an allowable emission rate for carbon monoxide as follows—the more stringent of 10 ppmdv at 15% O_2 or 11 lb/hr (3-hr average) when firing gas, and 21 lb/hr (3-hr average) when firing fuel oil, from the exhaust stack of any of the four turbines associated with this project.

FOR FURTHER INFORMATION CONTACT: Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A–3–1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8240, FTS 454–8240.

SUPPLEMENTARY INFORMATION: Best Available Control Technology (BACT) requirements include the use of a water injection system to control NO_x emissions. In addition, the exhaust heat recovery boiler shall be designed to accommodate a CO oxidizing catalyst system, capable of achieving 10 ppmv CO at 15% O_2, as an alternative to CO control by proper combustion techniques. EPA may require installation of said catalyst system if Sycamore Cogeneration Company fails to meet the CO emission limitation by the end of the six-month startup period.

DATE: The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by June 29, 1987.

Dated: April 10, 1987.

David P. Howekamp,

Director, Air Management Division, Region 9.

[FR Doc. 87–9556 Filed 4–27–87; 8:45 am]

BILLING CODE 6560–50–M

[WH–FRL–3192–5]

Reallotment of Funds Under Municipal Wastewater Treatment Works Construction Grants Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reallotment of funds under Municipal Wastewater Treatment Works Construction Grants Program (40 CFR Part 35, Subpart I).

SUMMARY: This notice announces the distribution of unobligated fiscal year (FY) 1985 construction grant funds subject to reallotment after September 30, 1986, under section 205 of the Clean Water Act, 33 U.S.C. 1285, and explains the procedure by which the reallotment distribution was determined.

The construction grants program operates under authority of the Clean Water Act (the Act), Pub. L. No. 92–500, as amended. Section 205(d) of the Act requires that funds allotted for FY 1978 and beyond which are not obligated by the end of the second year of their availability ". . . shall be immediately reallotted by the Administrator . . .". This notice advises the public of the reallotted amounts made available to the eligible States and of $1,000,000 made available to the National Small Flows Clearinghouse as required under section 104(q) of the Act as amended by Pub. L. No. 100–4. Funds reallotted to participating States are added to the eligible States' allotments for grants for the construction of municipal wastewater treatment facilities. Under section 205(d), these funds are available for obligation until September 30, 1988.

DATE: April 28, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Adams, Program Management Branch, Municipal Construction Division, Office of Municipal Pollution Control, (202) 382–5837.

SUPPLEMENTARY INFORMATION: Sums allotted to a State under section 205 of the Act remain available for obligation during the fiscal year in which appropriated and the following 12 months (40 CFR 35.2010(b)). Funds not obligated at the end of this period of availability are reallotted to the States which fully obligated their allotments, after $1,000,000 is made available to the National Small Flows Clearinghouse, as required in section 104(q) of the Act as amended by Pub. L. No. 100–4. In Pub. L. 98–371 Congress appropriated $2.4 billion for FY 1985 funding of the construction grants program. At the close of the availability period for the

FY 1985 allotment (September 30, 1986), 19 States and territories had not obligated $11,264,991 of the $2.4 billion available in FY 1985 allotments.

As explained below, not all of the unobligated funds remaining after the period of availability are subject to reallotment. Due to the following exception, the total amount reallotted is $11,259,891.

Northern Mariana Islands: Section 3(b)(2) of Pub. L. No. 95–348 provides that any funds made available to the Northern Mariana Islands (NMI) by the Congress after March 24, 1976 ". . . are hereby authorized to remain available until expended." Accordingly, construction grant funds allotted to the NMI which remain unobligated at the close of the period of availability prescribed by section 205(d) of the Act are not subject to reallotment. Because the NMI would have lost $5,100 to reallotment without this statutory provision, section 205(d) prevents the NMI from receiving any funds reallotted from other states.

Reallotment Procedure

To distribute the $11,259,891 that is subject to reallotment in accordance with the requirements of sections 205(d) and 104(q) of the Act, the following procedure was used:

1. The sum of $1,000,000 was subtracted from the total subject to reallotment. This amount will be made available to the Small Flows Clearinghouse and reduce the amount for reallotment to the participating States to $10,259,891.

2. The State allotment shares listed in section 205(c) of the Act (as amended by Pub. L. 97–117) were adjusted to reflect the absence of States which did not fully obligate their funds (40 CFR 35.2010(b)).

3. The resulting reallotment shares were applied to the $10,259,891 to arrive at each participating State's reallotment amount.

4. The resulting figures (rounded to the nearest $100, except for New York which is used as the balancing factor) are listed in the table which follows in column titled "Reallotment." The table also identifies the States which did not fully obligate their funds and displays these amounts in the column titled "Subject to Reallotment."

These reallotted funds are available for obligation until September 30, 1988. After that date, unobligated balances will be reallotted under section 205(d) of the Act (40 CFR 35.2010). Grants from these funds may be awarded as of the date that advices of allowances are issued to the EPA Regional Administrators by the Comptroller of EPA.

Dated: April 21, 1987.

Lee. M. Thomas,

Administrator.

SUMMARY OF FY 1985 CONSTRUCTION GRANTS REALLOTMENT

State	Subject to reallotment	Reallotment
Alabama	$0	$141,700
Alaska	0	75,900
Arizona	0	85,600
Arkansas	0	82,900
California	0	906,600
Colorado	249,479	0
Connecticut	656,065	0
Delaware	953,280	0
Dist. of Columbia	59,580	0
Florida	0	427,900
Georgia	0	214,300
Hawaii	757,920	0
Idaho	0	61,800
Illinois	0	573,300
Indiana	0	305,500
Iowa	140,768	0
Kansas	554,263	0
Kentucky	774,479	0
Louisiana	0	139,300
Maine	0	96,900
Maryland	0	306,600
Massachusetts	0	430,400
Michigan	1,998,675	0
Minnesota	0	233,000
Mississippi	0	114,200
Missouri	0	351,400
Montana	0	61,800
Nebraska	0	64,800
Nevada	0	61,800
New Hampshire	795,904	0
New Jersey	0	518,000
New Mexico	0	61,800
New York	0	1,406,591
North Carolina	0	226,800
North Dakota	375,978	0
Ohio	0	713,600
Oklahoma	0	102,400
Oregon	0	143,200
Pennsylvania	0	502,200
Rhode Island	305,888	0
South Carolina	0	129,900
South Dakota	0	61,800
Tennessee	0	184,200
Texas	0	481,600
Utah	0	66,800
Vermont	0	61,800
Virginia	0	259,400
Washington	816,032	0
West Virginia	0	197,600
Wisconsin	0	342,700
Wyoming	0	61,800
Guam	63,520	0
Puerto Rico	2,552,640	0
Virgin Islands	101,920	0
American Samoa	87,840	0
Trust Territories of Pacific Islands	15,660	0
Northern Mariana Islands	0	0
National Small Flows Clearinghouse		1,000,000
Total	$11,259,891	$11,259,891

[FR Doc. 87–9557 Filed 4–27–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

April 20, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140 Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0248.

Title: Section 74.751, Modification of Transmission Systems.

Action: Extension.

Respondents: Licensees of low power TV or TV translator stations.

Frequency of Response: Recordkeeping requirement on occasion.

Estimated Annual Burden: 593 Responses; 593 Recordkeepers; 594 Hours.

Needs and Uses: Section 74.751 requires licensees of low power TV or TV translator stations to send written notification to the FCC of equipment changes which may be made at licensee's discretion without the use of a formal application. This section also requires that licensees place in the station records a certification that the installation of new or replacement transmitting equipment complies in all respects with technical requirements. The data is used by FCC staff to assure modifications comply with FCC rules and station authorizations and will not cause interference to other authorized stations.

OMB Number: 3060–0126.

Title: Section 73.1820, Station Log.

Action: Extension.

Respondents: Licensees of AM, FM, and TV broadcast stations.

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 11,779 Recordkeepers; 14,253 Hours.

Needs and Uses: Section 73.1820 requires that each licensee of an AM, FM or TV broadcast station maintain a station log. Each entry must accurately reflect the station's operation. This log should reflect adjustments to operating parameters for AM stations with directional antennas without an approved sampling system; for all stations the actual time of any observation of extinguishment or improper operation of tower lights; and

entry of each test of the Emergency Broadcast System (EBS).

The data is used by FCC staff to assure that the licensee is operating in accordance with the technical requirements as specified in the Rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations. It also verifies that the EBS is operating properly.

Federal Communications Commission

William J. Tricarico,

Secretary.

[FR Doc. 87-9540 Filed 4-27-87; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1656]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

April 21, 1987.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed within 15 days of the date of public notice of the petitions in the **Federal Register**. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies. (Parts 31, 33, 42 and 42 of the FCC's Rules) (CC Docket No. 78-196). Number of petitions received: 1.

Subject: Marine Radar Transponders and Radio Beacons. (PR Docket No. 84-477). Number of petitions received: 1.

Subject: Low Power Television and Television Translator Service. (MM Docket No. 86-286). Number of petitions received: 2.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Lorenzo, Texas) (MM Docket No. 86-361, RM-5356). Number of petitions received: 1.

Subject: Amendment of Part 2 of the Rules and Regulations to Establish an Allocation in the 220-225 MHz Band for the Radio Reading Services. (RM-5434). Number of petitions received: 1.

William J. Tricarico,

Secretary.

[FR Doc. 87-9541 Filed 4-27-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Indiana Communications, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant	City/state	File No.	MM docket No.
A. Indiana Communications, Inc.	Ellettsville, Indiana.	BP-860428AH	87-108
B. Lawrence Minority Media, Inc.	Lawrence, Indiana.	BP-860728AA	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant(s)
1. Air Hazard	B
2. City Coverage	B
3. Contingent Comparative	All applicants
4. 307(b)	All applicants
5. Ultimate	All applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800.)

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-9542 Filed 4-27-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Ozark Broadcasting, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant, City and State	File No.	MM Docket No.
A. Ozark Broadcasting, Inc., Lebanon, MO.	BP-860210AC	87-109
B. Bott Broadcasting Company, Overland Park, KS.	BMP-860529AU	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading	Applicant
1. 307(b)—Modification	Both.
2. Contingent Comparative	Both.
3. Ultimate	Both.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800.)

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-9543 Filed 4-27-87; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Bancalabama Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12

CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 18, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *BancAlabama Inc.*, Huntsville, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of BankAlabama—Huntsville, Huntsville, Alabama, a *de novo* bank.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *CNB Bancshares, Inc.*, Evansville, Indiana; to acquire 100 percent of the voting shares of Wabash Valley Bank of Vincennes, Vincennes, Indiana.

Board of Governors of the Federal Reserve System, April 22, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-9497 Filed 4-27-87; 8:45 am]

BILLING CODE 6210-01-M

Banco Nacional De Mexico, S.N.C. et al.; Notice of Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 20, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Banco Nacional De Mexico, S.N.C.*, Mexico City, Mexico; Banamex Holding Company, Los Angeles, California, and Ammex Holding Company, Los Angeles, California; to engage de novo in the issuance and sale of consumer-type payment instruments denominated in Mexican pesos pursuant to § 225.25(b)(12) of the Board's Regulation Y.

2. *Standard Chartered PLC*, London, England; to engage *de novo* through its subsidiary Mocatta Metals Corporation, New York, New York, in providing data processing and data transmission services and facilities pursuant to § 225.25(b)(7) of the Board's Regulation Y. Comments on this application must be received by May 15, 1987.

Board of Governors of the Federal Reserve System, April 22, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-9498 Filed 4-27-87; 8:45 am]

BILLING CODE 6210-01-M

William Biles III et al.; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 12, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *William Biles, III*, Storm Lake, Iowa; John Biles, Pender, Nebraska; and Brian Riddell, Oakland, Nebraska; to acquire 60.3 percent of the voting shares of Pender State Corporation, Pender, Nebraska, and thereby indirectly acquire Pender State Bank, Pender, Nebraska.

2. *Gary L. Kelley*, Gering, Nebraska; to acquire 100 percent of the voting shares of Minatare State Company, Minatare, Nebraska, and thereby indirectly acquire The Minatare State Bank, Minatare, Nebraska.

Board of Governors of the Federal Reserve System, April 22, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-9499 Filed 4-27-87; 8:45 am]

BILLING CODE 6210-01-M

First Chicago Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank

Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 20, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation,* Chicago, Illinois; to acquire 100 percent of the voting shares of Beneficial National Bank USA, Wilmington, Delaware.

Board of Governors of the Federal Reserve System, April 22, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-9500 Filed 4-27-87; 8:45 am]

BILLING CODE 6210-01-M

Independent American Financial Corp. et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than May 20, 1987.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Independent American Financial Corporation,* Harrisburg, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The Dauphin National Bank, Dauphin, Pennsylvania.

Board of Governors of the Federal Reserve System, April 22, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-9501 Filed 4-27-87; 8:45 am]

BILLING CODE 6210-01-M

Norwest Corp. et al.; Notice of Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 20, 1987.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation,* Minneapolis, Minnesota; Norwest Financial Services, Inc., Des Moines, Iowa; and Norwest Financial, Inc., Des Moines, Iowa; to engage *de novo* in underwriting, directly or through reinsurance arrangements, credit life and credit accident and health insurance related to extensions of credit by Norwest Corporation or its subsidiaries pursuant to § 225.25(b)(8) of the Board's Regulation Y.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Austin County Bankshares, Inc.,* Bellville, Texas; to engage *de novo* in making, acquiring, and/or servicing loans for itself or for others of the type made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Texas.

Board of Governors of the Federal Reserve System, April 22, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-9502 Filed 4-27-87; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Report to Congress

Report on the costs of operating privately owned vehicles

The Travel Expense Amendments Act of 1975 (Pub. L. 94–22, May 19, 1975) requires the periodic investigation of the operating costs of privately owned vehicles (automobiles, motorcycles, and airplanes) to Government employees while engaged on official business. Further, the Act requires that the results of these investigations be reported to the Congress and published in the "Federal Register."

The following report is being published to comply with the requirements of the Act.

Dated: April 20, 1987.

T. C. Golden,

Administrator of General Services.

Report to Congress

The Travel Expense Amendments Act of 1975 (Pub. L. 94–22, May 19, 1975), 5 U.S.C. 5707(b), requires that the Administrator of General Services, in consultation with the Comptroller General of the United States, the Secretaries of Defense and Transportation, and representatives of Government employee organizations, conduct a periodic investigation of the costs of operating privately owned vehicles to Government employees while engaged on official business and report the results to the Congress at least once a year. The Act further requires that a determination of the average, actual cost per mile be made based on the results of the investigations. Such figures must be reported to the Congress within 5 working days after the determinations have been made.

The General Services Administration (GSA) has conducted a cost invetigation based on calendar year 1986 data and consulted with representatives of employee organizations, the General Accounting Office, and the Departments of Defense and Transportation. As required, GSA is reporting the results.

GSA's investigation of the costs of operating privately owned vehicles revealed an average cost of 21 cents per mile for operating an automobile, 25.5 cents per mile for operating a motocycle, and 75 cents per mile for operating an airplane. GSA will issue a revision to the Federal Travel Regulations increasing only the automobile mileage rate from the current level of 20.5 cents to 21 cents. The regulatory mileage rate for motorcycles and airplanes will not be changed. Their operating costs, while reflecting a decrease from the previous investigation, are still above the regulatory allowances currently set at their respective statutory ceilings of 20 cents and 45 cents per mile.

This report on the costs of operating privately owned vehicles will be published in the **Federal Register.**

[FR Doc. 87–9527 Filed 7–27–87; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HM, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 36163–7, August 19, 1975, as amended by 50 FR 33416, August 19, 1985) is amended to reflect a transfer in function of the clinical care facility of the William A. White Division of Saint Elizabeths Hospital to the Division of Intramural Research Programs of the National Institute of Mental Health. This transfer of function is necessary in preparation for the transfer of Saint Elizabeths Hospital to the District of Columbia in October 1987, in accordance with Pub. L. 98–621. The reorganization requires a revision of the functional statements of the Division of Intramural Research Programs and of Saint Elizabeths Hospital—Division of Clinical and Community Services.

Section HM–B, Organization and Functions, is amended as follows:

(1) In the functional statement for the *Division of Intramural Research Programs (HMMB)*, change item (2) to item (3) and insert the following as item (2): "(2) operates and physically maintains an independent, clinical care facility in the William A. White Building for the study of the mental illnesses; and".

(2) In the functional statement for Saint Elizabeths Hospital—Division of Clinical and Community Services, insert an "and" before item (3), change the semi-colon after item (3) to a period, and delete item (4).

Dated: April 16, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87–9560 Filed 4–27–87; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 87E–0058]

Determination of Regulatory Review Period for Purposes of Patent Extension; Alfenta

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Alfenta and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for

a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Alfenta (Alfentanil Hydrochloride), which is indicated as: An analgesic adjunct given in incremental doses in the maintenance of anesthesia with barbiturate/ nitrous oxide/oxygen; an analgesic administered by continuous infusion with nitrous oxide/oxygen in the maintenance of general anesthesia; and a primary anesthetic agent for the induction of anesthesia in patients undergoing general surgery in which endotracheal intubation and mechanical ventilation are required. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Alfenta (U.S. Patent No. 4,167,574) from Janssen Pharmaceutica, N.V. and requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated March 3, 1987, FDA advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, Alfentanil Hydrochloride, represented the first permitted commercial marketing or use of that active ingredient. This **Federal Register** notice now represents FDA's determination of the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Alfenta is 2,147 days. Of this time, 1,413 days occurred during the testing phase of the regulatory review period, while 734 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* February 13, 1981. The applicant claims that the notice of claimed investigational exemption (IND) for the drug became effective on February 12, 1981. However, FDA did not receive the application until January 14, 1981, and therefore, pursuant to FDA regulations, the IND did not become effective until February 13, 1981.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 26, 1984. FDA has verified the applicant's claim that the new drug application for Alfenta (NDA) 19-353) was initially submitted on December 26, 1984.

3. *The date the application was approved:* December 29, 1986. FDA has verified the applicant's claim that NDA 19-353 was approved on December 29, 1986.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 29, 1987, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 26, 1987, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 21,1987.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 87-9493 Filed 4-27-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 87E-0069 and 87E-0070]

Determination of Regulatory Review Period for Purposes of Patent Extension; Ocufen

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Ocufen and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Ocufen (Flurbiprofen), which is indicated for the treatment of postoperative and postlaser trabeculoplasty inflammation of the anterior segment of the eye, and for the inhibition of intraoperative miosis. Subsequent to this approval, the Patent and Trademark Office received two alternative patent term restoration applications for Ocufen from The Boots Co., PLC. The primary application pertained to U.S. Patent No. 3,793,457; the other application, for U.S. Patent No. 3,755,427, was submitted in the event that the application for U.S. Patent No. 3,793,457 was denied. The Patent and Trademark Office requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated March 13, 1987, FDA

advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the active ingredient, Flurbiprofen, represented the first permitted commercial marketing or use of that active ingredient. This Federal Register notice now represents FDA's determination of the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Ocufen is 3,131 days. Of this time, 2,388 days occurred during the testing phase of the regulatory review period, while 743 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* June 7, 1978. The applicant claims that the notice of claimed investigational exemption (IND) for the drug was submitted on May 8, 1978, but does not specify the date on which the IND became effective. However, FDA records indicate that the IND became effective on June 7, 1978.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 19, 1984. FDA has verified the applicant's claim that the new drug application for Ocufen (NDA 19-404) was initially submitted on December 19, 1984.

3. *The date the application was approved:* December 31, 1986. FDA has verified the applicant's claim that NDA 19-404 was approved on December 31, 1986. This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent extension for either patent.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 29, 1987, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 26, 1987, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 22, 1987.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 87-9512 Filed 4-27-87; 8:45 am]

BILLING CODE 4160-01-M

Office of Human Development Services

Head Start Administrative Regulations Guide Section VI; Head Start Program

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Final guidelines.

SUMMARY: These guidelines apply to all Head Start grantees and delegate agencies. They change current guidelines for computing average daily attendance (ADA) by eliminating the practice of counting children with excused absences as being present. Henceforth, ADA is to be defined as a percentage calculated from the following formula:

$$\text{ADA} = \frac{\text{Number present}}{\text{Funded enrollment}}$$

The "Number Present" is defined as children who are in class for any part of the classroom day and children who are not in class but receiving Head Start services during that day at another site.

"Funded Enrollment" is defined as the number of children whom the grantee has been funded to serve, as indicated in the approved application or, if applicable, as negotiated between the grantee and the Head Start program office.

While children with excused absences will no longer be counted as present in the ADA formula, programs will still need to track these absences as part of the social services component of Head Start. Therefore, sample forms for recording excused absences and monthly reports on ADA are provided, and grantees are invited to use them. However, grantees may continue to use their own forms if they provide equivalent information.

The purpose of this notice is to provide guidelines as well as sample forms in order to ensure that grantees and delegate agencies comply with the enrollment and attendance policies.

EFFECTIVE DATE: This guidance is effective May 28, 1987.

FOR FURTHER INFORMATION CONTACT: Clennie H. Murphy, Jr. Acting Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, (202) 755-7782.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social, and other services.

In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and direction of local programs. In FY 1985, Head Start served 452,080 children through a network of more than 1,305 grantees and more than 670 delegate agencies which have an approved written agreement with the grantees to operate Head Start programs.

While Head Start is targeted primarily on children whose families have incomes at or below the poverty line or are receiving public assistance, the Administration for Children, Youth and Families' policy permits up to 10 percent of the Head Start children in local programs to be from families which do not meet these low-income criteria. Head Start also requires that a minimum of 10 percent of enrollment opportunities in each State be made available to handicapped children. These children are expected to be enrolled in the full range of Head Start services and activities in a setting with their non-handicapped peers, and to receive needed special education and related services.

II. Background

In the **Federal Register** for November 2, 1979, the Administration for Children, Youth and Families (ACYF) published "Enrollment and Attendance Policies in Head Start" (44 FR 63478). On September 9, 1982, grantees were sent a "Head Start Administrative Regulations

Guide" which provided guidance to help them interpret a number of Head Start policies, including the Enrollment and Attendance Policies.

On October 28, 1985, ACYF published a Notice to propose a change in the 1982 "Administrative Regulations Guide" that would correct our system for computing ADA. This change was in response to a March 1984 report from the Office of the Inspector General (OIG). The OIG found that the guidelines in the "Administrative Regulations Guide" for calculating ADA were not consistent with the Enrollment and Attendance Policies. The guidelines instructed grantees to count children with excused absences as being present. Use of these guidelines has resulted in some programs reporting higher ADA than was actually the case. ACYF agreed with the OIG's finding and proposed to change its guidelines to eliminate the practice of counting children with excused absences as being present when computing ADA. However, grantees must still distinguish and record excused and unexcused absences in order to identify families in which absences may indicate a need for supportive services.

The Notice of October 28 also proposed a sample form for recording excused absences and monthly reports on ADA. Grantees are invited to use these forms. However, grantees may continue to use their own forms if they provide equivalent information.

Interested persons and organizations were invited to submit comments to the Notice on or before December 12, 1985. The Department received 154 letters from individual Head Start parents, advocacy organizations, State agencies, and national and local service organizations, including 59 Head Start grantees.

III. Summary of the Final Guidelines and Response to Comments

Except for minor technical revisions and clarifications, we have made no changes in the guidelines as proposed in the Notice. However, we would like to respond to the many thoughtful and informative letters we received and to clarify some points on which there appear to be some misunderstanding.

Following is a summary of comments from respondents, the Department's responses to the comments, and a discussion of the technical and editorial changes made in the final guidelines:

A. Calculating Average Daily Attendance

This part of the Notice requires grantees to stop counting as present children with excused absences when computing ADA.

All (88) Head Start parents who commented disapproved of the change eliminating excused absences in calculating ADA. These letters came primarily from Michigan (63) and Iowa (16). Moreover, 56 out of 66 Head Start agencies and advocacy organizations also objected. The main reasons were: (1) Head Start is serving an age group that is very vulnerable to childhood diseases and illness; (2) inclement weather prevents children from attending classes because of transportation problems or lack of transportation; (3) family crises or family activities often interfere with attendance; and (4) eliminating excused absences will tend to favor enrollment of children of highly motivated parents but not necessarily those families most in need of services.

ACYF acknowledges these as real problems and reasons for absences that both Head Start parents and the Head Start agencies face daily. Therefore, we still require that both excused and unexcused absences be recorded in order to identify families where absences indicate a need for supportive services. There is no reason, however, why children with excused absences should be counted as present for ADA calculations when we are trying to determine how many children actually are attending Head Start.

The main underlying reason for the objection to excluding excused absences when computing ADA seemed to be that both Head Start parents and the Head Start agencies are concerned that eliminating excused absences could result in ADA falling below the 85 percent level cited in the Enrollment and Attendance Policies and that this, in itself, would constitute a violation of policy and place a grantee's funding in jeopardy. This concern suggests a misunderstanding of the Enrollment and Attendance Policies. These policies do not mandate that grantees maintain 85 percent ADA. Instead, the policies set 85 percent as an expected goal and require that grantees take certain actions if ADA falls below 85 percent. However, a grantee's funding could be jeopardized if it does not make a reasonable, good faith effort to maintain 85 percent ADA, including taking the specific steps cited in Section A.3 of the Enrollment and Attendance Policies. Section A.3 reads as follows:

> 3. Attendance. There are four major reasons for absenteeism that are beyond the control of the Head Start program. They are: (1) illness which affects a whole center, (2) weather conditions, (3) transportation problems and (4) documented excused absences.
>
> a. When the average daily attendance rate drops below 85 percent, a Head Start program must analyze the causes of absenteeism. The analysis shall include, but not be limited to, a study of the pattern of absence for each child. The program must initiate action based on results of the analysis. If the absences are due to illness or other conditions which require closing a center or if the absences are a result of well-documented excused absences, no special action is required. If, however, the absences result from other factors, including temporary family problems or other circumstances that affect a child's regular attendance, the program must institute appropriate family support procedures for all children with three or more consecutive unexcused absences. These procedures must include home visits or other direct contact with the child's parents.
>
> Contacts with the family should emphasize the benefits of regular attendance, while remaining sensitive to the wisdom of parental discretion in deciding on any particular day that the child may be better off at home than in the preschool classroom. In the case of chronic attendance difficulties, the program should explore with the family the feasibility of other program models, including the home based option. In circumstances where the situation persists and it seems infeasible to include the child in the program, the child's slot should be treated as a vacancy.
>
> b. In order to qualify as an excused absence, each specific situation must be documented.
>
> c. If a child is absent three consecutive days, a Head Start program shall contact the family to ascertain the reason and what it reasonably can do to facilitate the return of the child to the program as soon as possible. This effort must be documented.

Several commenters asked for clarification since an accurate ADA would not be reflected in those programs that operate both center- and home-based options or totally home-based options using the proposed formula of ADA. As stated in the Enrollment and Attendance Policies, "the enrollment and attendance policy does not apply to home-based programs . . ."

Related to the above issue, one commenter suggested that parents who come to learn parenting skills should be counted as being in attendance in calculating ADA. ACYF does not concur with this recommendation because attendance is based on the presence of the children participating in Head Start programs and not on the attendance of parents.

A few commenters recommended that 85 percent ADA is not realistic and that a reasonable ADA is between 70 percent to 84 percent, since many public schools only have 75 percent ADA. ACYF does not plan to change the current policy of 85 percent and believes

that every effort should be made to reach the goal of 85 percent ADA in order to help children receive more benefits from their participation in Head Start.

A few commenters suggested that the 30 consecutive day period of unexcused absence, which they understand is required to confirm a vacancy, should be shortened because it affects the ADA adversely due to circumstances that are beyond the control of the local program. The current Enrollment and Attendance Policies explain that a child's slot shall be considered vacant when the child does not participate for a period of more than 30 calendar days of unexcused absences, despite the provision of family support. It should be noted that this does not necessarily mean that programs must wait 30 days to define a slot as being vacant if it has been determined that a child is not going to continue in Head Start. For example, a family may move or decide to withdraw the child.

ACYF does not plan to change this policy because unexcused absences may indicate that a child's family needs help. It is important to give a grantee enough time to investigate the absences and to provide the family with supportive services which may enable the child to continue in Head Start. The policies also explain that a program has up to 30 additional days to fill a slot after it is determined to be vacant. Only when an enrollment slot remains vacant for more than 30 days after it has been declared vacant is it viewed as a possible compliance problem.

B. Recording Absences and Preparing Monthly Reports on Average Daily Attendance

This part of the Notice of October 28 proposed and provided sample forms for recording excused absences and Monthly Reports on ADA. However, grantees may use their own forms if they provide equivalent information.

Sixteen Head Start agencies and advocacy organizations commented on this part. Thirteen respondents agreed with the need for the proposed change that would benefit record keeping and auditing and also expressed their appreciation for the proposed format. The other three respondents objected for a number of reasons.

One commenter stated that the "Record of Excused Absences" form is redundant and that information could be handled in the comment section of the "Monthly Attendance Sheet." ACYF believes that to combine the "Record of Excused Absences" and "Monthly Attendance Sheet" will only make the form more complicated. However, grantees can do so if all necessary information is provided.

A statement was made by one commenter that recordkeeping for the "Monthly Attendance Sheet" is overwhelming. ACYF believes that all data on the "Monthly Attendance Sheet" are necessary in computing ADA as well as for the purpose of monitoring, reporting and auditing compliance with Enrollment and Attendance Policies.

One commenter suggested having an attendance form for each child that shows an overview of the year's attendance pattern and reasons for absences. ACYF believes that the "Monthly Attendance Sheet" already serves these functions. Thus, a duplicate form which provides the same information is not required. However, grantees should feel free to do this if they so desire.

A few respondents suggested extending the scope of excused absences by adding items such as cultural and religious family activities. ACYF agrees that these can be considered as documented excused absences.

One commenter suggested adding the formula of ADA into our proposed "Monthly Attendance Sheet."

ACYF concurs and a revision of the "Monthly Attendance Sheet" has been made.

IV. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, P.L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements in a proposed and final rule, guidelines or other issuances. This change in the Head Start Administrative Regulations Guide corrects and clarifies our system for computing ADA. Each grantee is required to submit, annually, a Program Information Report (PIR) that includes the ADA of children enrolled. Collection of this information has been approved by OMB (OMB Approval Number 0980–0017—Expiration Date 3/31/88). These guidelines do not impose any additional recordkeeping or reporting requirements.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start).

Dated: March 31, 1987.

Dodie Livingston,

Commissioner, Administration for Children, Youth and Families.

Approved: April 17, 1987.

Jean K. Elder, Ph.D.,

Assistant Secretary for Human Development Services-Designate.

For the reasons set forth in the preamble, the Head Start Administrative Regulations Guide, pages 203–204, is amended to read as follows:

Section VI—Eligibility and Enrollment

1. The authority for publication of the Head Start Administrative Guide reads as follows:

Authority: 42 U.S.C. 9839(d).

2. Pages 203–204 are revised as follows:

a. Page 203, the first paragraph:

Although there is no particular form or method for recording excused absences, a sample form is provided at Appendix A. Grantees are invited to use this form. However, grantees may continue to use their own forms if they provide equivalent information.

* * * * *

b. Page 204, beginning at the second paragraph and continuing to the end of the page:

* * * * *

The percentage of ADA is calculated from the following formula:

$$\text{Percentage of ADA} = \frac{\text{Number present}}{\text{Funded enrollment}}$$

The "number present" is defined as children who are in class for any part of the classroom day and children who are not in class but who are receiving Head Start services during that day at another site (for example, if a child does not attend a class because the child is receiving Head Start medical services elsewhere, that child should be counted as present). Children who do not fall within either of these categories must be excluded from the attendance count whether or not their absences are excused. "Funded enrollment" is defined as the number of children which the grantee has been funded to serve as indicated in the approved application or, if applicable, as negotiated between the grantee and the Head Start program office.

The following example demonstrates the use of this formula:

Lawrence City Head Start Center is funded for enrollment of 34 children. On Monday, four children were absent, 29 children were in class and one child was receiving Head Start medical services elsewhere. Therefore, on this day, the percentage of ADA was 88% (30/34=.88 or 88%). In computing the percentage of ADA for a month, the following formula would be used:

$$\text{Percentage of ADA} = \frac{\text{Sum of children present in class or receiving Head Start services each day during the month}}{\text{Funded Enrollment x number of class days in the month}}$$

Monthly reports of ADA are required by the Enrollment and Attendance Policies. A sample monthly report form is provided at Appendix B. Grantees are invited to use this form. However, grantees may continue to use their own forms if they provide equivalent information.

BILLING CODE 4130-01-M

APPENDIX "A"

RECORD OF EXCUSED ABSENCES

Month/Year _____ Center _____ Teacher _____

Document excused absences with the following codes:

A - Hospitalization
B - Serious illness or injuries
C - Communicable disease
D - Other health ailments which temporarily prevent attendance
E - Dealth in family
F - Temporary family situations
G - Transportation Problems
H - Weather Conditions
I - Cultural and Religious Family Activities

Child's Name	Date(s) of Absence	Reason for Absence	Source of Documentation

APPENDIX "B" - SAMPLE FORM

MONTHLY ATTENDANCE SHEET

Month/Year _____ *ADA _____

Center _____

Teacher _____

Child's Name																											# Days Present	# Excused Absences	# Unexcused Absences	TOTAL DAYS
Last, First	M	T	W	TH	F	M	T	W	TH	F	M	T	W	TH	F	M	T	W	TH	F	M	T	W	TH	F					
1.																														
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19.																														
20																														
TOTALS																														

ATTENDANCE CODES

✓-Present
(E)-Present (off-site)
A -Unexcused Absence
(A)-Excused Absence
T -Tardy
E -Enrolled
W -Withdrawn

*ADA % FOR THE MONTH = Sum of the children present in class or receiving Head Start services each day of the month / Funded Enrollment x No. of class days in the month

[FR Doc. 87-9150 Filed 4-27-87; 8:45 am]
BILLING CODE 4130-01-C

Public Health Service

National Center for Health Services Research and Health Care Technology Assessment; Reassessment of Autologous Bone Marrow Transplantation; 1987

The Public Health Service (PHS) through the Office of Health Technology Assessment (OHTA) announces that it is conducting a reassessment of what is known of the safety, clinical effectiveness, appropriateness, and use of autologous bone marrow transplantation. OHTA previously coordinated a PHS assessment of autologous bone marrow transplantation (FR *49*:15280; April 18, 1984) resulting in a recommendation to the Health Care Financing Administration that the procedure be regarded as investigational. Specifically, we are interested in the medical indications for the procedure, its clinical acceptability, and the modalities used in preparation of the patients when this technology is applied. Autologous bone marrow transplantation has been proposed for use in treating (a) patients with leukemia and (b) those with solid tumors, for example, malignant melanoma, small-cell carcinoma of the lung, neuroblastoma and non-Hodgkin's lymploma.

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, PHS recommendations will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage Policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than 90 days form the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, bibliographies of published controlled clinical trials and other well-designed clinical studies, as well as other information related to characterization of the patient population most likely to benefit from this technology. Information on the clinical acceptability and effectiveness of this technology is also being sought. Proprietary information is not being sought.

Written material should be submitted to: Dr. Harry Handelsman, Office of Health Technology Assessment, 5600 Fishers Lane Room 18 A–27, Rockville, MD 20857, (301)— 443–4990.

Dated: April 17, 1987.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87–9558 Filed 4–27–87; 8:45 am]

BILLING CODE 4160–17–M

National Advisory Council On Health Care Technology Assessment; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory Council scheduled to meet during the month of May 1987:

Name: National Advisory Council On Health Care Technology Assessment.

Date and Time: May 7–8, 1987, 1:30 PM.

Place: Key Bridge Marriott, Georgetown Ballroom, 1401 Lee Highway, Arlington, Virginia.

Closed May 8, 1:00 PM to 1:30 PM.

Open for remainder of meeting.

Purpose: The Council is charged to provide advise to the Secretary and to the Acting Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of the health care technology assessment functions prescribed by section 305 of the Public Health Service Act, as amended.

Agenda: The agenda for the open session will center on public policy aspects of medical coverage issues involving health care technology. During the closed session, the Council will be reviewing research grant applications relating to health care technology. These applications contain research protocols, design, raw research data, technical information, and preliminary research reports. The meeting involves discussion of salaries and the professional competence of applicants, information of a personal nature, disclosure of which would constitute a clearly-unwarranted invasion of personal privacy. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), I have made a formal determination that these later sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Ms. Nancy Blustein, National Center for Health Services Research and Health Care Technology Assessment, Room 1805, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443–5652.

Agenda items are subject to change as priorities dictate.

Dated: April 17, 1987.

Samuel Lin,

Assistant Surgeon General, Acting Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87–9559 Filed 4–27–87; 8:45 am]

BILLING CODE 4160–17–M

Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services, Chapter HD (Public Health Service Regional Offices, HD1–HDX), 44 FR 21711, April 11, 1979, as amended most recently at 51 FR 16390–16391, May 2, 1986), is amended to reflect a reorganization in Region IV, Atlanta, Georgia. The Divison of Family Health and Professional Services and the Division of Health Resources Development (Region IV) are realigned into one division: Division of Family Health and Resources Development. This consolidation of similar functions and resources will strengthen Region IV capability to meet the needs of current health policies and programs. There are no organizaton changes in the remaining nine regional offices.

Public Health Service Regional Offices

Under Chapter HD, Public Health Service Regional Offices, Section HD–00, Mission, title and statement, delete Section HD–10, Organization, and substitute the following:

Section HD–10, Organization. The Public Health Service Regional Offices (HD1–HDX) consist of:

Office of Regional Health Administrator (HD1–HDX)
Office of Engineering Services (HD*E) [1]
Office of Grants Management (HD*J)
Division of Preventive Health Services (HD*U)
Division of Health Services Delivery (HD*V) [2]

[1] Offices located in Regions II, VI, and X.
[2] Division in all regions except Region IV.

Division of Community Health Services (HD*C) [3]
Division of Family Health and Resource Development (HD*R) [3]
Division of Health Resources Development (HD*W) [2]
Division of Federal Employee Occupational Health (HD*H)

Under Section HD–20 Functions, Public Health Service (PHS) Regional Offices (HD1–HDX), delete the title, statement and footnote [3] pertaining to the Division of Family Health and Professional Services (HD*P) in Region IV.

After the title and statement for the Divison of Health Resources Development (HD*W), add a footnote [2] to show the Division is in all regions except Region IV.

After the title, statement and footnote 2 for Division of Community Health Services (HD*C) [2], add the following title, statement and footnote [3] for Region IV:

Division of Family Health and Resources Development (HD4R).

The Division: (1) Directs and coordinates regional implementation of programs and activities designed to promote and provide quality family health services and to increase the capacity and capability of health care systems in the Region; (2) reviews and recommends action on grant and loan applications and contract proposals providing continous programmatic monitoring of division grants, contracts and loans for compliance with applicable laws, regulations, policies and performance standards; (3) verifies accuracy and analyzes programmatic data with respect to health resources, program impact and costs; (4) serves as the regional focal point for promoting and directing efforts to improve the quality of health care provided by PHS supported programs; (5) assures the implementation of all loan officer functions for division loan programs.

This Division also (6) provides or arranges professional consultation, guidance, and technical assistance in assigned program areas, including the interpretation and explanation of national policies and guidelines; (7) provides for the development, implementation, and monitoring of the annual regional work plan related to assigned program areas, including setting objectives responsive to regional and national priorities and assignment of division resources required to attain these objectives; (8) coordinates with other Regional Office staff to develop and consolidate objectives which cross program and division lines; (9) serves as source of expertise in the PHS Regional Office on specific program areas, and as regional program liaison with PHS headquarters on technical programmatic matters; and (10) serves as a focal point for information on family health, resource development and related efforts within the region, including voluntary, professional and other private sector activities.

Dated: April 16, 1987.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 87–9567 Filed 4–27–87; 8:45 am]

BILLING CODE 4160–17–M

[3] Division in Region IV.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–100–84–6310–02; GP7–169]

Roseburg District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Roseburg District's Advisory Council will meet to review and discuss the following.

—BLM OR/WA Organizational Study
—Spotted Owl Issue
—Planning for the 90's
—Research Natural Area Program

DATE: May 19, 1987 at 9:00 a.m.

ADDRESS: Bureau of Land Management, 777 N.W. Garden Valley Blvd., Roseburg, Oregon 97470.

FOR FURTHER INFORMATION CONTACT: Larry Lee, BLM Roseburg District Office, 777 N.W. Garden Valley Blvd., Roseburg, Oregon 97470. [Telephone (503) 672–4491, Ext. 230.]

Dated: April 17, 1987.

Gordon Cheniae,

Associate District Manager.

[FR Doc. 87–9465 Filed 4–27–87; 8:45 am]

BILLING CODE 4310–33–M

[NM–030–07–4212–11; NM 64776]

Realty Action; Lease Or Sale Of Public Land In Dona Ana County, New Mexico

The following described parcel of public land has been examined and found to be suitable for lease with the option to purchase under the provisions of the Recreation and Public Purposes Act of June 14, 1926, [43 U.S.C. 869]:

T. 25 S., R. 3 E., NMPM
Sec. 34: W½NE¼, N½NW¼, SE¼NW¼

The subject lands, comprising approximately 60 acres, will be leased to the Gadsden Independent School District for an elementary school to serve the Vado/Berino area.

The lease of these public lands under the Recreation and Public Purposes Act is consistent with the Bureau of Land Management's planning system. The lands are not critical to any resource program. The grazing lease will be cancelled on that portion of Allotment No. 5009 which is encompassed by the lands described in this Notice. Cancellation will occur 2 years after the date of publication of this Notice unless the 2-year notification period is waived by grazing allottee. It has been determined that lease of this parcel of land to the Gadsden Independent School District will serve important public objectives. This notice of realty action is being issued in accordance with new regulations contained in 43 CFR 2740 and in lieu of an initial classification decision.

The lease, when issued, will be subject to the following terms and conditions:

1. The lease will be issued for a 20-year period with option to purchase at any time during the 20-year period upon determination by the authorized officer that the requirements of the development and management plans have been met.

2. The lease shall contain such terms and conditions as required by law and public policy and which the authorized officer considers necessary for the proper development of the land, for the protection of Federal property, and for the protection of the public interest.

3. The lease shall be terminable by the authorized officer upon failure of the lessee to comply with the terms of the lease, upon a finding, after notice and opportunity for hearing, that all or part of the land is being devoted to a use other than the use authorized by the lessee, or upon a finding that the land has not been used by the leasee for the purpose specified in the lease for any consecutive 2 year period.

