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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

Expenses and Assessment Rate for the California Prune Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 993 for the 1987–88 fiscal year. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1987–July 31, 1988 (§ 993.338).

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone (202) 447–5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the "Act," 7 U.S.C. 601–674), and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 16 handlers of California prunes who will be subject to regulation under this marketing order during the course of the current season. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having annual gross revenues for the last three years of less than $100,000, and agricultural service firms, which include handlers, are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers may be classified as small entities.

The marketing order requires that the assessment rate for the crop year shall apply to all assessable prunes handled from the beginning of such year. An annual budget of expenses is prepared by the Prune Marketing Committee (PMC) and submitted to the Department of Agriculture for approval. The members of the PMC are handlers and producers of dried prunes. This is appropriate because they are familiar with the PMC's needs and with the costs for goods, services and personnel in the local area and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings, thus all directly affected persons have an opportunity to participate and provide input.

While this action may impose some additional costs on handlers, including small entities, the costs are in the form of uniform assessments on all handers which do not impose a significant economic impact on the small entities involved.

Based on available information, the Administrator of the Agricultural Marketing Service has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate recommended by the PMC is derived by dividing anticipated expenses by expected shipments of prunes (tons). That rate is applied to actual shipments to produce income sufficient to pay the PMC's expected expenses. The recommended budget and rate of assessment are usually acted upon by the PMC shortly before the season starts and expenses are incurred on a continuous basis, therefore the budget and assessment rate approval must be expedited in order that the PMC will have funds to pay their expenses.

List of Subjects in 7 CFR Part 993

Marketing agreements and orders, Dried prunes (California).

For the reasons set forth in the preamble, 7 CFR Part 993 is amended as follows:

1. The authority citation for 7 CFR Part 993 continues to read as follows:

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

2. Section 993.338 is added to read as follows (the following section prescribes the annual expenses and an assessment rate and will not be published in the Code of Federal Regulations):

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

§ 993.338 Expenses and asessment rate.

Expenses of $250,648 by the Prune Marketing Committee are authorized, and an assessment rate payable by each handler in accordance with § 993.81 is fixed at $1.52 per ton for salable dried prunes for the 1987–88 crop year ending July 31, 1988.

Dated: July 21, 1987.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–16985 Filed 7–24–87; 8:45 am]
BILLING CODE 3410–02–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 790

Description of Office, Disclosure of Official Records, Availability of Information; Promulgation of Regulations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This final rule implements recent amendments to the Freedom of Information Act (FOIA). The amendments concern Exemption 7 of the FOIA (relating to law enforcement records) and the provisions of the FOIA concerning fees and fee waivers. The final regulation, and NCUA's FOIA regulations in general, affect public

disclosure of information by the NCUA, and have no effect on the daily operations of credit unions.

EFFECTIVE DATE: July 27, 1987.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Staff Attorney, NCUA, Office of General Counsel, 1776 G Street NW., Washington, DC 20456, telephone: (202) 357–1030.

SUPPLEMENTARY INFORMATION: Recent amendments to the FOIA modified Exemption 7 (relating to disclosure of law enforcement records) and the provisions concerning charging and waiving fees. The amendments required that agency regulations contain a fee schedule that conforms to guidelines issued by the Office of Management and Budget (OMB). On May 8, 1987, the NCUA Board issued proposed rules implementing the amendments. (*See* 52 FR 19152, May 21, 1987.)

Only two comment letters were received concerning the proposed regulations. They were both from credit union trade associations. Both comments concerned the fees that credit unions and their trade associations would be charged under the new provisions. The amended FOIA sets forth five categories of requesters: (1) Commercial use; (2) educational institutions, (3) noncommercial scientific institutions; (4) representatives of the news media; and (5) all others. Pursuant to the amended FOIA, commercial requesters will be charged for the direct cost of review, search, and duplication of records. Educational institutions, noncommercial scientific institutions and representatives of the news media will be charged fees for direct costs of duplication with the first 100 pages provided free of charge. All other requesters will be charged fees for direct costs of search and duplication, with two hours of free search time and 100 pages of duplication provided free of charge. Prior to the amended FOIA, requesters were not classified and charges were made in all cases for search and duplication. In their guidelines, OMB specifically defined each one of the categories set forth in the amended FOIA. As required by the amended FOIA, NCUA followed OMB's definitions in its proposed regulation. The proposed rules did not specify into which category of requesters credit unions and their trade associations would fall.

One of the commenters suggested that NCUA add a sixth category of requesters to its regulation. The sixth category was suggested to include all credit union associations exempt from taxation under section 501(c)(6) of the Internal Revenue Code. It was suggested further that NCUA fill FOIA requests to those within this sixth category free of charge. In the alternative, the commenter suggested that the definition of educational institution be amended to include credit union associations exempt from taxation under section 501(c)(6) of the Internal Revenue Code. NCUA is not at liberty to make either of these suggested changes to its final rule. The categories of requesters are set forth in the amended FOIA. NCUA cannot alter a statute promulgated by Congress through its regulatory process by adding a category of requesters. Neither can NCUA materially alter the definition of educational institution as set forth in the OMB guidelines when Congress mandated that agencies follow OMB guidelines in promulgating their own regulations.

For purposes of clarification, NCUA will generally place credit unions in the category of "all other requesters" when they make FOIA requests. Pursuant to § 790.7(c)(4) of the final regulation, they will be charged for the full reasonable direct cost of searching for and reproducing records, with the first 100 pages and the first two hours of search time provided free of charge. Credit union trade associations will be treated as "representatives of the news media" when requests are made for the purpose of gathering news for publication or broadcast to the public. This includes the publication or broadcast to the credit union community. This clarification has been made to § 790.7(a)(8) of the final rule. Pursuant to § 790.7(c)(2), representatives of the news media will be charged for the cost of reproduction alone, with the first 100 pages provided free of charge. It is anticipated that most credit union trade association requests will be assigned to this category. If requests are for purposes other than the gathering and publication of news, credit union trade association FOIA requests will be assigned to the category of "all other requesters" unless the request is for a commercial purpose, in which case they would be assigned the category of commercial use requester. (*See* §§ 790.7(a)(5), 790.7(c)(1), and 790.7(c)(3) for definitions and charges.) NCUA staff has discussed the above clarifications with OMB staff. OMB agrees with the clarifications made by NCUA.

One of the commenters asked for clarification as to how the 100 free pages are going to be counted—annually, per request, etc. The free search and duplication time will be granted on a per-request basis unless NCUA makes a determination that multiple requests are being filed solely in order to avoid payment of fees. In that case, NCUA will aggregate such requests and charge accordingly. (See § 790.7(f) of final rule.)