4. Upon notification of the amount of yearly rental, the lease applicant shall be required to pay at least the first year's rental before the lease shall be issued. Thereafter, annual rental will be due and payable by the lease anniversary date.

5. The lease will not be transferable except with the consent of the authorized officer.

6. All minerals together with the right to mine and remove the same under applicable laws and regulations to be

established by the Secretary of the Interior shall be reserved to the United States.

Detailed information concerning this action is available for review at the Las Cruces District Office, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico 88005.

Upon publication of this notice in the **Federal Register** the public land described above will be segregated from the operation of the public land laws and the mining laws. The segregative effect of this notice of realty action shall terminate upon issuance of lease or patent on 270 days from the date of publication, whichever occurs first. The land will not be offered for lease or sale sooner than 60 days after the date of this notice.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Las Cruces District Manager, Bureau of Land Management, 1800 Marquess, Las Cruces, New Mexico 88005. Comments should reference serial number NM 64778.

Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional committees and delegations pursuant to P.L. 98–146, will be evaluated by the District Manager. The New Mexico State Director, Bureau of Land Management, may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Josie Banegas,

Acting District Manager.

[FR Doc. 87–9550 Filed 4–27–87; 8:45 am]

BILLING CODE 4310–FB–M

[OR–020–07–4212–11; GP7–156]

Oregon: Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice: Recreation and Public Purposes Lease.

SUMMARY: The following described lands have been examined and classified as suitable for lease under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 et seq.).

T. 24 S., R. 31 E., W.M., Harney County, Oregon

Section 34: S½S½SW¼, S½SW¼SE¼

T. 25 S., R. 31 E., W.M., Harney County, Oregon

Section 3: Lots 2, SW¼NE¼

The described lands, comprising 139.17 (±) acres, are being offered by lease to Harney County, for the development of a minimum facility recreation vehicle park.

This Notice-Decision is based on the following reasons:

1. The lands have been found to be valuable for public purposes and recreational uses.
2. The lands are not of national significance and not essential to any Bureau of Land Management program.
3. The proposed use is in conformance with the existing Land Use Plan.
4. The proposed action will have no significant or controversial environmental effects on the human or natural environment.
5. Leasing of the lands to Harney County will serve important public objectives, i.e., provide recreational opportunities, benefit the currently depressed local economy.
6. The classification and/or lease of the lands to Harney County is in conformance with the Secretary of the Interior's "Good Neighbor Program."

The classification and granting of a lease for the subject lands will not be adverse to any known public or private interests.

Publication of this notice in the **Federal Register** segregates the public lands, described above, from appropriation under the public land laws, including the mining laws, except as to applications under the Recreation and Public Purposes Act.

The Recreation and Public Purposes Application is consistent with Bureau of Land Management policies and planning and has been discussed with state and local officials.

Petition for classification OR 42073 is approved as to the land described above.

Name of Petitioner: Harney County

Title of Petition: Recreation and Public Purposes under the Recreation and Public Purposes Act of June 14, 1926, as amended.

DATE: April 3, 1987.

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, Burns District Office, 74 South Alvord, Burns, Oregon 97720—Telephone (503) 573–5241.

SUPPLEMENTARY INFORMATION: For a period of 45 days after the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become a final determination of the Department of the Interior. Interested parties should continue to check with the District Office to keep themselves advised of changes.

Dated: April 3, 1987.

Donald R. Cain,

Burns Associate District Manager.

[FR Doc. 87–9466 Filed 4–27–87; 8:45 am]

BILLING CODE 4310–33–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations; Arizona et al.

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 18, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 13, 1987.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Cochise County

Willcox, *Briscoe, Benjamin E., House (Willcox MRA)*, 358 N. Bowie
Willcox, *Crowley House (Willcox MRA)*, 175 S. Railroad Ave.
Willcox, *Gung'l, John, House (Willcox MRA)*, 210 S. El Paso Ave.
Willcox, *Hooker Town House (Willcox MRA)*, 235 E. Stewart
Willcox, *Johnson-Tillotson House (Willcox MRA)*, 124 N. Curtis
Willcox, *Mee, Joe, House (Willcox MRA)*, 265 W. Stewart
Willcox, *Morgan House (Willcox MRA)*, 242 E. Maley
Willcox, *Railroad Avenue Historic District (Willcox MRA)*, Roughly bounded by Curtis Ave., Stewart St., Southern Pacific RR Tracks, and Grant St.
Willcox, *Saxon, Harry, House (Willcox MRA)*, 308 S. Haskell
Willcox, *Soto, Pablo, House (Willcox MRA)*, 108 E. Stewart
Willcox, *Willcox Women's Club (Willcox MRA)*, 312 W. Stewart
Willcox, *Wilson, J.C., House (Willcox MRA)*, 258 E. Maley

Maricopa County

Phoenix, *Tweed, Judge Charles Austin, House*, 1611 W. Fillmore Ave.

DELAWARE

New Castle County

Wilmington vicinity, *Breck's Mill Area—Henry Clay Village Historic District*

(Boundary Increase-Decrease), Rising Sun La. and Kennett Pike

GEORGIA

Morgan County

Buckhead vicinity, *Zachry-Kingston House*, 6030 Bethany Rd.

IDAHO

Shoshone County

Murray, *Murray Masonic Hall*, Main St. between Second and Third

INDIANA

Marion County

Indianapolis, *Lockerbie Square Historic District Amendment (Bounty Increase)*, Bounded by Michigan and Davidson Sts., New York Ave., and New Jersey St.

LOUISIANA

Caddo Parish

Greenwood, *Trosper House*, 304 Magnolia St.

Clairborne Parish

Lisbon, *Killgore House*, Jct. of LA 2 & LA 518

East Baton Rouge Parish

Baton Rouge vicinity, *Audubon Plantation House*, 21371 Hoo Shoo Too Rd.

Natchitoches Parish

Natchitoches, *Texas and Pacific Railroad Depot*, Sixth St.

MISSISSIPPI

Chickasaw County

Okolona, *Merchants and Farmers Bank Building*, 423 Main St.

NEW MEXICO

Union County

Folson, *Folson Hotel*, SW Jct. of Grand Ave. & Wall St.

PENNSYLVANIA

Beaver County

Rochester vicinity, *Racoon Creek RDA (Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks: 1933-1942 TR)*, 20 mi. S of Rochester on PA 18

Chester County

Warwick vicinity, *Reading Furnace Historic District*, Mansion Rd.

Clinton County

Loganton vicinity, *Ravensburg State Park (Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks: 1933-1942 TR)*, 8 mi. SE of Jersey Shore on PA 880

Somerset County

Somerset, *Laurel Hill RDA (Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks: 1933-1942 TR)*, 4 mi. W of New Centerville & PA 281

Sullivan County

Forksville vicinity, *World End State Park Family Cabin District (Emergency Conservation Work (ECW) Architecture in Pennsylvania State Parks: 1933-1942 TR)*, 2 mi. SE of Forksville on PA 154

PUERTO RICO

Aguadilla County

Aguadilla, *Silva-Benejan House*, 15 Munoz Rivera St.

Moca County

Bo. Aceituna, *Hacienda Iruena Manor House*, Km. 115.7 PR Rd. No. 2

Ponce County

Ponce, *Albergue Caritativo Tricoche (19th Century Civil Architecture in Ponce TR)*, Tricoche St.

Ponce, *Antiguo Cuartel Militar Espanol de Ponce (19th Century Civil Architecture in Ponce TR)*, Calle Castillo Final

Ponce, *Antiguo Hospital Militar Espanol de Ponce (19th Century Civil Architecture in Ponce TR)*, Leon, Atocha and Bondad Sts.

TENNESSEE

Lewis County

Hohenwald, *Hohenwald Railroad Depot*, TN 99

VIRGINIA

James City County

Croaker Landing Archaeological Site (44JC70)

Loudon County

Leesburg vicinity, *Rockland*, E side US 15, N of Leesburg

Roanoke County

Salem, *Old Roanoke County Courthouse*, 301 E. Main St.

WYOMING

Big Horn County

Basin, *Basin Main Post Office (Historic US Post Offices in Wyoming: 1900–1941 TR)*, 402 West C. St.

Greybull, *Greybull Main Post Office (Historic US Post Offices in Wyoming: 1900–1941 TR)*, 401 Greybull Ave.

Converse County

Douglas, *Douglas Main Post Office (Historic US Post Offices in Wyoming: 1900–1941 TR)*, 129 N. Third St.

Fremont County

Lander, *Lander Main Post Office & Courthouse (Historic US Post Offices in Wyoming: 1900–1941 TR)*, 177 N. Third St.

Goshen County

Torrington, *Torrington Main Post Office (Historic US Post Offices in Wyoming: 1900–1941 TR)*, 2145 Main St.

Hot Springs County

Thermopolis, *Thermopolis Main Post Office (Historic US Post Offices in Wyoming: 1900–1941 TR)*, 440 Arapahoe St.

Johnson County

Buffalo, *Buffalo Main Post Office (Historic US Post Offices in Wyoming: 1900–1941 TR)*, 193 S. Main St

Laramie County

Chugwater vicinity, *McDonald Ranch*, 14 mi. SW of Chugwater on S side Laramie Cty. line

Lincoln County

Kemmerer, *Kemmerer Main Post Office (Historic US Post Office in Wyoming: 1900–1941 TR)*, Sapphire Ave. & Cedar St.

Park County

Powell, *Powell Main Post Office (Historic US Post Offices in Wyoming: 1900–1941 TR)*, 270 N. Bent St.

Yellowstone National Park, *Yellowstone Main Post Office (Historic US Post Offices in Wyoming: 1900–1941 TR)*, Mammoth, off Grand Loop Rd.

Sublette County

Big Piney vicinity, *Circle Ranch*, 4 mi. SW of Big Pine, off WY 350

Boulder vicinity, *New Fork*, 3 mi. S of Boulder of US 187

Uinta County

Evanston, *Evanston Main Post Office (Historic US Post Offices in Wyoming: 1900–1941 TR)*, 221 Tenth St.

Weston County

Newcastle, *Newcastle Main Post Office (Historic US Post Offices in Wyoming: 1900–1941 TR)*, W. Main St. & Sumner Ave

[FR Doc. 87–9503 Filed 4–27–87; 8:45 am]
BILLING CODE 4310–70–M

Geophysical Surveys, Oil and Gas Plan of Operations; Big Cypress National Reserve

Notice is hereby given pursuant to § 9.52(b) of Title 36, Part 9, Subpart B of the Code of Federal Regulations of the availability for comment and review of a plan of operations submitted by Shell Western E & P Inc., for the purpose of oil and gas geophysical survey operations in the Big Cypress National Preserve, Florida. Copies of the plan of operations are available for review at: Big Cypress National Preserve, S.R. Box 110, Satinwood Drive, Ochopee, Florida, 33943 (telphone 813–695–2000); National Park Service, Southeast Regional Office, 75 Spring Street, SW., Atlanta, Georgia, 30303 (telephone 404–331–4916); the Miami-Dade Public Library, 101 West Flagler Street, Miami, Florida, 33130 and the Collier County Public Library, 650 Central Avenue, Naples, Florida 33940.

Written comments will be accepted until May 28, 1987. Comments received during this period will be entered into the official records.

ADDRESS: COMMENTS SHOULD BE DIRECTED TO: Superintendent, Big Cypress National Preserve, Star Route

Box 110, Ochopee, Florida 33943, (813) 695–2000.

FOR FURTHER INFORMATION CONTACT: Fred J. Fagergren, Superintendent, Big Cypress National Preserve, Star Route Box 110, Ochopee, Florida 33943, (813) 695–2000.

Dated: April 23, 1987.

Denis P. Galvin,

Acting Director.

[FR. Doc. 87–9513 Filed 4–27–87; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers Decision-Notice Control, Purchase and Tariff Filing Exemptions; FunBus Systems, Inc.

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55. (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C 11344 and 11349*, 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal** and I.C.C. **Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose and application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d)

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decison is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's exising authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Noreta R. McGee,

Secretary.

MC–F–18277, filed March 20, 1987. FUNBUS SYSTEMS, INC. (FunBus) (304 Katella Way, Anaheim, CA 92892)—PURCHASE—AIRPORT SERVICE, INCORPORATED (Airport) (851 East Cerritos Avenue, Anaheim, CA 92805). Representatives: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, and Eldon Johnson, 825 Van Ness Avenue, Suite 601, San Francisco, CA 94109. FunBus (MC–145992) and Michael L. Valen, an individual and majority stockholder, seek authority to acquire the interstate and California intrastate operating rights of Airport (MC–176193 and California Public Utilities Decisions 83743 as amended in 84583, 82–03–028, Resolution PE 499 and 90383 as restated in 91578 (PSC 869) and TCP 163A). Airport's interstate certificate authorizes the transportation of passengers, in charter and special operations, beginning and ending at points in Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties, CA, and extending points in the United States (except HI). Its California intrastate rights authorize the transportation of passengers, in general, over specified routes in Los Angeles and Orange Counties, CA, to and from Los Angeles International Airport, Lockheed Air Terminal, Long Beach Municipal Airport, John Wayne (Orange County) Airport, and Ontario International Airport. Note: FunBus has filed an application for termporary authority to lease the above operating rights of Airport pending the final disposition of this application.

[FR Doc. 87–9522 Filed 4–27–87; 8:45 am]

BILLING CODE 7035–01–M

Notice to Holders of Certificates Authorizing Intrastate Regular-Route Transportation of Passengers Issued by the Interstate Commerce Commission Since November 19, 1982

April 21, 1987.

Section 340 of the Surface Transportation and Uniform Relocation Act of 1987, Pub. L. 100–17, 101 Stat. 132 (1987) requires that each certificate issued by the Interstate Commerce Commission before, on, or after April 2, 1987, to provide intrastate regular-route transportation of passengers on a route over which the carrier is authorized to provide interstate transportation of passengers shall be subject to a condition. The condition states as follows:

Condition

The carrier is authorized to provide intrastate transportation service on a route under this certificate only if the carrier provides regularly scheduled interstate transportation service on the route.

Carriers should attach this condition to the pertinent certificates that they hold.

Noreta R. McGee,

Secretary.

[FR Doc. 87–9521 Filed 4–27–87; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31027]

St. Louis Southwestern Railway Co.; Trackage Rights Exemption

Missouri Pacific Railroad Company (MP) has agreed to grant local trackage rights to St. Louis Southwestern Railway

Company (SSW) beginning at point of switch 2225+90 (MP milepost 387.56) and ending at point of switch 2281+20 (MP milepost 388.70), a distance of approximately 1.12 miles at Pine Bluff, Jefferson County, AR. The trackage rights will be effective on or after April 15, 1987.

This Notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

As a condition to use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).[1]

By the Commission, Jane F. Mackall, Director Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-9623 Filed 4-27-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Unfair Immigration-Related Employment Practices

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce the appointment by the President of Mary E. Mann as Acting Special Counsel for Immigration-Related Unfair Employment Practices under section 102(a) of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324B.

EFFECTIVE DATE: April 16, 1987.

ADDRESSES: Charges of unfair immigration-related employment practices may be directed to Mary E. Mann, Acting Special Counsel for Immigration-Related Unfair Employment Practices, Office of Special Counsel, P.O. Box 65490, U.S. Department of Justice, Washington, DC 20035-5490.

Edwin Meese III,

Attorney General.

April 22, 1987.

[FR Doc. 87-9514 Filed 4-27-87; 8:45 am]

BILLING CODE 4410-01-M

[1] The Railway Labor Executives' Association (RLEA) filed a request for labor protection. Since this transaction involves and exemption from 49 U.S.C. 11343, the imposition of the labor protective condition is mandatory and it has been imposed above.

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration
DBRA/CWHSSA Recordkeeping and Reporting Requirements 29 CFR Part 5
1215-0140; DBRA 5
On occasion
State or local governments; businesses or other for-profit; Federal agencies or employees; small businesses or organizations
2,505 responses; 630 hours; 1 form
Recordkeeping and incidental reporting requirements incurred by employers under DBRA/CWHSSA Regulations, 29 CFR 5

Extension

Employment Standards Administration
1215-0157
On occasion
Businesses or other for-profit; small businesses or organizations
1,599 responses; 133 hours

Regular dealers in specialty advertising products subject to the Public Contracts Act are required to insert a notice on orders to manufacturers for direct shipment to the U.S. that such manufacturers must comply with the Act. Notice is necessary to ensure manufacturer is made aware of the requirements of the Act. Signed at Washington, DC this 23rd day of April, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87-9561 Filed 4-27-87; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Bay State Abrasives et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period April 13, 1987—April 17, 1987

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,116; Bay State Abrasives, Westboro, MA

TA-W-19,094; Beech Aircraft Corp., Selma, AL

TA-W-19,114; Bike Athletic Co., Knoxville, TN

TA-W-19,196; T.J. Edwards Co., Auburn, ME

TA-W-19,158; Dunkirk Radiator Corp., Dunkirk, NY

TA-W-19,137; Westinghouse Electric Corp., Cincinnati, OH

TA-W-19,315; Premix E.M.S. Inc., Lancaster, OH

TA-W-19,148; Deutz-Allis Corps., Topeka, KS

TA-W-19,166; Marietta Metal Products Co., Marietta, OH

TA-W-19,144; Plume & Atwood, Thomaston, CT

In the following cases the investigation revealed that criteron (3) has not been met for the reasons specified.

TA-W-19,082; Jaguar Manufacturing, Inc., Smithport, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,247; Lydall, Inc., Chicago, IL

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,106; Lee Company, El Paso, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,125; Ladish Company, Cynthiana, KY

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,084; Jackson Products Co., Tampa, FL

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,277; Bryant Electric Bridgeport, CT

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,285; Pauline Appel & Browing, Thompson, Waddell & Blank, Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-19,205; Burns International Security Service, Babbitt, MN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-19,425; CRC Wireline, Inc., Grand Prairie, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-19,449; SSM Partnership, Tullos, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-19,191; Connelton Industries, Inc., Pocanontas Operation, Superior, McDowell County, WV

U.S. Imports of metallurgical coal are negligible.

TA-W-19,071; Gulf Marine Fabricators, Inc. Ingleside, TX

Imports of offshore oil and natural gas drilling and production platforms and parts are negligible.

TA-W-19,366; C & K Coal Coal Co., Clarion, PA

Imports of bituminous steam coal, lignite and anthracite were negligible.

TA-W-19,117; Angus Mining, Inc., Angus Mine, Caretta, WV

Imports of metallurgical coal are negligible.

TA-W-19,424; Britlon Drilling Co., Midland, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-19,434; Flusche Supply, Inc., Electra, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-19,447; Petco, Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-19,452; Terry R. White Oilfield Construction, Inc., Carmi, IL

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-19,218; USX Corp., USS Div., South Works, Chicago, IL

Imports of semifinished carbon and alloy steel shapes and carbon steel structural shapes declined absolutely and relative to domestic sipments in 1986 compared to 1985.

TA-W-19,441; LTV Energy Products, Houston, TX

Imports of oilfield machinery are negligible.

TA-W-19,438; Huges Tool Company, Corsicana, TX

Imports of oilfield machinery are negligible.

TA-W-19,232; Perry and Hylton, Inc., Deerfield Strip #2 Mine, Wyco, WV

Imports of metallurgical coal are negligible.

TA-W-19,126; High-Tech Collieries, Inc., Vesta Mine #5, Vestaburg, PA

Imports of metallurgical coal are negligible.

TA-W-19,463; Ansco Answering Service, Snyder, TX

The workers' firm does not produce an article as required for certification under Section 22 of the Trade Act of 1974.

TA-W-19,465; Armstrong Drilling, Inc. Wooster, OH

The workers' firm does not produce an article as required for certification under Section 22 of the Trade Act of 1974.

TA-W-19,470; Belcher & Windels, Inc., Golden, CO

The workers' firm does not produce an article as required for certification under Section 22 of the Trade Act of 1974.

TA-W-19,482; Jet Oilfield Equipment Rental & Service, Inc., Dickinson, ND

The workers' firm does not produce an article as required for certification under Section 22 of the Trade Act of 1974.

TA-W-19,486; Loftis Company, Midland, TX

The workers' firm does not produce an article as required for certification under Section 22 of the Trade Act of 1974.

TA-W-19,489; Mineral Search, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under Section 22 of the Trade Act of 1974.

Affirmative Determinations

TA-W-19,132; L.E. Carpenter, Sanitas Div., Hazelton, PA

A certification was issued covering all workers of the firm separated on or after January 28, 1986.

TA-W-19,209; Pirelli Cable Corp., Elkton, MD

A certification was issued covering all workers of the firm separated on or after February 13, 1986.

TA-W-19,096; American Brass Co., Kenosha, WI

A certification was issued covering all workers of the firm separated on or after January 27, 1986.

TA-W-19,105; Regal Lite, Rumford, RI

A certification was issued covering all workers of the firm separated on or after January 9, 1986.

TA-W-19,255; Kodiak Corp., Bessemer, MI

A certification was issued covering all workers of the firm separated on or after February 11, 1986.

TA-W-19,226; Fostoria Glass Co., Moundsville, WV

A certification was issued covering all workers of the firm separated on or after March 13, 1986.

TA-W-19,245; Penjac, Inc., Freeland, PA

A certification was issued covering all workers of the firm separated on or after February 20, 1986.

TA-W-19,859; Farrel Corp., Ansonia and Derby, CT

A certification was issued covering all workers of the firm separated on or after May 9, 1986.

TA-W-19,095; Arvin North American Automotive, Franklin, IN

A certification was issued covering all workers of the firm separated on or after January 26, 1986.

TA-W-19,256; Grace Petroleum Corp., Midland, TX

A certification was issued covering all workers of the firm separated on or after February 12, 1986.

TA-W-19,266; J.M. Huber Corp., Midland, TX

A certification was issued covering all workers of the firm separated on or after February 20, 1986.

TA-W-19,266A; J.M. Huber Corp., Houston, TX

A certification was issued covering all workers of the firm separated on or after February 20, 1986.

TA-W-19,266B; J.M. Huber Corp., Borger, TX

A certification was issued covering all workers of the firm separated on or after February 20, 1986.

TA-W-19,266C; J.M. Huber Corp., Amarillo, TX

A certification was issued covering all workers of the firm separated on or after February 20, 1986.

TA-W-19,266D; J.M. Huber Corp., Oklahoma City, OK

A certification was issued covering all workers of the firm separated on or after February 20, 1986.

TA-W-19,266E; J.M. Huber Corp., Denver, CO

A certification was issued covering all workers of the firm separated on or after February 20, 1986.

TA-W-19,243; Eljer Plumbingware Div., Marysville, OH

A certification was issued covering all workers of the firm separated on or after February 19, 1986.

TA-W-19,097; Health-Tex, Inc., Danville, VA

A certification was issued covering all workers of the firm separated on or after January 30, 1986.

TA-W-19,098; Health-Tex, Inc., Cowpens, SC

A certification was issued covering all workers of the firm separated on or after January 30, 1986.

TA-W-19,099; Health-Tex, Inc., Brunswick, ME

A certification was issued covering all workers of the firm separated on or after January 29, 1986.

TA-W-19,100; Health-Tex, Inc., Portland, ME,

A certification was issued covering all workers of the firm separated on or after January 29, 1986.

TA-W-19,101; Health-Tex, Inc., Gardiner, ME

A certification was issued covering all workers of the firm separated on or after January 29, 1986.

TA-W-19,102; Health-Tex, Inc., Imperial Reading Corp. Div., Christiansburg, VA

A certification was issued covering all workers of the firm separated on or after January 30, 1986.

TA-W-19,103; Health-Tex, Inc., Petersburg, VA

A certification was issued covering all workers of the firm separated on or after January 30, 1986.

TA-W-19,103A; Health-Tex, Inc., Lynchburg, VA

A certification was issued covering all workers of the firm separated on or after January 23, 1986.

TA-W-19,197; National Grinding Wheel Co., North Tonawanda, NY

A certification was issued covering all workers of the firm separated on or after February 12, 1986.

TA-W-19,229; Southern Heel Co., Springfield, TN

A certification was issued covering all workers of the firm separated on or after February 18, 1986.

TA-W-19,373; Edicott Johnson Corp., Tuckharnock, PA

A certification was issued covering all workers of the firm separated on or after January 10, 1986.

TA-W-19,111; Lone Star Industries, Inc., (Maryneal Plant), Sweetwater TX

A certification was issued covering all workers of the firm separated on or after January 27, 1986.

TA-W-19,276; Haleyville Textile Mills, Haleyville, AL

A certification was issued covering all workers of the firm separated on or after February 24, 1986.

TA-W-19,300; Honeywell Braukmann, Batavia, NY

A certification was issued covering all workers of the firm separated on or after November 1, 1986.

TA-W-19,164; V.S.D. Clothing, Newburg, NY

A certification was issued covering all workers of the firm separated on or after February 6, 1986.

TA-W-19,128; Cap Ann Tool Grantors Trust d.b.a. Cape Ann Tool Co., Pigeon Cove, MA

A certification was issued covering all workers of the firm separated on or after January 29, 1986.

I hereby certify that the aforementioned determinations were issued during the period April 13, 1987–April 17, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 duiing normal business hours or will be mailed to persons who write to the above address.

Dated: April 20, 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-9562 Filed 4-27-87; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-19,275]

L. E. Carpenter, Sanitas Division, Hazelton, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 3, 1987 in response to a worker petition received on March 2, 1987 which was filed on behalf of workers, producing wallcoverings at L.E. Carpenter, Hazelton, Pennsylvania.

An active certification covering the petitioning group of workers remains in effect (TA-W-19,132). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 20th day of April 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87-9563 Filed 4-27-87; 8:45 am]

BILLING CODE 4510-30-M

Labor Certification Process for the Temporary Employment of Aliens in Agriculture; 1987 Adverse Effect Wage Rates

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice of adverse effect wage rates for 1987.

SUMMARY: The Director, U.S. Employment Service, announces 1987 adverse effect wage rates (AEWRs), that is, the minimum wage rates which the Department of labor has determined must be offered and paid to U.S. and alien workers by employers of temporary alien agricultural workers ("H-2" visaholders). AEWRs are established and set to prevent the employment of these aliens from adversely affecting wages of similarly employed U.S. workers.

EFFECTIVE DATE: April 28, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas M. Bruening, Telephne: 202-535-0163.

SUPPLEMENTARY INFORMATION:

Requirement of Notice

The Department of labor (DOL) has published regulations at 20 CFR Part 655, Subpart C, for the certification of nonimmigrant aliens ("H-2" visaholders) for temporary employment in the United States in agriculture and logging. These regulations require the Director, United States Employment Service (USES), to cause a notice to be published in the **Federal Register** each calendar year announcing the adverse effect wage rates (AEWRs) for agricultural workers (except sheepherders) in fourteen States and for sugar cane workers in Florida. 20 CFR 655.207(b).

Agricultural Adverse Effect Wage Rates: 1987

Based upon U.S. Department of Agriculture (USDA) Quarterly Wage Survey data and the methodology set forth at 20 CFR 655.207(b)(1), DOL has computed the 1987 AEWRs. The AEWRs set forth in the table below have been computed using the methodology adopted by DOL by rulemaking on July 2, 1986. 51 FR 24138. The AEWR for each State has been changed from last year's AEWR by the same precentage change as the precentage change between 1985 and 1986 in the USDA annual average hourly wage rates for field and livestock workers (combined) based on the USDA quarterly survey.

The 1987 AEWRs, along with the 1986 AEWRs and the percentage changes in the various rates over the year, are published in the table below.

Agricultural Adverse Effect Wage Rates, 1987

State	1986 AEWR (dollars)	1987 AEWR (dollars)	1986 to 1987, percent change
Arizona	5.30	5.51	+4.0
Colorado	4.87	6.14	+26.0
Connecticut	4.39	4.84	+10.3
Florida (sugarcane only)	5.30	5.49	+3.6
Florida (except sugarcane)	4.29	4.44	+3.5
Maine	4.51	4.97	+10.2
Maryland	4.60	4.92	+6.9
Massachusetts	4.39	4.84	+10.3
New Hampshire	4.70	5.18	+10.2
New York	4.56	5.03	+10.3
Rhode Island	4.39	4.84	+10.3
Texas	5.04	5.56	+10.3
Vermont	4.64	5.12	+10.3
Virginia	4.72	4.98	+5.5
West Virginia	4.49	4.45	-0.9

Signed at Washington, DC, this 22d day of April, 1987.

Robert A. Schaerfl,

Director, U.S. Employment Service.

[FR Doc. 87-9564 Filed 4-27-87; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Retiree Health of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., Monday, May 11, 1987, at the American Association of Retired Persons, 1909 K Street NW., Room 802, Washington, DC 20049.

This eight-member work group was formed by the Advisory Council to study issues relating to retiree health benefit programs for employee welfare plans covered by ERISA.

The purpose of the May 11 meeting is to determine what constitutes the post-retirement health benefit promise made by the employer. The work group will take testimony from employee representatives, employer representatives and other interested individuals and groups regarding subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before May 8, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 8, 1987.

Signed at Washington, DC, this 23d day of April, 1987.

Dennis M. Kass,

Assistant Secretary for Pension and Welfare Benefits Administration.

[FR Doc. 87-9536 Filed 4-27-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (87-37)]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

Federal Register Citation of Previous Announcement: 52FR12476, Notice Number 87-35, April 16, 1987.

Previously Announced Times and Dates of Meeting: May 6, 1987, 9 a.m. to 5 p.m.; May 7, 1987, 9 a.m. to 5 p.m.

Changes in the Meeting: Dates changed to May 14, 1987, 9 a.m. to 5 p.m.; May 15, 1987, 9 a.m. to 5 p.m. Meeting location changed to Langley Research Center, National Aeronautics and Space Administration, Building 1219, Room 230A, Hampton, VA 23665.

Contact Person for More Information: Mr. John Smith, Office of Aeronautics and Space Administration, Washington, DC 20546, 202/453-2834.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

April 21, 1987.

[FR Doc. 87-9515 Filed 4-27-87; 8:45 am]

BILLING CODE 7510-01-M

[Notice (87-38)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); 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, Aeronautics Advisory Committee, Ad Hoc Review Team on Aviation Safety Research.

Date and Time: May 19, 1987, 8:30 a.m. to 4:30 p.m.; May 20, 1987, 8:30 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Federal Building 10B, Room 647, 600 Independence Avenue SW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Mr. Louis J. Williams, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2798.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST). Special ad hoc teams were formed to address specific topics. The ad hoc team on Aviation Safety Research, chaired by Mr. Donald Pritchett, is comprised of nine members. The meeting will open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

Type of meeting: Open.

Agenda:

May 19, 1987
- 8:30 a.m.—Opening Remarks.
- 8:45 a.m.—Working Group.
- 44:30 p.m.—Adjourn.

May 20, 1987
- 8:30 a.m.—Continuation of Working Group.
- 4:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

April 21, 1987.

[FR Doc. 87-9516 Filed 4-27-87; 8:45 am]

BILLING CODE 7510-01-M

[Notice (87-39)]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); 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, Onboard Processing and Data Management Technology Ad Hoc Review Team.

DATE AND TIME: May 19, 1987, 8:30 a.m. to 5:30 p.m.; May 20, 1987, 8 a.m. to 3:15 p.m.

ADDRESS: Goddard Space Flight Center, National Aeronautics and Space Administration, Building 8, Management Conference Room, Greenbelt Road, Greenbelt, MD 20771.

FOR FURTHER INFORMATION CONTACT: Mr. Robert D. Kreider, Code RC, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2744.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee was established to provide overall guidance and direction to the space research and technology activities in the Office of Aeronautics and Space Technology (OAST). The Onboard Processing and Data Management Technology Ad Hoc Review Team was established to provide an assessment of the current state of the art in onboard processing and data management system technologies, with an emphasis on reliability. The team, chaired by Dr. Donald C. Fraser, is comprised of 11 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of meeting: Open.

Agenda:

May 19, 1987
- 8:30 a.m.—Introduction, Opening Remarks
- 8:45 a.m.—George C. Marshall Space Flight Center Perceived Data Management Technology Problems.
- 9:15 a.m.—Lyndon B. Johnson Space Center Perceived Data Management Technology Problems
- 9:45 a.m.—John F. Kennedy Space Center Perceived Data Management Technology Problems.
- 10:45 a.m.—Jet Propulsion Laboratorty Perceived Data Management Technology Problems.
- 11:15 a.m.—Goddard Space Flight Center Perceived Data Management Technology Problems.
- 1:15 p.m.—Current Research and Technology Programs.
- 3:15 p.m.—Discussion on Format of Meeting.
- 3:45 p.m.—Panel Groups Convene.
- 5:30 p.m.—Adjourn.

May 20, 1987
- 8 a.m.—Discussion.
- 8:45 a.m.—General Purpose Processing.
- 9:15 a.m.—Special Purpose Computers.
- 9:45 a.m.—System Issues (Networks).
- 10:45 a.m.—Flight (Data) Recorders.
- 11:15 a.m.—Design, Evaluation, and Verification

Issues
- 1:15 p.m.—Refine Panel Group Outputs.
- 3 p.m.—Action Items for Next Meeting.

1:15 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

April 21, 1987.

[FR Doc. 87-9517 Filed 4-27-87; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Issues Related to Restricting Access to Sensitive But Not Classified Information; Public Hearing

AGENCY: U.S. National Commission on Libraries and Information Science.

ACTION: Notice of public hearing.

SUMMARY: The public debate over attempts to restrict sensitive but not classified information has raised issues which the U.S. National Commission on Libraries and Information Science believes should be aired in a public forum. The Commission's hearing will provide a forum for the identification and discussion of the major issues and contribute to the development of Commission recommendations. This notice announces and invites participation in a single public hearing designed to elicit views, comments and information from interested organizational representatives or individuals whose informed opinion may contribute to elucidating the issues. The Commission's hearings are authorized under Pub. L. 91-345.

DATE/LOCATION: The hearing will be held May 28, 1987 in the West Dining Room, James Madison Memorial Building, Library of Congress, Washington, DC, 9:30 a.m.-5:00 p.m.

Anyone desiring to testify should submit a written request, which should be received no later than April 30, 1987. Fifteen copies of the written statements must be received in the NCLIS office by 4:00 p.m. on May 13, 1987.

Supplemental or reply statements will become part of the record if received by 4:00 p.m. on June 30, 1987. Fifteen copies of such statements should be submitted.

ADDRESS: Written requests to present testimony and fifteen copies of all statements should be submitted to: U.S. National Commission on Libraries and Information Science, General Services Administration Building, Suite 3122, 7th and D Streets, SW., Washington, DC 20024.

All requests to testify should clearly identify the individual or group desiring to testify. The NCLIS office will attempt to contact all requestors to confirm their appearances.

FOR FURTHER INFORMATION CONTACT: Vivian J. Arterbery, Executive Director, U.S. National Commission on Libraries and Information Science, (202) 382-0840.

Dated: April 20, 1987.

Approved: Kenneth Y. Tomlinson, Chairman, U.S. National Commission on Libraries and Information Science.

Jane D.McDuffie,

Staff Assistant.

April 20, 1987.

[FR Doc. 87-9255 Filed 4-27-87; 8:45 am]

BILLING CODE 7527-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of section 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on May 7-9, 1987, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on March 17, 1987, Vol. 52, FR-8390.

Thursday, May 7, 1987

8:30 A.M.—8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.—10:45 A.M.: Quantitative Safety Goals (Open)—Discuss proposed NRC plan for implementation.

11:00 A.M.—12:30 P.M.: Radioactive Waste Management and Disposal (Open)—Discuss proposed NRC plan for obtaining outside technical advice for NRC regulation of high-level radioactive waste.

1:30 P.M.—2:00 P.M.: Future ACRS Activities (Open)—Discuss anticipated ACRS activites and items proposed for full Committee consideration.

2:00 P.M.—4:00 P.M.: Station Blackout (Open)—Review proposed NRC rule 10 CFR 50.63, Loss of All Alternating Current Power.

4:15 P.M.—6:15 P.M.: Severe Accident Research Program (Open)—Discuss report of NRC Experts Panel regarding their assessment of the NRC severe accident research program and resolution of uncertainties in severe accident evaluation.

Friday, May 8, 1987

8:30 A.M.—10:30 A.M.: Quantitative Safety Goals (Open)—Discuss proposed NRC plan for implementation.

10:30 A.M.—11:30 A.M.: Seabrook Nuclear Station (Open)—Briefing regarding status of NRC evaluation of emergency planning at the Seabrook Nuclear Station.

11:45 A.M.—12:45 P.M.: Improved Safety for Future Light Water Reactor Power Plant Design (Open)

Discuss proposed implementation of ACRS recommendations in its report dated January 15, 1987, ACRS Recommendations on Improved Safety for Future Light Water Reactor Power Plant Design.

1:45 P.M.—2:00 P.M.: ACRS Subcommittee Activities (Open)—Report of combined ACRS subcommittee meeting on May 5, 1987 regarding systems interaction implications of the feedwater line failure at the Surry Nuclear Station.

2:00 P.M.—3:30 P.M.: Nuclear Power Plant Safety in the USSR (Closed)—Briefing by NRC Commissioner F.M. Bernthal of recent visit to the USSR to discuss nuclear power plant safety.

This session will be closed to discuss National Security Information.

3:45 P.M.—5:15 P.M.: Safety Features in Nuclear Power Plants (Open/Closed)—Discuss safety features in foreign nuclear power plants and other safety improvements.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

5:15 P.M.—6:15 P.M.: Activities of ACRS Subcommittees (Open/Closed)—Hear and discuss reports of ACRS subcommittees regarding the status of assigned activities including thermal-hydraulic phenomena and the qualifications of candidates for appointment to the Committee.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Saturday, May 9, 1987

8:30 A.M.—12:30 P.M.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed ACRS reports to the NRC regarding items considered during this meeting. In addition, proposed reports on the risks associated with radwaste management and disposal and the Surry Nuclear Plant feedwater line failure will be considered.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

1:30 P.M.—2:30 P.M: ACRS Subcommittee Activities (Open)—

Discuss report of ACRS Subcommittee regarding control room habitability in nuclear power plants.

2:30 P.M.—3:00 P.M.: Miscellaneous (Open/Closed)—Complete discussion of items considered during this meeting.

Portions will be closed as noted above.

2:30 P.M.—3:00 P.M.: Miscellaneous (Open)—Complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 20, 1986 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as praacticable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possiblity that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss National Security Information (5 U.S.C. 552b(c)(1)), information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)), and information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

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 can be obtained by a prepaid telephone call to the ACRS Excutive Director, Mr. Raymond F. Fraley (telephone 202/634–3265), between 8:15 A.M. and 5:00 P.M.

Dated: April 23, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87–9570 Filed 4–27–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–412A]

Notice of No Significant Antitrust Changes and Time for Filing Requests for Reevaluation

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the construction permit review of Unit 2 of the Beaver Valley Power Station by the Attorney General and the Commission. The finding is as follows:

"Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the 'significant change' determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since the issuance of the Beaver Valley construction permit to Duquesne Light Company, et al., the staffs of the Planning and Resource Analysis Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as 'staff' have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

"In reaching this conclusion, the staff considered the structure of the electric utility industry in northern and central Ohio and western Pennsylvania, the events relevant to the Beaver Valley construction permit review and the events that have occurred subsequent to the construction permit review.

"The conclusion of the staff's analysis is as follows:

'Staff has identified numerous changes in the Central Area Power Coordination Group (CAPCO) company activities throughout the Combined CAPCO Company Territories (CCCT) since the Beaver Valley construction permit (CP) review. New interconnections involving large and small power systems have been built and are providing increased reliability to participating systems. Transmission and transmission services are no longer completely controlled by the larger investor owned power systems in the CCCI—smaller and more organizationally diversified power systems have been granted access to transmission facilities, enabling these systems to provide their customers more cost efficient service through the availability of numerous power supply options. Partial requirements wholesale power service is now available to many of the smaller systems in the CCCI—prior to the Beaver Valley CP review, these systems were limited to taking all of their power requirements from (primarily) CAPCO members or none at all. This type of control severely limited any type of "shopping" by purchasers of wholesale for resale power and energy and eliminated any possible savings from potentially lower cost power sources.

'Through no new nuclear plant owners have been added to any of the CAPCO plants since the Beaver Valley CP review, there have been a few changes in share allocations among existing owners—largely to accommodate variations in power supply needs of each of the CAPCO systems. The nuances of the business cycle played havoc with estimates of utility company load growth in the past decade. The CAPCO companies have not escaped this problem, cancelling four nuclear units and postponing completion dates of others under construction. In addition to the completion of a large coal-fired generating plant by the CAPCO companies and the decommissioning of a small nuclear plant supplying one of the CAPCO systems, staff noted several other unrelated changes associated with the development of large electric power systems which have had no significant anticompetitive effects in the CCCT bulk power services market.

'As stated at the outset of this operating license review, staff has not identified any individual change or group of changes in applicants' activities since the Beaver Valley construction permit review that meets all the necessary criteria established by the Commission in *Summer* to warrant a "significant change" finding. The changes that have occurred have by and large tended to mitigate applicants' market power within the confines of the combined CAPCO company territory. Staff has noted throughout its review that competitive options have opened up dramatically for small power systems throughout the CCCT since the Beaver

Valley CP review. By broadening the participation base and including new power entities into the buy/sell picture within the CCCT, the competitive process has been enhanced. This dramatic change in the power industry throughout the combined CAPCO company territory for the most part has been the result of the implementation of the Davis-Besse/Perry license conditions and the procompetitive affect they have had on the planning and day-to-day operations of all CAPCO systems.

'Staff is of the opinion that the changes which have occurred since the construction permit review have generally enhanced the competitive process throughout the bulk power market in Ohio and western Pennsylvania. Structurally and organizationally diverse power systems (private, public and cooperative systems) are now working more closely with each other in attempting to resolve the power supply problems facing each other. Other changes identified by staff which have had little or no impact on competition within the combined CAPCO company territory have not had significant negative antitrust implications that would likely warrant remedial action by the Commission. Based upon the above findings, staff recommends that no affirmative significant change determination be made pursuant to the application for an operational license for Unit 2 of the Beaver Valley Power Station.'

"Based upon the staff's analysis, it is my finding that there have been no 'significant changes' in the licensees' activities or proposed activities since the completion of the previous antitrust review in connection with the construction permit."

Signed on April 14, 1987, by Thomas E. Murley, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding, may file, with full particulars, a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the initial publication of this notice in the Federal Register.

Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the OL, only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Bethesda, Maryland, this 23rd day of April 1987.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

[FR Doc. 87-9565 Filed 4-27-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Positions Placed or Revoked Under Schedules A, B, and C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sylvia Cole, (202) 632-6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on April 6, 1987 (52 FR 10958). Individual authorities established or revoked under Schedule A, B, or C between March 1, 1987, and March 31, 1987, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedules A and B

No Schedule A or B exceptions were established or revoked during March.

Schedule C

The following exceptions were established:

Department of Agriculture

One Confidential Assistant to the Administrator, Federal Grain Inspection Service. Effective March 20, 1987.

Department of the Army

One Assistant Director to the Executive Director, President's Foreign Intelligence Advisory Board. Effective March 24, 1987.

Department of Commerce

One Confidential Assistant to the Director, Office of Business Liaison. Effective March 11, 1987.

One Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs. Effective March 18, 1987.

One Congressional Staff Assistant to the Deputy Assistant Secretary for Congressional Affairs. Effective March 18, 1987.

One Confidential Assistant to the Director, Minority Business Development Agency. Effective March 18, 1987.

Department of Defense

One Personal and Confidential Assistant to the Assistant Secretary of Defense (Acquisition and Logistics). Effective March 13, 1987.

Department of Education

One Special Assistant to the Director, Legislative Liaison Staff, Office of Legislation. Effective March 2, 1987.

One Special Assistant to the Deputy Under Secretary for Management. Effective March 17, 1987.

One Confidential Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective March 18, 1987.

One Secretary's Regional Representative to the Director, Regional Liaison Staff, Office of Intergovernmental and Interagency Affairs. Effective March 20, 1987.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective March 24, 1987.

Department of Energy

Four Staff Assistants to the Assistant Secretary for Management and Administration. Effective March 2, 1987.

One Research Assistant to the Assistant Secretary for Management and Administration. Effective March 2, 1987.

One House Liaison Specialist to the Deputy Assistant Secretary for House Liaison, Office of Congressional, Intergovernmental and Public Affairs. Effective March 6, 1987.

One Special Assistant to the Director, Office of External Affairs. Effective March 11, 1987.

One Ombudsman to the Director, Office of External Affairs. Effective March 11, 1987.

One Secretary (Confidential Assistant) to the Assistant Secretary for Defense Programs. Effective March 18, 1987.

One Public Affairs Specialist to the Director, Division of Public Affairs, Office of the Assistant Secretary for Congressional, Intergovernmental and Public Affairs. Effective March 27, 1987.

One Secretary (Confidential Assistant) to the Secretary of Energy. Effective March 27, 1987.

One Special Assistant for SSC Coordination to the Under Secretary. Effective March 27, 1987.

One Private Secretary to the Chairman, Federal Energy Regulatory Commission. Effective March 31, 1987.

Department of Health and Human Services

One Special Assistant to the Director, Office of Policy, Planning and Legislation, Office of Human Development Services. Effective March 4, 1987.

One Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services). Effective March 5, 1987.

One Special Assistant to the Deputy Assistant Secretary for Planning and Evaluation/Health Policy. Effective March 6, 1987.

One Special Assistant for Policy Development to the Director, Policy Development Staff, Office of the Deputy Commissioner, Policy and External Affairs, Social Security Administration. Effective March 6, 1987.

One Special Assistant for Policy Development to the Director, Policy Development Staff, Office of the Deputy Commissioner, Policy and External Affairs, Social Security Administration. Effective March 11, 1987.

One Special Assistant for Public Affairs to the Associate Commissioner for Public Affairs, Food and Drug Administration. Effective March 13, 1987.

One Director, Office of Congressional/External Affairs, to the Associate Commissioner, Office of Governmental Affairs, Social Security Administration. Effective March 20, 1987.

One Deputy Director to the Director, Office of Congressional/ External Affairs, Office of Governmental Affairs, Social Security Administration. Effective March 20, 1987.

One Director, Policy Development Staff, to the Deputy Commissioner for Policy and External Affairs, Social Security Administration. Effective March 27, 1987.

Department of Housing and Urban Development

One Special Assistant to the Secretary. Effective March 2, 1987.

One Special Assistant to the Assistant Secretary for Housing. Effective March 5, 1987.

Department of the Interior

One Special Assistant to the Assistant to the Secretary and Director, Office of Public Affairs. Effective March 5, 1987.

One Special Assistant to the Assistant Director-External Affairs. Effective March 11, 1987.

Department of Justice

One Attorney-Advisor (Senior Special Assistant) to the Assistant Attorney General, Civil Division. Effective March 4, 1987.

One Attorney-Advisor to the Assistant Attorney General, Office of Justice Programs. Effective March 11, 1987.

One Attorney-Advisor (Special Assistant) to the Assistant Attorney General, Civil Division. Effective March 18, 1987.

One Confidential Assistant to an Associate Deputy Attorney General. Effective March 20, 1987.

One Senior Liaison Officer to the Director, Office of Liaison Services. Effective March 31, 1987.

Department of Labor

Two Special Assistants to the Assistant Secretary for Occupational Safety and Health. Effective March 4, 1987.

Department of State

One Assistant Manager, President's Guest House, to the Chief of Protocol. Effective March 4, 1987.

One Staff Assistant to the Under Secretary for Management. Effective March 20, 1987.

One Secretary (Stenography) to the Ambassador-at-Large for Counter Terrorism. Effective March 27, 1987.

One Special Assistant to the Under Secretary for Security Assistance, Science and Technology. Effective March 27, 1987.

Department of Transportation

One Staff Assistant to the Administrator, Maritime Administration. Effective March 6, 1987.

Department of the Treasury

One Legislative Assistant to the Assistant Secretary (Legislative Affairs). Effective March 2, 1987.

One Special Assistant to the Deputy Assistant Secretary (Public Liaison), Office of the Assistant Secretary (Public Affairs and Public liaison). Effective March 4, 1987.

One Staff Assistant to the Deputy Assistant Secretary (Financial Institutions Policy), Office of the Assistant Secretary (Domestic Finance). Effective March 4, 1987.

One Travel Assistant to the Deputy Assistant Secretary for Administration, Office of the Assistant Secretary (Management). Effective March 12, 1987.

Administrative Office of the U.S. Courts

One Attorney-Advisor (Legislative) to the Legislative and Public Affairs Officer. Effective March 18, 1987.

Arms Control and Disarmament Agency

One Deputy Director, Office of Congressional Affairs, to the Director of Congressional Affairs. Effective March 12, 1987.

Commission on Civil Rights

One Special Assistant to a Commissioner. Effective March 2, 1987.

One Special Assistant to a Commissioner. Effective March 6, 1987.

Commodity Futures Trading Commission

One Administrative Assistant to a Commissioner. Effective March 31, 1987.

Consumer Product Safety Commission

One Special Assistant to the Chairman. Effective March 4, 1987.

Environmental Protection Agency

One Staff Assistant to the Assistant Administrator for Enforcement and Compliance Monitoring. Effective March 24, 1987.

Equal Employment Opportunity Commission

One Confidential Assistant to a Commissioner. Effective March 2, 1987.

Federal Communications Commission

One Congressional Liaison Specialist to the Legislative Affairs Officer, Office of Congressional and Public Affairs. Effective March 24, 1987.

Federal Trade Commission

One Staff Assistant to the Director, Office of Public Affairs. Effective March 4, 1987.

One Public Affairs Specialist to the Chairman. Effective March 18, 1987.

One Congressional Liaison Specialist to the Chairman. Effective March 24, 1987.

International Trade Commission

One Confidential Secretary to the Chairman. Effective March 12, 1987.

One Confidential Assistant to a Commissioner. Effective March 31, 1987.

Office of Management and Budget

One Secretary to the Associate Director for Management. Effective March 27, 1987.

Pension Benefit Guaranty Corporation

One Secretary (Typing) to the Principal Deputy Executive Director. Effective March 11, 1987.

Small Business Administration

One Director of Veterans Affairs to the Associate Administrator for Business Development. Effective March 31, 1987.

United States Information Agency

One Confidential Assistant to the Director, Voice of America. Effective March 27, 1987.

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–9484 Filed 4–27–87; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4. Activities will include:

- Hydro Assessment Study report.
- Other.
- Public comment.

DATE: April 29, 1987. 10:00 a.m.

ADDRESS: The meeting will be held in the Council's central office, 850 S.W. Broadway, Suite 1100, Portland Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503–222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 87–9488 Filed 4–27–87; 8:45 am]

BILLING CODE 00000-00-M

POSTAL SERVICE

Privacy Act of 1974; Matching Program—Postal Service/Department of Labor

AGENCY: United States Postal Service.

ACTION: Notice of Computer Matching Program—U.S. Postal Service/ U.S. Department of Labor.

SUMMARY: The purpose of this document is to publish notice of the Postal Service's plan to conduct a computer matching program through a comparison of its "Payroll System File" (USPS 050.020, Finance Records—Payroll System) with the Department of Labor's file of debtors under the Federal Employees' Compensation Program. The goal of the match is to identify postal employees indebted to the Federal Government as a result of receiving an overpayment of benefits under the Federal Employees' Compensation Act and to collect those debts through involuntary salary offset under the Debt Collection Act if voluntary repayment is not made.

DATE: It is anticipated that the match will begin on or about April 1987.

ADDRESS: Send any comments to Records Officer, Room 8121, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8121 at the above address.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, Records Office (202) 268–5158.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 authorizes Federal agencies to collect debts owed by their employees through involuntary salary offsets. The planned match will identify postal employees who are delinquent in debts owed to the Federal Government as a result of receiving overpayments under the Federal Employees' Compensation Program (FECP) administered by the Department of Labor. Those employees identified and verified as delinquent debtors under the FECP will be given an opportunity to contest the nature or amount of the debt and to voluntarily repay it before involuntary salary offset procedures under the Debt Collection Act are started. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS) and U.S. Department of Labor (DOL).

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the Office of Workers' Compensation Programs of the DOL will provide to the USPS a computer tape of its debtors who have received overpayments of benefits under the Federal Employees' Compensation Act during previous Federal employment. The USPS will match that tape, using name and Social Security Account Number (SSAN), against its Payroll System file of employees. In instances where employee/debtor SSANs match, i.e., "hits," the USPS will disclose to the DOL the following information from its payroll file: Name, SSAN, date of birth, home address and postal facility where employed.

The validity of "matched" employee/debtor information will be verified by the Office of Workers' Compensation Programs of the DOL. The case file of each employee verified as a debtor will be checked to determine if a repayment agreement has been reached. If no repayment agreement is in effect, the debtor will be given certain due process rights before involuntary salary offset procedures are initiated. These rights include an opportunity to review records relating to the debt, to voluntarily repay the debt, and to request a hearing on the existence or amount of the debt. Only after the debtor has been afforded all due process rights will action be taken to recoup the debt by way of involuntary salary offset. Further, the USPS Inspection Service may participate in the investigation of hits as a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, "Inspection Requirements Investigative File System" (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use No. 34 in USPS 050.020, Payroll System, most recently published in 52 FR 6251 of March 2, 1987.

c. *Period of the Match:* The matching program will be on a one-time basis and is expected to begin in April 1987 and end no later than October 1988.

d. *Security:* The USPS personnel who perform the match will: (a) Have the only USPS access to the DOL computer tape; (b) use it for the purpose of the match and for no other purpose; and (c) safeguard it from unauthorized access. Likewise, the postal employee information disclosed to the DOL will be used by authorized DOL personnel only for the purpose of the match and for no other purpose and will be safeguarded from unauthorized access. All information exchanged as a result of this

matching project will be maintained in locked file areas when not in use.

e. *Disposition of Records:* The USPS will not retain or copy the tape provided by the DOL and will return it to the DOL immediately upon completion of the match. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no illegality has occurred.

f. *Further Comments:* No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

Fred Eggleston,

Assistant General Counsel Legislative Division.

[FR Doc. 87-9537 Filed 4-27-87; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF STATE

[Public Notice CM-8/1075]

Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Notice of Meeting

The Department of State announces that Study Group A of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on May 15, 1987 at 10:00 a.m. in Room 1207, Department of State, 2201 C Street, NW., Washington, DC.

Study Group A deals with international telecommunications policy and services.

The proposed agenda will be dealt within morning and afternoon sessions.

A.M.

A. Debriefing of recent CCITT Study Group meetings, including review of present activities of Working Parties of Study Group I and proposed Contributions.

B. Reports of Study Group VIII, review of White Contributions and proposed U.S. Contributions for upcoming June 23–3 July Study Group VIII.

P.M.

A. Debriefing of recent CCITT Study Group meetings, including review of present activities of Working Parties of Study Group III and proposed Contributions.

B. Other business.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating availabie. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC.; telephone (202) 647-6700. All attendees must use the C Street entrance to the building.

Dated: April 17, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development; Chairman, U.S. CCITT National Committee.

[FR Doc 87-9492 Filed 4-27-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1071]

Study Groups 10 and 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Groups 10 and 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on May 14, 1987 in the First Floor Board Room of the National Association of Broadcasters, 1771 N Street, NW., Washington, DC. The meeting will begin at 10:00 a.m.

Study Group 10 deals with questions relating to sound broadcasting; Study Group 11 deals with questions relating to television broadcasting. The purpose of the meeting is to discuss preparations for the Interim Meetings of international Study Groups 10 and 11 in the Fall of 1987.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard E. Shrum, State Department, Washington, DC 20520; telephone 202 647-2592.

Dated: April 13, 1987.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 87-9489 Filed 4-27-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1072]

Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on May 14, 1987 in Room 521J of the National Aeronautics and Space Administration, 600 Independence Avenue SW., Washington, DC. The meeting will begin at 10:00 a.m.

Study Group 2 deals with matters relating to the communications for scientific satellites, space probes, spacecraft, exploration satellites (e.g., meteorological and geodetic) and to interference problems concerning the radio astronomy and radar astronomy services. The purpose of the meeting is to discuss preparations for the Interim Meeting of international Study Group 2 in the Fall of 1987.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard E. Shrum, State Department, Washington, DC 20520; telephone 202 647-2592.

Dated: April 9, 1987.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 87-9490 Filed 4-27-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1073]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:30 pm on June 8, 1987, in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593.

The purpose of the meeting is to finalize preparations for the 58th Session of the Council of the International Maritime Organization (IMO) which is scheduled for 15–19 June 1987 in London. In particular, the SHC will discuss the development of the U.S. Positions dealing with, inter alia, the following topics:

—Reports of the Major Committees

—Financial Issues

—Personnel Matters

—Preparation for Assembly XV

Interested persons may seek information by writing: Mr. G.P. Yoest, U.S. Coast Guard Headquarters (G-CPI), 2100 Second Street, SW., Washington, DC 20593 or by calling: 202-267-2280.

Dated: April 14, 1987.

Michael E. McNaull,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 87-9491 Filed 4-27-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending April 17, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44813 R-1—R-7

Parties: Members of the International Air Transport Association.
Date Filed: April 14, 1987.
Subject: Fares Between Japan & Guam/Saipan.
Proposed Effective Date: June 1, 1987.

Docket No. 44814

Parties: Members of the International Air Transport Association.
Date Filed: April 14, 1987.
Subject: TC2 Cargo Rates.
Proposed Effective Date: April 1, 1987.

Docket No. 44817

Parties: Members of the International Air Transport Association.
Date Filed: April 16, 1987.
Subject: Amend Mileage Manual.
Proposed Effective Date: May 1, 1987.

Docket No. 44818 R-1 & R-2

Parties: Members of the International Air Transport Association.
Date Filed: April 16, 1987.
Subject: Amend Dallas Proportional Fare-TC3.
Proposed Effective Date: May 20, 1987.

Docket No. 44819 R-1 & R-2

Parties: Members of the International Air Transport Association.
Date Filed: April April 16, 1987.
Subject: Revalidating Normal Fares TC123.
Proposed Effective Date: May 1, 1987.

Docket No. 44820 R-1—R-6

Parties: Members of the International Air Transport Association.
Date Filed: April 16, 1987.
Subject: Carlins-South Asian Subcontinent Fares.
Proposed Effective Date: May 1, 1987.

Docket No. 44821 R-1 & R-2

Parties: Members of the International Air Transport Association.
Date Filed: April 16, 1987.
Subject: Europe-Japan/Korea Fares.
Proposed Effective Date: April 1, 1987.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 87-9506 Filed 4-27-87; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended April 17, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due data for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44810

Date Filed: April 13, 1987.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 11, 1987.
Description: Application of Cayman Airways Limited pursuant to section 402 of the Act and Subpart Q of the Regulations requests amendment of its foreign air carrier permit with respect to U.K. Routes 9 and 16 and the U.S.-U.K. Air Services Agreement ("Bermuda II").

Docket No. 44824

Date Filed: April 17, 1987.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: May 15, 1987.
Description: Application of Tower Air, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity (or amendment of its current certificate) authorizing it to engage in scheduled foreign air transportation of persons, property and mail, on a permissive basis, between New York, N.Y., on the one hand, and Paris, France, on the other hand.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 87-9507 Filed 4-27-87; 8:45 am]
BILLING CODE 4910-62-01

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA), Special Committee 151, Minimum Operational Performance Standards for Airborne MLS Area Navigational Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 151 on Minimum Operational Performance Standards for Airborne MLS Area Navigational Equipment to be held on May 27-29, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is a folllows: (1) Chairman's Remarks; (2) Approval of the Minutes of the Fifteenth Meeting; (3) Review and Discuss EUROCAE Working Group 27 Activities; (4) Technical Presentations; (5) Review of the Tenth Draft MOPS Including Task Assignments and Draft Comments; (6) Working Group Sessions; (7) Plenary to Review Working Group Progress and Task Assignments; (8) Other Business; and (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 21, 1987.

Wendie F. Chapman,
Designated Officer.

[FR Doc. 87-9495 Filed 4-27-87; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

National Motor Carrier Advisory Committee and Associated Subcommittees; Public Meetings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Public meetings.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on May 6, 1987, in Long Beach, California, at the Breakers Hotel, 210 East Ocean Boulevard. The meeting will begin at 9:00 a.m. and is open to the public.

The agenda will include: a report on the subcommittee activities regarding commercial drivers' licenses, reasonable access, a discussion of legislation and rulemaking affecting mandatory drug testing of motor carrier operators, a discussion of the proposed requirements for the annual inspection of commercial

motor vehicles, the status of the Truck Inventory and Use Survey (TIUS), and the status of various legislative proposals affecting the motor carrier industry.

In conjunction with the Committee meeting, there will be two Subcommittee meetings held on May 5, 1987, at the Breakers Hotel. The Subcommittee on Safety will meet to discuss the implementation of the Commerical Driver's License program, particularly the public involvement plan, the public information campaign, the enforcement of the requirements that will go into effect on July 1, 1987, as well as other implementation issues. The Subcommittee on Highway Operations will be meeting at the same time to discuss the issue of reasonable access for Surface Transportation Assistance Act vehicles. This subcommittee will concentrate on the comments which were recently made to FHWA Docket No. 87–1 (52 FR 293, January 5, 1987) on the subject. Both Subcommittee meetings will begin at 1:30 p.m. and are also open to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director, National Motor Carrier Advisory Committee, Federal Highway Administration, HOA–1, Room 4218, 400 7th Street, SW., Washington, DC 20590, (202) 366–2238, office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

Issued on April 23, 1987

Ray Barnhart,

Administrator.

[FR Doc. 87–9572 Filed 4–27–87; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 224]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: The authority to consent to a taxpayer's request to revoke an election made under section 897(i) to the Internal Revenue Code is delegated to the Assistant Commissioner (International). The text of the delegation order appears below.

EFFECTIVE DATE: April 24, 1987.

FOR FURTHER INFORMATION CONTACT: Mark Grasse, OP:I:C:E:666, Room 2207, Internal Revenue Service, Office of Assistant Commissioner (International), 950 L'Enfant Plaza, Washington, DC 20024, (202) 287–4388 (Not a toll free telephone number).

Authority to Consent to Revocation of Elections Made Under section 897(i) of the Internal Revenue Code

1. Pursuant to the authority vested in the Commissioner of the Internal Revenue by Treasury Department Order No. 150–10 and by 26 CFR 1.897–3(f), there is hereby delegated to the Assistant Commissioner (International) the authority to consent to revocation of elections made under section 897(i) of the Internal Revenue Code.

2. This authority may be redelegated no lower than field group managers in the Examination Branch.

3. To the extent that authority previously exercised consistent with this order may require ratification, it is hereby affirmed and ratified.

Dated: January 9, 1987.

Approved:

James I. Owens,

Deputy Commissioner.

[FR Doc. 87–9440 Filed 4–27–87; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination: Amendment

On Tuesday, July 30, 1985, notice was published in the Fedeal Register (50 FR 30904) by the United States Information Agency pursuant to Pub. L. 89–259 relating to the exhibit "Ramses II: The Pharoah and His Time." An additional exhibition site will be added to those listed in the original notice. The exhibit will be on display at the Denver Museum of Natural History, Denver, Colorado, beginning on or about October 18, 1987 to on or about March 31, 1988.

A copy of the list of exhibit objects may be obtained by contacting Mr. John A. Lindburg of the Office of the General Counsel of USIA. The telephone number is 202–485–7976, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Public notice of the amendment is ordered to be published in the **Federal Register.**

Dated: April 21, 1987.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 87–9528 Filed 4–27–87; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 81
Tuesday, April 28, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DESPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Thursday, April 30, 1987, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

The Kids Bank, a proposed new bank to be located at 250 Steel Street, Denver, Colorado.

Domestic Safe Deposit Company, an operating noninsured loan and investment company located at 815 Reservoir Avenue, Cranston, Rhode Island.

Application for Federal deposit insurance and for consent to merge and establish twenty-two branches:

Barnett Bank of Pinellas County, a proposed new bank to be located at 1901 Central Avenue, St. Petersburg, Florida, for Federal deposit insurance, for consent to merge, under its charter and title, with Barnett Bank of Pinellas County, National Association, Clearwater, Florida, and for consent to establish twenty-one existing and one approved, by unopened, offices of Barnett Bank of Pinellas County, National Association as branches of Barnett Bank of Pinellas County.

Application for (1) Federal deposit insurance and for consent to purchase assets and assume liabilities and to establish one branch; and (2) for consent to merge and to establish two branches:

First Alabama Bank of Albertville, Albertville, Alabama, a proposed new bank in organization, for Federal deposit insurance, for consent to purchase the assets of and assume the liability to pay deposits made in The Albertville National Bank, Albertville, Alabama, and for consent to establish the sole branch of The Albertville National Bank as a branch of First Alabama Bank of Albertville; and First Alabama Bank, Montgomery, Alabama, for consent to merge, under its charter and title, with First Alabama Bank of Albertville, Albertville, Alabama, and for consent to establish the two offices of First Alabama Bank of Albertville as branches of First Alabama Bank.

Applications for consent to merge and establish branches:

Industrial State Bank, Kansas City, Kansas, an insured State nonmember bank, for consent to merge, under its charter and title, with The Fidelity State Bank, Kansas City, Kansas, and for consent to establish the sole office of The Fidelity State Bank as a branch of the resultant bank.

Security Bank of Kansas City, Kansas City, Kansas, an insured State nonmember bank, for consent to merge, under its charter and title, with Arrowhead State Bank of Kansas City, Kansas City, Kansas, and for consent to establish the main office and existing branch of Arrowhead State Bank of Kansas City as branches of resultant bank.

Applications for consent to purchase assets and assume liabilities:

BayBank Connecticut, National Association (In Organization), Farmington, Connecticut, for consent to purchase certain assets of and assume the liability to pay deposits made in eight offices of Northeast Savings, F.A., Hartford, Connecticut, a non-FDIC-insured institution.

Gadsden National Bank (Proposed), Quincy, Florida, for consent to purchase certain assets of and assume the liability to pay deposits made in the Quincy Branch of Pioneer Savings Bank, Clearwater, Florida, a non-FDIC-insured institution.

Industrial National Bank, Tallahassee, Florida, for consent to purchase certain assets of and assume the liability to pay deposits made in the Tallahassee Branch of Pioneer Savings Bank, Clearwater, Florida, a non-FDIC-insured institution.

Application for consent to purchase assets and assume liabilities and to establish two branches:

BayBank Valley Trust Company, Springfield, Massachusetts, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Ingleside Mall and 1941 Wilbraham Road Branches of Northeast Savings, F.A., Hartford, Connecticut, a non-FDIC-insured institution, and for consent to establish those two offices as branches of BayBank Valley Trust Company.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,016-L, The First National Bank of Midland, Midland, Texas.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of the Director, Division of Liquidation:

Memorandum re: Quarterly Report for Actions Approved Under Delegated Authority as of June 30, 1986.

Memorandum re: Quarterly Report for Actions Approved Under Delegated Authority as of September 30, 1986.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: Farmers State Bank of Clarissa, Clarissa, Minnesota (2573) (Memo dated April 1, 1987).

Summary Audit Report re: Indianapolis Consolidated Office, Cost Center—202 (Memo dated April 2, 1987).

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: April 23, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–9591 Filed 4–24–87; 9:00 am]

BILLING CODE 6714-01-M

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 2:30 p.m. on Thursday, April 30, 1987, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of

Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Recommendations regarding the Corporation's assistance agreement with an insured bank.

Discussion Agenda:

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re: Minneapolis Consolidated Office, Cost Center—204 (Memo dated April 1, 1987).

Summary Audit Report re: Orlando Consolidated Office, Cost Center—104 (Memo dated April 2, 1987).

Summary Audit Report re: Audit Report, general EDP Security (Memo dated march 10, 1987).

Requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Recommendations regarding the Corporation's assistance agreement with an insured bank.

Recommendation regarding the Corporation's corporate activities.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 989–3813.

Dated: April 23, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–9592 Filed 4–24–87; 9:00 am]

BILLING CODE 6714–01–M

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: At 2:00 P.M., Wednesday, April 29, 1987.

PLACE: In the Board Room, 6th Floor, 1700 G st., NW., Washington, DC 20552.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202–377–6679)

MATTERS TO BE CONSIDERED:

Classification of assets.

Appraisal policies and practices of insured institutions.

Jeff Sconyers,

Secretary.

No. 4, April 23, 1987.

[FR Doc. 87–9573 Filed 4–23–87; 4:40 pm]

BILLING CODE 6720–01–M

FEDERAL RESERVE SYSTEM

Board of Governors

TIME AND DATE: 11:00 a.m., Monday, May 4, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrace between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 24, 1967.

Barbara R. Lowrey,

Associate Secretary of the Board.

[FR Doc. 87–9670 Filed 4–24–87; 3:45 am]

BILLING CODE 6210–01–M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 10:00 a.m., Tuesday 5 May 1987.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. section 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy)

MATTERS TO BE CONSIDERED: Selection of Regional Directors for Region 22 (Newark New Jersey), and Region 3 (Buffalo, New York).

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, DC 20570, Telephone: (202) 254–9430.

Dated: Washington, DC, 23 April 1987.

By direction of the Board.

John C. Truesdale,

Executive Secretary National Labor Relations Board.

[FR Doc. 87–9574 Filed 4–23–87; 4:41 pm]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 27, May 4, 11, and 18, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 27

Thursday, April 30

2:00 p.m.

Briefing on Advanced Boiling Water Reactor Review (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Northern States Power Company (Control Room Radios)

b. Emergency Preparedness Rulemaking (Change from One Year to Two Years in Time Period to Conduct Pre-Operational Exercise) (Tentative)

Week of May 4—Tentative

Wednesday, May 6

2:00 p.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, May 7

2:00 p.m.

Briefing on State of the Nuclear Industry (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 11—Tentative

Wednesday, May 13

10:00 a.m.
Briefing on NRC/DOE Comparability Study (Closed—Ex. 1)
2:00 p.m.
Periodic Briefing by INPO (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of May 18—Tentative

Thursday, May 21

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

April 23, 1987.

[FR Doc. 87–9666 Filed 4–24–87; 3:42 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 27, 1987:

A closed meeting will be held on Tuesday, April 28, 1987, at 2:30 p.m. An open meeting will be held on Wednesday, April 29, 1987, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 28, 1987, at 2:30 p.m., will be:

Settlement of injunctive action.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Formal order of investigation.
Opinion.

The subject matter of the open meeting scheduled for Wednesday, April 29, 1987, at 10:00 a.m., will be:

1. Consideration of a legislative package to be sent to Congress proposing amendments to: (1) The definitions of "broker" and "dealer" in Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, and (2) the broker-dealer registration requirements found in Section 15(a) of the Securities Exchange Act of 1934. These amendments, if enacted, would preclude banks from engaging in securities activities, except under limited circumstances. For further information, please contact Amy Natterson Kroll at (202) 272–2848.

2. Consideration of releases concerning: (1) A joint industry reporting plan submitted by the National Association of Securities Dealers, Inc. ("NASD") and the Midwest Stock Exchange ("MSE") for National Market System ("NMS") Securities that are traded on a national securities exchange on a listed basis or pursuant to unlisted trading privileges; and (2) the MSE application for unlisted trading on 25 OTC NMS securities. For further information, please contact Christine A. Sakach at (202) 272–2418.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David Potel at (202) 272–2014.

Jonathan G. Katz,

Secretary.

April 23, 1987.

[FR Doc. 87–9629 Filed 4–24–87; 1:15 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 52, No. 81
Tuesday, April 28, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 300 and 355

[FRL-3173-6]

Extremely Hazardous Substances List and Threshold Planning Quantities; Emergency Planning and Release Notification Requirements

Correction

In rule document 87-9089 beginning on page 13378 in the issue of Wednesday, April 22, 1987, make the following corrections:

1. On page 13385, in the second column, in the next to the last paragraph, in the second line, "important" should read "import".

PART 355—[CORRECTED]

Appendix A—[Corrected]

2. On page 13398, in Appendix A, in the entry for CAS No. 62207-76-5, remove the extra spaces after "Cobalt," and "Ethanediylbis".

3. On page 13401, in the entry for CAS No.4418-66-0, the Chemical name should read "Phenol,2,2'-Thiobis(4-Chloro-6-Methyl)-".

Appendix B—[Corrected]

4. On page 13405, in Appendix B, in the entry for CAS No. 97-18-7, the Chemical name should read "Phenol,2,2'-Thiobis(4,6-dichloro)-".

5. On page 13410, in the entry for CAS No. 62207-76-5, remove the extra spaces after "Cobalt,".

For an Environmental Protection Agency correction to this document, see the Rules Section of this issue.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Amikacin Sulfate Injection

Correction

In rule document 87-8115 appearing on page 11816 in the issue of Monday, April 13,1987, make the following corrections:

1. In the second column, under **SUPPLEMENTARY INFORMATION**, in the 11th line, "*coli*" was misspelled.

§ 522.56 [Corrected]

2. In the third column, in § 522.56(a), in the third line, "or" should read "of".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

National Airspace Review Enhancement Program; Advisory Committee Meeting

Correction

In notice document 87-8113 appearing on page 11905 in the issue of Monday, April 13, 1987, make the following correction:

In the first column, under **FOR FURTHER INFORMATION CONTACT**, in the fifth line, the telephone number should read "(202) 267-3146".

BILLING CODE 1505-01-D

federal register

Tuesday
April 28, 1987

Part II

National Aeronautics and Space Administration

48 CFR Part 1801 et al.
Acquisition Regulations (NASA FAR Supplement); Guidelines for the Acquisition of Investigations and Miscellaneous Amendments; Final Rule

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1802, 1804, 1808, 1809, 1810, 1815, 1822, 1825, 1828, 1832, 1835, 1839, 1846, 1852, and 1870

[NASA FAR Supplement Directive 85-7]

Acquisition Regulations (NASA FAR Supplement); Guidelines for the Acquisition of Investigations and Miscellaneous Amendments

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) by adding guidelines for the acquisition of investigations and to reflect a number of miscellaneous changes implementing higher level issuances or dealing with NASA internal or administrative matters.

EFFECTIVE DATE: May 15, 1987.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters. Washington, DC 20546, Telephone: (202) 453-2119.

SUPPLEMENTARY INFORMATION:

Background

There is only one significant change for which proposed rulemaking was published at 51 FR 30884 (August 29, 1986) which made available to the public a copy of "Guidelines for the Acquisition of Investigations" (included herein as section 1870.103, App. I) for review and possible comment for a 30-day period, ending September 29, 1986. No comments were received from the private sector; however, three substantive changes have been made: (1) the "Treatment of Proposal Data" part of the General Provisions is now fully consistent with FAR and the NFS; (2) the "Invention and Data Rights" part of the General Provisions has been replaced by a "Patent Rights" provision, consisting of citations to applicable FAR and NFS clauses; and (3) the assigned OMB Paperwork Reduction Act approval number 2700-0042 has been included in the "Format of Announcement of Opportunity (AO)." Other changes to section 1870.103 are minor, consisting of editorial improvements and typographical corrections.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. All regulations in NFSD 85-7 fall in the exempted category, except the aforementioned section 1870.103. On January 14, 1987, the proposed final version of section 1870.103 was forwarded to the Office of Management and Budget for review in accordance with E.O. 12291. That review has been concluded. NASA certifies that this regulation will 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.). The regulations impose no burdens on the public within the ambit of the Paper Work Reduction Work Act, as implemented at 5 CFR Part 1320, except for section 1870.103 to which OMB control number 2700-0072 applies.

List of Subjects in 48 CFR Part 18

Government procurement.

S.J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR parts 1801, 1802, 1804, 1808, 1809, 1810, 1815, 1822, 1825, 1828, 1832, 1835, 1839, 1846 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Subpart 1801.1 is amended by revising 1801.105-1 to read as follows:

1801.105-1 NASA FAR Supplement requirements.

The following OMB control numbers apply:

NASA FAR supplement segment	OMB Control No.
18-12	2700-0056
18-23	2700-0051
18-27	2700-0052
18-32	2700-0055
18-43	2700-0054
NF 533	2700-0003
NF 667	2700-0004
NF 1018	2700-0017

3. Subpart 1801.6 is amended by revising paragraph 1 of the Format displayed in 1801.603-2(d)(2) to read as follows:

1801.603-2 Selection.

* * * * *

(d) * * *

(2) * * *

1. There is a clear and convincing need to appoint a contracting officer with the ability to perform at the _____ (basic, intermediate, or senior) contracting officer warrant level for the following reasons:

(Insert appropriate reasons.)

* * * * *

PART 1802—DEFINITIONS OF WORDS AND TERMS

4. Subpart 1802.1 is amended by revising 1802.101 to read as follows:

1802.101 Definitions.

The following words and terms are used throughout this regulation as defined in this subpart unless—

(a) The context in which they are used clearly requires a different meaning, or

(b) A different definition is prescribed for a particular part or portion of a part.

"Administrator" means the Administrator or Deputy Administrator of NASA.

"Assistant Administrator for Procurement" means the Assistant Administrator for Procurement, Office of Procurement, NASA Headquarters (Code H).

"Contracting activity" in NASA includes each "installation" as defined herein.

"Contracting office" within NASA is synonomous with the previously used term "procurement office."

"Defense agencies" as used in the FAR and this regulation, includes NASA, unless NASA is specifically excluded.

"Field installation" means Ames Research Center, Goddard Space Flight Center, John F. Kennedy Space Center, Langley Research Center, Lewis Research Center, Johnson Space Center, George C. Marshall Space Flight Center, National Space Technology Laboratories, and any other field installation hereafter established by NASA.

"Head of the agency" in NASA means the Administrator or Deputy Administrator of NASA.

"Head of the contracting activity" in NASA includes the Director (or other Head) of a NASA field installation and the Assistant Administrator for Procurement for NASA Headquarters.

"Installation" means NASA Headquarters and field installations and is synonymous with the term "contracting activity."

"Procurement" as used in this Regulation is interchangeable with the term acquisition, as defined in FAR Subpart 2.101.

"Procurement Officer" as used in this Regulation refers to the chief of the contracting office, as defined in FAR Subpart 2.101.

PART 1804—ADMINISTRATIVE MATTERS

5. Subpart 1804.71 is amended as set forth below:

1804.7100 [Amended]

a. In 1804.7100, the words "grants, basic agreements," are removed.

1804.7102-2 [Amended]

b. In 1804.7102-2 (a) and (b), the dollar amount "$10,000" is revised to read "$25,000" in both instances.

c. In 1804.7102-2, paragraph (f) is removed, and paragraphs (g) and (h) are redesignated (f) and (g), respectively.

d. Section 1804.7102-4(a) is revised to read as follows:

1804.7102-4 Assigned contract or agreement prefixes.

(a) Approved prefixes for NASA contract or agreement numbers are as follows:

Ames Research Center	NAS2
Goddard Space Flight Center	NAS5
Headquarters	NASW
Lyndon B. Johnson Space Center	NAS9
John F. Kennedy Space Center	NAS10
Langley Research Center	NASI
Lewis Research Center	NAS3
George C. Marshall Space Flight Center.	NAS8
NASA Resident Office—JPL	NAS7
National Space Technology Laboratories.	NAS13

* * * * *

1804.7102-5 [Amended]

e. In 1804.7102-5, paragraph (c) is removed, and paragraph (d) is redesignated (c).

f. Section 1804.7103-2 is revised to read as follows:

1804.7103-2 Assigned purchase order or request prefixes.

Approved letter prefixes for NASA purchase orders (including blanket purchase agreements) or requests to other Government agencies are as follows:

Field Installations and Offices	Prefix
Ames Research Center	A
George C. Marshall Space Flight Center.	H
Goddard Space Flight Center	S
Headquarters	W
John F. Kennedy Space Center	CC
Langley Research Center	L
Lewis Research Center	C
Lyndon B. Johnson Space Center	T
NASA Resident Office—JPL	WO
National Space Technology Laboratories.	NS

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

6. Subpart 1808.3 is amended as set forth below:

1808.303 [Amended]

a. In 1808.303, "(Code NX-2)," is revised to read "(Code NX),".

1808.304-21 [Amended]

b. In 1808.304-2(c), "(Code HS-1)," is revised to read "(Code HS),".

1808.304-4 [Amended]

c. In 1808.304-4(a), "DoD" is revised to read "DOD".

1808.304-571 [Amended]

d. In 1808.304-571, the phrases "(Code HS-1)" and "(Code NX-2)" are revised to read "(Code HS)" and "(Code NX)", respectively.

PART 1809—CONTRACTOR QUALIFICATIONS

7. Subpart 1809.2 is amended by revising 1809.206-71 to read as follows:

1809.206-71 Contract clause.

When qualified products (end items or components thereof) are being procured, insert the clause at 1852.209-70 in both the solicitation and resulting contracts.

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

8. Part 1810 is amended by revising 1810.007 to read as follows:

1810.007 Deviations.

If an exception or deviation from a Federal or military specification is required—

(a) The contracting officer shall, before issuance of the solicitation, submit a fully documented and justified request for the deviation to the Procurement Officer; and

(b) The Procurement Officer shall comply with FAR 10.007(a).

9. Section 1810.011 is revised to read as follows:

1810.011 Solicitation provisions.

When a "brand-name or equal" purchase description is used, the contracting officer shall insert in the solicitation the provision at 1852.210-70, Brand-Name or Equal. Terms in the provision unique to sealed bidding must be modified when it is used in negotiated procurements.

PART 1815—CONTRACTING BY NEGOTIATION

10. Subpart 1815.4 is amended as set forth below:

a. Sections 1815.407 and 1815.407-70 are revised and 1815.412 is added to read as follows:

1815.407 Solicitation provisions.

(a) The clause at FAR 52.215-10, Late Submissions, Modifications, and Withdrawals of Proposals, prescribed at FAR 15.407(c)(6), shall not be used in solicitations for Announcements of Opportunity or for the Small Business Innovative Research (SBIR) program. See instead 1815.407-70(b).

(b) The clause at FAR 52.215-12, Restriction on Disclosure and Use of Data, prescribed at FAR 15.407(c)(8), shall not be used in NASA solicitations. See instead 1815.407-70(a).

1815.407-70 NASA solicitation provisions.

(a) The contracting officer shall insert in requests for proposals and requests for quotations other than for information or planning purposes the provision at 1852.215-72, Restriction on Use and Disclosure of Proposal/Quotation Information (Data).

(b) In accordance with 1815.412, use the clause at 1852.215-73, Late Submissions, Modifications, and Withdrawals of Proposal, in lieu of FAR 52.215-10 in Announcement of Opportunity solicitations issued pursuant to 1870.1 and in Small Business Innovative Research (SBIR) solicitations. This clause allows the project office to accept late proposals or proposal modifications and late "best and final" offers if, in the selection official's judgment, it is in the Government's best interest.

1815.412 Late proposals and modifications.

This section applies to Announcement of Opportunity (see 1870.1) and SBIR Phase I and Phase II solicitations only. See FAR 15.412 for policy regarding late proposals/modifications under other solicitations.

(a) Proposals, or modifications thereof, received from qualified firms after the latest date specified for receipt may be considered if there is a probability of a significant reduction in cost to the Government or if there are significant technical advantages, as compared with proposals previously received. In such case, the project office shall investigate the circumstances surrounding the submission of the late

proposal or modification and evaluate its content and submit written recommendations and findings to the selection official or designee, as to whether there is an advantage to the Government to consider the proposal.

(b) The selection official or designee shall determine whether the proposal should be considered.

(c) Offerors may withdraw their proposals any time prior to award, provided that the conditions in paragraph (c) of the provision at 1852.215-73, Late Submissions, Modifications, and Withdrawals, are satisfied.

1815.413-2 [Amended]

b. In 1815.413-2(c), the reference to "NHB 8030.6A" is revised to read "1870.103, App. I,".

1815.613-70 [Amended]

11. Section 1815.613-70 is amended by revising the reference "NHB 8030.6, Guidelines for Acquisition of Investigations." to read "1870.103, App. I."

1815.1003 [Amended]

12. Section 1815.1003 is amended by revising the reference "NHB 8030.6, Guidelines for Acquisition of Investigations." to read "1870.103, App. I."

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

13. Subpart 1822.1 is amended as set forth below:

a. Section 1822.101-1(c) is revised to read as follows:

1822.101-1 General.

* * * * *

(c) When a strike which may have an adverse effect on NASA programs is imminent or in progess at a prime contractor's or subcontractor's plant, contracting officers shall—

(1) Advise both the prime contractor and the head of the union local in writing of the expected impact of the strike on NASA programs and, where appropriate, of the actions NASA is considering to protect the Government's interest and prevent delay in the accomplishment of NASA's mission. If the strike is in a subcontractor's plant, the subcontractor will only be approached through the prime contractor;

(2) Explore the possibility of locating other sources for the supplies or services to have been provided by the strike-threatened plant;

(3) Consider taking the actions at FAR 22.101-4.

b. Section 1822.103-4 is revised to read as follows:

1822.103-4 Approvals.