The only other comment made concerned application of the fee waiver or reduction provision of the proposed rule (Section 790.7(b)(7)) and its applicability to credit union trade association requesters. Determination of fee reduction or waiver will be made on a case-by-case basis based on the criteria set forth in § 790.7(b)(7).

The only changes made in the final rule are as follows. First, as noted above, a clarification has been added to § 790.7(a)(8)—the definition of representatives of the news media—to include the credit union community as the public. Second, § 790.7(c) (2) and (3) of the proposed rule have been combined into one section. Those two sections in the proposed rule are now set forth as § 790.7(c)(2) of the final rule and § 790.7(c) (4) and (5) in the proposed rule have been renumbered as § 790.7(c) (3) and (4) if the final rule. Finally, the first sentence or proposed § 790.7(b)(6) has been eliminated. This sentence stated that all requesters, other than commerical use requesters, would receive 100 pages of duplication and the first two hours of search time free of charge. This sentence was duplicative of other sections of the regulation.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the final rule does not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). The rule does not place burdens on requesters of information under the FOIA. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

This final regulation does not contain any collection requirements. It does not impose burdens on requesters of information under the FOIA.

List of Subjects in 12 CFR Part 790

Credit unions, FOIA exemptions, Criminal investigations, Schedule of fees, Waiver or reductions of fees.

By the National Credit Union Administraton Board on July 15, 1987.

Becky Baker,

Secretary, NCUA Board.

1. Accordingly, NCUA amends its regulations as follows:

Authority: The authority citation for Part 790 continues to read as follows: Sec. 120, 73 Stat. 635 (12 U.S.C. § 1789), unless otherwise noted.

§ 790.4 [Amended]

2. Section 790.4(a)(7) is revised to read:

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

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

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

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

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

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

(vi) Could reasonably be expected to endanger the life or physical safety of any individual. This includes, but is not limited to, information relating to enforcement proceedings upon which the Administration has acted or will act in the future.

3. Section 790.7 is revised to read:

§ 790.7 Fees for Document Search, Review, and Duplication; Waiver and Reduction of Fees.

(a) *Definitions.—(1) Direct costs* means those expenditures which NCUA actually incurs in searching for, duplicating and reviewing documents to respond to a FOIA request.

(2) *Search* means all time spent looking for material that is responsive to a request, including page-by-page of line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(3) *Duplication* means the process of making a copy of a document necessary to respond to FOIA request.

(4) *Review* means the process or examining documents located in response to a request that is for a commercial use (*see* § 790.7(a)(5)) to determine whether any portion of any document located is permitted to be withheld and processing such documents for disclosure.

(5) *Commerical use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers the commerical, trade, or profit interests of the requester or the person on whose behalf the request is made.

(6) *Educational institution* means a preschool, an 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 or programs of scholarly research.

(7) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis as that term is referenced in § 790.7(a)(5), and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. Included within the meaning of public is the credit union community. The term "news" means information that is about current events or that would be of current interest to the public.

(b) *Fees to be charged.*—NCUA will charge fees that recoup the full allowable direct costs it incurs. NCUA may contract with the private sector to locate, reproduce and/or disseminate records. Fees are subject to change as costs increase. In no case will NCUA contract out responsibilities which the FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

(1) *Manual searches and review*—NCUA will charge fees at the following rates for manual searches for and review of records:

(i) If search/review is done by clerical staff, the hourly rate for GS–5, step 1, plus 16 percent of the rate to cover benefits;

(ii) If search/review is done by professional staff, the hourly rate for GS–13, step 1, plus 16 percent of that rate to cover benefits.

(2) *Computer searches*—NCUA will charge fees at the hourly rate for GS–13, step 1, plus 16 percent of that rate to cover benefits, plus the hourly cost of operating the computer for computer searches for records.

(3) *Duplication of records*—(i) The per-page fee for paper copy reproduction of a document is $.25;

(ii) The fee for documents generated by computer is the hourly fee for the computer operator, plus the cost of materials (computer paper, tapes, labels, etc.).

(iii) If any other method of duplication is used, NCUA will charge the actual direct cost of duplicating the documents.

(4) *Fees to exceed $25*—If NCUA estimates that duplication and/or search fees are likely to exceed $25, it will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. The requester will then have the opportunity to confer with NCUA personnel with the object of reformulating the request to meet his/her needs at a lower cost.

(5) *Other services*—Complying with requests for special services is entirely at the discretion of NCUA. NCUA will recover the full costs of providing such services to the extent it elects to provide them.

(6) *Restriction on assessing fees*—NCUA will 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.

(7) *Waiving or reducing fees*—NCUA shall waive or reduce fees under this section whenever disclosure of 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.

(i) NCUA will make a determination of whether the public interest requirement above is met based on the following factors:

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

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

(C) 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;

(D) 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.

(ii) If the public interest requirement is met, NCUA will make a determination on the commercial interest requirement based upon the following factors:

(A) 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

(B) 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.

(iii) If the required public interest exists and the requester's commercial interest is not primary in comparison to it, NCUA will waive or reduce fees.

(c) *Categories of requesters* (1) Commercial use requesters—NCUA will assess fees for commercial use requesters which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents.

(2) Educational institution, noncommercial scientific institution, and requesters who are representatives of the news media—NCUA shall provide documents to requesters in this category for the cost of reproduction alone, excluding fees for the first 100 pages.

(3) All other requesters—NCUA shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without a fee.

(4) All requesters must specifically describe records sought.

(d) *Interest on unpaid fees.* NCUA may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill 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.

(e) *Fees for unsuccessful search and review.* NCUA may assess fees for time spent searching and reviewing, even if it fails to locate the records or if records located are determined to be exempt from disclosure.

(f) *Aggregating requests.* A requester(s) may not file multiple requests, each seeking portions of a document or documents, solely in order to avoid payment of fees. If this is done, NCUA may aggregate any such requests and charge accordingly.

(g) *Advance payment of fees.* NCUA will require a requester to make an assurance of payment or an advance payment only when:

(1) NCUA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. NCUA will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion. NCUA may require the requester to pay the full amount owed, plus any applicable interest as provided in § 790.7(d) or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before NCUA begins to process a new request or a pending request from that requester.

(3) When NCUA acts under § 790.7(g) (1) or (2), the administrative time limits prescribed in paragraph (a)(6) of the FOIA (i.e., 10 working days from 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 NCUA has received the fee payments described.

[FR Doc. 87-16940 Filed 7-24-87; 8:45 am]
BILLING CODE 7535-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 133

Display of Office of Management and Budget (OMB Control Numbers for Reporting and Recordkeeping Requirements)

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration is amending its regulations to indicate Office of Management and Budget (OMB) approval of new and revised information collection requirements contained in or authorized by the regulations. This action is required by the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 94 Stat. 2812, Chapter 35 of Title 44).

EFFECTIVE DATE: July 27, 1987.

FOR FURTHER INFORMATION CONTACT: William Cline, Chief, Administrative Information Branch, Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Telephone No. 653-8538.

SUPPLEMENTARY INFORMATION: This amendment is administrative in nature and is intended to comply with the requirements of the Paperwork Reduction Act of 1980 as implemented by 5 CFR Part 1320 that agencies display a current listing of OMB control numbers and expiration dates. Where the information collection requirement exists as a document separate from the regulations, the Small Business Administration will also display the current OMB number on the document.

Because this is a nonsubstantive amendment dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 U.S.C. et seq) requiring advance notice and comment.

List of Subject in 13 CFR Part 133

OMB control numbers assigned, Reporting and recordkeeping requirements.

PART 133—[AMENDED]

Therefore, 13 CFR Part 133 is amended as Follows:

1. The authority for Part 133 continues to read as follows:

Authority: 44 U.S.C. 3512.

2. The table in paragraph (c) of § 133.1 is revised to read as follows:

§ 133.1 Control numbers assigned by OMB under the Paperwork Reduction Act.

Current OMB control No.	Information collection requirement	Legal authority	Expiration date
3245-0003	SBA 745; SBA 745A	13 CFR 125.9	10-31-88
3245-0009	SBA 480	13 CFR 123.9	12-31-87
3245-0012	SBA 770	13 CFR 123.9	10-31-87

Current OMB control No.	Information collection requirement	Legal authority	Expiration date
3245-0013	SBA 74; SBA 74A; SBA 74B; SBA 183	13 CFR 125.5	3-31-89
3245-0016	SBA 4; SBA 4I; SBA 4 Sched. A	13 CFR 122.309	10-31-87
3245-0017	SBA 5; SBA 739; SBA 1368 A, B, C	13 CFR 123	10-31-89
3245-0018	SBA 5C; SBA 739	13 CFR 123.1	4-30-90
3245-0019	SBA 933; SBA 1099; SBA 1100	13 CFR 101.2-7	3-31-88
3245-0020	SBA 1136; SBA 1136A	13 CFR 111.8	6-30-88
3245-0024	SBA 1167; SBA 1395	13 CFR 125.10	1-31-88
3245-0046	SBA 1174	13 CFR 101.2-7	9-30-87
3245-0063	SBA 468.1-4		
3245-0071	SBA 1244 A&B	13 CFR 108.503	8-31-88
3245-0073	SBA 1246	13 CFR 108.503	10-31-87
3245-0074	SBA 1253 A&B	13 CFR 108.503	10-31-89
3245-0075	SBA 20	13 CFR 101.2-7	4-30-90
3245-0076	SBA's Nondiscrimination Rules and Regulations and SBA 793	13 CFR 120.5, 120.6	9-30-87
3245-0077	Reporting and Recordkeeping Requirements on Non-Bank Lenders	13 CFR 120.5 and (b)(7) and 120.6	9-30-87
3245-0078	Small Business Investment Company Records and Reports, SBA 684; SBA 10-31.	13 CFR 107.1102	4-30-87
3245-0079	SBA 419		1031-87
3245-0080	SBA 1081	13 CFR 120.4	4-30-90
3245-0081			
3245-0083	SBA 415C	13 CFR 107.1105	9-30-87
3245-0084	SBA 700	13 CFR Part 123	10-31-87
3245-0090	SBA 59	13 CFR 101.2-7	4-30-90
3245-0091	SBA 641	13 CFR 101.2-7	12-31-87
3245-0095	SBA 1175		6-30-88
3245-0096	SBA 883	Presidential Proclamation, Designating Small Business Week.	1-31-90
3245-0101	SBA 355, 1340	13 CFR Part 121	3-31-88
3245-0108	SBA 1062	13 CFR 101.2-7	6-30-88
3245-0109	SBA 857; SBA 858	13 CFR 107.1101	7-31-87
3245-0110	SBA 1366; SBA 1391	13 CFR 123.17	4-30-90
3245-0112	SBA 1301	13 CFR 108.503	7-31-87
3245-0116	SBA 860	13 CFR 107.1101	7-31-87
3245-0117	CO 266		6-30-87
3245-0118	SBA 856	13 CFR Part 107	
3245-0121	Governor's Request for Disaster Declaration	13 CFR 123.1101	6-30-87
3245-0123	SBA 888	13 CFR 101.2-7	10-31-88
3245-0125	SBA 898	Pub. L. 92-463	7-31-89
3245-0129	SBA 1238A		8-31-89
3245-0130	SBA 1238		8-31-89
3245-0131	SBA 172	Agency's Participant Handbook	7-31-89
3245-0132	SBA 1149		9-30-87
3245-0133	SBA 2014A	Pub L. 95-454	9-30-89
3245-0134	SBA 1369	13 CFR 101.2-7	9-30-87
3245-0135	SBA 1202	13 CFR 101.2-7	8-31-87
3245-0136	SBA 987	13 CFR 123.1	8-31-89
3245-0137	SBA Contract Requirements	OMB Circulars A-110; A-21; A-102; A-122	8-31-89
3245-0143	Request for Eligibilty Reconsideration	13 CFR Part 124	1-31-90
3245-0144	SBA 1017	13 CFR Part 124	1-31-90
3245-0145	Notice of Change in Ownership	13 CFR Part 124	1-31-90
3245-0146	Request for Approval of Joint Venture Agreement	13 CFR Part 124	1-31-90
3245-0147	Request for Fixed Program Participation Term (FPPT) Extensions	13 CFR Part 124	1-31-90
3245-0148	Request for Advance Payment and Schedule of Advance Payment Requirements.	13 CFR Part 124	1-31-90
3245-0149	Request for Business Development Expense	13 CFR Part 124	1-31-90
3245-0151	Submission of Business Financial Statement	13 CFR Part 124	1-31-90
3245-0157	SBA 1386	Pub. L. 97-219	11-30-89
3245-0160	SBA 149	13 CFR 122.15	9-30-87
3245-0164	Liquidation Activities	41 CFR Part 5	4-30-90
3245-0168	Small Business Institute Counseling Case Report	13 CFR 101.2-7	4-30-90
3245-0169	SBDC Quarterly and Financial Reports	13 CFR 101.2-7	3-31-87
3245-0172	SBA 1405	13 CFR 107.1101	2-28-90
3245-0176	Compliance Review Report	13 CFR 112, 113, 117	3-31-90
3245-0178	Statement of Personal History		5-31-90
3245-0183	SBA 1419	13 CFR 101.2-7	6-30-87
3245-0185	SBA 1085; SBA 1086	13 CFR Part 120	9-30-87
3245-0186	Sources of Informal Risk Capital for Veteran-Owned Enterprises Study	Pub. L. 94-305	8-31-88
3245-0188	SBA 413	15 U.S.C. 631	10-31-87
3245-0189	Business Loan Reconsideration Request	13 CFR Part 122	9-30-87
3245-0190	SBA 1347	13 CFR Part 122	10-31-87
3245-0191	Reporting and Recordkeeping Requirements	13 CFR Parts 120 and 122	10-31-87
3245-0192	Other Development Company Reporting Requirements	13 CFR Part 108	6-30-87
3245-0193	SBA 1429	13 CFR Part 108	10-31-87
3245-0194	SBA 1434	13 CFR 101.2-7	10-31-87
3245-0196	Borrower Reports, Records and Requests	13 CFR Part 122	10-31-87
3245-0199	Information Submitted by the Federal Agencies Participating in the SBIR Program to the Small Business Administration for the SBIR Annual Report to Congress.		4-30-87
3245-0200	SBA 1050	13 CFR Parts 120 and 122	12-31-87
3245-0201	SBA 147; SBA 148; SBA 153; SBA 159; SBA 160; SBA 160A; SBA 529; SBA 928; SBA 1059.	13 CFR Parts 120 and 122	12-31-87
3245-0202	SBA 1010H	Pub. L. 95-507	12-31-87
3245-0203	SBA 104A		12-31-87
3245-0204	SBA 1449	Pub. L. 95-89	12-31-87
3245-0212	SBA 1088	Pub. L. 98-352	12-31-88
3245-0213	SBA 1454; SBA 1455	13 CFR Part 122	12-31-88
3245-0215	SBA 1479		7-31-88
3245-0217	Measuring the Costs of Producing Bank Services in a Deregulated Environment		
3245-0218	SBA 1482	Pub. L. 96-481	10-31-88
3245-0219	The Performance of Definitive Federal Contracts by Large and Small Firms	15 U.S.C. 634(b)(5)	6-30-87
3245-0221	Small Business Development Centers Onsite Review and Recordkeeping Requirements.	13 CFR 101.2-7	1-31-90
3245-0224	Erroneous Penalties Assessed by IRS Associated with Payroll Taxes	Pub. L. 94-305	1-31-88