The Procurement Officer or designees are authorized to approve overtime premiums at Government expense. Where two or more contracting offices have current contracts at a single facility, and the approval of overtime by one contracting office will affect the performance or cost of contracts of another, the approving official will obtain the concurrence of other appropriate approving officials and seek agreement as to the contracts under which overtime premiums will be approved. If the approving officials do not agree within a reasonable time as to the action to be taken, a decision shall be obtained through normal channels. Ordinarily, in the absence of evidence to the contrary, a contracting office may rely on the contractor's statement that such approval will not affect the performance or payments in connection with any contract of another contracting office. Designations to approve overtime shall be in writing and shall not be delegated beyond the first level of supervision below the Procurement Officer, except that delegation may be made to the head of procurement at geographically remote branch facilities, e.g., Wallops Flight Facility, Dryden Flight Research Facility, without power of redelegation.

14. Subpart 1822.8 is amended by revising 1822.804-2 to read as follows:

1822.804-2 Construction.

In compliance with FAR 22.804-2(b), the OFCCP listing of covered geographical areas, "Goals for Minority Participation in the Construction Industry," will be made available by the Headquarters Procurement Policy Division (Code HP).

PART 1825—FOREIGN ACQUISITION

15. Subpart 1825.4 is amended by revising 1825.402 to read as follows:

1825.402 Policy.

For calendar year 1987, the threshold for procurements subject to the Trade Agreements Act of 1979 is $171,000.

PART 1828—BONDS AND INSURANCE

16. Subpart 1828.3 is amended as set forth below:

a. Section 1828.305(b)(2)(ii) is revised to read as follows:

1828.305 Overseas workers' compensation and war-hazard insurance.

* * * * *

(b) * * *

(2) * * *

(ii) An entry similar to the following:

The portion of this contract providing for the contractor to afford protection to its employees and subcontractors to their employees against war-hazard risks (see the clauses at 52.228-4 of the Federal Acquisition Regulation (FAR) and 1852.228-470 of the NASA FAR Supplement) is on a cost reimbursement, no fee basis, notwithstanding the basis of the remainder of the contract.

1828.309 [Amended]

b. Section 1828.309 is amended by removing the paragraph designation "(a)".

PART 1832—CONTRACT FINANCING

1832.111-70 [Amended]

17. Subpart 1832.1 is amended by revising, in 1832.111-70(d), the word "substitutions" to read "solicitations".

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

18. Subpart 1835 is amended by revising 1835.070(c) to read as follows:

1835.070 NASA contract clauses.

* * * * *

(c) The contracting officer shall insert the provision at 1852.235-72, Plan for New Technology Reporting, in any solicitation for any contract estimated to cost $2,500,000 or more if such contract is also to contain the clause at 1852.227-70, New Technology, unless, in consultation with the installation's New Technology Officer, the contracting officer determines that the provision is not appropriate. The contracting officer may insert the provision in solicitations for any such contract of a lesser dollar amount if deemed appropriate after consultation with the installation's New Technology Officer.

PART 1839—MANAGEMENT ACQUISITION AND USE OF INFORMATION RESOURCES

19. Subpart 1839.70 is amended by revising 1839.7001 to read as follows:

1839.7001 Policy.

The Assistant Administrator for Procurement has responsibility for submitting Agency Procurement Requests (APR's) to the General Services Administration (GSA) to obtain Delegations of Procurement Authority (DPA's) for ADP. Telecommunications services shall be obtained in accordance with NMI 2520.1, Communications System Management.

PART 1846—QUALITY ASSURANCE

1846.709–70 [Amended]

20. Subpart 1846.7 is amended by revising in 1846.709–70 the words "formerly advertised" to read "Sealed bid".

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

21. Section 1852.000 is revised to read as follows:

1852.000 Scope of part.

This part, in conjunction with FAR Part 52, (a) gives instructions for using provisions and clauses prescribed by this regulation, and (b) contains those solicitation provisions and contract clauses.

22. Subpart 1852.2 is amended as set forth below:

a. Section 1852.204–71 is revised to read as follows:

1852.204–71 NASA contractor financial management reporting.

As prescribed by 1804.675–1(a), insert the following clause in contracts that require submission of the NASA Form 533 series of reports (excluding Form 533P).

NASA Contractor Financial Management Reporting (May 1987)

(a) Financial Management Reports shall be submitted by the Contractor on NASA Form 533 in accordance with the instructions set forth in the NASA Handbook "Procedures for Contractor Reporting of Correlated Cost and Performance Data" (NHB 9501.2B) and on the reverse side of the forms, as supplemented in the Schedule of this contract. The detailed reporting categories to be used, which shall be correlated with technical and schedule reporting, will be set forth in the Schedule of this contract. Implementation by the Contractor of reporting requirements under this clause shall include NASA approval of the definitions of the content of each reporting category, and will give due regard to the Contractor's established financial management information system.

(b) Lower level detail, which the Contractor utilizes for its own management purposes to validate information reported to NASA, shall be compatible with NASA requirements.

(c) Reports shall be submitted in the number of copies, at the time, and in the manner set forth in the Schedule of this contract or as designated administratively in writing by the Contracting Officer. Upon completion and acceptance by NASA of all contract schedule line items, the Contracting Officer may direct the Contractor to submit Form 533 reports on a quarterly basis only.

(d) The Contractor agrees to insert the substance of this clause in all first tier cost type subcontracts specifically identified in writing by the Contracting Officer and shall include the cost of such subcontracts in its cost reports.

(e) During the performance of this contract, if NASA requires a change, either an increase or decrease in the information or reporting requirements specified in the Schedule, or as provided for in (a) or (c) above, such change shall be effected by the Contracting Officer in accordance with the procedures of the Changes clause of this contract.

(End of clause)

b. The introductory paragraph of 1852.204–72 is revised to read as follows:

1852.204–72 NASA contractor financial management reporting (performance analysis report).

As prescribed in 1804.675–1(b), insert the following clause in contracts that require submission of NASA Form 533P in addition to the Form 533 series submission prescribed at 1804.675–1(a).

* * * * *

c. Section 1852.210–70 is revised to read as follows:

1852.210–70 Brand name or equal.

As prescribed in 1810.011, insert the following provision:

Brand Name or Equal (May 1987)

(a) As used in this provision, the term "brand name" includes identification of products by make and model.

(b) If items called for by this Invitation for Bids have been identified in the Schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products including products of the brand name manufacturer other than the one described by brand name will be considered for award if such products are clearly identified in the bids and are determined by the Government to meet fully the salient characteristics requirements referenced in the Invitation for Bids.

(c) Unless the offeror clearly indicates in the bid that it is offering an "equal" product, the bid shall be considered as offering a brand-name product referenced in the Invitation for Bids.

(d)(1) If the offeror proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the offeror or identified in its bid, as well as other information reasonably available to the contracting activity. CAUTION TO OFFERORS. The contracting office is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the contracting office. Accordingly, to insure that sufficient information is available, the offeror must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the contracting office to (i) determine whether the product offered meets the salient characteristics requirements of the Invitation for Bids and (ii) establish exactly what the offeror proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the contracting office.

(2) If the offeror proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, it shall (i) include in the bid a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(End of provision)

d. The introductory paragraph of 1852.215–72 is revised to read as follows:

1852.215–72 Restriction on use and disclosure of proposal/quotation information (data).

As prescribed in 1815.407–70(a), insert the following provision:

* * * * *

e. Section 1852.215–73 is added to read as follows:

1852.215–73 Late submissions, modifications, and withdrawals of proposals.

As prescribed in 1815.407–70(b), substitute the following provision for FAR 52.215:10:

Late Submissions, Modifications, and Withdrawal of Proposals (AO and SBIR Programs) (February 1987)

(a) The Government reserves the right to consider proposals or modifications thereof received after the date indicated for receipt of proposals should such action be in the best interest of the Government.

(b) The Government reserves the right to consider a revision to an otherwise successful proposal received after the date indicated for receipt of proposals should such action be in the best interest of the Government.

(c) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of Provision)

f. The introductory paragraph of 1852.232–78 is revised to read as follows:

1852.232–78 Payment information.

As prescribed at 1832.111–70(d), insert the following clause:

* * * * *

g. Section 1852.233–1 is revised to read as follows:

1852.233–1 Disputes.

As prescribed in 1833.214, insert the Alternate I at FAR 52.233–1.

h. Section 1852.235–71 is revised to read as follows:

1852.235–71 Key personnel and facilities.

As prescribed in 1835.070(b), insert the following clause:

Key Personnel and Facilities (May 1987)

The personnel and/or facilities listed below (or as specified in the Schedule of this contract) are considered essential to the work being performed hereunder. Prior to removing, replacing, or diverting any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this contract. No diversion shall be made by the Contractor without the written consent of the Contracting Officer; *provided,* that the Contracting Officer may ratify in writing the change, and such ratification shall constitute the consent of the Contracting Officer required by this clause. The personnel and/or facilities listed below (or as specified in the Schedule of this contract) may, with the consent of the contracting parties, be amended from time to time during the course of the contract to either add or delete personnel and/or facilities, as appropriate.

(End of clause)

i. Section 1852.243–70 is amended by revising the introductory paragraph and paragraphs (a) and (b) of the clause to read as follows:

1852.243–70 Engineering change proposals.

As prescribed in 1843.205–70, insert the following clause. The term "price" in paragraph (b) may be changed consistent with the type of contract. When desirable, delete the second reference in paragraph (a) of the clause to MIL–STD–480 and enter local format, if any.

Engineering Change Proposals (March 1987)

(a) The Contracting Officer may, at any time, request in writing, that the Contractor prepare and submit an Engineering Change Proposal (ECP) as that term is defined in DOD–STD–480A within the scope of this contract, as hereafter set forth. Upon receipt of such request, the Contractor shall submit to the Contracting Officer the information specified by, and in the format required by, paragraph 4.6 of DOD–STD–480A.

(b) Any Contractor ECP shall include a "not-to-exceed" price and delivery adjustment or a "not-less-than" price and delivery adjustment acceptable to the Contractor if the Government subsequently orders such ECP. If ordered, the equitable increase shall not exceed, nor shall the equitable decrease be less than such "not-to-exceed" or "not-less-than" amounts, respectively. This paragraph does not preclude any revision(s) or correction(s) of an ECP in accordance with paragraphs 4.10 and 4.11 of DOD–STD–480A. Concurrently with the submission of any ECP under this contract, the Contractor shall, in accordance with FAR 15.804–2, 15.804–4, and 15.804–6, submit to the Contracting Officer a completed Standard Form 1411, Contract Pricing Proposal Cover Sheet, and at the time of agreement upon the price of the ECP, a signed Certificate of Current Cost or Pricing Data.

(End of clause)

* * * * *

j. Section 1852.245–71 is amended by revising the introductory paragraph and paragraphs (a) through (d) of the clause to read as follows:

1852.245–71 Installation-provided government property.

As prescribed in 1845.106–70(b), insert the following clause in solicitations and contracts when Government property is to be provided to on-site contractors:

Installation-Provided Government Property (May 1987)

(a) In performance of work under this contract, certain Government property identified in this contract shall be made available to the Contractor on a no-charge-for-use basis by the installation Supply and Equipment Management Officer. Such property shall be utilized in the performance of this contract at the installation administering this contract or at such other installation(s) or location(s) specified elsewhere in this contract. Under this clause, the Government retains accountability as well as title to the property and the Contractor assumes user responsibilities prescribed in installation property management directives, which are listed elsewhere in this contract.

(b) The official accountable recordkeeping and financial control and reporting of the property subject to this clause shall be retained by the Government and accomplished by the installation Supply and Equipment Management and Financial Management Officers. However, the Government will provide the Contractor a record of all items of property including copies of all transaction documents used to describe changes to this record. The Contractor shall maintain this record and transaction documentation in such a condition that at any stage of completion of work under this contract, the status of the property including location, utilization, consumption rate, and identification may be readily ascertained. The Contractor shall also adhere to all other procedures (and be subject to sanctions related thereto) prescribed by the installation director which have been established for the management of installation property. The records and documentation shall be made available, upon request, to the installation Supply and Equipment Management Officer and other formally designated representative(s) of the Contracting Officer.

(c) In the event the Government fails to provide the Government property specified in this contract such as to adversely affect the Contractor's ability to perform hereunder, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the effect on the Contractor and shall equitably adjust the contract in accordance with the procedure provided in the Changes clause of this contract. Equitable adjustments made pursuant to this paragraph, however, shall not include adjustments in fee unless the property to be provided was described in specific quantities of specific items.

(d) Government property made available under this clause shall in every respect be subject to the provisions of the Government Property clause of this contract except as provided in paragraphs (a), (b), and (c) above, and as may otherwise be provided in this contract with respect to (1) the Contractor's responsibilities for repair and maintenance of Government property, or (2) the Contractor's liability for any loss of or damage to such property which is attributable to the Contractor's failure to maintain and administer a program for maintenance and repair in accordance with sound industrial practice.

(End of Clause)

* * * * *

k. The introductory paragraph of 1852.249–72 is revised to read as follows:

1852.249–72 Termination (utilities).

As prescribed in 1849.505 insert the following clause in all contracts for utilities services. The period of 30 days may be varied not to exceed 90 days.

* * * * *

l. Section 1852.250–70 is revised to read as follows:

1852.250–70 Indemnification under Public Law 85–804—fixed-price contracts.

Insert the following clause as prescribed at 1850.403–3 (a)(1):

Indemnification Under Public Law 85–804—Fixed-Price Contracts (May 1987)

(a) Pursuant to Pub. L. 85–804 (50 U.S.C. 1431–1435) and Executive Order 10789, as amended, and notwithstanding any other provision of this contract, but subject to the following paragraphs of this clause, the Government shall hold harmless and indemnify the Contractor against:

(1) claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death, personal injury, or loss of, damage to, or loss of use of property;

(2) loss of or damage to property of the Contractor, and loss of use of such property but excluding loss of profit; and

(3) loss of, damage to, or loss of use of property of the Government but excluding loss of profit to the extent that such a claim, loss, or damage (i) arises out of or results from a risk defined in this contract to be unusually hazardous in nature and (ii) is not compensated by insurance or otherwise. Any

such claim, loss or damage within deductible amounts of Contractor's insurance shall not be covered under this clause.

(b)(1) The Government shall not be liable for:

(i) claims by the United States (other than those arising through subrogation) against the Contractor;

(ii) losses affecting the property of such Contractor when the claim, loss or damage was caused by the willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or principal officials. (For purposes of this clause, the term "principal officials" means any of the Contractor's managers, superintendents, or other equivalent representatives who have supervision or direction of—

(A) all or substantially all of the Contractor's business, or

(B) all or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed, or

(C) a separate and complete major industrial operation in connection with the performance of this contract.); or

(iii) loss of, damage to, or loss of use of property of the Contractor unless the total amount for such loss, damage, and loss of use, excluding loss of profit, is in excess of the Contractor's insurance or $500,000,000. Specifically, the Government shall only be liable for such loss, damage and loss of use in excess of the Contractor's insurance or $500,000,000, whichever is the larger amount.

(2) The Contractor shall not be indemnified under this clause for liability assumed under any contract or agreement unless such assumption of liability has been specifically authorized by the Administrator and approved by the Contracting Officer. When the Government has assumed liability for subcontracts, the term "Contractor" in this paragraph (b) shall include subcontractors.

(c) No payment shall be made by the Government under this clause unless the amount thereof shall first have been certified to be just and reasonable by the Administrator or the administrator's representative designated for such purpose. The rights and obligations of the parties under this clause shall survive the termination, expiration, or completion of this contract. The Government may discharge its liability under this paragraph by making payments to the Contractor or directly to parties to whom the Contractor may be liable.

(d) With the prior written approval of the Contracting Officer, the Contractor may include in any subcontract under this contract, the same provisions as those in this clause, whereby the Contractor shall indemnify the subcontractor against any risk defined in this contract to be unusually hazardous. Such a subcontract shall provide the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and the like, between the Contractor and the subcontractor as are established by this clause. The Contracting Officer may also approve similar indemnification of subcontractors at any tier upon the same terms and conditions. Subcontracts providing for indemnification within the purview of this clause shall provide for the prompt notification to the Contracting Officer of any claim or action against, or of any loss by, the subcontractor which is covered by this clause and shall entitle the Government, at its election, to control or assist in the settlement or defense of any such claim or action. The Government shall indemnify the Contractor with respect to its obligations to subcontractors under subcontract provisions thus approved by the Contracting Officer. The Government may discharge its obligations under this paragraph by making payments directly to subcontractors or to parties to whom the subcontractor may be liable.

(e) If insurance coverage or other financial protection program approved by the Administrator is reduced, the liability of the Government under this clause shall not be increased by reason of such reduction.

(f) The Contractor shall (1) promptly notify the Contracting Officer of any claim or action against, or of any loss by, the Contractor or any subcontractor which reasonably may be expected to involve indemnification under this clause, (2) furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form required by the Government, and (3) immediately furnish to the Government copies of all pertinent papers received by the Contractor. The Government may direct, control, or assist in the settlement or defense of any such claim or action. The Contractor shall comply with the Government's directions, and execute any authorizations required in regard to such settlement or defense.

(End of clause)

m. Section 1852.250–72 is revised to read as follows:

1852.250–72 Space activity—unusually hazardous risks.

Insert the following clause as prescribed at 1850.403–3(b).

Space Activity—Unusually Hazardous Risks (May 1987)

The risks for which indemnification is authorized are solely those risks resulting from or arising out of the use or performance of the following products or services in NASA's space activities. For this purpose, the use or performance of such products or services in NASA's space activities begins only when such products or services are provided to the U.S. Government at a U.S. Government installation for one or more Shuttle launches and are actually used or performed in NASA's space activities:

(a) Provision of Space Transportation System and cargo flight elements or components thereof.

(b) Provision of Space Transportation System and cargo ground support equipment or components thereof.

(c) Provision of Space Transportation System and cargo ground control facilities and services for their operation.

(d) Repair, modification, and overhaul support and services, and other support and services directly relating to the Space Transportation System, its cargo, and other elements used in NASA's space activities.

(End of Clause)

23. Part 1870 is added to read as follows:

PART 1870—NASA SUPPLEMENTARY REGULATIONS

Authority: 42 U.S.C. 2473(c)(1).

1870.000 Scope of part.

This part contains NASA-unique regulations which—

(a) Constitute a system of regulations such that presentation in a unified format is essential;

(b) Relate to numerous FAR subparts;

(c) Have, as a whole, no clearly identifiable FAR counterpart; and

(d) May include non-regulatory material necessary to complete coverage of the instant subject.

Subpart 1870.1—NASA Acquisition of Investigations System

1870.101 Purpose.

Experience has shown that the best space research results when active space research investigators personally participate in the selection of investigations. The investigation acquisition system provides the mechanism for encouraging the participation of investigators and selecting the investigations which contribute most effectively to the advancement of NASA's scientific and technological objectives. It is a system separate and distinct from the ordinary acquisition process but requiring the same vigorous management and discipline to assure compliance with statutory requirements and elementary considerations of equitable treatment. "NASA Acquisition of Investigations" is the formal name under which this system is incorporated into the NASA FAR Supplement.

1870.102 System content.

(a) The regulations governing the NASA Acquisition of Investigations system shall set forth the entire system in a single document, covering the interrelated roles individuals with procurement and programmatic responsibilities both within NASA and the private sector. Therefore, the regulation will provide general and

specific guidance to all NASA personnel engaged in the solicitation, evaluation and selection of investigations. It will emphasize the responsibilities of line management and, as appropriate, the selected investigators in the acquisition of equipment necessary for the investigation. It will provide for uniform procedures and equitable treatment in the evaluation and selection of investigators and acquisition of investigative equipment consistent with the FAR and NFS.

(b) The system regulation shall contain policy and procedures applicable to the solicitation of investigations with "Announcements of Opportunity," a form of broad agency announcement authorized at FAR 6.102(d)(2)(i).

1870.103 NASA acquisition of investigations.

(a) The NASA Acquisition of Investigations System is prescribed by Appendix I to this section 1870.103.

(b) NASA may reprint this Appendix I as a separate Handbook for sale and/or distribution provided the following two conditions are met:

(1) With the exception of availability and distribution information, any subsequent modification in the text shall be preceded by a change to the NASA FAR Supplement 1870.103.

(2) The following information shall be included as a part of the prefatory material in the NASA Handbook:

Important Notice

This Handbook is a separately bound, verbatim version of NASA FAR Supplement (NFS) (48 CFR 1870.103) section 1870.103, Appendix I. Reference to other parts of the Federal Acquisition Regulation (FAR) and the NFS will be required for complete coverage of all procurement aspects. NASA reserves the right to make changes to NFS 1870.103, Appendix I, without issuing a new edition of this Handbook. Any such changes will be published in the **Federal Register**; however, it is anticipated that such changes will be rare, unless mandated by statute or unusual circumstances. In the event of apparent conflict between this Handbook and the NFS, the NFS shall govern.

Appendix I to 1870.103—Guidelines for Acquisition of Investigations

Preface

From its beginning, NASA has provided opportunities for qualified people in NASA, other Government agencies, colleges and universities, private industry, and foreign countries to participate in developing and carrying out its responsibilities in aeronautical and space activities. NASA has treated itself as a part of the scientific and technical community and has encouraged this community to bring to bear its expertise in developing investigatory objectives, selecting the investigations to carry out, participating in the resulting missions, analyzing the data obtained, and publishing the results.

Success of our program in aeronautics and space, in a large measure, can be attributed to the ability of NASA to harness the ideas, knowledge, and technical abilities of the investigators within and outside of NASA. Success has also been dependent on the effective development of equipment required for investigations. In the area of space applications, program success also depends upon the support of actual and potential users of space related systems, and upon how well NASA understands their operations and programmatic requirements.

The acquisition of investigations process covered by these guidelines allows the continuation of our successful cooperative endeavors with the scientific, technological, and applications user communities in the Space Transportation System, Spacelab, and Space Station era, and, at the same time, provides standards requiring greater attention to the planning and management of investigations. Also, these guidelines emphasizes the responsibilities of line management and, as appropriate, the selected investigators in the acquisition of equipment necessary for the investigation. These guidelines should assure uniform procedures and equitable treatment in the evaluation and selection of investigators and the acquisition of investigative equipment.

These guidelines provides general and specific guidance to all NASA personnel engaged in the solicitation, evaluation, and selection of investigations.

Chapter 1—The Investigation Acquisition System

100 General.

Experience has shown that the best space research results when active space research investigators personally participate in the selection of investigations. The investigation acquisition system provides the mechanism for encouraging the participation of investigators and selecting the investigations which contribute most effectively to the advancement of NASA's scientific and technological objectives. It is a system separate and distinct from the ordinary acquisition process but requiring the same vigorous management and discipline to assure compliance with statutory requirements and elementary considerations of equitable treatment.

101 Key Features of the System.

1. Utilization of the system commences with a Program Associate Administrator's determination that the investigation acquisition process is appropriate and applicable for a program under consideration. There follows a broadly disseminated Announcement of Opportunity (AO) to the interested community. This solicitation does not generally specify the investigations to be proposed but rather solicits investigative ideas which contribute to broad objectives. The proposals received are distinctive and innovative. In order to determine which of the dissimilar proposals should be selected, a formal competitive evaluation process is utilized. The evaluation for merit is normally made by experts in the specific fields represented by the proposals and care taken to avoid conflicts of interest. These peer evaluators may be from NASA, other Government agencies, universities, or the commercial sector. Along with or subsequent to the evaluation for merit, the other factors of the proposals, such as engineering, cost, and integration aspects, are reviewed by specialists in those areas. The evaluation conclusions as well as considerations of budget and other factors are used to formulate a complement of recommended investigations. A steering committee serving as staff to the Program Associate Administrator reviews the proposed payload or program of investigation, the iterative process, and the selection recommendations. The steering committee serves as a forum where different interests, such as flight program, discipline management, and administration, can be weighed and reconciled.

The Program Associate Administrator selects the investigations and the investigators who shall participate in the program. Once selected, an investigator is assigned appropriate key responsibilities relating to the investigation through a contract with the institution. In the case of foreign investigators, these responsibilities will usually be outlined in an agreement between NASA and the sponsoring governmental agency in the investigator's country.

2. The Announcement of Opportunity process provides a disciplined approach to investigation acquisition. The following major steps must be followed in each case where the determination is made to utilize the investigation acquisition system:

a. Announcement of Opportunity shall be signed by the appropriate Program Associate Administrator and shall be widely distributed to the scientific, technological, and applications user communities, as appropriate.

b. An evaluation team shall be formed including recognized peers of the investigators to review the proposals.

c. A project office will be assigned to assess the engineering, cost, integration, and management aspects of the proposals.

d. A program office will be responsible to formulate a complement of investigations consistent with the objectives stated in the Announcement of Opportunity, cost, and schedule constraints.

e. A steering committee appointed by the appropriate Program Associate Administrator shall review the proposed investigations for relevance and merit, will assure compliance with the system as described in these guidelines, and make selection recommendations.

f. Selections shall be made by the appropriate Program Associate Administrator.

3. Payloads will be formulated consisting of investigations selected through the Announcement of Opportunity process and/or other authorized methods.

4. When the need is determined by the Program Associate Administrator, payload specialists will be selected in accordance with NMI 7100.16, "Payload Specialists for NASA-Related Payloads."

102 Management Responsibilities

1. Program Associate Administrators are responsible for overseeing the process and for making key decisions essential to the process including:

a. Determination to use the investigation acquisition system.

b. Appointment of the steering committee members.

c. Designation of a centralized staff to assure uniformity in the issuance of the Announcement of Opportunity and conformity with the required procedures in the evaluation and selection.

d. Reuse, to the maximum extent practicable, of space hardware and support equipment.

e. Determination to use advisory subcommittees, contractor, or full-time Government employees only in the evaluation process.

f. Issuance of the Announcement of Opportunity.

g. Selection of investigations and investigators, determination of need of a definition phase, determination of the role of the investigator with regard to providing essential investigation hardware and services, and determination of the need for payload specialists.

h. Assure due consideration is given to minorities in the establishment of peer groups, distribution of the Announcement of Opportunity, and in the selection of investigations.

i. Provide a timely, flexible framework for cooperative foreign participation in Space Shuttle, Spacelab, and Space Station missions.

2. Exercise of these responsibilities will require the professional assistance of experts in several functional, programmatic, and technical disciplines. The Program Associate Administrator should call upon such experts at appropriate times throughout the process. The remaining chapters of these guidelines will discuss the exercise of the foregoing responsibilities in greater detail.

Chapter 2—Applicability of the Process

200 General.

The system used for acquisition of investigations is separate and distinct from the agency procedures for procurement of known requirements of hardware and services. A decision to use this special acquisition process will be based on a considered determination, in accordance with the general guidance in this chapter, that it is the most suitable to meet program needs. The decision-making official will consider the criteria for use of the system. The project plan or other program or project documentation should discuss the proposed mode of investigations selection.

201 Criteria for Determining Applicability.

1. The decision to utilize the investigations acquisition process as an alternative to the normal planning and acquisition process of the agency can only be made after consideration of the special conditions which are requisite to its use. All of the following conditions should exist before deciding that the system is appropriate and applicable:

a. NASA has a general objective which can be furthered through unique, novel, experimental approaches. To develop such novel approaches, NASA wishes to draw upon the broadest reservoir of ideas that can be made available.

b. Choices must be made among competing dissimilar ideas in expanding knowledge of phenomena in the atmosphere and space.

c. Individual participation of an investigator is essential to exploitation of the opportunity.

2. The investigations acquisition process shall not be used when any of the following characteristics are present:

a. The requiring office can define a requirement sufficiently to allow for normal procurement. This includes requirements that can be stated as design or performance specifications, including requirements for the use of known technology and hardware, and requirements for continuation of existing tasks.

b. The program is extremely complex, requiring specialized integration, coordination, or other special handling, or extending over a lengthy period wherein individual participation is not essential.

c. It is not possible or considered essential to the program to follow the critical steps of the special investigations acquisition process.

202 Programs and Activities Where Use May be Considered.

1. *General.* The investigation acquisition process is most suitable for investigations aimed at exploration requiring several unique sensors or instruments, but it has been used successfully and advantageously in several types of opportunity. Each program is unique and the opportunities for participation in investigative effort will necessarily vary from program to program. Similarly, program implementation plans may provide opportunities for participation but may not meet the conditions necessary for use of the special investigations acquisition process. In those latter cases, the normal procurement procedures will be followed to meet the program needs. Because of the differences in programs, only general standards can be given to guide the decision of whether or not to use the alternate acquisition process. There follows a discussion of several types of programs, the opportunities they offer, and comment on the suitability of the special process.

2. *Exploration and space research flights*— a. *Examples.* Space Transportation System (STS) flights with attached payloads, generally Spacelab payloads; and free-flying spacecraft, such as Explorers, Pioneers, Space Telescope, Landsats, and Long Duration Exposure Facilities.

b. *Types of opportunity.* (1) A common and sought after opportunity is to participate as a Principal Investigator responsible for conceiving and conducting a space investigation. This may involve a major piece of instrumentation. In the case of a "facility" or "multiuser" payload, each Principal Investigator's responsibilities would ordinarily involve a relatively minor portion of the total instrument.

(2) There may also be an opportunity to serve on a Principal Investigator's team as a team member or as a Co-Investigator.

(3) A type of opportunity that generally involves the use of data from another investigator's instrument is that of guest investigator or guest observer. Guest investigators usually participate after the primary objectives have been satisfied for the investigations involved.

(4) A team may be formed from selected investigators to assist in defining planned mission objectives and/or to determine, in a general manner, the most meaningful instruments to accomplish the mission objectives.

c. *Selection and acquisition procedures.* The investigation acquisition process may be applicable to all of these types of opportunities. The supposition common in these opportunities is that the best ideas and approaches are likely to result from the broadest possible involvement of the scientific, technological or applications user communities. Most free-flying spacecraft represent single flight opportunities in contrast to Spacelab payload acquisition which may have a number of discipline objectives since the flight opportunities are frequent and recurring.

3. *Minor missions*—a. *Examples.* Research aircraft, sounding rockets, balloons, and minor missions are generally of short duration, small in size, often single purpose, and subject to repetition. Many investigations are follow-on to past-flight investigations.

b. *Types of opportunity.* (1) Principal Investigators responsible for investigation.

(2) Data use or analysis.

c. *Selection and acquisition process.* Opportunities for participation on minor missions are generally suitable for normal procurement procedures. The use of a general announcement announcing the general nature and schedule of flights may be appropriate when considered necessary to broaden participation by requesting investigator-initiated research proposals. Procurement procedures as contained in NASA FAR Supplement shall be used for follow-on repeat flights. Although NASA seeks unique, innovative ideas for these missions, the prospect of reflight and the latitude in determining number and schedule of flights argue against the need for the use of the investigations acquisition process to force dissimilar proposals into an annual or periodic competitive structure. On the other hand, there are some minor missions addressed to specific limited opportunities; for example, a solar eclipse. When such limitations indicate that the special competitive structure is needed, it should be authorized.

4. *Operational and Operational Prototype Spacecraft*— a. *Examples.* GOES, TIROS.

b. *Selection and acquisition process.* The user agency can be expected to specify performance parameters. Payload definition will be the responsibility of the user agency and NASA. Specifications sufficient for normal procedures can be produced. Use of data from the mission is the responsibility of the user agency. Thus, the special process is not required.

5. *Reimbursable missions*— a. *Examples.* INTELSAT, SATCOM, WESTAR, MARISAT.

b. *Selection and acquisition process.* Payload determination and delivery are the responsibility of the user organization. NASA's role is essentially to provide launch services. No special process is required.

6. *Supporting Research and Technology (SR&T)*— a. *Examples.* Studies, minor developments, instrument conceptualization, ground-based observations, laboratory and theoretical supporting research, and data reduction and analysis which is unconstrained by a specific opportunity.

b. *Selection and acquisition process.* Programs in these areas tend to go forward on a continuing basis, rather than exploiting unique opportunities. Normal procurement procedures should be utilized to satisfy these requirements. A general announcement of area of interest could be made when greater participation is deemed advisable. Proposals can be solicited or unsolicited and can be entertained within the context of the normal procurement procedure.

203 Specific Approval Required.

The Program Associate Administrator responsible for the program is also responsible for determining whether or not to use the special investigations acquisition process. Normally on major projects, or when a project plan is required, use of the investigation acquisition system will be justified and recommended in the project planning documentation and will be coordinated with staff offices and discussed in the planning presentation to the Deputy Administrator or designee.

Chapter 3—The Announcement of Opportunity

300 General.

The essence of the competitive solicitation is through use of an Announcement of Opportunity. The Announcement is characterized by its generality since NASA has not predetermined a specific and finite objective but only the general objective of the investigations. Notwithstanding its general nature, it is essential that the Announcement of Opportunity contains sufficient data in order to obtain meaningful proposals. To a considerable extent, the detail and depth of the Announcement will depend on the investigative objective. In all cases, judgment is of paramount importance, since the purpose is to get adequate information to assess the relevance, merit, cost, and management without overburdening the proposer.

301 Need for Preparatory Effort.

1. When the use of the Announcement process is contemplated, there is need to consult with appropriate Headquarters offices and the Project Installation responsible for the project prior to release of the Announcement. These consultations will require early involvement of the Project Installation and appropriate Headquarters offices in the investigation acquisition process.

2. In addition, the need to meet legal requirements in the acquisition processes will require early external Program Office involvement to:

a. Synopsize the Announcement in the Commerce Business Daily prior to the time of release.

b. Determine if there is instrumentation or support equipment available which may be appropriate to the Announcement with all necessary background data considered essential for use by a proposer.

c. Determine mailing lists, including the mailing list maintained by the International Affairs Division, Office of External Relations, for broad dissemination of the Announcement to the appropriate recipients.

d. Assure mandatory provisions are contained in the Announcement.

3. Other methods of dissemination of the Announcement may also be used, such as the use of press releases, etc. When possible, the Announcement should be widely publicized through publications of appropriate professional societies; however, NASA policy does not allow payment for the placement of advertisements.

302 Responsibilities.

1. The Program Office originator is responsible for the content of the Announcement and that coordination with concerned Headquarters offices and field installations has been accomplished. All personnel involved in the evaluation of investigative proposals are responsible for familiarizing themselves and complying with these guidelines and other applicable regulations. To this end, they are expected to seek the advice and guidance of appropriate Headquarters program and staff offices, and Project Installation management.

2. The Program Office is also responsible for coordinating the Announcement of Opportunity with the International Affairs, Educational Affairs, Management Support Divisions, Office of External Relations, Office of General Counsel, and Office of Procurement prior to issuance. Attention is directed to NMI 1362.1, "Initiation and Development of International Participation and Cooperation in Aeronautical and Space Programs."

3. Concurrence of the Office of Procurement is required before issuance of an Announcement of Opportunity.

303 Proposal Opportunity Period.

1. The Announcement of Opportunity is considered the primary method of soliciting investigations. As such, it is necessary that the process accommodate the continuous opportunities afforded by the Shuttle/Spacelab flights. Thus, the following methods may be utilized, individually or in combination, to enable an Announcement and resultant proposals to be open for an extended period of time and/or to cover a series or range of flight possibilities or disciplines:

a. The Announcement may be issued establishing a number of proposal submission dates. Normally, no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposals.

b. The Announcement may be issued establishing a single proposal submission date. However, the Announcement could provide that NASA may amend the Announcement to provide for subsequent dates for submission of proposals, if additional investigations are desired within the Announcement objectives. In this case, the initiative to reopen is a management determination. If sufficient investigations are selected to satisfy the Announcement objectives or the flight possibilities as a result of the first submission, subsequent opportunities for proposal submission by potential investigators would not be available.

c. The Announcement may be issued to provide for an initial submission date with the Announcement to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals, the time remaining prior to the flight opportunity(s) contemplated by the Announcement, and payload funding and availability.

2. Generally, a core or primary payload of investigations would be selected from the initial submission of proposals under the above methods of open-ended Announcements. These selections could be final or tentative recognizing the need for further definition. Proposals received by subsequent submission dates would be considered in the scope of the original Announcement but would be subject to the opportunities and resources remaining available or the progress being made by prior selected investigations.

3. Any investigation proposal, whether received on the initial submission or subsequent submission, requires notification to the investigator and the investigator's institution of the proposal disposition. Some of the proposals will be rejected completely and the investigators immediately notified. The remaining unselected proposals may, if agreeable with the proposers, be held for later consideration and funding and the investigator so notified. However, if an investigator's proposal is considered at a later date by NASA, the investigator must be given an opportunity to validate the proposal with the investigator's institution and for updating the cost and other data contained in the original submission prior to a final selection. In summary, NASA may retain proposals, receiving Category I, II, or III classifications (see paragraph 403), for possible later sponsorship until no longer feasible to consider the proposal. When this final stage is reached, the investigator must be promptly notified.

4. If the intent is to hold proposals for possible later consideration, as discussed in subparagraph 3, the Announcement should specifically indicate this intent and the procedure to be used. Proposing investigators not desiring their proposals be held for later consideration should be given the

opportunity to so indicate in their original submissions.

304 Guidelines for Announcement of Opportunity.

1. The preparation of the Announcement of Opportunity should be a multifunctional effort. It involves program and project management and usually involves other offices of NASA.

2. The Announcement should be tailored to the particular needs of the contemplated investigations and be complete in itself. Each Announcement will be identified as (Program Office) originated and numbered consecutively each calendar year, e.g., OSSA–1–86, OSSA–2–86; OAST–1–86; OSTDS–1–86; etc. The required format and detailed instructions regarding the contents of the Announcement are contained in Appendix A to Appendix I of 1870.103. They are summarized as follows:

a. *Description of the opportunity.*—The basic purpose or aims of the opportunity.

b. *Announcement objectives.*—A succinct statement of the specific scientific, applications, and/or technological objectives.

c. *Background.*—An explanation of the context of the opportunity in relation to broader objectives, other disciplines, and prior studies and investigations.

d. *Proposal opportunity period.*—The period in which the Announcement opportunity will remain open for receipt of proposals.

e. *Requirements and constraints.*—Technical, programmatic, cost, and schedule requirements or limitations.

f. *Proposal submission information.*—Information relating to the proposal submission procedure.

g. *Proposal evaluation, selection, and implementation.*—The notification to the proposers of the evaluation criteria and the manner of proposal evaluation.

h. *Schedule.*—Scheduled dates for activities related in the Announcement.

i. *Appendices.*—The General Instructions and Provisions and any other appendices that are pertinent to the Announcement.

3. The General Instructions and Provisions (Appendix B to Appendix I of §1870.103) are necessary to accommodate the unique aspects of the Announcement of Opportunity process. The instructions and provisions inform potential investigators and their institutions of certain prerogatives of the selection official and of procedural requirements dictated by law and regulation. Therefore, they must be appended to each Announcement of Opportunity.

4. At the time of issuance, copies of the Announcement must be furnished to the Office of Procurement and to the Office of General Counsel.

5. Proposers should be informed of significant departures from scheduled dates for activities related in the Announcement.

305 Announcement of Opportunity Soliciting Foreign Participation.

Proposals for participation by individuals outside the U.S. should be submitted in the same format (excluding cost plans) as U.S. proposals; they should be typewritten and be in English; the proposals should be reviewed and endorsed by the appropriate foreign governmental agency. If letters of "Notice of Intent" are required, the Announcement should indicate that they be sent to NASA's International Affairs Division, Office of External Relations. Should a foreign proposal be selected, NASA will arrange with the sponsoring foreign agency for the proposed participation on a no-exchange-of-funds basis, in which NASA and the sponsoring agency will each bear the cost of discharging its respective responsibilities. Note that additional guidelines applicable to foreign proposers are contained in the Management Plan Section of Appendix C to Appendix I of §1870.103 (see Section II) and must be included in any Guidelines for Proposal Preparation or otherwise furnished to foreign proposers.

306 Guidelines for Proposal Preparation.

While not all of the guidelines outlined in Appendix C to Appendix I of §1870.103 will be applicable in response to every Announcement, the investigator should be informed of the relevant information required to allow for an evaluation of the investigator's proposal. The proposal may be submitted on a form to be supplied by the Program Office. However, the proposal should be submitted in at least two sections: (1) Investigation and Technical Section; and (2) Management and Cost Section as described in Appendix C to Appendix I of 1870.103.

Chapter 4—Evaluation of Proposals

400 General.

The evaluation process assures consideration of the several aspects of each proposal and constitutes a series of progressive sorting of the proposals. A review resulting in a categorization is performed by using one of the methods or combination of the methods outlined in paragraph 402. The purpose of this initial review is to determine the scientific and/or technological merit of the proposals in the context of the Announcement objectives. Those proposals which are considered to have the greatest scientific or technological merit are then reviewed in detail for the engineering, management, and cost aspects, usually by the Project Office at the installation responsible for the project. Final reviews are performed by the Program Office and the Steering Committee and are aimed at developing a group of investigations which represent an integrated payload or a well-balanced program of investigation which has the best possibility for meeting the announced scientific, applications, and/or technological objectives, and within programmatic constraints. The importance of considering the interrelationship of the several aspects of the proposals to be reviewed in the process and the need for carefully planning their treatment should not be overlooked. An evaluation plan has been found helpful to the evaluators, program management officials, and the selection official. The evaluation plan should be developed before issuance of the Announcement of Opportunity. It should cover the recommended staffing for any subcommittee or contractor support, review guidelines as well as the procedural flow and schedule of the evaluation. While not mandatory, such a plan should be considered for each Announcement. A fuller discussion of the evaluation and selection process is included in the following paragraphs.

401 Criteria for Evaluation.

1. The fundamental aim of the investigations acquisition process is the acquisition of those unique ideas and capabilities which best fulfill an Announcement's stated scientific, applications, and/or technological objectives. In furtherance of this goal, each Announcement must indicate those criteria which the evaluators will apply when assessing the merit of a proposal. The relative importance of each criterion must also be stated in the Announcement. The provision of this information will allow prospective investigators to make informed judgments in their attempt to formulate proposals that best meet the stated objectives.

2. Following is a list of general evaluation criteria which would be appropriate for inclusion in most Announcements:

a. The scientific, applications, and/or technological merit of the investigation.

b. The relevance of the proposed investigation to the Announcement's

stated scientific, applications, and/or technological objectives.

c. The competence and experience of the investigator and any investigative team, as an indication of the investigator's ability to carry the investigation to a successful conclusion.

d. Adequacy of whatever apparatus may be proposed with particular regard to its ability to supply the data needed for the investigation.

e. The reputation and interest of the investigator's institution, as measured by the willingness of the institution to provide the support necessary to ensure that the investigation can be completed satisfactorily.