Current OMB control No.	Information collection requirement	Legal authority	Expiration date
3245-0225	SBA 1531	Pub. L. 98-577, 15 U.S.C. 637b	2-28-90
3245-0226	SBA 1538	Pub. L. 95-507	10-31-88
3245-0227	SBA 1539	Pub. L. 95-507	10-31-88
3245-0228	SBA 1540	Pub. L. 95-507	5-31-89
3245-0229	For Profit Cosponsored Training Program		6-30-88

Date: July 17, 1987.

James Abdnor,

Administrator.

[FR Doc. 87-16907 Filed 7-24-87; 8:45 am]

BILLING CODE 8025-01-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Production of Agency Records or Testimony Concerning Agency Matters

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board is amending § 102.118 of its rules and regulations that povides for the procedures under which Board personnel may be allowed to produce Agency records or testify concerning Agency matters. The amendment clarifies the rule to specify that former Agency personnel are subject to the same procedures when asked to produce Agency records or testify concerning Agency matters.

EFFECTIVE DATE: July 27, 1987.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under section 6 of the National Labor Relations Board Act (29 U.S.C. 156), the National Labor Relations Board is revising the provision of its rules and regulations that establishes the procedures under which Board employees may produce Agency records or testify concerning matters contained within Agency records or other matters that came to the employee's knowledge while employed at the Agency in an official capacity. Section 102.118 presently states that the procedures, pursuant to which the permission of the General Counsel or the Board must be obtained before a person can produce such records or give such testimony, applies to "Board employees." In order to clarify any ambiguity that these procedures apply only to "current," and not "former," Board employees, the Board is adding language to specifically provide for the application of the procedures to former Board employees. While the occasion of former Board personnel being asked to produce Board records or testify to matters contained within those records or other Agency matters is infrequent, by revising the rules the Board will ensure that its interests in its records and testimony concerning Agency business will be protected where the employment status of the affected individual may have ended.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

Accordingly, 29 CFR Part 102 is amended as follows:

PART 102—RULES AND REGULATIONS, SERIES 8, AS AMENDED

1. The authority citation for 29 CFR Part 102 is revised to read as follows:

Authority: Section 6, National Labor Relations Act (29 U.S.C. 151, 156). Section 102.117 also issued under section 552(a)(4)(A) of the Freedom of Information Act (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under section 504(c)(1) of the Equal Access to Justice Act (5 U.S.C. 504(c)(1)).

2. Section 102.118 is amended by revising the section heading and paragraph (a)(1) to read as follows:

§ 102.118 Present and former Board employees prohibited from producing files, records, etc., pursuant to subpoena ad testificandum or subpoena duces tecum; prohibited from testifying in regard thereto; production of witnesses' statements after direct testimony.

(a)(1) Except as provided in § 102.117 of these rules respecting requests cognizable under the Freedom of Information Act, no present or former Regional Director, field examiner, administrative law judge, attorney, specially designated agent, General Counsel, Member of the Board, or other officer or employee of the Agency shall produce or present any files, documents, reports, memoranda, or records of the Board or of the General Counsel, whether in response to a subpoena duces tecum or otherwise, without the written consent of the Board or the Chairman of the Board if the document is in Washington, DC, and in control of the Board; or of the General Counsel if the document is in a Regional Office of the Agency or is in Washington, DC, and in the control of the General Counsel. Nor shall any such person testify in behalf of any party to any cause pending in any court or before the Board, or any other board, commission, or other administrative agency of the United States, or of any State, territory, or the District of Columbia, or any subdivisions thereof, with respect to any information, facts, or other matter coming to that person's knowledge in his or her official capacity or with respect to the contents of any files, documents, reports, memoranda, or records of the Board or the General Counsel, whether in answer to a subpoena or otherwise, without the written consent of the Board or the Chairman of the Board if the person is in Washington, DC, and subject to the supervision or control of the Board or was subject to such supervision or control when formerly employed at the Agency; or of the General Counsel if the person is in a Regional Office of the Agency or is in Washington, DC, and subject to the supervision or control of the General Counsel or was subject to such supervision or control when formerly employed at the Agency. A request that such consent be granted shall be in writing and shall identify the documents to be produced, or the person whose testimony is desired, the nature of the pending proceeding, and the purpose to be served by the production of the document or the testimony of the official. Whenever any subpoena ad testificandum or subpoena duces tecum, the purpose of which is to adduce testimony or require the production of records as described hereinabove, shall have been served on any such person or otherwise expressly directed by the Board or the Chairman of the Board or the General Counsel, as the case may be, move pursuant to the applicable procedure, whether by petition to revoke, motion to quash, or other officer or employee of the Board, that person will, unless otherwise, to have such subpoena invalidated on the ground that

the evidence sought is privileged against disclosure by this rule.

* * * * *

Dated, Washington, DC, July 17, 1987.

By direction of the Board.

National Labor Relations Board.

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 87-16639 Filed 7-24-87; 8:45 am]

BILLING CODE 7545-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R, Amdt. No. 4]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); CHAMPUS Eligibility Regarding Marriage of a Child

AGENCY: Office of the Secretary, DoD.

ACTION: Amendment to Final rule.

SUMMARY: This amendment revises the DoD Regulation 6010.8-R (32 CFR 199) and reclarifies the CHAMPUS position prohibiting the reinstatement of eligibility following termination of marriage by divorce after age 21. This clarification prevents future erroneous eligibility determinations.

EFFECTIVE DATES: This amendment is effective July 27, 1987. Comments should be received by September 25, 1987.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: Judith A. Carroll, Policy Branch, OCHAMPUS, telephone (303) 361-3521.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the **Federal Register** on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. 32 CFR Part 199 (DoD 6010.8-R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

In a final appeal decision the Assistant Secretary of Defense (Health Affairs) directed the Director of OCHAMPUS to revise 32 CFR Part 199 § 199.3(e)(3)(iv). This section concerns CHAMPUS eligibility and addresses the marriage of a child as follows:

Marriage of Child. A child of an active duty member or retiree, who marries a person whose dependents are not eligible for CHAMPUS, loses eligibility as of 12:01 a.m. on the day following the day of the marriage. However, should the marriage be terminated by death, divorce, or annulment before the child is 21 years old, the child again becomes a CHAMPUS eligible dependent as of 12:01 a.m. of the day following the day of the occurrence that terminates the marriage and continues up to age 21 if the child does not remarry before that time. If the marriage terminates after the child's 21st birthday, there is no reinstatement of CHAMPUS eligibility, unless based on other entitlement.

The final appeal decision found that an erroneous CHAMPUS eligibility determination had been made due to the misinterpretation of the phrase "based on other entitlement" from the above quoted regulation. The phrase was interpreted as allowing retroactive eligibility based on physical disability and incapacity for self support, thereby providing for continuous CHAMPUS coverage as though the marriage and divorce did not exist. As a result of this interpretation, a former CHAMPUS beneficiary was erroneously reinstated as a CHAMPUS eligible beneficiary when in fact not eligible.

The Assistant Secretary of Defense determined the intent of the above regulation clearly provides that a child loses CHAMPUS eligibility upon his/her marriage and eligibility cannot be reinstated if the marriage is terminated by divorce after the child's 21st birthday. He determined the phrase "based on other entitlement" was intended to mean that eligibility can only be reestablished if the child remarries a person who is a military sponsor and thereby provides an independent basis for CHAMPUS eligibility.

To clarify the above regulation, and eliminate future misinterpretations creating erroneous eligibility determinations, the Assistant Secretary of Defense decided the phrase "based on other entitlement" was unnecessary and should be deleted.

The amendment of the above regulation does not eliminate a class of beneficiaries now eligible for coverage. It provides greater clarification concerning CHAMPUS eligibility. It precludes a misinterpretation which may cause undue hardship on those people erroneously determined to be CHAMPUS eligible, who receive services, then later, are determined not to be eligible, and are faced with paying for the cost of the services on their own. For these reasons, we are not using the proposed rule making process. However, in recognition of the value of public comments, written comments are invited for 60 days following publication of this final rule. A document advising of any revisions prompted by public comments will be published in the **Federal Register**.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of Title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this regulation will not have a significant economic impact on a substantial number of small businesses, organizations, or governmental jurisdictions.

We have determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended to read as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

2. Section 199.3 is amended by revising paragraph (e)(3)(iv), to read as follows:

§ 199.3 Eligibility.

* * * * *

(e) * * *

(3) * * *

(iv) *Marriage of Child.* A child of an active duty member or retiree, who marries a person whose dependents are not eligible for CHAMPUS, loses eligibility as of 12:01 a.m. of the day following the day of the marriage. However, should the marriage be terminated by death, divorce, or annulment before the child is 21 years old, the child again becomes a CHAMPUS eligible dependent as of 12:01 a.m. of the day following the day of the occurrence that terminates the marriage and continues up to age 21 if the child does not marry before that time. If the marriage terminates after the

child's 21st birthday, there is no reinstatement of CHAMPUS eligibility.

* * * * *

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 22, 1987.

[FR Doc. 87-16935 Filed 7-24-87; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 111

Restriction on Purchase of Money Orders

AGENCY: Postal Service.

ACTON: Interim rule with request for comments.

SUMMARY: This rulemaking imposes a temporary restriction on the purchase of postal money orders. Individual postal customers will not be permitted to purchase money orders in excess of $10,000 in face value on any day. This temporary restriction is being put into effect immediately on an interim basis in order to curtail, as soon as possible, the misuse of postal money orders to launder cash proceeds from illegal drug sales. The Postal Service plans to initiate a separate administrative action before the Postal Rate Commission to establish a permanent restriction.

DATES: Effective August 2, 1987. Comments must be received on or before August 31, 1987.

ADDRESS: Written comments should be directed to Grayson M. Poats, Assistant General Counsel, Classification Division, Law Department, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West SW., Washington, DC 20260-1141. 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 the Room 6436, at the above address.

FOR FURTHER INFORMATION CONTACT: Grayson M. Poats, (202) 268-2981.

SUPPLEMENTARY INFORMATON: In the last year the Federal Government has focused a great deal of attention on the illegal drug business in the United States. This attention is part of the broad effort to curb this activity through all reasonable means, including making it more difficult to convert ("launder") the cash proceeds from drug sales into apparently legitimate financial accounts and instruments. The Postal Service has become part of this effort because, in cooperation with the Department of the Treasury, we have identified postal money orders as one means being used for drug money laundering.

The professional criminals engaged in the laundering of the cash proceeds from drug sales (known as "smurfs") have apparently discovered that they can avoid federal currency transaction reporting laws by purchasing postal money orders. Pursuant to the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*) and Treasury regulations (31 CFR Part 103), banks and other financial institutions are required to submit a report to the Secretary of the Treasury whenever a customer engages in a currency transaction of more than $10,000 in one day. Treasury regulations also require reporting when the financial institution is actually aware of related transactions that aggregate over $10,000 in one day.