In addition to or in lieu of the criteria listed herein, additional criteria may be utilized. In all cases, the evaluation criteria must be germane to the accomplishment of the stated objectives.

3. Cost and management aspects will be considered in all selections.

4. Once the evaluation criteria and their relative importance are disseminated through issuance of the Announcement, it is essential that they be applied in a uniform manner. If it becomes apparent, before the date set for receipt of proposals, that the criteria or their relative importance should be changed, the Announcement will be amended, and all known recipients will be informed of the change and given an adequate opportunity to consider it in submission of their proposals. Evaluation criteria and/or their relative importance will not be changed after the date set for receipt of proposals.

402 Methods of Evaluation.

1. Alternative methods are available to initiate the evaluation of proposals received in response to an Announcement of Opportunity. These are referred to hereinafter as the Advisory Subcommittee Evaluation Process, the Contractor Evaluation Process, and the Government Evaluation Process. In all processes, a subcommittee of the appropriate Program Office Steering Committee will be formed for the purpose of categorizing the proposals. The various approaches, described in detail in paragraph 403, are summarized as follows:

a. *Advisory subcommittee evaluation process.* An advisory subcommittee of the appropriate Program Office Steering Committee may be established to evaluate the scientific, applications, or technological merit of the proposals and to categorize them. This method envisions the use of non-Government peers or a combination of non-Government and Government peers. The impact of using one of the open-ended Announcement methods should be considered in establishing the subcommittee.

b. *Contractor evaluation process.* In some instances, it may be necessary for NASA to utilize a contractor to assist in evaluation of proposals. The contractor would not provide advice or recommendations to the agency nor categorize the proposals but would assist by submitting a summary of each proposal along with a listing of its major strengths and weaknesses to the Program Office. The Program Office, using full-time Government employees appointed as a subcommittee of the Program Office Steering Committee, will, upon consideration of the contractor's report, categorize the proposals. This method may also be used to aid an advisory subcommittee established as indicated in subparagraph a. in which event the categorization function will be performed by the advisory subcommittee.

c. *Government evaluation process.* In certain circumstances, such as those situations where the establishment of an advisory subcommittee is not feasible, it may be appropriate to appoint or assign full-time Government employee(s) as a subcommittee of the Program Office Steering Committee to perform the evaluation and categorization of proposals.

2. Following categorization under one of the methods outlined in subparagraphs a. through c., those proposals still in consideration will be processed to the selection official as prescribed hereafter.

403 Advisory Subcommittee Evaluation Process.

1. Evaluation of scientific and/or technological merit of proposed investigations is the responsibility of an advisory subcommittee of the Steering Committee. It is of prime importance that the appointment of members to the subcommittee be weighed carefully as these individuals may exercise significant influence on the selection of investigations and hence achievement of program goals and objectives.

2. The subcommittee constitutes a peer group qualified to judge the scientific and technological aspects of all investigation proposals submitted in a specific program. For a given application of the process, one or more subcommittees may be established depending on the breadth of the technical or scientific disciplines inherent in the Announcement's objectives. Each subcommittee represents a discipline or grouping of closely related disciplines. To maximize the quality of the subcommittee evaluation and categorization, the following conditions of selection and appointment should be considered.

a. The subcommittee normally should be established on an ad hoc basis for the particular objectives referenced in the Announcement.

b. Qualifications and broad acknowledgment of the professional abilities of the subcommittee members are of primary importance. Institutional affiliations, per se, are not sufficient qualifications.

c. The executive secretary of the subcommittee must be a full-time NASA employee.

d. Subcommittee members should normally be appointed as early as possible and prior to receipt of proposals.

e. In selecting members, care must be taken to avoid conflicts of interest. These include financial interests, institutional affiliations, professional biases and associations, as well as familiar relationships. Conflicts could further occur as a result of imbalance between Government and non-Government appointees, a member evaluating a proposal from the person's parent organization, or membership from institutions representing a singular school of thought in discipline areas involving competitive theories in approach to an investigation.

f. The subcommittee should convene as a group in closed sessions for proposal evaluation to protect the proposer's proprietary ideas and to allow frank discussion of the proposer's qualifications and the merit of the proposer's ideas. Lead review responsibility for each proposal may be assigned to members most qualified in the involved discipline. It is important that each proposal be considered by the entire subcommittee. It is only through this action that dissimilar ideas are forced into open competition.

3. It may not be possible to select a subcommittee fully satisfying all of the conditions described in subparagraph 2. For example, the most qualified specialists in a particularly narrow discipline may themselves, or some other part of their parent organization, be submitting proposals. It is not the purpose of these guidelines to establish provisions for making trade-offs, where necessary, among the above criteria (see subparagraph 2). This is properly the responsibility of the nominating and appointing officials. This latitude permits flexibility in making decisions in accord with circumstances of each application. In so doing, however, it is emphasized that recognized expertise in

evaluating dissimilar proposals is essential to the continued workability of the investigation acquisition process.

4. Candidate subcommittee members should be nominated by the office having responsibility for the evaluation. Nominations should be approved in accordance with NMI 1150.2, "Establishment, Operation, and Duration of NASA Advisory Committees." The notification of appointment should specify the duration of assignment on the subcommittee, provisions concerning conflicts of interest, and arrangements regarding honoraria, per diem, and travel when actually employed.

5. It is important that members of the subcommittee be formally instructed as to their responsibilities with respect to the investigation acquisition process—even where several or all of the members have served previously. This briefing of subcommittee members should include:

a. Instruction of subcommittee members on agency policies and procedures pertinent to acquisition of investigations.

b. Review of the program goals, announcement objectives, and evaluation criteria, including relative importance, which provide the basis for evaluation.

c. Instruction on the use of preliminary proposal evaluation data furnished by the Installation Project Office. The subcommittee should examine these data to gain a better understanding of the proposed investigations, any associated problems, and to consider cost in relation to the value of the investigations' objectives.

d. Definition of responsibility of the subcommittee for evaluation and categorization with respect to scientific and/or technical merit in accordance with the evaluation criteria.

e. Instruction for documentation of deliberations and categorizations of the subcommittee.

f. Inform the chairperson of the subcommittee and all members that they should familiarize themselves with the provisions of the current "Standards of Conduct for NASA Employees", NHB 1900.1, or "Standards of Conduct for NASA Special Government Employees", NHB 1900.2, as appropriate, regarding conflicts of interest. Members should inform the appointing authority if their participation presents a real or apparent conflict of interest situation. In addition, all participants should inform the selection official in the event they are subjected to pressure or improper contacts.

g. Inform members that prior to the selection and announcement of the successful investigators and investigations, subcommittee members and NASA personnel shall not reveal any information concerning the evaluation to anyone who is not also participating in the same evaluation proceedings, and then only to the extent that such information is required in connection with such proceedings. Also, inform members that subsequent to selection of an investigation and announcement of negotiations with the investigator's institution, information concerning the proceedings of the subcommittee and data developed by the subcommittee will be made available to others within NASA only when the requestor demonstrates a need to know for a NASA purpose. Such information will be made available to persons outside NASA including other Government agencies, only when such disclosure is concurred in by the Office of General Counsel. In this connection, reference is made to 18 U.S.C. 1905 which provides criminal sanctions if any officer or employee (including special employees) of the United States discloses or divulges certain kinds of business confidential and trade secret information unless authorized by law.

6. The product of an advisory subcommittee is the classification of proposals into four categories. The categories are:

a. *Category I.* Well conceived and scientifically and technically sound investigations pertinent to the goals of the program and the Announcement's objectives and offered by a competent investigator from an institution capable of supplying the necessary support to ensure that any essential flight hardware or other support can be delivered on time and that data can be properly reduced, analyzed, interpreted, and published in a reasonable time. Investigations in Category I are recommended for acceptance and normally will be displaced only by other Category I investigations.

b. *Category II.* Well conceived and scientifically or technically sound investigations which are recommended for acceptance, but at a lower priority than Category I.

c. *Category III.* Scientifically or technically sound investigations which require further development. Category III investigations may be funded for development and may be reconsidered at a later time for the same or other opportunities.

d. *Category IV.* Proposed investigations which are recommended for rejection for the particular opportunity under consideration, whatever the reason.

7. A record of the deliberations of the subcommittee should be prepared by the assigned executive secretary and should be signed by the Chairperson. The minutes should contain the categorizations with basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

404 Contractor Evaluation Process.

1. The use of the contractor method for obtaining support for evaluation purposes of proposals received in response to an Announcement of Opportunity requires the specific approval of the Program Associate Administrator. Prior to the use of this method, discussion should be held with the Office of Procurement.

2. It is NASA policy to avoid situations in the procurement process where, by virtue of the work or services performed for NASA, or as a result of data acquired from NASA or from other entities, a particular company:

a. Is given an unfair competitive advantage over other companies with respect to future NASA business;

b. Is placed in a position to affect Government actions under circumstances in which there is potential that the company's judgment may be biased; or

c. Otherwise finds that a conflict exists between the performance of work or services for the Government in an impartial manner and the company's own self-interest.

3. To reduce the possibility of an organizational conflict of interest problem arising, the following minimum restrictions will apply and be incorporated into the contract:

a. No employee of the contractor will be permitted to propose in response to the Announcement of Opportunity;

b. The "Limitation on Future Contracting" clause contained in NASA FAR Supplement 1852.209–71 and the conditions set forth in NASA FAR Supplement 1815.413–2 Alternate II (c) and (d) will be included in all such contracts; and

c. Unless authorized by the NASA contracting officer, the contractor shall not contact the originator of any proposal concerning its contents.

4. The scope of work for the selected contractor will provide for an identification of strengths and weaknesses and a summary of the proposals. The contractor will not make selections nor recommend investigations.

5. The steps to be taken in establishing evaluation panels and the responsibilities of NASA and the

contractor in relation to the panels will be as follows:

a. The contractor will be required to establish and provide support to panels of experts for review of proposals to evaluate their scientific and technical merit;

b. These panels will be composed of scientists and specialists qualified to evaluate the proposals;

c. The agency may provide to the contractor lists of scientist(s) and specialist(s) in the various disciplines it believes are qualified to serve on the panels;

d. The contractor will report each panel's membership to NASA for approval; and

e. The contractor must make all the necessary arrangements with the panel members.

6. The evaluation support by the contractor's panels of experts will be accomplished as follows:

a. The panels will review the scientific and technical merit of the proposals in accordance with the evaluation criteria contained in the Announcement and will record their strengths and weaknesses.

b. The contractor will make records of each panel's deliberations which will form the basis for a report summarizing the results of the evaluations. Upon request, the contractor shall provide all such records to NASA;

c. The chairperson of each panel should certify that the evaluation report correctly represents the findings of the review panel; and

d. A final report will be submitted as provided in the contract.

7. A subcommittee of the Program Office Steering Committee will be established on an ad hoc basis. Utilizing furnished data, the subcommittee will classify the proposals into the four categories enumerated in paragraph 403, "Advisory Subcommittee Evaluation Process." A record of the deliberations of the subcommittee should be prepared by an assigned executive secretary and signed by the chairperson. The minutes should contain the categorizations with the basic rationale for such ratings and the significant strengths and weaknesses of the proposals evaluated.

405 Government Evaluation Process.

1. The Program Associate Administrator may, in accordance with NMI 1150.2, appoint one or more full-time Government employees as subcommittee members of the Program Office Steering Committee to evaluate and categorize the proposals.

2. Each subcommittee member should be qualified and competent to evaluate the proposals in accordance with the Announcement evaluation criteria. It is important that a subcommittee's evaluation be uninfluenced by others either within or outside of NASA.

3. The subcommittee members will not contact the proposers for additional information.

4. The subcommittee members will classify the proposals in accordance with the four categories indicated in paragraph 403. Each categorization will be supported by an appropriate rationale including a narrative of each proposal's strengths and weaknesses.

406 Cost, Engineering, Integration, and Management Evaluation.

1. The subcommittee responsible for categorization of each proposal in terms of its scientific, applications, or technical merit should receive information on probable cost, technical status, developmental risk, integration and safety problems, and management arrangements in time for their deliberations.

2. This information should be provided, where appropriate, at the discretion of the Headquarters Program Office by the Project Office at the cognizant installation. This information can be in fairly gross, general terms and should reflect what insights the Project Office can provide without requesting additional details from the proposers. This limited Project Office review will not normally give the subcommittees information of significant precision. The purpose is to give the subcommittee sufficient information so it can review the proposals in conjunction with available cost, integration, and management considerations to gain an impression of each investigator's understanding of the problems of the experiment and to permit gross trade-offs of cost versus value of the investigation objective.

3. Following categorization, the Project Office shall evaluate proposals still in contention, in depth, including a thorough review of each proposal's engineering, integration, management, and cost aspects. This review should be accomplished by qualified engineering, cost, and business analysts at the project center. The review must be a regular part of the evaluation and selection process.

4. In assessing proposed costs, the evaluation must consider:

a. The investigation objective.

b. Comparable, similar or related investigations.

c. Whether NASA or the investigator should procure the necessary supporting instrumentation or services and the relative cost of each mode.

d. Total overall or probable costs to the Government including integration and data reduction and analysis. In the case of investigations proposed by Government investigators, this includes all associated direct and indirect cost. With respect to cooperative investigations, integration, and other applicable costs should be considered.

5. The Project Office, as part of the in-depth evaluation of proposals that require instrumentation or support equipment, will survey all potential sources for Government-owned instrumentation or support equipment that may be made available, with or without modifications, to the potential investigator. Such items contributed by foreign cooperating groups which are still available under cooperative project agreements will also be considered for use under the terms and conditions specified in the agreements. As part of the evaluation report to the Program Office, the availability or nonavailability of instrumentation or support equipment will be indicated.

6. Proposals which require instrumentation should be evaluated by project personnel. This evaluation should cover the interfaces and the assessment of development risks. This evaluation should furnish the selection official with sufficient data to contribute to the instrument determinations. Important among these are:

a. Whether the instrument requires further definition;

b. Whether studies and designs are necessary to provide a reasonably accurate appreciation of the cost;

c. Whether the investigation can be carried out without incurring undue cost, schedule, or risk of failure penalties; and

d. Whether integration of the instrument is feasible.

7. In reviewing an investigator's management plan, the Project Office should evaluate the investigator's approach for efficiently managing the work, the recognition of essential management functions, and the effective overall integration of these functions. Evaluation of the proposals under final consideration should include, but not be limited to: Workload— present and future related to capacity and capability; past experience; management approach and organization; e.g.:

a. With respect to workload and its relationship to capacity and capability, it is important to ascertain the extent to which the investigator is capable of providing facilities and personnel skills necessary to perform the required effort on a timely basis. This review should reveal the need for additional facilities or people, and provide some indication of the Government support the investigator will require.

b. A review should be made of the investigator, the investigator's institution, and any supporting contractor's performance on prior investigations. This should assist in arriving at an assessment of the investigator and the institution's ability to perform the effort within the proposed cost and time constraints.

c. The proposed investigator's management arrangements should be reviewed, including make or buy choices, support of any co-investigator, and preselected subcontractors or other instrument fabricators to determine whether such arrangements are justified. The review should determine if the proposed management arrangements enhance the investigator's ability to devote more time to the proposed experiment objectives and still effectively employ the technical and administrative support required for a successful investigation. In making these evaluations, the Project Office should draw on the installation's engineering, business, legal, and other staff resources, as necessary, as well as its scientific resources. If further information is needed from the proposers, it should be obtained through the proper contacts.

407 Program Office Evaluation.

1. A Program Office responsible for the project or program at Headquarters will receive the evaluation of the several aspects of the proposals, and weigh the evaluative data to determine an optimum payload or program of investigation. This determination will involve recommendations concerning individual investigations; but, more importantly, should result in a payload or program which is judged to optimize total mission return within schedule, engineering, and budgetary constraints. The recommendations so made should facilitate sound selection decisions by the Program Associate Administrator. Three sets of recommendations result from the Program Office evaluation:

a. Optimum payload or program of investigations, or options for alternative payloads or programs.

b. Recommendation for final or tentative selection based on a determination of the degree of uncertainty associated with individual investigations. A tentative selection may be considered step one of a two-step selection technique.

c. Upon consideration of the guidelines contained in paragraph 501–1c, recommending responsibility for instrument development.

2. The cognizant Installation Project Office evaluation is principally concerned with ensuring that the proposed investigation can be managed, developed, integrated, and executed with an appropriate probability of technical success within the estimated probable cost. The Headquarters Program Director, drawing upon these inputs, should be mainly concerned with determining a payload or program from the point of view of programmatic goals and budgetary constraints. Discipline and cost trade-offs are considered at this level. The Headquarters Program Office should focus on the potential contribution to program objectives that can be achieved under alternative feasible payload integration options.

3. It may be to NASA's advantage to consider certain investigations for tentative selection pending resolution of uncertainties in their development. Such tentative selections should be reconsidered after a period of time for final selection in a payload or program of investigations. This two-step selection process should be considered when:

a. The potential return from the investigation is sufficient, relative to that of the other investigations under consideration, and that its further development appears to be warranted before final selection.

b. The investigation potential is of such high priority to the program that the investigation should be developed for flight if at all possible.

c. The investigative area is critical to the program and competitive approaches need to be developed further to allow selection of the optimum course.

4. Based on evaluation of the above considerations associated with the investigations requiring further development of hardware, the following information should be provided to the Steering Committee and the Program Associate Administrator responsible for selection:

a. The expected gain in potential return associated with the eventual incorporation of tentatively recommended investigations in the payload(s) or program.

b. The expected costs required to develop instrumentation to the point of "demonstrated capability."

c. The risk involved in terms of added cost, probability of successfully developing the required instrument capability, and the possibility of schedule impact.

d. Identification of opportunities, if any, for inclusion of such investigations in later missions.

5. In those cases where investigations are tentatively selected, an explicit statement should be made of the process to be followed in determining the final payload or program of investigations and the proposers so informed. The two-phase selection approach provides the opportunity for additional assurance of development potential and probable cost prior to a full and final commitment to the investigation.

6. As instruments used in investigations become increasingly complex and costly, the need for greater control of their development by the responsible Headquarters Program Office also grows. Accordingly, as an integral part of the evaluation process, a deliberate decision should be made regarding the role of the Principal Investigator with respect to the provision of the major hardware associated with that person's investigation. The guidelines for the hardware acquisition determination are discussed in paragraph 501–1c.

7. The range of options for responsibility for the instrumentation consists of:

a. Assignment of full responsibility to the Principal Investigator. The responsibility includes all in-house or contracted activity to fabricate, test, calibrate and provide the instrumentation for integration.

b. Retention of developmental responsibility by the Government with participation by the Principal Investigator in key events defined for the program. In all cases the right of the Principal Investigator to counsel and recommend is paramount. Such involvement of the Principal Investigator may include:

(1) Provision of instrument specifications.

(2) Approval of instrument specifications.

(3) Independent monitorship of the development and advice to the Government on optimization of the instrumentation for conduct of the investigation.

(4) Participation in design reviews and all other appropriate reviews.

(5) Review and concurrence in changes resulting from design reviews.

(6) Participation in configuration control board actions.

(7) Advice in definition of test program.

(8) Review and approval of test program and changes thereto.

(9) Participation in conduct of the test program.

(10) Participation in calibration of instrument.

(11) Participation in final inspection and acceptance of the instrument.

(12) Participation in subsequent test and evaluation processes incident to integration and flight preparation.

(13) Participation in the development and support of the operations plan.

(14) Analysis and interpretation of data.

8. Normally, the Principal Investigator should as a minimum:

a. Approve the instrument specification.

b. Consult and advise the project manager in development and fabrication.

c. Participate in final calibration of the instrument.

d. Develop and support the operations plan.

e. Analyze and interpret the data.

9. The cognizant Project Installation is responsible for implementing the program or project and should make recommendations concerning the appropriate role for the Principal Investigators. The responsible Program Associate Administrator will determine the role, acting upon the advice of the responsible Headquarters Program Office and the Steering Committee. The Principal Investigator's desires will be respected in the negotiation of the person's role allowing an avenue of appeal to the Program Associate Administrator and, of course, the right to withdraw from participation.

10. The Program Office responsible for the program should make a presentation to the Steering Committee with supporting documentation on the several decisions to be made by the responsible Program Associate Administrator.

408 Steering Committee Review.

1. The most important role of the Steering Committee is to provide a substantive review of a potential payload or program of investigations and to recommend a selection to the Program Associate Administrator. The Steering Committee applies the collective experience and insight of representatives from the program and discipline communities and offers a forum for discussing the logic of the selection from those points of view. In addition to this mission-specific evaluation function, the Steering Committee provides central guidance to subcommittee chairpersons and serves as a clearinghouse for problems and complaints regarding the evaluation and selection process. The Steering Committee is responsible for assuring adherence to required procedures. Last, it is the forum where discipline objectives are weighed against program objectives and constraints.

2. The Steering Committee represents the means for exercising three responsibilities in the process of selecting investigations to:

a. Review compliance with procedures governing application of the investigation acquisition process.

b. Ensure that adequate and appropriate documentation has been made of the several steps in the evaluation process.

c. Review the results of the evaluation by the subcommittee, Project, and Program Offices and prepare an assessment or endorsement of a recommended payload or program of investigations to the Program Associate Administrator.

3. The purpose in exercising the first of these responsibilities is to ensure equity and consistency in the application of the process. In this sense, the Steering Committee is intended to provide the necessary checks, balances, reviews, and coordination established through procedures and controls inherent in conventional acquisition practices.

4. The second and third responsibilities of the Steering Committee are technical in nature. They require that the Steering Committee review the evaluations by subcommittee, the Project Office, and the Program Office in terms of their completeness and appropriateness for forwarding to the Program Associate Administrator. Most important in this review are:

a. Degree to which results of evaluations and recommendations follow logically from the criteria contained in the Announcement.

b. Consistency with objectives and policies generally beyond the scope of affected Project/Program Offices.

c. Sufficiency of reasons stated for tentative recommendations of those investigations requiring further instrument research and development.

d. Sufficiency of reasons stated for determining responsibilities for instrument development.

e. Sufficiency of consideration of reusable space flight hardware and support equipment for the recommended investigations.

f. Sufficiency of reasons given for classifying proposed investigations in their respective categories.

g. Fair treatment of all proposals.

5. The Steering Committee makes recommendations to the selection official on the payload or program of investigations and notes caveats or provisions important for consideration of the selection official.

409 Principles to Apply.

1. Paragraph 408 contains a description of the evaluation function appropriate for a major payload or very significant program of investigation. The levels of review, evaluation, and refinement described should be applied in those selections where warranted but could be varied for less significant selection situations. It is essential to consider the principles of the several evaluative steps, but it may not be essential to maintain strict adherence to the sequence and structure of the evaluation system described. The selection official is responsible for determining the evaluation process most appropriate for the selection situation using this Chapter as a guide.

2. Significant deviations from the provisions of this Handbook must be fully documented and be approved by the Program Associate Administrator after concurrence by the Office of General Counsel and Office of Procurement.

Chapter 5—The Selection Process

500 General.

The Program Associate Administrator is responsible for the final decision on those investigations to be selected for contract negotiation. This decision culminates the several types of evaluations and processes that can be summarized as follows:

Evaluation stage	Principal emphasis	Results
Contractor (when authorized).	Summary evaluation strengths and weaknesses).	Report to Subcommittee.
Subcommittee	Science and technological relevance, value, and feasibility.	Categorization of individual proposals.
Project Office	Engineering/cost/integration/management assessment.	Reports to Subcommittee and Program Office.
Program Office	Consistency with Announcement and program Objectives, and cost and schedule constraints.	Recommendations to Steering Committee of payload or program of investigations.
Steering Committee.	Logic of proposed selections and compliance with proper procedures.	Recommendations to Program Associate Administrator.

501 Decisions to be Made.

1. The selection decisions by the Program Associate Administrator constitute management judgments balancing individual and aggregate scientific or technological merit, the contribution of the recommended investigations to the Announcement's objectives and their consonance with budget constraints. In so doing, the selection official may develop such additional data to make the following decisions:

a. Determination of the adequacy of scientific/technical analysis supporting the recommended selections. This supporting rationale should involve considerations including:

(1) Assurance that the expected return contributes substantially to program objectives and is likely to be realized.

(2) Assurance that the evaluation criteria were applied consistently to all proposed investigations, thus ensuring that selection and rejection decisions are proper and fair.

(3) Assurance that the set of recommended investigations constitutes the optimum program or payload considering potential value and constraints.

(4) Assurance that only one investigator is assigned as the Principal Investigator to each investigation and that the Principal Investigator will assume the associated responsibilities and be the single point of contact and leader of any other investigators selected for the same investigation.

b. Determination as to whether available returned space hardware or support equipment, with or without modification, would be adequate to meet or support investigation objectives.

c. Determination as to whether the proposed instrument fabricator qualifies and should be accepted as a sole source or whether the requirement should be subjected to competitive solicitation. The following guidelines apply:

(1) The hardware requirement should be subjected to competitive solicitation in those instances where it is clear that the capability is not sufficiently unique to justify sole source procurement.

(2) The hardware requirement should be purchased from the fabricator proposed by the investigator, which may be the investigator's own institution, (a) when the fabricator's proposal contains technical data that are not available from another source, and it is not feasible or practicable to define the fabrication requirement in such a way as to avoid the necessity of using the technical data contained in the proposal; (b) when the fabricator offers unique capabilities that are not available from another source; (c) when the selection official determines as part of the selection that the hardware of the particular fabricator contributes so significantly to the value of the investigator's proposal as to be an integral part of it.

(3) If a producer other than the one proposed by the investigator offers unique capabilities to produce the hardware requirement, NASA may buy the hardware from the qualified fabricator.

d. Determination of the desirability for tentative selection of investigations. This determination involves considerations including:

(1) Assessment of the state of development of the investigative hardware, the cost and schedule for development in relation to the gain in potential benefits at the time of final selection.

(2) Assurance that there is adequate definition of investigation hardware to allow parallel design of other project hardware.

(3) Assurance that appropriate management procedures are contained in the project plan for reevaluation and final selection (or rejection) on an appropriate time scale.

e. Determination of the acceptability of the proposer's management plan, including the proposed hardware development plan, and the necessity, if any, of negotiating modifications to that plan.

2. In the process of making the above determinations described in subparagraph 1, the Program Associate Administrator may request additional information or evaluations. In most instances, this information can be provided by the Program Office responsible for the mission, project, or program. However, where it is determined appropriate, the Program Associate Administrator may reconvene the subcommittee or poll the members individually or provide for additional analysis or require additional data from evaluators or proposers as considered necessary to facilitate the Program Associate Administrator's decision.

502 The Selection Statement.

Upon completion of deliberations, the responsible Program Associate Administrator shall issue a selection statement. Ordinarily this statement will, upon request, be releasable to the public. As a minimum, the selection statement should include:

1. The general and specific evaluation criteria and relative importance used for the selection.

2. The categorizations provided by the subcommittee and the basic rationale for accepting or not accepting each Category I proposal and a succinct statement concerning the nonacceptance of all other proposals.

3. A concise description of each investigation accepted including an indication as to whether the selection is a partial acceptance of a proposal and/or a joinder with other investigators.

4. The role of the Principal Investigator with regard to hardware essential to the investigation and whether the Principal Investigator will be responsible for hardware acquisition and the basis therefor.

5. An indication of the plan and acquisition using the regular procurement processes, if the Principal Investigator is not to acquire the hardware.

6. A statement indicating whether the selection is final or tentative, recognizing the need for better definition of the investigation and its cost.

7. A statement indicating any use of Government-owned available space flight hardware and/or support equipment.

503 Notification of Proposers.

1. It is essential that investigators whose proposals are determined to have no reasonable chance for selection be apprised of that fact as soon as practicable. To this end, the responsible Program Office will, upon such determination, promptly notify investigators of that fact together with an exposition of the major reason(s) why the proposals were so considered. The notification letter should also inform such investigators that they may obtain a detailed oral debriefing provided they request it in writing. The letter should point out that such a debriefing would be available only after completion of the selection process and would otherwise be conducted in accordance with NASA regulations (NASA FAR Supplement). (See paragraph 504.)

2. As a result of the selection decisions made by the Program Associate Administrator, letters of notification will be sent to those Principal Investigators selected to participate. This notification letter should not commit the agency to more than negotiations for the selected investigation leading to a contract, but it should clearly indicate the decision made and contain:

a. A concise description of the Principal Investigator's investigation as selected, specifically noting substantive changes, if any, from the investigation originally proposed by the Principal Investigator.

b. The nature of the selection, i.e., whether it should be considered final or tentative requiring additional hardware or cost definition.

c. A description of the anticipated role of the Principal Investigator including the responsibility for the provision of instruments for flight experiments.

d. Identification of the principal technical and management points to be treated in subsequent negotiations.

e. Any rights to be granted on use of data, publishing of data, and duration of use of the data.

f. Where applicable, indication that a foreign selectee's participation in the program will be arranged between the International Affairs Division, Office of External Relations, and the foreign government agency which endorsed the proposal.

3. In conjunction with the notification of successful foreign proposers, the Program Office shall forward a letter to the responsible International Affairs Division, Office of External Relations, addressing the following:

a. The overall scientific technological objective of the planned effort.

b. The period of time during which the effort is planned.

c. The respective responsibilities of NASA and of the sponsoring (endorsing) governmental agency; these may include:

(1) Provision and subsequent disposition of hardware and software.

(2) Responsibilities for reporting, reduction and dissemination of data.

(3) Responsibilities for transportation of hardware.

d. Any additional information pertinent to the successful conduct of the experiment.

4. Using the information provided in subparagraph 3, the International Affairs Division, Office of External Relations will prepare and negotiate an agreement with the sponsoring foreign agency.

5. Notices shall also be sent to those proposers not previously notified pursuant to the preceding paragraphs, and, as applicable, a copy to the sponsoring foreign government agency. It is important that these remaining proposers be informed at the same time as those selected. Other agency notifications and press release procedures will apply, as appropriate.

504 Debriefing.

It is the policy of the National Aeronautics and Space Administration to debrief, if requested, unsuccessful proposers of investigations in accordance with NFS 1815.1003. The following considerations are offered in arranging and conducting debriefings:

1. Debriefing should be carried out by an official designated by the responsible Program Associate Administrator. Any other personnel receiving requests for information concerning the rejection of a proposal should refer to the designated official.

2. Debriefing of unsuccessful offerors should be made at the earliest possible time; debriefing will generally be scheduled subsequent to selection but prior to award of contracts to the successful proposers.

3. Material discussed in debriefing should be factual and wholly consonant with the documented findings of several stages of the evaluation process and the selection statement.

4. The debriefing official should advise of weak or deficient areas in the proposal, indicate whether those weaknesses were factors in the selection, and advise of the major considerations in selecting the competing successful proposer where appropriate.

5. The debriefing official should not discuss other unsuccessful proposals, ranking, votes of members, or attempt to make a point-by-point comparison with successful proposals.

6. A memorandum of record of the debriefing should be provided the Chairperson of the Steering Committee.

Chapter 6—Payload Formulation

600 Payload Formulation.

1. Payload elements for Space Transportation System (STS) missions can come from many sources. These include those selected through Announcements of Opportunity, those generated by in-house research and funded through the Research and Technology Operations and Plans (RTOP) procedures, unsolicited (domestic and foreign) proposals and those derived from agreements between NASA and external entities. Missions may have payload elements originating from any or all of these sources. However, it is anticipated that the primary source of NASA payload elements will be the Announcement process. Generally, proposals for payload elements submitted outside the Announcement process will not be selected if they would have been responsive to a stated Announcement objective.

2. Payload elements for STS flights fall into two major categories. "NASA or NASA-related" payload elements are those which are developed by a NASA Program Office or by another party with which NASA has a shared interest. "Non-NASA" payload elements are those which require only STS operation services from NASA and hence interface with the NASA through Office of Space Flight Customer Services.

3. In general, a Program Office will be designated to be responsible for formulating the "NASA or NASA-related" portion of an STS payload. The Office of Space Flight will be responsible for formulating the "non-NASA" portion of an STS payload. Flights may, of course, consist wholly of payload elements of either type defined in subparagraphs 1 and 2. Resource allocation for mixed missions will be determined jointly by the designated Program Office and the Office of Space Flight.

Chapter 7—Procurement and Other Considerations

700 Early Involvement Essential.

1. The distinctive feature of the Announcement of Opportunity process is that it is both a program planning system and a procurement system in one single procedure. The choice of what aeronautical and space phenomena to investigate is program planning. Procurement is involved with the purchase of property and services to carry out the selected investigations.

2. Because of both the programmatic and multifunctional aspects of the Announcement of Opportunity process, early involvement of external program office elements is essential. Success of the process requires that it proceed in a manner that meets program goals and is clearly in line with statutory requirements and sound procurement policy.

3. The planning preparation and selection schedule for the investigation should commence early enough to meet the present statutory and regulatory requirements. Chief of these are the requirements for soliciting maximum feasible competition and for conducting discussions with offerors within the competitive range by the Project Office and/or any other evaluation group or office authorized by the selection official.

701 Negotiation, Discussions, and Contract Award.

Indicated below are some of the major procurement procedures that need to be accomplished or performed to assure uniformity and sufficiency in the acquisition of investigations. These areas are not exclusive and not intended to substitute for adequate coordination and good judgment before issuance of the Announcement, during evaluation of proposals, and prior to contract award.

1. As negotiated procurements must be made by soliciting proposals from the maximum number of qualified sources consistent with the requirement, the Announcement of Opportunity must also be synopsized in the Commerce Business Daily. Responses to the synopsis must be added to the Announcement mailing list. Every effort should be made to publish opportunities far enough in advance to encourage a broad response. (In no case less than 45

days before the date set for receipt of proposals).

2. *Significant items for consideration after receipt of proposals*—a. *Late proposals.* The NASA policy on late proposals contained in the NASA FAR Supplement (NFS 1815.412) is applicable to proposals received in response to an Announcement of Opportunity. Potential investigators should be informed of this policy. In the Announcement of Opportunity context, the selection official or designee will determine whether a late proposal will be considered.

b. *Competitive considerations.* (1) The acquisition of investigations involves the solicitation of unique, novel, and unspecified ideas to meet NASA's aeronautical and space responsibilities. The proposals submitted in response to these solicitations are not necessarily fully comparable. Rather these are discrete, novel, scientific and technical investigative ideas associated with a limited opportunity. Although not necessarily fully comparable, all proposals within the scope of a specified opportunity must nevertheless be evaluated in accordance with the criteria stated in the Announcement.

(2) Cost must be considered in the evaluation if costs are involved in the investigation. Accordingly, general cost information should be given to the subcommittee by the Installation Project Office for use in determining the categories into which the subcommittee places proposals.

(3) Further information should be obtained, as necessary, by the Installation Project Office and/or any other evaluation group or office authorized by the selection official and from the investigators whose proposals are still being considered. This would be similar to the regular procurement procedure for conducting written and oral discussions. A major consideration during discussions is to avoid unfairness and unequal treatment. Obviously, good judgment is required by all concerned in the extent and content of the discussions. There should be no reluctance in obtaining the advice and guidance of management and staff offices during the discussion phase. A summary should be prepared of the primary points covered in the written and oral discussions and show the effect of the discussions on the evaluation of proposals. This summary should also contain general information about the questions submitted to the investigators, the amount of time spent in oral discussion, and revisions in proposals, if any, resulting from the discussions.

(4) During the conduct of discussions, all proposers still being considered shall be offered an equitable opportunity to submit such cost, technical, or other revisions in their proposals as may result from the discussions. All proposers shall be informed that any revisions to their proposals must be submitted by a common cut-off date in order to be considered. The record should take note of compliance of the investigators with that cut-off date.

3. *Significant items for consideration before award*—a. *Issuance of a request for proposal (RFP).* A formal RFP should not be issued to obtain additional information on proposals accepted under the Announcement of Opportunity process. Additional technical, cost, or other data received should be considered as a supplement to the original proposal.

b. *Selection of investigator/contractor.* The selection decision of the Program Associate Administrator approves the selected investigators and their institutions as the only satisfactory sources for the investigations. The selection of the investigator does not constitute the selection of that person's proposed supporting hardware fabricator unless the selection official specifically incorporates the fabricator in the selection decision.

702 Application of the Federal Acquisition Regulation (FAR) and the NASA FAR Supplement (NFS).

The Announcement of Opportunity process supplants normal procurement procedures only to the extent necessary to meet the distinctive features of the process that it is both a program planning system and a procurement system in a single procedure. This process is not intended to conflict with any established statutory requirements. The FAR, the NFS, and related procurement directives should be referred to for guidance and clarification in those instances where specific instructions are not contained in these guidelines.

703 Other Administrative and Functional Requirements.

After selection, all other applicable administrative and functional requirements will be complied with or incorporated in any resultant contract. These may include requirements contained in such publications as NHB 5300.4(1B), "Quality Program Provisions for Aeronautical and Space System Contractors," and NHB 9501.2, "Procedures for Contractor Reporting of Correlated Cost and Performance Data."

Appendix A.—Format of Announcement of Opportunity (AO)

OMB Approval Number 2700-0042

National Aeronautics and Space Administration, Washington, DC 20546

Announcement of Opportunity

AO No. _____

(Issuance Date)

(Descriptive Heading)

I. Description of the Opportunity.

This section should set forth the basic purpose of the Announcement and describe the opportunity in terms of NASA's desire to obtain proposals which will meet the stated scientific, applications and/or technological objectives. These objectives may be directed to the generation of proposals for investigations and/or they may pertain to the acquisition of dissimilar ideas leading to selection of investigators, guest observers, guest investigators, or theorists; and/or any other approved area as identified in NHB 8030.6. In those instances wherein proposals for investigations are sought, this section should describe the requirement, if any, for selected investigators to serve on advisory or working groups. In those instances where the project or program has not yet been approved, an appropriate qualifying statement should be included to clearly indicate that this Announcement of Opportunity does not constitute an obligation on the part of the Government to carry the proposed effort to completion.

II. Announcement Objectives.

This section will give a succinct statement of the specific scientific applications, and/or technological objective(s) for the opportunity(s) for which proposals are sought.

III. Background.

This section should provide an explanation of the context of the opportunity, i.e., information which will help the reader to understand the relevance of the opportunity in relation to broader objectives. For example, if the opportunity is related to a specific mission, this section should so indicate and provide information regarding the mission objectives. If, on the other hand, the opportunity is not related to a specific mission (for example, where the opportunity is discipline-oriented), this section should reflect that fact and provide information which will give the reader insight into the circumstances which have given rise to the opportunity and its relevance to the general scheme

of things. Information on prior studies and their availability should, if relevant to an understanding of the opportunity, be disclosed here.

IV. Proposal Opportunity Period.

This section should inform the reader of the proposal opportunity period(s). The following methods may be utilized individually or in conjunction for establishing the proposal opportunity period(s):

1. The Announcement may be issued establishing a single date by which proposals may be received. However, the Announcement could provide that the agency may amend the AO to provide for subsequent dates for submission of proposals, if additional investigations are desired. In this case, the initiative to reopen is an agency management determination and if sufficient investigations were selected for the Announcement objectives or flight possibilities, subsequent opportunities for proposal submission by potential investigators would not be available.

2. The Announcement may be issued to provide for an initial submission date with the AO to remain open for submission of additional proposals up to a final cutoff date. This final date should be related to the availability of resources necessary to evaluate the continuous flow of proposals and the time remaining prior to the flight opportunities contemplated by the Announcement.

3. The Announcement may be issued establishing a number of dates by which proposals may be received. Normally no more than three proposal submission dates should be established. The submittal dates may be spread over the number of months most compatible with the possible flight opportunities and the availability of resources necessary to evaluate and fund the proposal. If desired, this section should further inform the reader that if a proposal receives a Category I, II, or III rating but is not selected for immediate support, the proposal may, if desired by the proposer, be held by NASA for later consideration within the ground rules set forth in paragraphs 1 and 2. The section should inform the reader that if the person wishes the proposal to be so treated, it should be indicated in the proposal. This section should further indicate that offerors whose proposals are to be considered at a later time will be given the opportunity to revalidate their proposals with their institution and update cost data.

V. Requirements and Constraints.

1. This section will include technical, programmatic, cost, and schedule requirements or constraints, as applicable, and will specify performance limits such as lifetime, flight environment, safety, reliability, and quality assurance provisions for flightworthiness. It will specify the requirements and constraints related to the flight crew and the ground support. It will also include requirements for data analysis, estimated schedule of data shipment to user or observer, need for preliminary or raw data analysis and interim reports. It will specify planned period (time) for data analysis to be used for budgeting. It will provide any additional information necessary for a meaningful proposal.

2. When NASA determines that instrumentation, ground support equipment, or NASA supporting effort will be required or may be expected to be required by the contemplated investigations, the Announcement should indicate to the potential investigators that they must submit specific information regarding this requirement to allow an in-depth evaluation of the technical aspects, cost, management, and other factors by the Installation Project Office.

VI. Proposal Submission Information.

1. *Preproposal activities.* In this section, the Announcement will indicate requirements and activities such as the following:

a. Submittal of "Notice of Intent" to propose (if desired), date for submission, and any additional required data to be submitted. Indicate whether there are information packages which will only be sent to those who submit "Notice of Intent."

b. Attendance at the preproposal conference (if held). Information should be provided as to time, place, whether attendance will be restricted in number from each institution, and whether prior notice of intention to attend is required. If desired, a request may be included that questions be submitted in writing several days before the conference in order to prepare replies.

c. The name and address of the scientific or technical contact for questions or inquiries.

d. Any other preproposal data considered necessary.

2. *Format of proposals.* This section should provide the investigator with the information necessary to enable an effective evaluation of the proposal. The information is as follows:

a. *Proposal.* The Announcement should indicate how the proposal should be submitted to facilitate evaluation. The proposal should be submitted in at least two sections: (1) Investigation and Technical Section; and (2) Management and Cost Section.

b. *Certification.* The proposal must be signed by an institutional official authorized to certify institutional support, sponsorship of the investigation, management, and financial aspects of the proposal.

c. *Quantity.* The number of copies of the proposal should be specified. One copy should be clear black and white, and on white paper of quality suitable for reproduction.

d. *Submittal address.* Proposals from domestic sources should be mailed to arrive not later than the time indicated for receipt of proposals to:

National Aeronautics and Space Administration, Office of (Program): Code _____ AO No. _____, Washington, DC 20546.

e. *Format.* To aid in proposal evaluation, and to facilitate comparative analysis, a uniform proposal format will be required for each Announcement. The number of pages, page size, and restriction on photo reduction, etc., may be included therein. The format contained in Appendix C to Appendix I of 1870.103 can be used as a guide. Proposers may be requested to respond to all of the items contained therein or the Announcement may indicate that only selected items need be addressed. Using the Appendix format as a guide, specific guidelines may be prepared for the Announcement or an appropriate form developed. The major consideration is that all proposals be received in a similar format.

3. *Additional information.* This section may be used to request or furnish data considered necessary to obtain clear and concise proposals that should not require further discussions with the proposer by the evaluators. Any other pertinent data could also be included in this section, such as significant milestones.

4. *Foreign proposals.* The detailed procedures for submission of proposals from outside the U.S. are contained in Appendix B, "General Instructions and Provisions." This section will describe any additional requirements, for example, if information copies of proposals are required to be furnished by the proposer to other organizations, such as European Space Agency (ESA), at the same time the proposal is sent to NASA, this should be indicated here.

5. Cost proposals (U.S. investigators only). This section defines any special requirements regarding cost proposals of domestic investigators. Reference then

should be made to the cost proposal certifications indicated in Appendix B to Appendix I of 1870.103, "General Instructions and Provisions."

VII. Proposal Evaluation, Selection, and Implementation.

1. *Evaluation and selection procedure.* a. This section should notify the proposers of the evaluation process, i.e., advisory subcommittee, government evaluation and/or contractor assistance.

b. For example, a statement similar to the following should be included: "Proposals received in response to this Announcement of Opportunity will be reviewed by a subcommittee appointed by the (appropriate Program Associate Administrator). The purpose of the review is to determine the scientific/technical merit of the proposals in the context of this Announcement of Opportunity and so categorize the proposals. Those proposals which are considered to have the greatest scientific/technical merit are further reviewed for engineering, integration, management, and cost aspects by the Project Office at the installation responsible for the project. On the basis of these reviews, and the reviews of the responsible Program Office and the Steering Committee, the (appropriate Program Associate Administrator) will appoint/select the investigators/investigations."

2. *Evaluation Criteria.* a. This section should indicate that the selection of proposals which best meet the specific scientific, applications, and/or technological objectives, as stated in the Announcement, is the fundamental aim of the solicitation. This section should then list the criteria to be used in the evaluation of proposals and indicate their relative importance. See paragraph 401, NHB 8030.6B, for a listing of criteria generally appropriate.

b. Following a listing of the criteria and an indication of their relative importance, this section will also inform the proposers that cost and management factors, e.g., proposed small business participation in instrumentation fabrication or investigation support, will be separately considered.

VIII. Schedule.

This section should include the following, as applicable:

1. Preproposal conference date.
2. Notice of Intent submittal date.
3. Proposal submittal date(s).
4. Target date for announcement of selections.

IX. Appendices.

1. General Instructions and Provisions (must be attached to each Announcement).
2. Other Pertinent Data, e.g., Spacelab Accommodations Data.

/s/ Associate Administrator for (Program).

Appendix B to Appendix I of 1870.103—General Instructions and Provisions

I. Instrumentation and/or Ground Equipment.

By submitting a proposal, the investigator and institution agree that NASA has the option to accept all or part of the offeror's plan to provide the instrumentation or ground support equipment required for the investigation or NASA may furnish or obtain such instrumentation or equipment from any other source as determined by the selecting official. In addition, NASA reserves the right to require use, by the selected investigator, of Government instrumentation or property that subsequently becomes available, with or without modification, that will meet the investigative objectives.

II. Tentative Selections, Phased Development, Partial Selections, and Participation With Others.

By submitting a proposal, the investigator and the organization agree that NASA has the option to make a tentative selection pending a successful feasibility or definition effort. NASA has the option to contract in phases for a proposed experiment, and to discontinue the investigative effort at the completion of any phase. The investigator should also understand that NASA may desire to select only a portion of the proposed investigation and/or that NASA may desire the individual's participation with other investigators in a joint investigation, in which case the investigator will be given the opportunity to accept or decline such partial acceptance or participation with other investigators prior to a NASA selection. Where participation with other investigators as a team is agreed to, one of the team members will normally be designated as its team leader or contact point.

III. Selection Without Discussion.

The Government reserves the right to reject any or all proposals received in response to this Announcement when such action shall be considered in the best interest of the Government. Notice is also given of the possibility that any selection may be made without discussion (other than discussions conducted for the purpose of minor clarification). It is therefore emphasized that all proposals should be submitted initially on the most favorable terms that the offeror can submit.

IV. Foreign Proposals.

See Appendix C to Appendix I of 1870.103, section II, paragraph 3.

V. Treatment of Proposal Data.

It is NASA policy to use information contained in proposals and quotations for evaluation purposes only. While this policy does not require that the proposal or quotation bear a restrictive notice, offerors or quoters should, in order to maximize protection of trade secrets or other information that is commercial or financial and confidential or privileged, place the following notice on the title page of the proposal or quotation and specify the information, subject to the notice by inserting appropriate identification, such as page numbers, in the notice. In any event, information (data) contained in proposals and quotations will be protected to the extent permitted by law, but NASA assumes no liability for use and disclosure of information not made subject to the notice.

Restriction on Use and Disclosure of Proposal and Quotation Information (Data)

The information (data) contained in [insert page numbers or other identification] of this proposal or quotation constitutes a trade secret and/or information that is commercial or financial and confidential or privileged. It is furnished to the Government in confidence with the understanding that it will not, without permission of the offeror, be used or disclosed for other than evaluation purposes; provided, however, that in the event a contract is awarded on the basis of this proposal or quotation the Government shall have the right to use and disclose this information (data) to the extent provided in the contract. This restriction does not limit the Government's right to use or disclose this information (data) if obtained from another source without restriction.

VI. Status of Cost Proposals (U.S. Proposals Only).

The investigator's institution agrees that the cost proposal submitted in response to the Announcement is for proposal evaluation and selection purposes, and that following selection and during negotiations leading to a definitive contract, the institution will be required to resubmit or execute a Standard Form (SF) Form 1411 "Contract

Pricing Proposal Cover Sheet" and all certifications and representations required by law and regulation.

VII. Late Proposals.

The Government reserves the right to consider proposals or modifications thereof received after the date indicated for such purpose, should such action be in the interest of the Government.

VIII. Source of Space Transportation System Investigations.

Investigators are advised that candidate investigations for Space Transportation System (STS) missions can come from many sources. These sources include those selected through the Announcement of Opportunity, those generated by NASA in-house research and development, and those derived from contracts and other agreements between NASA and external entities.

IX. Disclosure of Proposals Outside Government.

NASA may find it necessary to obtain proposal evaluation assistance outside the Government. Where NASA determines it is necessary to disclose a proposal outside the Government for evaluation purposes, arrangements will be made with the evaluator for appropriate handling of the proposal information. Therefore, by submitting a proposal the investigator and institution agree that NASA may have the proposal evaluated outside the Government. If the investigator or institution desire to preclude NASA from using an outside evaluation, the investigator or institution should so indicate on the cover. However, notice is given that if NASA is precluded from using outside evaluation, it may be unable to consider the proposal.

X. Equal Opportunity (U.S. Proposals Only).

By submitting a proposal, the investigator and institution agree to accept the following clause in any resulting contract:

Equal Opportunity

During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

2. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (a) employment, (b) upgrading, (c) demotion, (d) transfer, (e) recruitment or recruitment advertising, (f) layoff or termination, (g) rates of pay or other forms of compensation, and (h) selection for training, including apprenticeship.

3. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

4. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

5. The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding the notice to be provided by the Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

6. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

7. The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO–1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

8. The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

9. If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, the contract may be cancelled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

10. The Contractor shall include the terms and conditions of subparagraph 1 through 9 of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

11. The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

XI. Patent Rights.

1. For any contract resulting from this solicitation awarded to other than a small business firm or nonprofit organization, the clause at NFS 1852.227–70, "New Technology," shall apply. Such contractors may, in advance of contract, request waiver of rights as set forth in the provision at NFS 1852.227–73, "Requests for Waiver of Rights to Inventions."

2. For any contract resulting from this solicitation awarded to a small business firm or nonprofit organization, the clause at FAR 52.227–11, "Patent Rights—Retention by the Contractor (Short Form)" (as modified by NFS 1852.227–11), and the clause at NFS 1852.227–73, "Patent Rights Clause for Subcontracts," shall apply.

Appendix C to Appendix I of 1870.103—Guidelines for Proposal Preparation

The following guidelines apply to the preparation of proposals by potential investigators in response to an Announcement of Opportunity. The material presented is merely a guide for the prospective proposer and not intended to be all encompassing or directly applicable to the various types of proposals which can be submitted. The proposer should, however, provide information relative to those items applicable or as otherwise required by the Announcement of Opportunity.

I. Cover Letter

A letter or cover page should be forwarded with the proposal. It should be signed by the investigator and an official by title of the investigator's

organization who is authorized to commit the organization that is responsible for the proposal and its contents.

II. Table of Contents

The proposal should contain a table of contents.

III. Identifying Information

The proposal should contain a short descriptive title for the investigation, the names of all investigators, the name of the organization or institution and the full name, address, and telephone number of the Principal Investigator.

Section I—Investigation and Technical Plan

1. Investigation and technical plan. The investigation and technical plan generally will contain the following:

a. *Summary.* A simple, concise statement about the investigation, its conduct, and the anticipated results.

b. *Objective and significant aspects.* A brief definition of the objectives, their value, and their relationships to past, current, and future effort. The history and basis for the proposal and a demonstration of the need for such an investigation. A statement of present development in the discipline field.

c. *Investigation approach.* (1) Fully describe the concept of the investigation.

(2) Detail the method and procedures for carrying out the investigation.

2. Instrumentation. This section should describe all information necessary to plan for experiment development, integration, ground operations, and flight operations. This section must be complete in itself without need to request additional data. Failure to furnish complete data may preclude evaluation of the proposal.

a. *Instrument description.* This section should fully describe the instrumentation and indicate items which are proposed to be developed as well as any existing instrumentation. Performance characteristics should be related to the experiment objectives as stated in the proposal.

b. *Instrument integration.* This section should describe all parameters of the instrument pertinent to the accommodation of the instrument in the spacecraft, Spacelab, Shuttle Orbiter, Space Station, etc. These include, but are not limited to volumetric envelope; weight; power requirements; thermal requirements; telemetry requirement; sensitivity to or generation of contamination (e.g., EMI gaseous effluents); data processing requirements.

c. *Ground operations.* This section should identify requirements for pre-launch or post-launch ground operations support.

d. *Flight operations.* This section should identify any requirements for flight operations support including mission planning. Operational constraints, viewing requirements, and pointing requirements should also be identified. Details of communications needs, tracking needs, and special techniques, such as extravehicular activity or restrictions in the use of control thrusters at stated times should be delineated. Special communications facilities that are needed must be described. Any special orbital requirements, such as time of month, of day, phase of moon, and lighting conditions are to be given in detail. Describe realtime ground support requirements and indicate any special equipment or skills required of ground personnel.

3. Data reduction and analysis. A discussion of the data reduction and analysis plan including the method and format. A section of the plan should include a schedule for the submission of reduced data to the receiving point. In the case of Space Science programs, the National Space Science Data Center, Greenbelt, MD, will be the repository for such data and the Department of the Interior, Sioux Falls, SD, for earth observations data.

4. Orbiter crew and/or payload specialist training requirement. A description of the tasks required of each crew member (Commander, Pilot, Mission Specialist) or payload specialist should be provided, including the task duration and equipment involved. Indicate special training necessary to provide the crew members or payload specialist(s) with the capability for performing the aforementioned tasks.

Section II—Management Plan and Cost Plan

A. Management plan. The management plan should summarize the management approach and the facilities and equipment required. Additional guidelines applicable to non-U.S. proposers are contained herein:

1. Management. a. The management plan sets forth the investigator's approach for managing the work, the recognition of essential management functions, and the overall integration of these functions.

b. The management plan gives insight into the organization proposed for the work, including the internal operations and lines of authority with delegations, together with internal interfaces and relationships with the NASA major subcontractors and associated investigators. Likewise, the management plan usually reflects various schedules necessary for the logical and timely pursuit of the work accompanied by a description of the investigator's work plan and the responsibilities of the co-investigators.

c. The plan should describe the proposed method of instrument acquisition. Specifically, it should include the following, as applicable.

(1) Rationale for the investigator to obtain the instrument through or by the investigator's institution.

(2) Method and basis for the selection of the proposed instrument fabricator.

(3) Unique or proprietary capabilities of the instrument fabricator that are not available from any other source.

(4) Contributions or characteristics of the proposed fabricator's instrument that make it an inseparable part of the investigation.

(5) Availability of supporting personnel in the institution to successfully administer the instrument contract and technically monitor the fabrication.

(6) Status of development of the instrument. What additional development is needed. Areas that need further design or in which unknowns are present.

(7) Method by which the investigator proposes to:

(a) Prepare instrument specifications.

(b) Review development progress.

(c) Review design and fabrication changes.

(d) Participate in testing program.

(e) Participate in final checkout and calibration.

(f) Provide for integration of instrument.

(g) Support the flight operations.

(h) Coordinate with co-investigators, other related investigations, and the payload integrator.

(i) Assure safety, reliability, and quality.

(j) Provide required support for Payload Specialist(s), if applicable.

(8) Planned participation by small and/or minority business in any subcontracting for instrument fabrication or investigative support functions.

2. Facilities and equipment. All major facilities, laboratory equipment, and groundsupport equipment (GSE) (including those of the investigator's proposed contractors and those of NASA and other U.S. Government agencies) essential to the experiment in terms of its system and subsystems are to be indicated, distinguishing insofar as possible between those already in existence and those that will be developed in order to execute the

investigation. The outline of new facilities and equipment should also indicate the lead time involved and the planned schedule for construction, modification, and/or acquisition of the facilities.

3. Additional guidelines applicable to non-U.S. proposer only. The following guidelines are established for foreign responses to NASA's Announcement of Opportunity. Unless otherwise indicated in a specific announcement, these guidelines indicate the appropriate measures to be taken by foreign proposers, prospective foreign sponsoring agencies, and NASA leading to the selection of a proposal and execution of appropriate arrangements. They include the following:

a. Where a "Notice of Intent" to propose is requested, prospective foreign proposers should write directly to the NASA official designated in the Announcement of Opportunity and send a copy of this letter to the International Affairs Division, Office of External Relations, NASA, Washington, DC 20546, U.S.A.

b. Unless otherwise indicated in the Announcement of Opportunity, proposals will be submitted in accordance with this Appendix excluding cost plans. Proposals should be typewritten and written in English.

c. Persons planning to submit a proposal should arrange with an appropriate foreign governmental agency for a review and endorsement of the proposed activity. Such endorsement by a foreign organization indicates:

(1) The proposal merits careful consideration by NASA.

(2) If the proposal is selected, sufficient funds will be available to undertake the activity envisioned.

d. Proposals along with the requested number of copies and letters of endorsement from the foreign governmental agency must be forwarded to NASA in time to arrive before the deadline established for each Announcement of Opportunity. These documents should be sent to: National Aeronautics and Space Administration, International Affairs Division, Office of External Relations, Washington, DC 20546, U.S.A.

e. All proposals must be received before the established closing date; those received after the closing date will be treated in accordance with NASA's provisions for late proposals. Sponsoring foreign government agencies may, in exceptional situations, forward a proposal directly to the above address if review and endorsement is not possible before the announced closing date. In such cases, NASA should be advised when a decision on endorsement can be expected.

f. Shortly after the deadline for each Announcement of Opportunity, NASA's Office of External Relations will advise the appropriate sponsoring agency which proposals have been received and when the selection process should be completed. A copy of this acknowledgement will be provided to each proposer.

g. Successful and unsuccessful proposers will be contacted directly by the NASA Program Office coordinating the Announcement of Opportunity. Copies of these letters will be sent to the sponsoring Government agency.

h. NASA's Office of External Relations will then begin making the necessary arrangements to provide for the selectee's participation in the appropriate NASA program. Depending on the nature and extent of the proposed cooperation, these arrangements may entail:

(1) A letter of notification by NASA.

(2) An exchange of letters between NASA and the sponsoring foreign governmental agency.

(3) An agreement or Memorandum of Understanding between NASA and the sponsoring foreign governmental agency.

B. Cost plan (U.S. investigations only). The cost plan should summarize the total investigation cost by major categories of cost as well as by function.

1. The categories of cost should include the following:

a. *Direct labor.* List by labor category, with labor hours and rates for each. Provide actual salaries of all personnel and the percentage of time each individual will devote to the effort.

b. *Overhead.* Include indirect costs, which because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Usually this is in the form of a percentage of the direct labor costs.

c. *Materials.* This should give the total cost of the bill of materials including estimated cost of each major item. Include lead time of critical items.

d. *Subcontracts.* List those over $25,000, specify the vendor and the basis for estimated costs. Include any baseline or supporting studies.

e. *Special equipment.* Include a list of special equipment with lead and/or development time.

f. *Travel.* List estimated number of trips, destinations, duration, purpose, number of travelers, and anticipated dates.

g. *Other costs.* Costs not covered elsewhere.

h. *General and administrative expense.* This includes the expenses of the institution's general and executive offices and other miscellaneous expenses related to the overall business.

i. *Fee (if applicable).*

2. Separate schedules, in the above format, should be attached to show total cost allocable to the following:

a. Principal Investigator and other Investigators' costs.

b. Instrument costs.

c. Integration costs.

d. Data reduction and analysis including the amount and cost of computer time.

3. If the effort is sufficiently known and defined, a funding obligation plan should provide the proposed funding requirements of the investigations by quarter and/or annum keyed to the work schedule.

Appendix D to Appendix I of 1870.103—Glossary of Terms and Abbreviations Associated With Investigations

Advisory Committee Subcommittee. Any committee, board, commission, council, conference, panel, task force; or other similar group, or any subcommittee or other subgroup thereof, that is not wholly composed of full-time Federal Government employees, and that is established or utilized by NASA in the interest of obtaining advice or recommendations.

Announcement of Opportunity (AO). A document used to announce opportunities to participate in NASA programs. Announcements are published in accordance with these guidelines.

AO Process. A term used to describe the program planning and procurement procedure used to acquire investigative effort, initiated by an AO.

Categorization. The process whereby proposed investigations are classified into four categories: synopsized here as Category I—recommended for immediate acceptance; Category II—recommended for acceptance but at a lower priority than Category I proposals; Category III—sound investigations requiring further development; Category IV—rejected.

Co-Investigator (Co-I). Associate of a Principal Investigator, responsible to the Principal Investigator for discrete portions or tasks of the investigation.

Data Users. Participants in NASA programs, selected to perform investigations utilizing data from NASA payloads or facilities.

Experiments. Activities or effort aimed at the generation of data. NASA-sponsored experiments generally concern generation of data obtained through measurement of aeronautical

and space phenomena or use of space to observe earth phenomena.

Federal Acquisition Regulation (FAR). The regulations governing the conduct of procurement.

Flight. That portion of the mission encompassing the period from launch to landing or launch to termination of the active life of spacecraft. The term shuttle "flight" means a single shuttle round trip—its launch, orbital activity, and return; one flight might deliver more than one payload. More than one flight might be required to accomplish one mission.

Flight Investigation. Investigation conducted utilizing aeronautical or space instrumentation.

Flight Opportunity. A flight mission designed to accommodate one or more experiments or investigations.

Guest Investigators. Investigators selected to conduct observations and obtain data within the capability of a NASA mission, which are additional to the mission's primary objectives. Sometimes referred to as Guest Observers.

Investigation. Used interchangeably with "Experiments."

Investigation Team. A group of investigators collaborating on a single investigation.

Investigator. A participant in an investigation. May refer to the Principal Investigator, Co-Investigator, or member of an investigation team.

Mission. The performance of a coherent set of investigations or operations in space to achieve program goals. (Example: Measure detailed structure of Sun's chromosphere; survey mineral resources of North America.)

NASA FAR Supplement (NFS). Procurement regulations promulgated by NASA in addition to the FAR.

NHB. NASA Handbook.

NMI. NASA Management Instruction.

Notice of Intent. A notice or letter submitted by a potential investigator indicating the intent to submit a proposal in response to an AO.

Payload. A specific complement of instruments, space equipment, and support hardware carried to space to accomplish a mission or discrete activity in space.

Peer Group. A gathering of experts in related disciplinary areas convened as a subcommittee of the Program Office Steering Committee to review proposals for flight investigations.

Peer Review. The process of proposal review utilizing a group of peers in accordance with the categorization criteria as outlined in these guidelines.

Principal Investigator (PI). A person who conceives an investigation and is responsible for carrying it out and reporting its results.

Program. An activity involving human resources, materials, funding, and scheduling necessary to achieve desired goals.

Project. Within a program, an undertaking with a scheduled beginning and ending, which normally involves the design, construction, and operation of one or more aeronautical or space vehicles and necessary ground support in order to accomplish a scientific or technical objective.

Project Office. An office generally established at a NASA field installation to manage a project.

Selection Official. The NASA official designated to determine the source for award of a contract or grant.

Space Facility. An instrument or series of instruments in space provided by NASA to satisfy a general objective or need.

Steering Committee. A standing NASA sponsored committee providing advice to the Program Associate Administrators and providing procedural review over the investigation selection process. Composed wholly of full-time Federal Government employees.

Study Office. An office established at a NASA field installation to manage a potential undertaking which has not yet developed into project status.

Subcommittee. An arm of the Program Office Steering Committee consisting of experts in relevant disciplines to review and categorize proposals for investigations submitted in response to an AO.

Supporting Research and Technology (SR&T). The programs devoted to the conduct of research and development necessary to support and sustain NASA programs.

Team. A group of investigators responsible for carrying out and reporting the results of an investigation or group of investigations.

Team Leader. The person appointed to manage and be the point of contact for the team and who is responsible for assigning respective roles and privileges to the team members and reporting the results of the investigation.

Team Member. A person appointed to a team who is an associate of the other members of the team and is responsible to the team leader for assigned tasks or portions of the investigation.

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federal register

Tuesday
April 28, 1987

Part III

Department of Transportation

Urban Mass Transportation Administration

Implementation of the Federal Mass Transportation Act of 1987; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Implementation of the Federal Mass Transportation Act of 1987

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Mass Transportation Act of 1987 (the Act), Title III of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17), effective April 2, 1987, makes a number of significant changes to the programs of the Urban Mass Transportation Administration (UMTA). This notice describes generally some of the principal changes that the new legislation makes that are applicable to a number of grantees. UMTA Circulars providing application instructions are being updated to reflect the changes, and a number of regulations will have to be issued or revised to comply with the law. Unless otherwise specified, each of the changes applies to funds obligated by UMTA after enactment of the Act.

FOR FURTHER INFORMATION CONTACT: Brian J. Cudahy, Office of Grants Management, (202) 366–1662, for information on general grant application issues, or the appropriate Regional Administrator; Kenneth W. Butler, Office of Budget and Policy, (202) 366–4050, for general policy matters; or Daniel Duff, Office of Chief Counsel, (202) 366–4063, for information on legal issues. Except for Regional Administrators, all are located at 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: *Changes to the section 3 program.* The Act provides contract authority for the Mass Transit Account of the Highway Trust Fund for fiscal years 1987 through 1991. The amount for fiscal year 1987 is $1.097 billion; however, the fiscal year 1987 DOT appropriation act provides an obligation limitation of $1.0025 billion, which is the amount UMTA is authorized to obligate from the Mass Transit Account authorization for fiscal year 1987. Completed applications for these fiscal year 1987 section 3 funds should be submitted to UMTA Regional offices by June 1, 1987.

Of the amounts from the Mass Transit Account available for section 3 funding, the Act allocates funding on a percentage basis: 40 percent for new starts; 40 percent for rail modernization; 10 percent for bus activities; and 10 percent to be allocated at the Secretary's discretion.

Under the Act, no new start project may be funded under section 3 unless the Secretary determines that the project is based on alternatives analysis, is cost-effective, and is supported by an acceptable degree of local financial commitment. UMTA is developing a regulation to implement this provision. Any project for which a letter of intent or full funding contract was issued before enactment of the Act, or any project in the preliminary engineering, final design, or construction stage as of January 1, 1987, is not subject to these new start criteria.

Finally, advance construction authority, discussed below, is available under section 3.

Distribution of Mass Transit Account funds over $1 billion. Beginning in fiscal year 1988, in any year in which an obligation limitation for the Transit Account exceeds $1 billion, and after necessary drawdowns for the section 4(i), 8 and 16(b) and other programs funded from the Transit Account, the funds in excess of $1 billion are to be allocated half on a discretionary basis and half under a new section 9B formula program—essentially a capital-only section 9 program. The discretionary amounts must be allocated in accordance with the section 3 percentage allocations discussed above.

Changes to the section 8 program. The Act amends this section to provide that the local planning process must include an analysis and development of long-term financial plans for regional transit improvements and the revenue available from current and potential sources to implement such improvements. UMTA issued a Circular on financial capacity on March 30, 1987, that addresses a number of financial planning issues.

Changes to the section 9 program. The Act makes a number of changes to this program, but the distribution formula and the basic structure of the program remain unchanged. The section 9 Circular is being updated to describe these program changes in detail. In accordance with the FY 1987 DOT appropriation act, UMTA published the FY 1987 section 9 formula apportionments in the **Federal Register** on December 10, 1986 (51 FR 44546).

Under the Act, a number of expenses that have been eligible as operating costs under section 9 may now be eligible for capital funding. These include the leasing of certain facilities and equipment if it can be demonstrated that leasing is more cost-effective than the acquisition of such items; UMTA will be developing a regulation to implement this provision. Also capitalized under the Act are bus remanufacturing projects which extend the economic life of a bus eight years or more, as well as any overhaul of rail rolling stock. The associated capital maintenance item threshold has been lowered from its current one percent to one-half of one percent, and includes tires, tubes, and materials.

The Federal share for section 9 capital projects "shall be" eighty percent, but a recipient at its discretion may provide overmatch.

The Act has a provision regarding the disposition of advertising revenues a grantee earns in excess of those earned in fiscal year 1985.

The operating assistance limitation for urbanized areas of less than 200,000 in population has been changed by the Act. For urbanized areas that became such as a result of the 1980 Census or later, the limitation is two-thirds of their first fiscal year section 9 apportionment, which will be fiscal year 1984 for all areas except Merced, California, which was recently designated an urbanized area. These new limitations are being published elsewhere in the **Federal Register** today. The operating assistance cap for other urbanized areas of less than 200,000 in population shall be increased by 32.2 percent on October 1, 1987. On each October 1 thereafter the operating assistance limitation for all small UZAs shall be increased to reflect the increase in the latest available CPI.

The limitation on the Governor's ability to transfer apportionments to areas larger than 300,000 in population has been deleted.

Advance construction authority. Under section 9, a recipient that has used all of its capital apportionment in a fiscal year may seek approval from UMTA to spend its local funds and be reimbursed from future section 9 apportionments. Certain bond interest costs are eligible costs under this provision. A similar provision applies to section 3.

Buy America. The Buy America domestic content requirement for buses, rolling stock and associated equipment will be increased from its existing 50 percent to 55 percent at the end of three years, and to 60 percent at the end of five years, except that any company that has met the existing Buy America requirement would be exempted from these increases for all contracts entered into before April 1, 1992. In addition, the rolling stock price differential waiver is increased from its current 10 percent to 25 percent, and the definition of "components" is specifically to include "subcomponents." UMTA will be

revising its Buy America regulation to reflect these changes.

Project management oversight. The Act authorizes UMTA to contract directly for project management oversight in connection with major capital projects, using one-half of one percent of funds available for the major grant programs. In addition, a grantee undertaking a major capital project is to prepare a project management plan. UMTA will be issuing a regulation to implement this provision.

Interstate transfer-transit. The Act authorizes $200 million a year from general revenues for this program.

Section 18/Rural transit assistance program. A new section 18(h) is added to the UMT Act. Beginning in FY 1988, it authorizes some $5 million a year from general revenues for rural transportation assistance and research. In addition, beginning in fiscal year 1988, the section 18 program will receive from general revenues 2.93 percent of the general fund formula program (as it receives under current law) as well as the new section 9B program.

Contracts for engineering and design. Unless a State adopts some other law, a recipient of UMTA funds may not use low bid procurements on any architectural and engineering contracts. It must use quality-based procurements on any such contracts.

Disadvantaged business enterprise program. The Act provides that women are presumptively to be considered eligible under this program. The Department's DBE regulations are being revised accordingly.

Preaward and postdelivery audit of rolling stock purchases. UMTA is required to issue regulations requiring preaward and postdelivery audit of rolling stock purchases to assure compliance with Buy America, Federal motor vehicle safety requirements, and bid specifications.

Bus testing facility. After September 30, 1989, no funds made available under the Act may be obligated for the acquisition of a new bus model unless such model has been tested at a facility to be established in Altoona, Pennsylvania. UMTA will be developing a regulation to implement this provision.

Increased Federal share. The Act provides that the Federal share for projects that provide transit station access, parking and conveyance facilities for bicycles under sections 3, 9 or 18 shall be 90 percent, and that the Federal share for projects that enhance transportation accessibility for elderly and handicapped persons (beyond those projects required by law) shall have a Federal share of 95 percent.

Charter bus restrictions. The Act also revises ICC procedures to provide that publicly-funded operators cannot get interstate charter authority beyond their service area if private operators already provide such service or are willing and able to.

Issued on: April 22, 1987.

Ralph L. Stanley,

Administrator.

[FR Doc. 87-9450 Filed 4-22-87; 4:15 pm]

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federal register

Tuesday
April 28, 1987

Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement: Research on Drug Use Among Juveniles; Notices

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Program Announcement: Research on Drug Use Among Juveniles

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of issuance of a solicitation for applications to conduct research on drug use among juveniles.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to Part C, Section 243(1) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, announces a competitive OJJDP research program entitled "Drug Use Among Juveniles." The purpose of the program is to develop information on high risk factors for drug use among youth including illegal drugs, alcohol and tobacco; and on the effectiveness of interventions for the prevention and control of illegal drug use. The research goal is to examine data already collected but not analyzed which would provide information on the nature, extent and patterns of drug use by youth. Results of this study will improve our understanding of why youth become involved in drug abuse, inform the development of more specific and efficient new research, and will be used to promote the development of effective prevention and treatment programs.

OJJDP's National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) invites public or private agencies to submit applications to conduct secondary analysis of existing data bases. The project period will be six months during which the principal analysis will be conducted and a final report issued. A total of $125,000 is available for award of up to five individual grants.

DATES: The deadline for receipt of applications is May 29, 1987.

FOR FURTHER INFORMATION CONTACT: Catherine P. Sanders, National Institute of Juvenile Justice and Delinquency Prevention, R&PDD, 633 Indiana Avenue, NW., Room 782, Washington, DC 20531, (202) 724–5929.

SUPPLEMENTARY INFORMATION:

Program Announcement—Research on Drug Use Among Juveniles

Table of Contents

I. Introduction and Background

Drug use and abuse is a pervasive problem in society. Statistics from a 1985 study indicate that the lifetime prevalence rates are high among seniors for the Class of 1985. Over half, 54% have tried marijuana, 18% have tried inhalants, 5% have used PCP, 17% have tried cocaine, 26% have used stimulants, 92% have tried alcohol and 69% have tried cigarettes. Corresponding rates for use within the previous year and previous month, while lower, are also unacceptably high. These are alarming figures because they represent answers from the best and brightest youth in the United States. Over half of the students answering these questions entered colleges and universities in the Fall of 1985.

Although we understand some of the parameters of the drug abuse problems of adolescents, a significant issue for research involves the need to understand the dynamics of the progression from experimentation with drugs (including the consumption of alcohol and tobacco) to abuse of drugs and involvement in other delinquent activities. Understanding the many facets of the problem is a prerequisite for developing effective prevention, intervention and treatment programs for youth.

There are numerous ideas about what is to be prevented. There are the views that: (1) What should be prevented is drug abuse; (2) what should be prevented is the *regular* use of psychoactive substances, regardless of whether this use is accompanied by overt problems in personal, social, educational, or economic functioning; (3) what might be prevented is *any* use of pyschoactive substances, regardless of whether the use is regular or accompanied by problems; (4) what should be prevented is experimentation from becoming abuse; (5) a prevention goal should be to delay the age at which individuals first use psychoactive substances; and (6) what should be prevented is the use of particular categories of substances such as tobacco, marijuana, alcohol, cocaine, or opiates.

Recent research on risk factors for drug abuse suggests that each of these conceptions imply different causes and developmental patterns, and therefore, potentially different prevention strategies. The prevention of serious, chronic drug abuse among adolescents may require a different strategy than the prevention of experimentation with drugs. Strategies which are adequate for preventing experimentation among those at low risk of engaging in serious antisocial behaviors may be wholly inadequate for preventing initiation and use by those who exhibit a "deviance syndrome." On the contrary, effective strategies for preventing drug abuse among those at highest risk for substance abuse may be inappropriate for those at risk only of becoming experimental users.

For the most part, we still do not know the reasons why youth become involved in drug abuse and why their involvement differs in terms of longevity, intensity, etc. Furthermore, the relationships that may exist between drug use and juvenile delinquency, between drug use as a juvenile and drug use as an adult, between juvenile delinquency and criminality as an adult, between youthful drug use and adult criminality, and between delinquency and adult drug use are not well understood.

Our first step to answering these types of questions is to obtain objective information about the scope, magnitude, intensity, and occurance of the drug problem among adolescents. Second, to be effective in preventing drug use among youth, we must address the etiological risk factors for behavior. It is important to distinguish between the behaviors of drug initiation, occasional use of drugs, regular or frequent use of drug and drug abuse and to understand the causes and correlates of each of these types of behavior. Different prevention strategies may be implied depending on how the problem is defined, the type of behavior to be prevented and the outcome goal sought.

The literature indicated that there are numerous existing data bases collected for a variety of purposes which have valuable information on drug use among youth. Most of these data bases have never been fully utilized. This program would support the examination of existing data to develop empirical information to inform program development as well as for structuring new research in a more timely and cost effective manner.

II. Program Goals and Objectives

A. Purpose and Goal Statement

The purpose of this program is to develop information on high risk factors for drug use among youth including illegal drugs, alcohol and tobacco; and recommendations for the application of that knowledge to the development of effective interventions for prevention or

control of illegal drug use. The information will guide policy and program development. The research goal is to maximize the utility of data already collected which would shed light on the nature, extent and patterns and rick factors for drug use by youth.

B. Major Objectives

The proposed research must be designed to address one or more of the following objectives:

1. To identify high risk factors for drug use among youth.
2. To understand the etiology of drug initiation and regular drug use among juveniles.
3. To enhance our ability to identify and intervene early with high risk youth to prevent or control drug use.
4. To determine the magnitude of the drug use problem among youth and how much it impacts the school system, juvenile justice system, and society.
5. To advance the development of sound recommendations for the development of effective prevention, intervention and rehabilitation/ treatment strategies.
6. To identify natural community support systems for controlling and rehabilitating juvenile drug users.

III. Program Strategy

Applicants must propose to review and analyze existing drug-related data to produce empirical information for structuring new research and programs focused on prevention of drug use among youth.

Applicants must provide justification for how secondary analysis of their particular data will address the research goal and objectives of this program. Specifically, each application must summarize the relevant research literature, discuss the research problems to be addressed, and delineate the specific hypotheses of the study. Applicants may address any of the issues posed in the introduction or propose and justify other issues concerning the prevention, intervention and treatment of drug abuse among youth.

The data base(s) to be studied, the means to access the data base(s), and the provisions for protection of privacy and confidentiality of the data should be described. Research questions should be identified and the potential of the data base for answering those questions should be demonstrated, including adequate sample sizes, appropriateness and completeness of questions/ responses, data quality and completeness of critical data elements, etc. Also, data analysis strategies must be articulated. An outline of the anticipated report should be presented.

A draft report will be due five months after award. The final product should be an article of publishable quality. It may undergo external peer reviews.

IV. Dollar Amount and Duration

Up to $125,000 has been allocated for Fiscal Year 1987. Up to five grants will be awarded competitively. No future funding is anticipated. The project period for all projects awarded under this program will be six (6) months.

V. Eligibility Requirements

Eligible applicants include public and private agencies or organizations. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. The applicant and any co-applicants must have the management and financial capability to effectively implement this program. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

VI. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and a budget narrative. The program narrative shall be succinct and responsive to the application requirements outlined in this section and should be no more than 30 double-spaced pages in length, excluding resumes. In submitting joint proposals, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. An organization which is primarily providing services or products to an applicant organization would not be considered a co-applicant but rather a contractor. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following must be included in the application:

A. A problem statement which discusses the characteristics of drug abuse among youth. Include a summary of the relevant literature and discuss the need for the proposed work and its potential contribution to the field. Identify specific research questions to be addressed by this research.

B. A succinct statement of your understanding of the goals and objectives of this program, and how the data base(s) that will be used for secondary analysis will answer the specific research questions posed.

C. A complete discussion of the proposed research. This section should clearly demonstrate the applicant's understanding of the objectives of this study including a description of the data sources, the plans for data analysis and a description of the final report in terms of the intended audience targeted and the types of journals for which it will be developed, and other proposed dissemination strategies. Grantees should plan to submit articles for publication. OJJDP anticipates preparing an edited volume of articles prepared under this program.

D. A discussion of the implementation plan. Applicants must describe how they will allocate resources to implement the strategy presented in their proposal; describe the organizational capability, management structure, roles and responsibilities of key personnel; provide position descriptions; and provide a time/task plan for the six month project period.

E. A detailed six-month budget with a budget narrative explaining the basis for all costs associated with project activities.

VII. Selection Procedures and Criteria

All applications received in response to this solicitation will be evaluated by an external peer review panel. The applications will be reviewed in terms of their responsiveness to the specifications in the solicitation. Specifically, they will be rated according to the following criteria and weights:

A. Problem Statement (15 Points)

The problem to be addressed is clearly stated and includes evidence of knowledge of related literature. A clear statement of how the proposed research would make a significant contribution to

knowledge in the field. (Refer to Section VI. A.)

B. Goals and Objectives (15 Points)

An understanding of the goals and objectives of this program is clearly demonstrated, including your specific study's goals and objectives. (Refer to Section VI. B.)

C. Research Design (35 Points)

The research design is sound. Proposed data analysis plans and approaches are suitable for the data base and the research questions to be answered. The utility of proposed reports is discussed. (Refer to Section VI. C.)

D. Implementation Plan (20 Points)

The implementation plan is adequate, clear and appropriate to support the research efforts. Proposed staff have adequate qualifications and organizational support for the project. (Refer to Section VI. D.)

E. Budget (15 Points)

Budget costs are fully described, reasonable, complete and appropriate in comparison to the activities proposed to be undertaken. (Refer to Section VI.E.)

Applications receiving the highest total scores based on the above criteria will be recommended for funding to the Administrator, OJJDP. Peer review recommendations in conjunction with the results of internal review and any necessary supplementary reviews will assist the Administrator's consideration of competing applications and selection of applications for funding. The final award decisions will be made by the OJJDP Administrator.

VIII. Deadline for Receipt of Applications

The deadline for receipt of applications is *May 29, 1987.* One signed original and three copies must be mailed or hand delivered to Catherine P. Sanders, Research and Program Development Division, Office of Juvenile Justice and Delinquency Prevention, Room 782, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the NIJJDP/OJJDP between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal Holidays. All applications must be postmarked by the U.S. Postal Service or Express Mail Services on or before May 29, 1987.

The necessary forms for applications (Standard Form 424) will be provided upon request.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title Vl of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 32, subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds; the recipient will forward a copy of the findings to the Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request, timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s), or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

X. References

Clayton, R.R., "Drug Use Among Children and Adolescents", Paper prepared for the Office of Juvenile Justice and Delinquency Prevention, December 1986.

Hawkins, D.J., "Childhood Predictors and The Prevention of Adolescent Substance Abuse", Paper prepared for the National Institute for Juvenile Justice and Delinquency Prevention and the National Institute on Drug Abuse, April 1984.

Elliott, D.S. Huizinga, D., and Ageton, S.S., *Explaining Delinquency and Drug Use,* Beverly Hills: Sage, 1985.

Dishion, T.J. and Loeber, R., "Adolescent Marijuana and Alcohol Use: The Role of Parents and Peers Revisited", *American Journal of Public Health, 11:11–25.*

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

Charles A. Lauer,

General Counsel, Office of Justice Programs.

[FR Doc. 87–9425 Filed 4–27–87; 8:45 am]

BILLING CODE 4410–18–M

federal register

Tuesday
April 28, 1987

Part V

Department of Education

Funding Priorities for FY 1987; National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

Final Funding Priorities for Fiscal Year 1987; National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal year 1987.

SUMMARY: The Secretary of Education announces final funding priorities for research activities to be supported under some programs of the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal year 1987. NIDRR is required under the Rehabilitation Act of 1973 as amended, to develop a long-range research plan that identifies goals for rehabilitation research and to determine funding priorities that will facilitate the support of these activities within available resources. These final funding priorities are derived from the NIDRR Long-Range Plan and are articulated within the goals, objectives and research activities specified in the Plan. These priorities were proposed for public comment in the **Federal Register** of January 12, 1987 (52 FR 1282).

A summary of the public comments and the Secretary's reponses to them is included at the end of this notice.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research Telephone (202) 732–1139; deaf and hearing impaired individuals may call (202) 732–1198 for TTY services. For application packages, call (202) 732–1207.

SUPPLEMENTARY INFORMATION: Authority for the research program of NIDRR is contained in Section 204 of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602, by Pub. L. 98–221, and by Pub. L. 99–506. Under this program, awards are made to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations. NIDRR can make awards for up to 60 months.

The purpose of the awards is for planning and conducting research demonstrations, and related activities which have a direct bearing on the development of methods, procedures, and devices to assist in providing vocational and other rehabilitation services to handicapped individuals, especially those with the most severe handicaps.

NIDRR, formerly NIHR, regulations (46 FR 45300, September 10, 1981, as amended March 12, 1984 at 49 FR 9324) authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 351.32).

The publication of the final funding priorities does not bind the United States Department of Education to fund projects in any or all, of these research areas. Funding of particular projects depends on both the availability of funds and on the applications received.

The following eleven proposed priorities represent areas in which NIDRR will support research and related activities through the grants or cooperative agreements in two programs, the Research and Demonstration Program and the Knowledge Dissemination and Utilization Program.

The notice establishing the closing date for applications under these priorities was also published in the **Federal Register** on January 12, 1987, at 52 FR 1289.