Some smurfs have apparently turned to the use of postal money orders because these reporting requirements have not applied to the Postal Service and because of the way our money order system operates. In order to offer a low cost service, the postal money order system operates essentially as the sale of a bearer instrument to an unidentified purchaser for cash. The Postal Service does not ask for or record any identification of the purchaser and the Postal Service leaves it to the purchaser to complete the payee identification portion of the money order. Because there is currently no limit on the number of money orders one person can purchase at a time, smurfs can purchase large amounts (at a maximum increment of $700) without providing identification or triggering any kind of law enforcement report.

A Postal Service Inspection Service investigation has produced evidence of unusually large money order purchases in a number of urban areas that provides circumstantial evidence of the use of money orders for drug money laundering. Financial data on money order activity also supports this view—money order sales and the dollar value of outstanding money orders increased noticeably in 1986.

The Postal Service is concerned about the problem of drug money laundering and does not want to be an unwitting participant in such activities. Nor do we want to facilitate the operation of the illegal drug business. We are also concerned over the potential for armed robbery at those post offices, stations and branches that would be receiving large amounts of cash from these money order purchases. These concerns must be balanced with the needs of the legitimate users of postal money order service in arriving at a solution to the problem. The Postal Service wants to maintain the money order system without incurring additional transaction costs that could have an impact on the level of the money order fee. We are especially concerned about the fee because postal money orders are most frequently purchased by our less-affluent customers who do not have checking accounts.

Our past experience has been that noticeably large money order purchases are a rare phenomenon. The vast majority of money orders purchased by customers are either (1) used in lieu of bank checks (for paying bills, ordering products or sending money to someone) or (2) used to purchase products or services for which a personal bank check is not accepted, *e.g.*, mail order purchase of tickets to a concert or sporting event. In both of these situations, there is rarely, if ever, a need to purchase a large dollar amount of money orders at one time. Indeed, even the purchase of large dollar face value money orders for a legitimate reason is not common. Money order statistics for FY 1986 indicate that 78 percent of all money orders were for less than $100 and almost 90 percent were under $200. Given these facts, the establishment of a reasonable overall dollar limit for money order purchases would have, at the most, an insignificant impact on legitimate postal customers. Moreover, these customers would have alternatives, such as the purchase of certified checks, available to them if they do need to purchase a high value financial instrument.

Therefore, the Postal Service is setting a money order purchase limit of $10,000 to be commensurate with the threshold reporting level set by Treasury for financial institutions. This limit will apply on a daily basis to each postal customer whether the purchases are made at one time or throughout the day, regardless of the postal facility or facilities used. The advantages of this approach are significant. A uniform, nationwide ceiling on money order purchases would be easy to administer and would incur no additional costs. It would also avoid any discrimination problems that could arise if we tried to impose limitations only on those areas where possible drug laundering activities had been identified. The problems associated with employees handling large sums of cash also would be avoided. Most importantly, the Postal Service would be taking a very positive step in the national fight against the illegal drug business.

Because money order service is treated as a postal service subject to the classification and ratemaking procedures of the Postal Reorganization

Act (39 U.S.C. 3621, *et. seq.*), changes must be considered in light of the Domestic Mail Classification Schedule (DMCS) and the Domestic Mail Manual (DMM). The pertinent DMCS provision, § 8.020, provides that:

The maximum value for which a domestic postal money order may be purchased is [$700]. There is no limit on the number of money orders which may be purchased at one time, except that the Postal Service may impose temporary restrictions.

See 39 CFR 3001.68. This language on purchase limitations is repeated in DMM § 941.121. The subject temporary restriction on money order sales is authorized by these provisions. A change in the DMCS will be necessary in order to permanently limit money order purchases. The Postal Service intends, following the completion of the necessary administrative procedures, to establish a permanent limitation.

While in ordinary circumstances the Postal Service publishes proposed changes in its regulations with a thirty day public comment period, this change is being implemented immediately, on an interim basis without that prior notice and an opportunity for comment, because it may be impracticable, unnecessary, or contrary to the public interest to delay this change. The Postal Service has good cause to believe that postal money orders are being purchased in large amounts by professional criminals as a means to launder cash proceeds from illegal drug sales. The Postal Service believes that allowing the continuation of this practice for the time that notice and comment rulemaking would require would be contrary to the public interest. Given the insignificant impact this change is expected to have on legitimate users of postal money order service, the Postal Service also finds that prior notice is unnecessary. The Postal Service does, however, want to know if any legitimate users of money order service will be affected by this change and is requesting comments prior to the publication of a final rule.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following interim amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 941—MONEY ORDERS

2. In 941, revise 941.121 to read as follows:

941 Money Orders
941.1 Issuance
* * * * *
.12 Amounts, Fees, and Payments

.121 Amounts. The maximum amount for a single money order is $700. Generally, there is no limitation on the number of orders that may be purchased at one time. *Exception:* The Postal Service may impose temporary restrictions.

NOTE.—EFFECTIVE AUGUST 2, 1987, THE POSTAL SERVICE HAS IMPOSED SUCH A TEMPORARY RESTRICTION. NO INDIVIDUAL POSTAL CUSTOMER MAY PURCHASE MONEY ORDERS IN EXCESS OF $10,000 IN FACE VALUE ON ANY DAY. THERE ARE NO EXCEPTIONS TO THIS RESTRICTION.

An appropriate amendment to 39 CFR 111.3 to reflect this change will be published in due course.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–16945 Filed 7–24–87; 8:45 am]

BILLING CODE 7710–12–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 95

Radio Control Radio Service; Authorized Channels; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects certain errors in the text of the document concerning authorized channels for Radio Control radio service published 52 FR 16262, May 4, 1987.

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Special Services Division, Private Radio Bureau, (202) 632–4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 95

Radio Control (R/C) Radio Service.

In paragraph two of the Order, the first word of the last sentence was corrected to read "Thirty" instead of "Twenty-three." Also, the second-last word of paragraph two was corrected to read "75.99" instead of "75.85."

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–16911 Filed 7–24–87; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 52, No. 143
Monday, July 27, 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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Federal Credit Union Investment in Mortgage Securities

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comments.

SUMMARY: The Secondary Mortgage Market Enhancement Act of 1984 amended the Federal Credit Union Act to permit Federal credit unions to invest in certain mortgages and in mortgage securities. The NCUA Board is seeking comment on several safety and soundness issues relating to this new authority. The Board also requests comments on the manner in which NCUA should implement this new FCU authority. FCU's are not currently empowered to make these investments.

DATE: Comments must be received on or before September 18, 1987.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, National Credit Union Administration, 1776 G. Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley, Director, Office of Examination and Insurance, or Steven R. Bisker, Assistant General Counsel, Office of General Counsel, at the above address, or telephone: (202) 357–1065 (Mr. Riley); (202) 357–1030 (Mr. Bisker).