Potential applicants were advised to submit their applications based on the proposed priorities. There are no changes made in these final funding priorities that would require applicants to modify or resubmit their applications. The closing date for receipt of applications under these priorities is April 20, 1987.

Priorities for Research and Demonstration Projects (6)

Supported Employment for Individuals With Traumatic Brain Injury (TBI)

Residual deficits resulting from closed head injury include difficulties experienced by TBI individuals in physical, cognitive, and psychosocial functioning. Employment prospects for this group have been very limited. Recently, however, successful supported employment programs have served disabled persons with severe learning difficulties, physical limitations, behavior problems, complex health care requirements, and complicated transportation needs.

Supported employment in this context is defined as paid work of at least 20 hours per week for persons with TBI for whom competitive employment is unlikely, and who, because of their disabilities, need intensive ongoing support to perform in a work setting. Employment is conducted in a variety of settings, particularly work sites in which persons without disabilities are employed, and is supported by any activity needed to sustain paid work for persons with disabilities, including supervision, transportation, and training.

An investigation is warranted of the potential for various supported employment models to assist traumatically brain injured individuals to engage in ongoing supported employment. The assessment should be conducted in close conjunction with one or more vocational programs serving a TBI client population, and should collect the requisite data to assess the effectiveness, including the cost-effectiveness, of the program(s) with this client group. The analysis should consider the appropriateness of various program strategies for individuals with different levels of impairment and different types of functional deficits.

An absolute priority will be given to applications for a research project which will:

- Identify the types of productive work for which supported employment can most effectively be used with this population;
- Investigate techniques to enhance the social functioning of TBI individuals and to facilitate their integration with nonhandicapped persons in employment settings;
- Identify potential sources and types of long-term financial and other assistance to enable individuals with traumatic brain injuries to become employed in a supported work setting;
- Develop and implement a methodology to collect data necessary to conduct an evaluation of the cost-effectiveness of the program, and conduct such analyses where there are sufficient data to support such an evaluation during the course of the project; and
- Evaluate the effectiveness of the program in achieving improved employment outcomes for TBI individuals, including through comparisons with control groups, as measured by the stability of the employment, the number of hours worked, earnings, the suitability of the client-job match, and other measures.

Supported Employment for Chronically Mentally Ill (CMI) Individuals

A large population of chronically mentally ill individuals, while capable of residing in the community and working productively, need continuing assistance to cope with the demands and pressures of daily living and employment. The episodic and cyclical nature of mental illness complicates the provision of support services to persons with chronic mental illness.

An absolute priority will be given to applications for a research project which will:

- Identify the types of productive work for which supported employment can be most effectively used for this population;
- Investigate techniques to promote community and workplace integration of mentally ill individuals and improve their social functioning in work and other settings;
- Identify the types and sources of long-term financial and other support for this type of employment program;
- Develop and implement a methodology to collect and analyze the data necessary for an evaluation of the cost-effectiveness of the program(s) and conduct such analyses where sufficient data are available to warrant such analysis during the course of the project; and
- Assess the effectiveness of supported employment in achieving improved employment outcomes for this group, including through comparison with a control group, as measured by job stability, number of hours worked, earnings, appropriateness of the client-job match, and other measures.

Model Projects for Comprehensive Rehabilitative Services to Individuals With Traumatic Brain Injury

Approximately half a million people suffer head injuries each year, and about ten percent of these are left with physical, intellectual, and social impairments severe enough to prevent them from returning to their former levels of functioning. This problem is a growing one in terms of both numbers and severity, compounded by the fact that many of the injured are young and, with improved life expectancy for this group, require rehabilitation in a number of areas in order to maximize the quality of their lives. Preliminary evidence indicates that early comprehensive and coordinated rehabilitation is likely to improve the outcome for this group. A need exists to demonstrate the efficacy of a model system of rehabilitative services for individuals with traumatic brain injury and to systematically collect uniform data on clients, services, and outcomes.

This system and the collection of data must be within the context of a comprehensive model program that coordinates rehabilitation and other services specifically designed to meet the special needs of individuals with traumatic brain injury, including: emergency medical services; intensive and acute neurological care; comprehensive rehabilitation management; psychosocial adjustment service; education and vocational preparation; and community integration with extended follow-along services.

In any programs conducted under this priority, a critical element will be the input of disabled individuals in the planning of the project and involvement of disabled persons in the conduct of the activity.

An absolute priority will be given to applications for a project or projects which will:

- Demonstrate and evaluate the costs and benefits of a comprehensive service delivery system for individuals with traumatic brain injury;
- Establish a research program to develop a new data base and conduct innovative analyses of data;
- Demonstrate and evaluate the development and application of improved methods essential to the care and rehabilitation of individuals with traumatic brain injury; and
- Participate in national studies of the traumatic brain injury model system by contributing to a national data base.

Research on New Rehabilitation Strategies for Traumatic Brain Injury

An estimated 30,000–50,000 persons survive traumatic brain injuries (TBI) annually, and incur a range of impairments and disabilities. Brain injury occurs most commonly in individuals fifteen to thirty years of age, and nearly twice as many males as females are affected.

In addition to long-term physical impairments, many TBI individuals face a wide array of other life-long problems, including memory loss, speech dsyfluency, visual and perceptual deficits, behavioral problems, cognitive deficits, and loss of emotional control. Aggressive behavior and inadequate social skills are other frequent results.

More individuals are surviving severe brain injury due to development of increased life support capability; improved systems of acute care for trauma victims, with highly skilled medical and surgical management; and the use of new medical and surgical techniques which limit the neurologic damage produced by brain swelling and other complications.

However, techniques and methods of rehabilitation care and management have not kept pace with the new developments in acute care. Rehabilitation practitioners and treatment teams need definitive new knowledge on effective modalities and interventions for traumatic brain injury rehabilitation.

An absolute priority will be given to applications for a project which will:

- Evaluate, in clinical settings, one or more new rehabilitation modalities contributing to the physical restoration and rehabilitation management of the functional, motor, perceptual, and cognitive problems of traumatic brain injury;
- Develop and evaluate new techniques and methods of social skills training and family intervention strategies to be included in rehabilitation programs for persons with TBI; and
- Develop and demonstrate a prototype program involving self-help organizations and peer counseling in the provision of rehabilitation services and continuing peer support networks to maximize functional independence for those with traumatic brain injury.

New Models for the Provision of Personal Assistance Services

Data on the need for attendant care and other types of personal assistance are incomplete, but the current literature indicates there are many problems with existing systems for providing personal assistance. (World Institute on Disability, 1986; de Jong and Wenker, 1986; National Council on the Handicapped, 1986; Ratzka, 1986).

While many disabled adults do use personal services, many others are unable to live in the community, to pursue work, or to participate in mainstream activities because of the lack of personal services. This leads to increased health care costs in more restrictive environments as well as to diminished quality of life for the disabled individuals affected.

Personal services may be classified into three categories: assistance for those with mobility impairments; personal care and communication assistance for those with sensory impairments; and assistance in managing various aspects of daily living needed by persons with cognitive impairments.

Some estimates are that approximately two billion dollars per year are expended on personal assistance through State agencies. Most of these expenditures are based on the "medical model" of care, in which physicians prescribe the care that is then conducted under the supervision of a nurse or other health practitioner.

Others who have investigated the issue of delivery of attendant care services contend that an alternate model of providing and managing care, emphasizing consumer management, is both less costly and more advantageous to disabled individuals.

More information is needed about the benefits and costs, as well as the feasibility of implementation, of each type of service model. The study must take into consideration sources of services and payments, issues related to the most effective providers of training and management of personal attendants, and the relative benefits to different disability groups.

In the conduct of any studies under this priority, a critical element will be the input of disabled individuals who use personal care services and the inclusion of consumers in the conduct of the study.

An absolute priority will be given to applications for a project which will:

- Identify existing research on attendant care, including data on need, use, cost, and evaluation of services;
- Assess the role of personal care services in the prevention of secondary disability and the impact of these services on expenditures for medical care and hospitilization;
- Analyze the effect of using personal care services on employment, earnings, and the receipt of cash benefits;
- Analyze current systems of providing personal care for disabled individuals, including: sources of payment; recruitment, training, and management of personal attendants; types and levels of service provided; and costs of services; and
- Develop strategies for implementing more effective models of attendant care, including those aspects which will assure more comprehensive and beneficial services to individuals and greater consumer satisfaction.

Studies on Traumatic Brain Injury in Young Children

"Few crises in life are as devastating as an illness or sudden trauma of a child that results in brain injury. Whether eighteen months or eighteen years, the child's life is drastically changed." (Hutzler, 1985) The child from birth to adolescence may experience major cognitive, emotional, and behavioral changes that severely alter his or her prior levels of functioning. These changes necessitate adjustments in the educational programs, family interactions, and social relationships of the child.

From the time of injury, families must learn to cope with a new set of economic, emotional, and psychological problems. In addition, families must learn to communicate with medical caregivers, to locate needed community services, and to identify and manage financial support and insurance reimbursement provisions.

As a prerequisite to developing new strategies and service programs to assist children with brain injuries and their families, it is necessary to thoroughly understand the scope and dimensions of the problem, and to document an effective role for families in the rehabilitation process.

An absolute priority will be given to applications for a project which will:

- Study the incidence and prevalance of TBI in children up to age sixteen, and develop a continuing system to maintain and update information on characteristics and service use of this population;
- Study the social, economic, and psychological impact of TBI on families of children up to age sixteen; and
- Develop and evaluate techniques for family involvement as part of the treatment/education/rehabilitation team in the re-entry process, and study incentives and disincentives to family involvement.

Priorities for Knowledge Dissemination and Utilization Projects (5)

Public Education in Traumatic Brain Injury (TBI)

Estimates are that between 400,000–600,000 individuals suffer head injuries each year. Although data are sparse, studies conducted as much as ten years ago reported direct and indirect annual costs attributable to TBI, exclusive of lost income, to be over four billion dollars per year. Studies have shown that drug and alcohol abuse are often involved. Because most head injuries happen to young people, and because of improved treatment interventions, there is an increasing population of individuals who survive for many years with serious limitations in functioning.

Safety measures such as protective sports equipment and seat belts can be effective in preventing serious head injuries. Research indicates that appropriate early intervention after head trauma can increase the effectiveness of rehabilitation and help to prevent secondary complications. Unfortunately, family members and professionals frequently do not know that the symptoms of brain trauma may not appear immediately after the injury, and are often unaware of the available sources of information and care.

A public education effort is needed to inform parents, professionals, and others about the prevention of primary disability and secondary complications, early identification of brain injury, the importance of early intervention, and resources for assistance.

An absolute priority will be given to applications for a project which will:

- Develop a program of public education that includes specialized materials for families of brain trauma individuals and professional caregivers, emphasizing primary and secondary prevention, early identification and intervention, and resources for information and treatment;
- Develop materials on prevention of traumatic brain injury, to include print and audiovisual training materials, posters, and pamphlets, which can be used by both the generalized and the specialized media; and
- Devise a plan for the dissemination of the materials developed in this project.

Dissemination of a Model to Create Least Restrictive Environments for Deaf Students

In the decade following the passage of Pub. L. 94–142, the Education of All Handicapped Children Act, organizations concerned with the education of deaf children and youth have used a variety of interpretations of the "least restrictive environment" (LRE) provision mandated by the law. A more complete picture of the range of LRE interpretations and provisions currently used in the education of deaf children and youth would facilitate policy and service decisions at the Federal, State, and local levels.

A need exists to improve education for deaf students in least restrictive environments by promoting coordination of educational services in and among regular classroom programs, specialized day school programs, and residential school programs. For these reasons, NIDRR proposes that a significant cross-section of such programs be identified, and assessed, that exemplary coordination practices be identified, and that models be developed which could be adapted and adopted by other programs.

Deaf individuals and the parents of deaf students must be involved in all phases of the project, including the identification of exemplary programs and the development and implementation of strategies and models.

An absolute priority will be given to applications for a project which will:

- Identify exemplary programs of coordinated services in various educational settings for deal children and youth;
- Develop strategies and guidelines on how to replicate those programs;
- Provide technical assistance to education programs on the replication of these service models; and

• Assist in the development of a network of regular and special schools which will foster cooperative programs, including summer and short-term residential programs.

Demographic Data Analysis

To effectively plan research, services, or policy related to the disabled population, detailed information about the size and characteristics of the population is necessary. This information is needed by Federal, State, and local planners in fields as diverse as rehabilitation, education, social services, transportation, housing, income maintenance, and recreation.

At present there is neither a central source for demographic or other data on disability, nor a comprehensive system for the collection of those data. A number of Federal agencies, some states, and many private research institutions collect information, analyze some of it, and often produce public use tapes which also include great amounts of unanalyzed data. As a consequence, much of the most critical data on disability are not analyzed or are poorly disseminated, or both. A considerable unmet demand exists for information on the incidence and prevalence of disability and its distribution among various population groups. Other data such as service use, distribution of benefits, earnings, and costs of care are needed but are not effectively available to disabled individuals and their organizations, planners, researchers, and policymakers.

Information developed through this activity should be made available to a variety of potential users.

A critical element of any activities to be carried out under this priority will be the involvement of disabled individuals in the planning and conduct of the project.

An absolute priority will be given to applications for a project which will:

• Develop and update estimates of incidence, prevalence, and distribution of various disabilities, using existing data;

• Develop a database of information from governmental and nongovernmental data collection efforts encompassing information on specific disabling conditions, limitations in activities of daily living, patterns of service use, needs for assistive devices, employment and earnings benefits payments, and demographic data;

• Conduct secondary analyses of major data files, such as the Survey of Income and Program Participation, the Health Interview Survey, and others to provide needed information; and

• Develop and disseminate information on the characteristics of the disabled population for consumers and professionals.

Database Networking With Independent Living Centers

There are approxmiately 300 independent living centers (ILC's) providing services to disabled individuals in the nation; 166 of these currently receive funding from the Rehabilitation Services Administration (RSA). At present there is no comprehensive linkage among these centers to facilitate the sharing of information about management, programs, resources, assistive devices, client problems, opportunities for disabled individuals, or policy developments. Many of the centers have computer capability, and about one-third have some linkages to each other through a common computer network. However, Independent Living Centers and their clients could benefit from improved use of hardware and software now available at the centers for management and training, for improved inter-center communication, and for access to national sources of information.

NIDRR is proposing a project to develop and demonstrate a model system of regional networks for the purpose of creating effective communication among Centers and facilitating the access of Centers to national databases and to appropriate software for management and training, through compatible computer systems. Any project to be carried out under this priority must involve disabled individuals, including those who are or have been participants in independent living programs, in the planning and conduct of project activities.

An absolute priority will be given to applications for a project which will:

• Establish criteria for selection of participating ILC's which have, or can acquire, the hardware and software capability to participate in the network;

• Develop a computerized file on available resources for Independent Living Centers, including personel, assistive devices, and services, and facilitate a resource match;

• Demonstrate an electronic network among the selected Centers, providing technical assistance as needed, with expansion to additional centers that have compatible equipment;

• Facilitate the access of Centers to appropriate national databases; and

• Evaluate all aspects of the program.

The International Exchange of Information and Experts in Rehabilitation

There is much rehabilitation research and practice in other countries which can serve as the impetus for rehabilitation research and service delivery in the United States. For example, the new widely accepted practice of immediate post-surgical fitting of prostheses was developed in Poland; the concept of disability management at the workplace was brought to the attention of the United States as a result of concepts uncovered in past international exchanges; and functional electrical stimulation techniques used in the United States were derived from earlier work in Yugoslavia. In addition, there are practices in the United States, such as model systems for spinal cord injury, school-to-work transition programs for disabled youth, and computer adaptations which could be extremely beneficial to foreign professionals and researchers.

Fostering such international collaboration and providing networks to maintain collegial contacts requires personal exposure of researchers and professionals to other cultures. In addition, the good practices and knowledge derived from other nations need to be disseminated to U.S audiences through monographs and utilization conferences.

Any program conducted under this priority must involve disabled people in the selection of topics and participants. Topics to be studied and resulting publications must focus on issues which are current priorities for the National Institute on Disability and Rehabilitation Research, such as traumatic brain injury, supported work, transition, rural rehabilitation, personal assistance services, and rehabilitation technology.

An absolute priority is proposed for a project which will:

• Develop and implement a plan for U.S. experts to study policies, practices, programs, and research results in other nations;

• Provide for the preparation of monographs on rehabilitation research topics by foreign or U.S. experts, who have benefitted from international exchanges;

• Conduct utilization conferences to disseminate information on selected topics of international significance to rehabilitation; and

• Evaluate the impact on practices in the United States of international

exchanges of information and experts arranged for under the project.

Summary of Comments and Responses

NIDRR received a number of comments from the public concerning the proposed priorities. Some of the comments will be considered in developing future priorities and others contain research suggestions that applicants may incorporate into their applications under the priorities as proposed. No changes were made to the proposed priorities as a result of these comments. These comments, and the Secretary's responses to them, are summarized below.

Comment: One commenter recommended that the priority for demographic studies address definitional variations among surveys, relationships among variables, proejctions of demographic trends, institutionalized populations, and international comparisons.

Response: No change has been made. The purpose of the priority is to set general objectives and minimum guidelines. NIDRR prefers to allow opportunities for the applicant to develop specific research approaches and to demonstrate particular knowledge and expertise in the given area. Applicants are not restricted to specific issues stated in the priorities and they are not precluded from addressing the concerns raised by the commenter. NIDRR also has the option to support promising research on some of these issues through the Field-Initiated Research and Innovation Grants program.

Comment: One commenter stated that NIDRR should have provided a more comprehensive list of available surveys within the statement of the priority for demographic studies.

Response: No change has been made. The data sources referenced in the priority were examples of minimum data sources to be addressed. NIDRR expects that applicants will identify those surveys or other data which they believe are important and will justify their inclusion.

Comment: One commenter argued that the dissemination component of the demographic data analysis project is premature, since existing data sources are likely to be inadequate to meet the need for information. The commenter stated the priority should focus on the analysis of existing data, including an assessment of their adequacy and recommendations for correcting the deficits. This commenter recommended that the product to be disseminated should be an exploration of different concepts of disability and an explanation of the varying estimates.

Response: No change has been made. The priority would not preclude an applicant from proposing the approach suggested by the commenter. Also, NIDRR expects that if a grantee finds deficits in the existing data, the grantee would pursue appropriate analytical and research approaches, and would present those findings which it believes are both useful and reliable.

Comment: One commenter recommended that analysis of secondary and tertiary disabilities should be included in the demographic data analysis.

Response: No change has been made. NIDRR assumes that successful applicants for research support will recognize the significance of secondary and tertiary disabilities, and will consider those issues.

Comment: One commenter stated that the priority on database networking for Independent Living Centers (ILC's) would be a duplication of the ABLEDATA system which NIDRR supports.

Response: No change has been made. The database network for Independent Living Centers should include access to ABLEDATA, possibly through an ABLEDATA broker. However, the information to be incorporated and shared among ILC's is much broader than that in ABLEDATA, as it would include information about employment opportunities, local resources for services and technology repairs, personnel needs and resources for ILC's themselves, sources of personal attendants and training for attendants, and other information which the grantees and the ILC's agree would be valuable.

Comment: Several commenters recommended that the three regional database networks for ILC's should be replaced by one national project.

Response: No change has been made. The Secretary recognizes that there are some advantages to organizing one national network; however, NIDRR is building these networks on a regional basis in order to capitalize on shared interests and concerns at that level.

Comment: One commenter stated that the priorities did not seem to encompass concerns raised at a recent NIDRR-sponsored planning conference and specifically did not address mentally retarded populations and families of individuals with disabilities.

Response: No change has been made. The planning conference was called to discuss options for fiscal 1988 priorities. These current priorities were developed based on earlier planning activities. These priorities are only a portion of NIDRR's total set of priorities for fiscal years 1987 and 1988. Other priorities will be announced in both 1987 and 1988 that address problems of individuals with mental retardation and families with disabled members.

Comment: One commenter recommended that a number of specific activities be added to the priority for evaluation of supported employment for mentally ill individuals, including a consumer-defined needs assessment and an evaluation of participant choice and satisfaction, as well as the involvement of severely mentally disabled individuals in the planning and development of the project.

Response: No change has been made. There is nothing in the current priority that would preclude any of the above activities. However, NIDRR does not believe that it is necessary or advisable to require these components in an evaluation study that is limited in scope and resources.

Comment: One commenter suggested that communication needs should be addressed in the priorities concerning individuals with traumatic brain injury.

Response: No change has been made. Since these priorities call for a comprehensive approach to services and an assessment of the factors involved in positive rehabilitation outcomes, NIDRR believes that successful research applicants will identify and address the full range of impaired functions and rehabilitative interventions, including communication issues.

Comment: One commenter suggested that the priority on personal assistance services also address the advantages of substituting technology for some personal attendant services.

Response: No change has been made. The purpose of this priority is to look at various means for delivery and financing of personal assistance services, and to examine the impact of various support systems on the effective use of personal attendants. NIDRR does recognize the value of technological devices, including communication aids and robotics, and supports research in this area under other priorities.

Comment: Several commenters suggested that the priority on development of new rehabilitation techniques for traumatic brain injury should evaluate current interventions as well as new techniques.

Response: No change has been made. However, NIDRR does not believe the current priority precludes the researchers' evaluating existing techniques that have not yet been tested or validated in clinical trials.

Comment: Several commenters expressed concern that the number of databases called for in the priorities may lead to an uncoordinated or redundant effort.

Response: No change has been made. The Secretary agrees that it is necessary to assure that databases are coordinated and that there is no needless duplication of effort. However, NIDRR intends to implement other projects to coordinate this activity. Meanwhile, it is important that both research data and information that could be used by clinicians or clients be maintained in a systematic and accessible fashion, so that it can be captured in any comprehensive or permanent databases to be developed in the near future.

Comment: One commenter suggested that NIDRR should ascertain the credentials of prospective applicants in developing cooperative agreements among agencies that collect demographic data, and allow time for meetings for this purpose in the project schedule.

Response: No change has been made. These suggestions appear to apply more to a contracting process than a grants competition. NIDRR accepts applications from all applicants who are eligible by statute. The schedule for the work activities is set by the individual applicant, who may elect to address the issue of interagency agreements and allow time to accomplish the related tasks.

(Catalog of Federal Domestic Assistance No. 84.133, National Institute on Disability and Rehabilitation Research)

Dated: April 16, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-9475 Filed 4-27-87; 8:45 am]

BILLING CODE 4000-01-M

federal register

Tuesday
April 28, 1987

Part VI

Department of Education

Research in the Education of the Handicapped; Application Invitation for a New Award (FY 1987) and Proposed Annual Funding Priority; Notices

DEPARTMENT OF EDUCATION

[CFDA 84.023]

Invitation for Applications for a New Award Under the Research in Education of the Handicapped for Fiscal Year 1987

Purpose: Provide support for a research institute on the placement and integration of severely handicapped children.

Deadline for Transmittal of Applications: June 25, 1987.

Applications Available: May 1, 1987.

Estimated Number of Awards: One.

Estimated Amount of Award: $600,000 per year.

Project period: Up to 60 months.

Applicable Regulations: (a) The Research in Education of the Handicapped Regulations, 34 CFR Parts 324, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78 and, (c) when adopted in final form, the Annual Funding Priority for this Program. A notice of a proposed annual funding priority is published in this issue of the **Federal Register.** Applicants should prepare their applications based on the proposed priority. If there are any changes made when the final annual priority is published, applicants will be given the opportunity to amend or resubmit their applications. The Secretary intends to give an absolute preference to applications that meet this priority.

For Applications or Information contact: R. Paul Thompson, Severely Handicapped Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3511–M/S 2312), Washington, DC 20202. Telephone (202) 732–1161.

Program Authority: 20 U.S.C. 1441–1444.

(Catalog of Federal Domestic Assistance No. 84.023; Research in Education of the Handicapped)

Dated: April 22, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87–9471 Filed 4–27–87; 8:45 am]

BILLING CODE 4000–01–M

Office of Special Education and Rehabilitative Services; Research in Education of the Handicapped: Research Institute on Placement of Severely Handicapped Children

AGENCY: Department of Education.

ACTION: Notice of proposed annual funding priority.

SUMMARY: The Secretary proposes an annual funding priority under the Research in Education of the Handicapped Program. This priority supports a research project on placement and integration of severely handicapped children.

DATE: Comments must be received on or before May 28, 1987.

ADDRESS: Comments should be addressed to R. Paul Thompson, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4615) Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: R. Paul Thompson. Telephone: (202) 732–1161.

SUPPLEMENTARY INFORMATION: The Research in Education of the Handicapped Program, authorized by sections 641–644 of Part E of the Education of the Handicapped Act, supports research, surveys, and demonstration projects relating to the educational needs of children with handicaps. Under this program, the Secretary makes awards for research and related activities, to assist special education and related services personnel and other appropriate persons including parents, in improving the education and related services for handicapped children and youth, and to conduct research, surveys, or demonstration projects relating to the education of children and youth with handicaps. Research and related activities supported under this program must be designed to increase knowledge and understanding of handicapping conditions and services for children and youth with handicaps, including physical education or recreation.

In accordance with this authority, the Secretary proposes to fund a priority to support a research institute on the placement and integration of children with severe handicaps. This priority addresses the need for (1) research concerning placement categories, procedures, and outcomes; (2) development of more effective educational procedures for these children; and (3) provision of technical assistance to State-wide systems change projects. State-wide systems change projects are funded as a priority under the Program for Severely Handicapped Children. Each systems change project is designed to develop, in conjunction with the Education for the Handicapped Act Part B State plan, activities to improve the quality of special education and related services in the State to severely handicapped children and youth, and to change the delivery of these services from segregated environments to integrated environments.

This research activity has been determined by professionals in the field to be critical in the improvement of functional integration of severely handicapped children with nonhandicapped age-peers.

Proposed Priority

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications submitted under this priority of the Research in Education of the Handicapped program in 1987 that respond to the priority described below.

Research Institute on Placement and Integration of Children with Severe Handicaps

This priority supports a research project that (1) studies the current characteristics and distribution of educational placements of children with severe handicaps, and identifies variables that are related to differences among State and local education agencies in the distribution of placements; (2) provides information about strategies and techniques that facilitate effective integration of children with severe handicaps into regular public schools where same-aged students without disabilities are educated, by (a) evaluating existing strategies and techniques, and (b) developing and validating new strategies and techniques; and (3) provides technical assistance to State-wide systems change projects funded under the Program for Severely Handicapped Children and to other related State-wide services projects for severely handicapped children which promote integration of these children.

The intent of this institute is to support and coordinate research at different sites across the country on the subject of placement of children and youth with severe handicaps. This coordination should assure that the research findings are shared and evaluated by these researchers and disseminated to State and local school administrators and teachers of children with severe handicaps, and to the general public.

(a) *Tasks.* Applications under this priority must present a comprehensive plan for completion of the following tasks:

(1) *Descriptive research.* Under this component, the institute is to conduct descriptive research on the current distribution of placements of children with severe handicaps and those at risk of being categorized as having severe handicaps. The institute will accomplish the following activities:

(i) Develop and validate a set of mutually exclusive and exhaustive categories of types of educational placements that reflect professional consensus and available evidence on important differences among placement options.

(ii) Use the categories developed above to define the distribution of placements of children with severe handicaps in at least six demographically different and geographically dispersed States. The resulting information should identify at least the number and ages of students in each placement category.

(iii) Use an adequate sample of local education agencies (LEAs) from the States studied to identify factors that appear to differentiate among LEAs with high and low percentages of children placed in regular public school buildings. Factors to be investigated should include types of State funding formulas, resource allocation practices, community characteristics, and instructional procedures.

(iv) Identify potentially useful practices in LEAs with a high percent of placements in regular school buildings, such as: models for deploying supervisory and related services staff; patterns of interactions with students' families; use of community resources outside the school; and procedures for assessment and IEP development.

(v) Identify types of preschool placements that result in the highest percentage of children with severe handicaps entering regular school settings at age six.

(vi) Conduct other related research which the applicant proposes as important to developing and using the information gained from studies addressing activities (i)–(v).

(2) *Developmental research.* Under this component, the institute is to perform research, development, and evaluation activities that increase the effectiveness of special education programs for children with severe handicaps that are located in regular school buildings where same-aged children without disabilities form the majority of the student body. The research should identify intervention procedures, administrative arrangements, or other strategies that result in more active social networks and relationships, improved development of functional skills, and improved vocational and residential outcomes upon graduation. Topics and procedures identified for this developmental research component should be those that show the greatest potential for improving special education practices in regular school settings, as determined through a review of current literature, model practice, and current service delivery.

In addition, the institute must:

(i) Justify the focus of the developmental research in terms of the relevance of the research to current needs of children with severe handicaps and their families; and

(ii) Describe how the findings of this research effort will be disseminated to professional personnel, including teachers and adminstrators of programs serving children with severe handicaps, and to the general public.

(3) *Technical assistance.* Under this component, the institute is to provide technical assistance to State-wide systems change projects funded under the Program for Severely Handicapped Children and to a limited number of other relevant projects promoting the integration of children with severe handicaps into the least restrictive environments.

To complete this task, the institute is to:

(i) Define the recipients of technical assistance in conjunction with the Department of Education program officer. For planning and budgeting purposes, applicants should assume that these recipients will be five nationally distributed State-wide systems change projects selected for funding in the FY 1987 competitions for such projects under the Program for Severely Handicapped Children, with up to 10 additional projects, identified by the Secretary, that are providing related Statewide services for severely handicapped children.

(ii) Develop in coordination with the project personnel of each of the projects defined under Task (a)(3)(i), an annually reviewed plan for delivery of technical assistance to be provided by the institute to the systems change projects to facilitate efforts within the States to improve the number and effectiveness of placements of children with severe handicaps into regular school settings within the States. The technical assistance designed for each of these projects must show its responsiveness to the unique needs of each State served, as those needs have been articulated in written form by the State-wide systems change projects.

(iii) Provide the technical assistance to the State-wide systems change projects. For planning purposes, applicants should assume (a) that two meetings for the directors of each of the projects defined under Task (a)(3)(i) will be required each year in Washington, D.C., with the institute providing arrangements and supplying faculty, but not paying for participants' travel; (b) that at least three trips of three days duration will be made each year to the State of the projects defined under Task (a)(3)(i); and (c) that at least two topical workshops will be held when similar needs are found across States.

(iv) Demonstrate utilization of institute findings under Tasks (a)(1) and (a)(2) in the provision of the technical assistance.

(v) Implement an evaluation plan to determine effectiveness of the technical assistance provided the State-wide systems change projects including procedures to determine user satisfaction, change in quality of services provided children with severe handicaps, and the overall impact on these children, their parents and relevant others.

(vi) Coordinate technical assistance activities with other related projects, including the Federal Regional Resource Center and the Regional Resource Centers anticipated to be funded in fiscal year 1987.

(b) *Products.* Products of the institute will include:

(1) Written, publishable results of accomplishments under Tasks (a) (1) and (2).

(2) Annual technical assistance plans for each of the State-wide systems change projects defined under Task (a)(3)(i).

(3) An annual project report which summarizes overall institute accomplishments, describes problems encountered in carrying out project activities and action taken to resolve these problems, describes relevant areas identified in the institute which need further investigation.

(c) *Period of award.* The project funded under this priority will be funded through a cooperative agreement with the Secretary for a period of 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. In determining whether to continue the institute for the last two years of the project period, in addition to considering the factors in 34 CFR 75.253(a), the Secretary will also consider the recommendation of a review team consisting of three external experts selected by the Secretary and designated Federal program officials. The services of the review team are to be performed during the last half of the

institute's second year, and will replace the year's annual evaulation which a recipient is required to perform under 34 CFR 75.590. During all other years of the project, a recipient must also comply with 34 CFR 75.590. Costs associated with the services to be performed by the three external members of the review team are to be incorporated into the applicants's proposed budget. In developing its recommendation, the review team will consider, among other factors, the following:

(1) The timeliness and the effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the recipient and its subgrantees;

(2) The degree to which the institute's research design and methodological procedures demonstrate the potential for producing significant new knowledge and improvement of practice in the effective integration of children with severe handicaps; and

(3) The effectiveness of the technical assistance provided by the institute to State-wide systems change projects and other relevant projects, as determined through: (i) Recipient satisfaction, and (ii) the extent to which the technical assistance is reflected in improved recipient performance as measured by its positive impact on the targeted children with severe handicaps.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority. All comments submitted in response to the priority will be available for public inspection, during and after the comment period, in Room 4615, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(Catalog of Federal Domestic Assistance No. 84.023; Research in Education of the Handicapped)

(20 U.S.C. 1441–1444)

Dated: April 13, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–9472 Filed 4–27–87; 8:45 am]

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federal register

Tuesday
April 28, 1987

Part VII

Department of Education

Educational Media Research, Production, Distribution, and Training Program, FY 1987; Application Invitation and Proposed Annual Funding Priority; Notices

DEPARTMENT OF EDUCATION

[CFDA No. 84.026]

Invitation for Applications for New Awards Under the Educational Media Research, Production, Distribution, and Training Program for Fiscal Year 1987

Purpose: To contribute to the general welfare of persons who are deaf by providing cultural and educational enrichment through the captioning of films and television, and to promote the educational advancement of persons who are handicapped through the use of educational media, materials, and technology.

Deadline for Transmittal of Applications: June 12, 1987.

Deadline for Intergovernmental Review: August 11, 1987.

Applications Available: May 1, 1987.

Estimated Range of Awards: $1,000,000.

Estimated Average Size of Awards: $1,000,000.

Estimated Number of Awards: 1.

Project Period: 3 years.

Applicable Regulations: (a) The Educational Media Research, Production, Distribution, and Training Regulations, 34 CFR Part 332, (b) the Education Department General Administrative Regulations, 34 CFR 74, 75, 77, 78, and 79, and (c) when adopted in final form, the Annual Funding Priorities for this program. A notice of proposed annual funding priority is published in this issue of the **Federal Register**. Applicants should prepare their applications based on the proposed priority. If there are any changes made when the final annual funding priority is published, applicants will be given the opportunity to amend or resubmit their applications.

For Applications or Information Contact: Dr. Malcolm J. Norwood, Telephone: (202) 732–1177, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3094–M/S 2313), Washington, DC 20202.

Program Authority: 20 U.S.C. 1451(a)(2), 1452(b)(5).

Dated: April 22, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87–9473 Filed 4–27–87; 8:45 am]

BILLING CODE 4000–01–M

Office of Special Education and Rehabilitative Services, Educational Media Research, Production, Distribution, and Training Program; Proposed Annual Funding Priority

AGENCY: Department of Education.

ACTION: Notice of proposed annual funding priority.

SUMMARY: The Secretary proposes to establish this annual funding priority for the Educational Media Research, Production, Distribution, and Training Program to ensure effective use of program funds and to direct funds to the area identified during Fiscal Year 1987.

DATE: Comments must be received on or before May 28, 1987.

ADDRESS: Comments should be addressed to Dr. Malcolm Norwood, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 4088–M/S 2313), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Malcolm Norwood, Telephone: (202) 732–1177.

SUPPLEMENTARY INFORMATION: Awards under the Educational Media Research, Production, Distribution, and Training Program are authorized under Part F of the Education of the Handicapped Act. The purpose of this program is to promote the educational advancement of persons who are handicapped by providing assistance for conducting research in the use of educational media for persons who are handicapped; producing and distributing educational media for the use of persons who are handicapped, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of persons who are handicapped; and training persons in the use of educational media for the instruction of persons who are handicapped.

Additional priorities for the Educational Media Research, Production, Distribution, and Training Program are contained in a notice of proposed priorities published in the **Federal Register** on April 7, 1987. The priorities published on April 7 dealt with closed-captioned television programming for the general population.

Proposed Priority

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications submitted under the Educational Media Research, Production, Distribution, and Training Program in Fiscal Year 1987 that respond to the priority described below. An absolute preference is one under which the Secretary selects only those applications that meet the described priority.

Closed-Captioned Television Programming for Children

This proposed priority would support a cooperative agreement to close-caption national, syndicated, and public broadcasting programs for children who are hearing-impaired. Closed-captioning of national, public broadcasting, and syndicated programs increases access for children who are hearing impaired to programming available to the general population.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened Federalism by relying on State and local processes for State and local government coordination review of proposed Federal financial assistance.

In accordance with the order, this document provides early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 4092, Switzer Building, 330 C Street, SW., Washington, DC 20202 between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1451(a)(2))

(Catalog of Federal Domestic Assistance No. 84.026; Educational Media Research, Production, Distribution, and Training)

Dated: April 16, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–9474 Filed 4–27–87; 8:45 am]

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federal register

Tuesday
April 28, 1987

Part VIII

Education Department

34 CFR Part 320

Special Education and Rehabilitative Services; Clearinghouses for the Handicapped Program; Proposed Rule

Clearinghouses for the Handicapped Program for Fiscal Year 1987; Notice

DEPARTMENT OF EDUCATION

34 CFR Part 320

Office of Special Education and Rehabilitative Services Clearinghouses for the Handicapped Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Clearinghouses for the Handicapped Program authorized by Section 633 of the Education of the Handicapped Act (EHA). These regulations are needed to implement amendments made to section 633 of the EHA by section 310 of Pub. L. 99-457. Pub. L. 99-457 changed the title of the program from "Recruitment and Information," to "Clearinghouses for the Handicapped," authorized an additional clearinghouse for funding, and revised the functions of an existing clearinghouse.

DATE: Comments must be received on or before May 28, 1987.

ADDRESS: All comments on these proposed regulations should be addressed to M. Angele Thomas, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511-M/S 2313), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Helene S. Corradino, Division of Educational Services, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511-M/S 2312), Washington, DC 20202. Telephone: (202) 732-1167.

SUPPLEMENTARY INFORMATION: The Clearinghouses for the Handicapped Program was established under Pub. L. 91-230 on April 13, 1970 and is currently authorized by Section 633 of the Education of the Handicapped Act (20 U.S.C. 1433).

Prior to the Pub. L. 99-457 amendments to the Education of the Handicapped Act, section 633 of the Act authorized two clearinghouses. The national clearinghouse on the education of the handicapped provided information on special education to parents, professionals, and other interested parties. Another national clearinghouse provided information on postsecondary education for handicapped individuals. Pub. L. 99-457 authorized a new national clearinghouse on careers and employment in special education that assumed one of the principal functions previously performed by the national clearinghouse on the education of the handicapped along with other new responsibilities. Pub. L. 99-457 requires the new clearinghouse to perform five functions. In order to carry out the collection and dissemination function required by section 633(c)(1) of the Act, these regulations propose five activities the new clearinghouse must carry out. The overlap in responsibility for the dissemination of information on postsecondary education, which was assigned to both of the earlier clearinghouses, was also eliminated by deleting this responsibility from the national clearinghouse on the handicapped. Also, the title of the program is changed from "Recruitment and Information" to "Clearinghouses for the Handicapped Program".

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The regulations would not have a significant economic impact on the small entities affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments will be available for public inspection, during and after the comment period, in Room 4633, Switzer Building, 330 C Street, SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

List of Subjects in 34 CFR Part 320

Administrative practice and procedure, Education, Education of handicapped, Equal education opportunity, Grants program—education, Privacy, Private schools.

(Catalog of Federal Domestic Assistance No. 84.030; Clearinghouses for the Handicapped)

Dated: March 23, 1987.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 320 of Title 34 of the Code of Federal Regulations as follows:

1. The authority citation for Part 320 is revised to read as follows:

Authority: 20 U.S.C. 1433, unless otherwise noted.

2. The title of Part 320 is revised to read as follows:

PART 320—CLEARINGHOUSES FOR THE HANDICAPPED

3. Section 320.1 is amended by revising the title of the section, the introductory text of the section, and paragraph (a), deleting the "and" at the end of paragraph (b), redesignating paragraph (c) as paragraph (d), and adding a new paragraph (c) to read as follows:

§ 320.1 What is the Clearinghouses for the Handicapped Program?

The Clearinghouses for the Handicapped Program provides financial assistance for—

(a) A national clearinghouse on the education of the handicapped that disseminates information and provides technical assistance to parents, professionals, and other interested parties;

* * * * *

(c) A national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields

relating to the education of handicapped children and youth; and

* * * * *

4. Section 320.10 is amended by removing paragraph (a)(2), redesignating paragraph (a)(3) as paragraph (a)(2), adding "and" at the end of paragraph (a)(1)(iii), deleting the "and" at the end of paragraph (b), redesignating paragraph (c) as paragraph (d), and by adding a new paragraph (c) to read as follows:

§ 320.10 What kinds of activities may be supported under this part?

* * * * *

(c) Establish and operate a national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields related to the education of handicapped children and youth through the following:

(1) Collection and dissemination of information on current and future national, regional, and State needs for special education and related services personnel. To meet this requirement, the clearinghouse must—

(i) Collect, validate, and provide ready access to existing information about current needs;

(ii) Develop a plan to estimate future needs;

(iii) Conduct investigations designed to improve the relevance and accuracy of information on current and future needs;

(iv) Collect, analyze, and report on information concerning the current personnel needs related to differently aged children and youth with handicaps of varying severity; and

(v) Devise mechanisms to foster better collection and dissemination of information on current and future personnel needs.

(2) Dissemination of information to high school guidance counselors and others concerning current career opportunities in special education, location of programs, and various forms of financial assistance (such as scholarships, stipends, and allowances).

(3) Identification of training programs available around the country.

(4) Establishment of a network among local and State educational agencies and institutions of higher education concerning the supply of graduates and available openings.

(5) Provision of technical assistance to institutions seeking to meet State and professionally recognized standards of personnel preparation; and

* * * * *

§ 320.30 [Amended]

5. In § 320.30(b)(2)(iii), the reference to "(b)(20) (i) and (ii)" is amended to read "(b)(2) (i) and (ii)".

6. Section 320.40(b) is revised to read as follows:

§ 320.40 What evaluation and coordination requirements must be met by a grantee?

* * * * *

(b) Recipients of awards under § 320.10 (a), (b), and (c) shall coordinate the dissemination of materials and information activities supported under this part.

(Authority: 20 U.S.C. 1433)

[FR Doc. 87-9469 Filed 4-27-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA 84.030]

Notice Inviting Applications for New Awards Under the Clearinghouses for the Handicapped Program for Fiscal Year 1987

Purpose: Provide support through cooperative agreements with public agencies or private nonprofit organizations or institutions for national clearinghouses on the education of the handicapped, postsecondary education for handicapped individuals, and careers and employment in special education.

Deadline for Transmittal of Applications: June 25, 1987.

Deadline for Intergovernmental Review Comments: August 24, 1987.

Applications Available: May 1, 1987.

Priorities: The Secretary establishes, pursuant to 34 CFR 75.105(c)(3) and 34 CFR 320.31, the following three priorities for fiscal year 1987. The Secretary will give an absolute preference to applications that meet one of these priorities.

CFDA No.	Priority Title	Available funds (per year)	Estimated No. of awards	Anticipated project period (months)
84.030 A	National Clearinghouse on the Education of the Handicapped	$650,000	1	36
84.030 C	National Clearinghouse on Postsecondary Education for Handicapped Individuals.	$300,000	1	36
84.030 E	National Clearinghouse on Careers and Employment in Special Education.	$250,000	1	36

Applicable Regulations: (a) The existing Recruitment and Information Regulations, 34 CFR Part 320; (b) when adopted in final form, the amendments to Part 320 in the Notice of Proposed Rulemaking for the Clearinghouses for the Handicapped Program published in this issue of the **Federal Register.** Applicants should prepare their applications based on the proposed amendments. If there are any substantive changes when the final regulations are published, applicants will be given the opportunity to amend or resubmit their applications; and (c) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78 and 79.

For Applications or Information:

Pertaining to CFDA 84.030 A and C: Contact— Helene S. Corradino, Severely Handicapped Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511–M/S 2312), Washington, DC 20202. Telephone (202) 732–1167.

Pertaining to CFDA 84.030 E: Contact— M. Angele Thomas, Special Education Personnel Branch, Office of Special Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511–M/S 2313), Washington, DC 20202. Telephone (202) 732–1100.

Program Authority: 20 U.S.C. 1433.

(Catalog of Federal Domestic Assistance No. 84.030; Clearinghouses for the Handicapped)

Dated: April 22, 1987.

Madeleine Will,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 87–9470 Filed 4–27–87; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
April 28, 1987

Part IX

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for December 1986

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-53092; (FRL-3175-9)]

Premanufacture Notices; Monthly Status Report for December 1986

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substances Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption requests pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for December 1986.

Nonconfidential portions of the PMNs and exemption requests may be seen in the Public Reading Room NE-G004 at the address below between 8:00 a.m. and 4:00 p.m., Monday thru Friday, excluding legal holidays.

ADDRESS: Written comments, identified with the document control number "[OPTS-53092]" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, Rm. L-100, 401 M Street, SW., Washington, DC 20460, (202) 554-1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during December; (b) PMNs receive previously and still under review at the end of December; (c) PMNs for which the notice review period has ended during December; (d) chemical substances for which EPA has received a notice of commencement to manufacture during December; and (e) PMNs for which the review period has been suspended. Therefore, the December 1986 PMN Status Report is being published.

Dated: March 18, 1987.

Denise Devoe,

Acting Director, Information Management Division.

Premanufacture Notices Monthly Status Report, December 1986

I. 149 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS RECEIVED DURING THE MONTH

PMN No.	
P 87-285	P 87-345
P 87-286	P 87-346
P 87-287	P 87-347
P 87-288	P 87-348
P 87-289	P 87-349
P 87-290	P 87-350
P 87-291	P 87-351
P 87-292	P 87-352
P 87-293	P 87-353
P 87-294	P 87-354
P 87-295	P 87-355
P 87-296	P 87-356
P 87-297	P 87-357
P 87-298	P 87-358
P 87-299	P 87-359
P 87-300	P 87-360
P 87-301	P 87-361
P 87-302	P 87-362
P 87-303	P 87-363
P 87-304	P 87-364
P 87-305	P 87-365
P 87-306	P 87-366
P 87-307	P 87-367
P 87-308	P 87-368
P 87-309	P 87-369
P 87-310	P 87-370
P 87-311	P 87-371
P 87-312	P 87-372
P 87-313	P 87-373
P 87-314	P 87-374
P 87-315	P 87-375
P 87-316	P 87-376
P 87-317	P 87-377
P 87-318	P 87-378
P 87-319	P 87-379
P 87-320	P 87-380
P 87-321	P 87-381
P 87-322	P 87-382
P 87-323	P 87-383
P 87-324	P 87-384
P 87-325	P 87-385
P 87-326	P 87-386
P 87-327	P 87-387
P 87-328	P 87-388
P 87-329	P 87-389
P 87-330	P 87-390
P 87-331	P 87-391
P 87-332	P 87-392
P 87-333	P 87-393
P 87-334	P 87-394
P 87-335	P 87-395
P 87-336	P 87-396
P 87-337	P 87-397
P 87-338	P 87-398
P 87-339	P 87-399
P 87-340	P 87-400
P 87-341	P 87-401
P 87-342	P 87-402
P 87-343	P 87-403
P 87-344	P 87-404
P 87-405	Y 87-70
P 87-406	Y 87-71
Y 87-58	Y 87-72
Y 87-59	Y 87-73
Y 87-60	Y 87-74
Y 87-61	Y 87-75
Y 87-62	Y 87-76
Y 87-63	Y 87-77
Y 87-64	Y 87-78
Y 87-65	Y 87-79
Y 87-66	Y 87-80
Y 87-67	Y 87-81
Y 87-68	Y 87-82
Y 87-69	Y 87-83

II. 113 PREMANUFACTURE NOTICES RECEIVED PREVIOUSLY AND STILL UNDER REVIEW AT THE END OF THE MONTH

PMN No.	
P 87-163	P 87-220
P 87-164	P 87-221
P 87-165	P 87-222
P 87-166	P 87-223
P 87-167	P 87-224
P 87-168	P 87-225
P 87-169	P 87-226
P 87-170	P 87-227
P 87-171	P 87-228
P 87-172	P 87-229
P 87-173	P 87-230
P 87-174	P 87-231
P 87-175	P 87-232
P 87-176	P 87-233
P 87-177	P 87-234
P 87-178	P 87-235
P 87-179	P 87-236
P 87-180	P 87-237
P 87-181	P 87-238
P 87-182	P 87-239
P 87-183	P 87-240
P 87-184	P 87-241
P 87-185	P 87-242
P 87-186	P 87-243
P 87-187	P 87-244
P 87-188	P 87-245
P 87-189	P 87-246
P 87-190	P 87-247
P 87-191	P 87-248
P 87-192	P 87-249
P 87-193	P 87-250
P 87-194	P 87-251
P 87-195	P 87-252
P 87-196	P 87-253
P 87-197	P 87-254
P 87-198	P 87-255
P 87-199	P 87-256
P 87-200	P 87-257
P 87-201	P 87-258
P 87-202	P 87-259
P 87-203	P 87-260
P 87-204	P 87-270
P 87-205	P 87-271
P 87-206	P 87-272
P 87-207	P 87-273
P 87-208	P 87-274
P 87-209	P 87-275
P 87-210	P 87-276
P 87-211	P 87-277
P 87-212	P 87-278
P 87-213	P 87-279
P 87-214	P 87-280
P 87-215	P 87-281
P 87-216	P 87-282
P 87-217	P 87-283
P 87-218	P 87-284
P 87-219	

III. 181 PREMANUFACTURE NOTICES AND EXEMPTION REQUESTS FOR WHICH THE NOTICE REVIEW PERIOD HAS ENDED DURING THE MONTH. (EXPIRATION OF THE NOTICE REVIEW PERIOD DOES NOT SIGNIFY THAT THE CHEMICAL HAS BEEN ADDED TO THE INVENTORY)

PMN No.

P 87-1
P 87-2
P 87-3
P 87-4
P 87-5
P 87-6
P 87-7
P 87-8
P 87-9
P 87-10
P 87-11
P 87-12
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P 87-72
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P 87-74
P 87-75
P 87-76
P 87-77
P 87-78
P 87-79
P 87-80
P 87-81

PMN No.

P 87-82
P 87-83
P 87-84
P 87-85
P 87-86
P 87-87
P 87-88
P 87-89
P 87-90
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P 87-136
P 87-137
P 87-138
P 87-139
P 87-140
P 87-141
P 87-142
P 87-143
P 87-144
P 87-145
P 87-146
P 87-147
Y 87-21

PMN No.

Y 87-22
Y 87-23
Y 87-24
Y 87-25
Y 87-26
Y 87-27
Y 87-28
Y 87-29
Y 87-30
Y 87-31
Y 87-32
Y 87-33
Y 87-34
Y 87-35
Y 87-36
Y 87-37
Y 87-38
Y 87-39
Y 87-40
Y 87-41
Y 87-42
Y 87-43
Y 87-44
Y 87-45
Y 87-46
Y 87-47
Y 87-48
Y 87-49
Y 87-50
Y 87-51
Y 87-52
Y 87-53
Y 87-54

IV. 39 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE.

PMN No.	Identity/generic name	Date of commencement
P 81-683	Generic name: A polymer of 1,1'-methylene bis (4-isocy-anatocyclohexane); a polymer of E-caprolactone and ethylene glycol derivative; 2-butanone oxime; and a polyalky-alkylhydroxy substituted heterocycle.	Oct. 24, 1986.
P 82-402	Generic name: Styrene-diene-substituted alkene copolymer	Nov. 23, 1986.
P 83-116	Generic name: Sulfone ester	Aug. 9, 1984.
P 85-990	Generic name: Polymer of: substituted norbornane derivative, disubstituted ethane and disubstituted benzene	Nov. 5, 1986.
P 85-1298	Generic name: Condensation product of an alkylphenol and alkylamine, and formaldehyde, calcium salt	Oct. 30, 1986.
P 85-1303	Generic name: Modified acrylic polymer	July 23, 1986.
P 86-10	((4'-ethyl sulfonyl sulfonyl sulphuric acid ester sodium salt phenyl sulfonamide) 1,4(sulfonic acid sodium salt) 1,6-sulfonamide) of copper phthalocyanine.	Sept. 7, 1986.
P 86-35	Generic name: Phosphonate silylated silicate	Dec. 2, 1986.
P 86-87	Generic name: Arylalkyl substituted phosphonium salt	June 27, 1986.
P 86-234	Generic name: Alkyd	Nov. 10, 1986.
P 86-273	Generic name: Acrylated oil modified polyester	Nov. 30, 1986.
P 86-365	Generic name: Ethylene interpolymer	Nov. 16, 1986.
P 86-529	Generic name: Aqueous acrylic polymer	June 13, 1986.
P 86-889	Reaction product of trimethylsiloxy silica copolymer and 1,1,2,2-tetrahydroperfluoro-1-decanol	Nov. 19, 1986.
P 86-936	Generic name: Polyester urethane methacrylate blocked	Nov. 24, 1986.
P 86-988	Generic name: Substituted copper phthalocyanine	Nov. 12, 1986.
P 86-989	Generic name: Substituted copper phthalocyanine; salt	Oct. 29, 1986.
P 86-1026	Generic name: Alkyl esters	Nov. 7, 1986.
P 86-1055	Generic name: Polyester urethane methacrylate blocked	Dec. 1, 1986.
P 86-1056	Generic name: Polyester urethane methacrylate blocked	Nov. 5, 1986.
P 86-1110	Generic name: Cycloakylbutyrolactone	Nov. 12, 1986.

IV. 39 CHEMICAL SUBSTANCES FOR WHICH EPA HAS RECEIVED NOTICES OF COMMENCEMENT TO MANUFACTURE.—Continued

PMN No.	Identity/generic name	Date of commencement
P 86-1130	Generic name: Modified styrene diene copolymer	Nov. 11, 1986.
P 86-1219	Reaction mixture of carbomonocylic acid, sulfonated carbomonocyclic ester, alkylene glycol and cycloalkylene glycol.	Nov. 4, 1986.
P 86-1229	Generic name: Amine-functional poly dimethyl siloxane	Nov. 29, 1986.
P 86-1290	Generic name: Substituted phthalocyamine	Oct. 16, 1986.
P 86-1331	Generic name: Alkyl benzotriazole	Oct. 20, 1986.
P 86-1354	Generic name: Siloxanes and silicones, alkyl methyl, dimethyl	Nov. 29, 1986.
P 86-1355	Generic name: Amino functional polydimethylsiloxane	Nov. 29, 1986.
P 86-1366	Generic name: Nitrogen heterocycle	Oct. 22, 1986.
P 86-1527	Generic name: Aliphatic urethane-modified alkyd polymer	Nov. 11, 1986.
P 86-1535	Polymer of benzene, 1,1'-methylenebis [isocyanato-,1,4 butane diol, dipropylene glycol, and polybutylene adipate	Nov. 14, 1986.
P 86-1595	Generic name: Alkoxy substituted carboxy acetonitrile	Nov. 24, 1986.
P 86-1596	Generic name: Cis-3-hexen-10-OL	Dec. 1, 1986.
Y 85-73	Generic name: Styrene—methacrylate terpolymer	Nov. 19, 1986.
Y 86-66	Polymer of: tall oil fatty acid; 1,2-benzenedicarboxylic acid; benzoic acid; and 2-ethyl-2-(hydroxymethyl)-1,3-propanediol.	Oct. 22, 1986.
Y 86-72	Generic name: Polymer of mixed glycols, a terephthalate and an alkyl dicarboxylic acid	Sept. 23, 1986.
Y 86-137	Generic name: Polyester resin	Nov. 13, 1986.
Y 86-238	Generic name: Modified tall oil alkyd	Nov. 6, 1986.
Y 86-250	Generic name: Aliphatic aromatic polyester	Nov. 10, 1986.

V. 20 Premanufacture notices for which the period has been suspended

PMN No.	
P 85-463	P 86-1573
P 85-1189	P 86-1593
P 86-1299	P 86-1602
P 86-1491	P 86-1603
P 86-1492	P 86-1604
P 86-1493	P 86-1616
P 86-1516	P 86-1657
P 86-1525	P 86-1659
P 86-1528	P 86-1742
P 86-1530	P 86-1749

[FR Doc. 87-6556 Filed 4-27-87; 8:45 am]

BILLING CODE 6560-50-M

federal register

Tuesday
April 28, 1987

Part X

Department of Education

34 CFR Part 630

Fund for the Improvement of Postsecondary Education; Notice of Proposed Rulemaking

Fund for the Improvement of Postsecondary Education; Notice Inviting Applications for New Awards To Be Made in Fiscal Year 1987

DEPARTMENT OF EDUCATION

34 CFR Part 630

Fund for the Improvement of Postsecondary Education

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Fund for the Improvement of Postsecondary Education (FIPSE). These amendments are needed to implement the changes in Title X of the Higher Education Act of 1965 as amended by the Higher Education Amendments of 1986. The proposed regulations would provide for the administration of a new Innovative Projects for Student Community Service Program.

DATES: Comments must be received on or before May 28, 1987.

ADDRESSES: All comments concerning these proposed regulations should be addressed to John E. Donahue, Fund for the Improvement of Postsecondary Education, Office of Postsecondary Education, (Room 3100, ROB–3), Department of Education, 400 Maryland Avenue SW., Mail Stop 3331, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: John E. Donahue, Telephone (202) 245–8091.

SUPPLEMENTARY INFORMATION: The purpose of this program is to support innovative projects designed to encourage students to participate in community service programs in exchange for educational services or financial assistance, thereby reducing the participating students' postsecondary education debt burden.

A participating student might receive free or reduced-cost educational services, enabling him to borrow less than he otherwise would to complete his education. He might receive direct financial assistance which he would use to reduce his outstanding debt burden, or to pay future educational costs, thus reducing his future debt burden.

The statute specifies that the program be administered by the Director of the Fund for the Improvement of Postsecondary Education (FIPSE). Rather than create entirely new regulations, the Secretary is proposing to amend the existing FIPSE regulations to include provisions relevant to the administration of the new program.

A principal issue addressed in these proposed regulations involves the definition of "community service." The Secretary is proposing to define "community service" broadly to include both areas that have historically been the subject of government involvement and areas traditionally viewed as appropriate subjects of volunteer or community-oriented activities. The proposed regulations would exclude certain activities, such as political and religious activities that, in the Secretary's view, do not have community service as their principal aim. They would also exclude activities that result in the displacement of employed workers or impair existing contracts for service.

The Secretary interprets the statutory scheme for this program as addressing the debt burden incurred by students for attendance at "institutions of higher education" as that term is defined in section 1201(a) of the Higher Education Act of 1965, as amended. Thus, the description of the program in § 630.11(c) would require that the educational services and financial assistance provided to participating students reduce the debt burden that has been or would be incurred by those students for attendance at institutions of higher education.

To conform the regulations to the statute as amended by the Higher Education Amendments of 1986, the Secretary is also proposing to amend them by adding a provision requiring that applications be approved by the National Board of the Fund for the Improvement of Postsecondary Education before funding.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in that order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Applications will be governed by existing procedures, which are not overly burdensome.

Paperwork Reduction Act of 1980

These proposed regulations contain no information collection requirements under section 3504(h) of the Paperwork Reduction Act of 1980.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3100, ROB–3, 7th & D Streets SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would 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 630

Colleges and universities, Education, Grant programs—education.

Dated: April 16, 1987.

(Catalog of Federal Domestic Assistance Number 84.182 Fund for the Improvement of Postsecondary Education—Innovative Projects for Student Community Service)

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 630 of Title 34 of the Code of Federal Regulations as follows:

PART 630—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

1. The authority citation for Part 630 is revised to read as follows:

Authority: 20 U.S.C. 1135–1135a–2, 1135e–1135e–1, unless otherwise noted.

2. In § 630.5(b), definitions of "community service" and "institution of higher education" are added, in alphabetical order, to read as follows:

§ 630.5 Definitions that apply to this program.

* * * * *

(b) * * *

"Community service" means planned, supervised service designed to improve the quality of life for community residents, particularly for low-income people, or to assist in the solution of particular problems related to their needs, including, but not limited to, health care, child care, literacy, education (including tutorial services), vocational rehabilitation and training, social services, legal services,

transportation, housing and neighborhood improvement, public safety, crime prevention and control, recreation, and rural development. This term does not include partisan or non-partisan political activity, lobbying, direct solicitation of donations, religious proselytizing, conduct of religious services or instruction, pro-union or anti-union activity, or activities that result in the displacement of employed workers or impair existing contracts for service.

* * * * *

"Institution of higher education" means an institution that meets the definition of that term found in Section 1201(a) of the Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 1135, 1135e, 1135e–1, 1141)

3. Section 630.11 is amended by adding a new paragraph (c) and revising the citation of legal authority to read as follows:

§ 630.11 Types of competitions.

* * * * *

(c) *Innovative projects for student community service competition.* In this competition the Secretary supports innovative projects designed to encourage students to participate in community service programs in exchange for educational services or financial assistance in order to reduce the debt burden that has been or would otherwise be incurred by those students for attendance at institutions of higher education.

(Authority: 20 U.S.C. 1135, 1135e)

§ 630.33 [Amended]

4. Section 630.33 is amended by adding the phrase "under the competitions described in §§ 630.11 (a) and (b)" between the words "project" and "to".

§ 603.34 [Redesignated as § 630.35]

5. Section 630.34 is redesignated as § 603.35 and a new § 630.34 is added to read as follows:

§ 603.34 Board approval.

The Secretary does not make an award to an applicant under § 603.11(c) until the application is approved by the National Board of the Fund for the Improvement of Postsecondary Education.

(Authority: 20 U.S.C. 1135e–1)

[FR Doc. 87–9530 Filed 4–27–87; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Notice Inviting Applications for new awards to be made in Fiscal Year 1987 (CFDA No. 84–182) under the Innovative Projects for Student Community Service Competition conducted by the Fund for the Improvement of Postsecondary Education

Purpose: Provides grants to institutions of higher education and other public and private, non-profit institutions and agencies to support projects encouraging students to praticipate in community service activities in exchange for education services or financial assistance, thereby reducing the debt incurred by these students in completing their postsecondary educational programs

Deadline for transmittal of applications: June 16, 1987.

Applications available: April 23, 1987.

Available funds: $1,537,000

Estimated size of awards: $50,000.

Project period: Not to exceed 24 months.

Applicable regulations: Part 630 of 34 CFR, including:

(1) When published in final and effective, the amendment thereto pertaining to this competition, published as a Notice of Proposed Rulemaking (NPRM) published elsewhere in this edition of the **Federal Register.** If the final rule differs from the NPRM is a manner which affects the contents of applications under this competition the deadline for transmittal of applications will be extended to permit applicants to revise their applications accordingly.

(2) The Education Department General Admninistrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), and Part 78 (Education Appeal Board), with the exceptions noted in 34 CFR Part 630. *Contact:* The Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., Room 3100, ROB–3, Washington, DC 20202. Telephone (202) 245–8091.

Program authority: 20 U.S.C. 1135e–1.

Dated: April 22, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–9531 Filed 4–27–87; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
April 28, 1987

Part XI

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWA-41]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at Allentown-Bethlehem-Easton Airport, PA, and Kahului Airport, HI. The locations designated are public airports at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 U.T.C., June 4, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Laser, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 79 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On November 18, 1986, the FAA proposed to designate ARSA's at Allentown-Bethlehem-Easton Airport, PA, and Kahului Airport, HI, (51 FR 41748). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings for each of these proposed airports.

Discussion of Comments

The FAA has received comments on the basic ARSA program as well as comments directed toward the proposed individual designation. Additionally, several of the comments on individual designation are common or speak to the basic program itself. Discussion of the comments is divided into two sections. The first addresses common and ARSA program comments; the second addresses comments on the proposal at each of the specific airports.

ARSA Program Comments

Aircraft Owners and Pilots Association (AOPA) and others commented that, notwithstanding the statement by the FAA in the Regulatory Evaluation contained in the notice, increased air traffic controller personnel and equipment would be needed to handle the increased traffic expected due to the mandatory provisions of the ARSA. FAA's experience with the current ARSA's has been that while there is an increase in the amount of traffic being handled by controllers, this increase is significantly offset by the reduction in the amount of control instructions that must be issued under ARSA procedures as compared to TRSA procedures. However, the FAA recognizes that the potential exists for a need to establish additional controller positions at some facilities due to increased workload should the expected efficiency improvements in handling traffic not fully offset the increased number of aircraft handled. Further, FAA does not expect to incur additional equipment costs in implementing the ARSA program. In some instances, previously adopted plans to replace or modify older existing equipment may be rescheduled to accommodate the ARSA program. However, no new equipment is expected to be required as a result of the ARSA program.

Several commenters, including AOPA, disagreed with the FAA's conclusion that the additional air traffic could be accommodated with existing manpower at locations where TRSA participation was low. The FAA's conclusion for the total program was in part based upon the fact that participation in the existing TRSA's was quite high and, therefore, an increase from the present levels to 100% would not be a significant change. The commenters, while not agreeing with this conclusion, claimed that the FAA's rationale did not apply where participation was low and thus additional manpower would be needed at these locations if ARSA was designated. The FAA recognizes that participation in the TRSA program is relatively low at some of the candidate locations. However, this is in large part due to the controllers' walkout of 1981 and the subsequent reduction in fully qualified controllers which led to the discontinuance of TRSA services. A sufficient number of controllers is assigned at the facilities to which the commenters refer and those facilities are ready to provide the service to the increased number of pilots. This factor was considered by the FAA in its initial evaluation of the ARSA program.

The Soaring Society of America (SSA) objected to the ARSA program because it does not provide the same level of safety and service to all classes of aviation. As with other regulations, this rule affects different operators in different ways depending on their respective need to operate in controlled airspace or near the airports involved. The FAA does not agree that this variation in impact is reason not to adopt a rule which benefits the majority of users.

The SSA claimed that the ARSA rule should state that the ultimate responsibility for separation from other aircraft operating in visual flight rule (VFR) conditions rests with the pilot. While the FAA agrees that such is the case, the agency does not agree that the ARSA rule must so state. Unless a new or amending provision to the Federal Aviation Regulations (FAR) specifically deletes, amends, or supersedes existing sections, the existing regulations still apply. The ARSA rule (50 FR 9252, 9257, March 6, 1985) did not alter the sections

of the FAR that establish that level of responsibility.

AOPA faulted the FAA's implementation of the ARSA program. The FAA stated in the proposal that the benefits of standardization and simplicity were nonquantifiable, and that the safety benefits anticipated by the FAA were not attributable to any given candidate but were based upon implementation of the program on a national basis. According to AOPA, this evidenced the need to further evaluate the program at the current locations so that benefits could be individually assessed and each candidate evaluated accordingly. The FAA does not agree. The benefits of standardization and simplicity would always be nonquantifiable, regardless of the amount of evaluation, yet they received considerable emphasis by the NAR Task Group. Overall national midair collision accident rates are relatively low, and accident rates within individual categories of airspace are lower still. Additionally, accidents at specific locations are random occurrences. Therefore, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Additionally, the FAA does not believe that these considerations should be cause for delaying a program that was recommended by a majority of the members of the National Airspace Review, and which has already produced positive results at most of the designated locations.

Numerous commenters also objected to the proposals based upon their belief that the volume of air traffic in several of the proposed locations was too great for the ARSA program. The FAA believes that such a point argues strongly for the establishment of an ARSA rather than the converse.

Some commenters, including AOPA, predicted that user costs incurred due to delays will be greater than expected by the FAA, and that these costs will be experienced more at some sites than at others. In the NPRM, FAA acknowledged that initial delay problems would vary from site to site, that at some facilities the transition process is expected to go very smoothly, and that at other sites delay problems will dominate the initial adjustment period. Any delay that may result is expected to be transitory in nature in that actual delays will be reduced as pilots and controllers become experienced with ARSA procedures. This has been the experience at those locations where ARSA's have been in effect for the longest period of time, and is the trend at most of the locations that have been more recently designated.

Several comments claimed that some aircraft would have to purchase two-way radios in order to enter the ARSA and land at or depart from airports within the ARSA. The FAA does not agree. Each primary airport receiving ARSA designation has an airport traffic area requiring two-way radio communications at present. Therefore, no additional cost will be incurred for purchase of radios for aircraft landing at or departing from primary airports receiving ARSA designation.

Further, some commenters, including AOPA, expressed concern that older 360 channel transceivers would not be adequate to operate within an ARSA. Frequencies compatible with 360 channel transceivers are available at all ARSA locations. Therefore, operators of 360 channel equipment will not need to install new radios to operate within an ARSA.

AOPA and other commenters stated that the proposed ARSA's would derogate rather than improve safety, as a result of increased frequency congestion, pilots concentrating on their instruments and placing too much reliance upon ATC rather than "see and avoid," and the compression of air traffic into narrow corridors as pilots elect to circumnavigate an ARSA rather than receive ARSA services. In addition to increasing the risk of aircraft collision, the commenters claimed that compression would increase the impact of aircraft noise on underlying communities and cause aircraft to be flown closer to obstructions.

As indicated above, while an increased number of aircraft will be using radio frequencies, the amount of "frequency time" needed for each aircraft is reduced in an ARSA compared to the current TRSA. This has been the experience of the FAA at the current ARSA facilities.

AOPA claims that since the communications and readback procedures in ARSA's do not differ from those utilized in TRSA's, there would be no reduction in "frequency time" needed for each pilot to acknowledge instructions or information, and thus, the partial offset indicated by the FAA was not justified. The offset is based upon fewer as well as shorter transmissions for each pilot; thus, the FAA does not agree with this claim.

The FAA evaluated the flow of air traffic around the Austin, TX, and Columbus, OH, ARSA's during the confirmation period to determine if compression was occurring. This evaluation was performed by observing the radar at Austin, TX, and by both radar observations and the use of extracted computer data at Columbus, OH. Following the designation of an ARSA at Baltimore/Washington International Airport (BWI), the FAA evaluated the flow of air traffic there for a period of 90 days by observing the radar and extracting computer data to determine if compression was occurring. Additionally, the FAA has continually monitored for the possibility of compression at all recently designated locations. Compression has not been detected at any of these locations. However, compression of air traffic is a site-specific effect that could occur at a particular location regardless of its absence elsewhere. Thus, although the FAA does not believe compression of traffic will occur at any of the proposed airports, the agency will continue to monitor each designated ARSA and make adjustments if necessary.

AOPA, and other commenters claimed that the FAA provided no demonstrable evidence that the ARSA program would improve aviation safety. The FAA continues to believe the implementation of the ARSA program will enhance aviation safety. The program requires two-way radio communication between ATC and all pilots within the designated areas. Air traffic controllers will thus be in a much improved position to issue complete traffic information to the pilots involved, and thus, safety will be improved.

AOPA, and several other commenters, requested that VFR corridors be established at several of the subject locations along routes that are currently contained within an airport traffic area (ATA). The NAR Task Group noted in their evaluation of the TRSA program that under FAR § 91.87 pilots operating under VFR to or from a satellite airport within an ATA are excluded from the two-way radio communications requirement. The Task Group noted that this was acceptable until the volume of air traffic at the primary airport dictated the installation of a radar approach control. The Task Group recommended, and the FAA adopted, the ARSA program as a safety improvement addressing this problem. Thus, the FAA does not believe provisions for VFR corridors that penetrate an ATA in most cases are warranted or in keeping with that recommendation.

One commenter claimed that the grouping of ARSA's, such as that adopted in the Sacramento Valley area, would create "squeezing" of traffic in the corridors between the blocks of ARSA airspace. One area in question,

between Sacramento and Beale Air Force Base (AFB), is approximately 20 miles wide. The FAA does not agree that "squeezing" will occur in this area. Additionally, other user organizations have requested VFR corridors between adjacent or grouped ARSA's and these ARSA's have been modified to accommodate this request.

AOPA and others commented that several of the proposals will require pilots to violate FAR § 91.79 (14 CFR 91.79) regarding minimum safe altitudes. The section states in part, "Except when necessary for takeoff or landing, no person may operate an aircraft below . . . an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft [when over any congested area of a city, town, or settlement, or over any open air assembly of persons]." The commenters claim that the 1,200-foot base altitude of the 5- to 10-mile portion of the ARSA will force pilots to violate FAR § 91.79 where obstacles extend more than 200 feet above the ground. There are two alternatives available to pilots in such a situation which permit compliance with the regulation. First, pilots may participate in ARSA services and thus not be limited to the 1,200-foot base, and second, a pilot may deviate 2,000 feet horizontally from the obstacle.

Furthermore, AOPA claims that the above response does not adequately respond to the issue. They claim that deviations of 2,000 feet horizontally would increase workload and reduce the efficiency of see-and-avoid, and thus, potentially reduce safety. The FAA does not encourage deviation but encourages participation which will not require deviation and will result in controllers providing radar assistance for see-and-avoid.

Several commenters noted that the proposal did not contain an environmental assessment. Under existing environmental regulations, the proposed establishment of a Terminal Control Area (TCA) or a TRSA does not require an environmental assessment. The agency environmental regulations have not been amended to reflect ARSA procedures. However, because the potential environmental impact and regulatory effects of ARSA designation fall between those of the TCA and TRSA designations, the FAA finds that no environmental assessment is required for an ARSA designation.

AOPA, the Experimental Aircraft Association (EAA), and other commenters indicated that the FAA had failed to demonstrate a need for the ARSA program itself, as well as a need for several of the individual proposed locations. Additionally, comments were received that faulted the standard configuration and some of the features of the ARSA. Most of these comments went beyond the scope of the subject proposal and were addressed when the FAA adopted the recommendation of National Airspace Review (NAR) Task Group 1–2.2 (50 FR 9252, March 6, 1985). However, the FAA believes the need for the ARSA program was adequately demonstrated by the task group that reviewed the TRSA program and recommended the ARSA as the former's replacement. The task group faulted the TRSA program in several of its aspects and through consensus agreement determined the preferred features of the ARSA prior to making their recommendation to the FAA. Justification for the ARSA program has been the subject of previous FAA rulemaking, and the program was adopted after consideration of public comment. Response to comments on ARSA's at particular locations is made below.

AOPA, EAA, and others commented that several of the proposed ARSA's failed to meet the criteria for designation or that the FAA was changing the criteria. The FAA has not departed from the NAR criteria which would replace TRSA with ARSA at airports with an operating control tower served by a Level III, IV, or V radar approach control facility. The criteria for this airport was recommended by the NAR Task Group and adopted by the FAA. Namely, ". . . excluding TCA locations, all airports with an operational airport traffic control tower and currently contained within a TRSA serviced by a Level III, IV, or V radar approach control facility shall have [an ARSA] designated; unless a study indicates that such designation is inappropriate for a particular location." (49 FR 47184, November 30, 1984).

Several commenters suggested the top of the ARSA be lowered from 4,000 feet above field elevation. Absent strong justification for lowering this altitude, the FAA has not adopted these recommendations.

Several commenters, including AOPA and EAA, indicated that at several of the proposed ARSA's, the TRSA was working quite well and that there was no need to change something that was working. The FAA acknowledges that TRSA's are functional and beneficial, to a point. However, the NAR Task Group did not fault individual TRSA locations but the TRSA program itself and recommended its replacement. The FAA concurred with that assessment and has determined that the ARSA program is an improvement over the TRSA program from the standpoints of both safety and service. Thus, the quality of service being provided at TRSA locations should not constitute a roadblock to improvement.

Several commenters claimed the reduced separation standards of the ARSA program would derogate rather than enhance safety. The elimination of the Stage III separation requirements was recommended by users, all of whom are vitally interested in aviation safety, and adopted by the FAA. This aspect of the ARSA program received considerable FAA attention during the confirmation period at Austin, TX, and Columbus, OH. The FAA agrees with the task group that the Stage III separation standards are not needed for safety in a mandatory participation area.

Several commenters requested that the ARSA be described in statute rather than nautical miles. Numerous user organizations and the NAR itself have recommended that the FAA adopt nautical-mile descriptions rather than statute. It is the intention of the FAA to establish all new descriptions according to that recommendation.

Several commenters objected to proposals where the ARSA was in proximity to other airports. According to these commenters, pilots would not know whether they should be in contact with the ARSA approach control facility or in contact with the control tower at the secondary airport, or on unicom. The FAA does not view this situation as different from that existing at many of these locations today. Through pilot education programs and experience with ARSA procedures, this situation will improve. Also, as at present, when a pilot contacts the wrong FAA facility, the controllers will give appropriate instructions.

AOPA, and other commenters objected to several of the proposed ARSA's based upon the claim that the FAA had failed to evaluate the cumulative effect of the proposed ARSA's and other regulatory airspace. The evaluation for each ARSA included all factors known to the FAA, including the proximity of other regulatory airspace.

Underlying a great many of the comments received was the idea that some provision should be made so that pilots could continue their current practices without contacting the responsible ATC facility. While the FAA has made modifications from the standard ARSA in cases where circumstances warrant, the basic thrust of the ARSA program is to require two-way communication with the responsible approach control facility.

and not to make modifications in the program to provide for nonparticipation.

Information on ARSA's following the establishment of a new site will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are regularly provided by the FAA to discuss a variety of aviation safety issues, and, therefore, will not involve additional costs strictly as a result of the ARSA program.

SSA faulted the FAA for using the aviation safety seminars for pilot education on ARSA's. They claim these seminars do not reach many pilots and the seminars are reserved during this year for the FAA "Back to Basics" program. The FAA does not agree. The aviation safety seminars are for all pilots and for education on all aspects of aviation which would include the ARSA program.

Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings. These meetings are being held at public or other facilities which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

SSA commented that the FAA should take into consideration the unique operating characteristics of gliders in defining the ARSA airspace at some locations. The FAA has modified the configurations of the ARSA at some locations where glider operations would be adversely affected by a standard configuration. Additionally, comparable accommodations have been facilitated through local agreements at several ARSA locations.

Numerous commenters objected to the ARSA designations claiming they would simply provide the FAA with the basis for additional regulatory restrictions. The FAA does not believe this to be a valid objection. While the agency has no current plans for further regulatory action which imposes additional restrictions, such action, if it should ever become a reality, would be the subject of additional rulemaking and would of necessity be judged on its own merits, as should these proposals.

The Air Line Pilots Association (ALPA) concurred with the proposal as an improvement in operational efficiency and a significant contribution to a reduction of midair collision potential.

The Air Transport Association (ATA) endorsed the proposed designations as an improvement in safety with specific comments indicated below.

The General Aviation Manufacturers Association endorsed the ARSA's as an improvement in safety and concurred with the FAA's philosophy regarding some deviation from the standard model.

Comments were received which were supportive of each of the ARSA's addressed here as an improvement in aviation safety, and stating that participation by all pilots was only equitable and that normal safety concerns dictated mandatory two-way communications. The FAA agrees.

Comments on Specific Locations, Allentown-Bethlehem-Easton Airport, PA

Several commenters, including AOPA, SSA and Aero Club Albatross, suggested an area of exclusion along the Kittatinny Ridge, approximately eight miles north of the airport. This ridge is utilized by pilots conducting glider operations and the commenters claimed the ARSA would adversely impact those operations. The FAA does not agree, considering such operations may be facilitated through local agreements. Furthermore, a substantial portion of the ridge lies outside the ARSA. The FAA will continue to cooperate with local glider operators and cross country operations to ensure safety with the minimum impact on both operations.

AOPA recommended raising the base altitudes in the west and southeast sectors citing terrain and antennae respectively. The base altitude for the ARSA outer area is established at 1,200 feet AGL taking into account the predominant terrain features and presence of obstacles. Those conditions cited by AOPA are not of significant presence to warrant raising the base altitude of those areas.

Kahului International Airport, HI

Hawaiian Hang Gliding Association and another commenter supported the proposal citing the program benefits and ability to develop agreements to cover unique activities.

EEA proposed alteration of both inner and outer areas to accommodate pilot training and transit flights. The FAA believes sufficient airspace has been excluded in both the eastern and western quadrants to accommodate these operations. Development of an adjacent training area may be accommodated locally or through Letter of Agreement by the parties involved.

Other commenters, including AOPA, addressed issues which were of a national scope and were addressed in the general comments above.

Other Comments

A number of other comments were received addressing matters beyond the scope of these proposals such as charting, the number of frequencies depicted on a chart, the general design features of an ARSA, etc. The FAA will give consideration to all of the points raised in these comments but will not address them as a part of this rulemaking.

Regulatory Evaluation

Those comments that addressed information presented in the Regulatory Evaluation of the notice have been discussed above. The Regulatory Evaluation of the notice, as clarified by the "Discussion of Comments" contained in the preamble to the final rule, constitutes the Regulatory Evaluation of the final rule. Both documents have been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA site established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be

achieved without any additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of this ARSA site will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within five miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the TRSA and radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding some satellite airports located within the five-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to virtually eliminate any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at Allentown-Bethlehem-Easton Airport, PA, and the Kahului Airport, HI. Each location designated is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (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).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

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

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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.

2. Section 71.501 is amended as follows:

Allentown-Bethlehem-Easton Airport, PA [New]

That airspace extending upward from the surface to and including 4,400 feet MSL within a 5-mile radius of the Allentown-Bethlehem-Easton Airport (lat. 40°39'11"N., long. 75°26'25"W.), excluding that airspace within a 1-mile radius of the Queen City Municipal Airport, Allentown, PA, (lat. 40°34'13"N., long. 75°29'19"W.) and that airspace extending upward from 2,200 feet MSL to 4,400 feet MSL within a 10-mile radius of the Allentown-Bethlehem-Easton Airport from the 020° bearing from the airport clockwise to the 215° bearing from the airport and that airspace extending upward from 1,900 feet MSL to 4,400 feet MSL within a 10-mile radius of the airport from the 215° bearing from the airport clockwise to the 285° bearing from the airport and that airspace extending upward from 2,800 feet MSL to 4,400 feet MSL within a 10-mile radius of the airport from the 25° bearing from the airport clockwise to the 020° bearing from the airport.

Kahului Airport, HI [New]

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Kahului Airport (lat. 20°54'07"N., long. 156°25'59"W.), and that airspace extending upward from 2,000 feet MSL within a 10-mile radius of Kahului Airport from the 311° bearing from the airport clockwise to the 091° bearing from the airport and that airspace extending upward from 2,000 feet MSL within a 10-mile radius of the airport from the 171° bearing from the airport clockwise to the 221° bearing of the airport. This airport radar service area is effective during the specific days and hours of operation of Kahului Tower and Approach Control as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Washington, DC, on April 22, 1987.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 87-9547 Filed 4-27-87; 8:45 am]

BILLING CODE 4910-13-M

federal register

Tuesday
April 28, 1987

Part XII

Department of Agriculture

Forest Service

Southern Region Environmental Impact Statement for Southern Pine Beetle Suppression Program; Notice of Decision

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Region Environmental Impact Statement for Southern Pine Beetle Suppression Program

AGENCY: Forest Service, USDA.

ACTION: Notice of decision.

SUMMARY: The Chief of the Forest Service has decided to implement Alternative 4 as identified in the Final Environmental Impact Statement for the Southern Pine Beetle Suppression Program on Federal and Non-Federal Lands, Including Wilderness. The notice of availability of the final environmental impact statement was published by the Environmental Protection Agency in the **Federal Register** of March 6, 1987, at 52 FR 7021.

DATE: The Chief's decision was signed April 6, 1987.

FOR FURTHER INFORMATION CONTACT: Dave Smith, Environmental Impact Statement Team Leader, Southern Region, 1720 Peachtree Road, NW., Room 423 N., Atlanta, Georgia 30367; telephone (404) 347–4338.

SUPPLEMENTARY INFORMATION: On April 6, 1987, Chief of the Forest Service, F. Dale Robertson, signed a record of decision selecting Alternative 4 of the Final Environmental Impact Statement as the management strategy for suppression of the southern pine beetle within the Southern Region. This strategy applies to Federal and non-Federal lands, including wilderness.

For infestations in general forest areas, Alternative 4 will continue the practice of integrated pest management to reduce timber losses caused by the southern pine beetle. For infestations in wilderness, Alternative 4 will result in permitting the majority of these infestations to run their natural course. The alternative specifies that the Forest Service may control individual infestations within a wilderness only in two circumstances. First, the outbreak will likely threaten the continued existence of an essential red-cockaded woodpecker colony site and foraging area. Second, the outbreak occurs within ¼ mile of a susceptible host on State and private land or within ¼ mile of high-value Federal forest resources and the spot is predicted to spread across the wilderness boundary and cause unacceptable damage to those resources. For purposes of this latter situation, high value Federal forest resources do not include commercial timber. The presence of these circumstances must be supported by a site-specific analysis, which includes a biological evaluation of the infestation.

Anyone desiring a copy of the Record of Decision should direct requests to: Regional Forester, Southern Region (3400), Forest Service, USDA, 1720 Peachtree Road, NW., Atlanta, Georgia 30367.

The decision is subject to appeal pursuant to 36 CFR 211.18.

Dated: April 27, 1987.

George M. Leonard,

Associate Chief.

[FR Doc. 87–9716 Filed 4–27–87; 11:23 am]

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