SUPPLEMENTARY INFORMATION: Section 105(b) of the Secondary Mortgage Market Enhancement Act of 1984 ("SMMEA") (Pub. L. 98–440) amended section 107 of the Federal Credit Union Act by inserting new sections 107(15)(A) and (B). *See* 12 U.S.C. 1757(15). As is discussed in greater detail below, these sections authorize Federal credit unions to invest in certain mortgages and privately-issued mortgage-related securities, respectively. The purpose of this document is to request comment on what actions the National Credit Union Administration should take to implement this authority.

It is noted that the NCUA has taken the position that section 107(15) is *not* self-implementing and requires regulation or other official action by the NCUA Board.

Section 107(15)(A)

Section 107(15)(A) authorizes Federal credit unions to invest in "securities that . . . are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)). Essentially, this authorizes FCU's to invest in notes, and participation interests in notes, where the note is secured by a first lien on a dwelling or commercial structure and certain other conditions are met.

FCU's have had similar authorities for several years. Section 107(5) authorizes FCU's to make loans, including mortgage loans, to members and to participate with other lenders in making loans to the credit union's members (*See* 12 U.S.C. 1757(5)). Section 107(13) allows FCU's to purchase "eligible obligations" of their members. (*See* 12 U.S.C. 1757(13)). Sections 701.21, 701.22 and 701.33 of NCUA's Rules and Regulations implement these authorities.

In all cases, the lending authority and the loan relationships of FCU's have been limited to *members* of the credit unions. While the new section 107(15) authority to invest in notes secured by first liens is not specifically limited to notes of members, any different interpretation would substantially and materially alter the nature of Federal credit union asset powers and, in effect, would authorize loans to nonmembers. The NCUA Board does not believe Congress intended this result. Accordingly, the new section 107(15)(A) authority is interpreted to be limited to notes of members of the purchasing FCU.

The NCUA Board invites public comment on this interpretation. The Board also requests comment on whether § 701.22 of NCUA's Rules and Regulations (Loan Participation) and § 701.23 (Purchase of Eligible Obligations) should be revised to clarify their applicability to loans and participations acquired under the authority of section 107(15)(A) of the Act.

Section 107(15)(B)

Section 107(15)(B) authorizes FCU's to invest in *privately*-issued "mortgage related securities" (as defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)) "subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both." Although FCU's have been authorized to invest in mortgage-backed securities issued by the Federal National Mortgage Association ("FNMA"), the Government National Mortgage Association ("GNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC") (*see* section 107(7)(E) of the Act, 12 U.S.C. 1757(7)(E)), they previously did not have the statutory authority to invest in *privately*-issued mortgage-related securities until the enactment of SMMEA.

NCUA has reviewed the investment activity in mortgage-related securities since the enactment of SMMEA. As a result, NCUA has determined to seek comment from FCU's and the public on whether a regulation is necessary, or whether some other form of Agency action, such as an Interpretive Ruling and Policy Statement ("IRPS"), might be more appropriate. Additionally, the Board requests comment on various safety and soundness issues, addressed below, concerning mortgage-related securities.

The following discussion addresses the definition of "mortgage-related securities," the types of investments falling within the definition, and the issues and concerns of NCUA with respect to the safety and soundness of FCU investment in these securities.

Definition of "Mortgage-Related Security"

The term "mortgage-related security" is defined in section 101 of the SMMEA (15 U.S.C. 78c(a)(41)). Items (1)–(4) below summarize the requirements contained in the definition. The definition generally includes any security that satisfies *all* of these requirements:

(1) The security is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization; and

(2) The security must either represent ownership of one or more promissory notes or certificates of interest or participations in such notes; or be secured by one or more promissory notes or certificates of interest or participation in such notes and, by its terms, provide for payments of principal in relation to payments or reasonable projections of payments, on notes, or certificates of interest or participations, in promissory notes; and

(3) The underlying notes or certificates must be directly secured by a first lien on a single parcel of real estate; stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure; or on a residential manufactured home; and

(4) The underlying notes or certificates must have been originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority; or by a mortgagee approved by the Secretary of Housing and Urban Development.

The types of investments covered by this definition have been expanding in the marketplace. These investments include securities such as mortgage pass-through securities, mortgage-backed securities (bonds), and mortgage pay-through securities such as Collateralized Mortgage Obligations ("CMO's") and Real Estate Mortgage Investment Conduits ("REMIC's").

Description of the General Types of Mortgage-Related Securities Available

(a) Mortgage Pass-Through Securities

Investors own undivided interests in a pool of underlying mortgages and receive pro rata shares of cash flows. Each pool has, for example, a coupon or pass-through rate, an issue date, a maturity date, and a payment delay. In addition, each pool may have some unique features. Many FCU's are familiar with and have invested in pass-through securities issued by GNMA, FNMA and FHLMC under the express authority in section 107(7)(E) of the FCU Act. The types of mortgage pass-through securities that would be authorized under the SMMEA amendment would include those securities issued by private institutions that qualify as mortgage-related securities.

(b) Mortgage-Backed Securities (Bonds)

Investors own the security (bond) which is secured by collateral consisting, at least in part, of mortgages or mortgage-related securities. Mortgage-backed bonds are more similar to traditional corporate bonds than to pass-through securities. The main distinction between mortgage-backed bonds and corporate bonds is the use of mortgage-related collateral. A mortgage-backed security may be a general obligation of the issuer, which is additionally secured by mortgages, or it may be backed solely by the mortgage collateral. The bonds have a known maturity date and a predetermined cash flow. Unlike a pass-through security, where principal and interest are passed on directly to the investors on a pro rata basis, mortgage-backed bond cash flows are redirected on a priority basis to various classes of bondholders. The bond issuer owns the collateral and distributes that portion of the cash flows generated by the mortgage collateral that is dedicated to the investors.

(c) Mortgage Pay-Through Securities

(i) Mortgage Pay-Through Bonds

These are also known as cash flow bonds. They combine aspects of pass-through securities with features of mortgage-backed bonds. As with mortgage-backed bonds, the investor owns the bond while the issuer retains ownership of the mortgage collateral. However, unlike a mortgage-backed bond, pay-through bonds link the cash flow from the collateral to the cash flow on the bonds. Due to the linking of the cash flows, principal payments on the bonds will fluctuate depending on the timing of unscheduled principal payments from the collateral.

(ii) CMO's

CMO's are multiclass pay-through bonds. CMO's can be general obligations of the issuer backed by mortgage collateral or they can be limited obligations where the bondholders can only look to the pledged collateral for payment. The cash flows generated by the collateral are linked to the cash flows of the bonds. Principal payments are made to one class at a time based upon an order of priority determined at the bond issue date.

Each bond class, or tranche, has a stated maturity date and a fixed coupon rate. After interest payments have been made, all available cash goes to repay principal on the "fastest-pay" tranche. Following retirement of the first class, the next tranche in the sequence becomes the exclusive recipient of principal payments until this class is retired. Due to principal prepayments on the collateral, the bonds may be retired substantially earlier than their final maturity date.

Many CMO issues include one or more tranches that are "accrual bonds (or "Z-bonds")." An accrual bond does not receive any cash payments of principal or interest until all tranches preceding it are retired. In effect, an accrual bond is a deferred interest obligation, resembling a zero coupon bond prior to the time when the preceding tranches are retired.

Pursuant to the authority in section 107(7)(E) of the Act, FCU's have been authorized to invest in CMO's issued by the FHLMC (the first issuer of CMO's). The authority provided by the SMMEA amendment would broaden FCU's investment authority to generally include CMO's of private issuers.

(iii) REMIC's

The Tax Reform Act of 1986 establishes and creates rules relating to REMIC's. REMIC's were authorized as a way of avoiding problems of double taxation. In general, a REMIC is a fixed pool of mortgages with multiple classes of interests held by investors. In order to qualify as a REMIC, all of the interests in the REMIC must consist of one or more classes of "regular" interests and a single class of "residual" interest. Regular interests are like the class(es) of a CMO issue. The residual interest consists of the excess interest and reinvestment earnings that exist as a result of the differential between the income flow from the underlying mortgages and the income outflow to the regular interestholders. FCU investment in residual interests is *not* authorized under the SMMEA Amendment.

Safety and Soundness Issues

Mortgage-backed securities can sustain significant changes in market value and prepayment rates as interest rates change. The credit union industry incurred substantial losses in the late 1970's and early 1980's from holding long-yielding fixed-rate mortgage-backed securities during an economic environment of high double-digit investment yields. The NCUA Board had to utilize resources of the National Credit Union Administration to assist in stabilizing the earnings position of some credit unions while the asset/liability maturity mix was restructured. More recently, rising interest rates have resulted in market losses at credit unions that have invested in mutual funds composed of long-term securities, many of which are mortgage related. The lack of market awareness and the potential risk exposure assumed by credit unions in the investment area

continue to concern the NCUA Board. Specifically, the safety and soundness issues include credit risk, interest rate risk, and liquidity risk resulting from improper asset-liability management techniques utilized by the credit unions. These various risks are described and discussed below.

Commenters are requested to focus on these issues and provide their thoughts on what steps NCUA should take to ensure that FCU's operate in a safe and sound manner. Should NCUA consider *all* mortgage-backed securities, e.g., GNMA's, FNMA's, FHLMC's, in conjunction with the action it takes to implement the SMMEA amendment? Should NCUA consider taking some form of action with respect to FNMA Strips (both principal only and interest only), in light of the extreme volatility and potential for significant losses, as evidenced by the recent $250 million loss of a well-known national securities brokerage firm?

(a) Credit Risk

By definition, mortgage-related securities are those that are rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization. As an example, Standard & Poors ("S&P") and Moody's would satisfy the national rating organization requirement. Their two highest rating categories are:

S&P—AAA or AA+, AA, and AA–
Moody—Aaa or Aa1, Aa2, and Aa3.

The rating companies do extensive, in-depth analysis of the transactions involved in a pool of mortgages backing a securities issue. Pool quality and ratings are dependent on collateral characteristics, including: lien status, type of property, occupancy status, amortization type, mortgage term, amount of seasoning or age of the mortgage, location and geographic dispersion of mortgages, size of mortgage, loan-to-value ratios, size of pool, and other factors such as mortgage default insurance, pool insurance, and degree of over-collateralization.

In light of the rating criteria that must be satisfied to receive a rating in one of the two highest categories (one of the requirements in the definition of mortgage-related security), the Board does not consider credit risk to be a major concern.

(b) Interest Rate Risk

The NCUA Board has repeatedly addressed the issue of volatility of mortgage-backed securities to changes in the prevailing interest rates. Essentially all mortgage-related securities are subject, in varying degrees, to loss in market value when interest rates rise. Some form of securities may be less volatile than others, e.g., CMO's or REMIC securities in the fastest-paying tranche with an average maturity of 1–3 years are generally less volatile than mortgage-backed bonds.

Another aspect of mortgage-related or -backed securities that is influenced by interest rates is the prepayment rate of the underlying mortgages. Prepayment rates on the underlying mortgage collateral will also impact on the value of the investment. This is particularly significant in such securities as FNMA Strips.

It has been suggested that a prudent approach to investing in interest-sensitive investments is to analyze the interest rate sensitivity with respect to its impact on the value of the investment and earnings position of the credit unions based upon various basis point shifts (e.g., a 300 basis point shift in interest rates either up or down). The NCUA Board specifically requests comments on the advisability and usefulness of such an analysis and, if advisable, whether it should be required of FCU's before making such investments.

(c) Evaluation of the Investment in Light of the FCU's Assets and Liabilities

Although mortgage-related securities and other mortgage-derivative securities, such as FNMA Strips, are extremely volatile and therefore risky, the risk to an FCU investing in these securities may be lessened somewhat depending on the makeup of the FCU's asset portfolio and its liabilities. Most of the mortgage-type securities that are currently available have been developed with savings and loan associations in mind. They have been useful in converting mortgage loans into securities (referred to as "securitizing" loans) and in providing investments for savings and loans to help manage their inherent mismatch between assets and liabilities (i.e., major portion of many S&L's assets are in long-term, fixed-rate mortgages while their deposit liabilities are short term). In general, Federal credit unions, unlike savings and loan associations, do not have such an inherent mismatch. FCU loan portfolios are typically comprised of short-term consumer loans, making a mismatch less likely. Therefore, the need of FCU's to invest in mortgage-related and mortgage-derivative securities is not the same as that of savings and loan associations.

The Board is concerned about the reasons why FCU's invest in mortgage securities. While the use of such securities to hedge against other assets and liabilities can be a legitimate use, investing in them simply because of their higher yields and their potential for capital gains can be viewed as an unsafe and unsound practice. Even though NCUA has sent out several letters to all federally-insured credit unions in the past two years warning of the pitfalls of reaching for high-yield, long-term investments, particularly in GNMA mutual funds, many FCU's had ignored the warnings and plunged head first into these investments. With the rise in interest rates over the last few months, these credit unions have sustained significant markdowns in their investments which have impacted on their ability to pay dividends and, in other instances, have rendered the credit union insolvent.

The legislative history of SMMEA provides insight as to Congress' view of such investments. In discussing the final version of the SMMEA amendment to the FCU Act, the House Committee stated:

> A proposed requirement that mortgage related securities have a $250,000 aggregate purchase price was deleted by the Committee from the definition of mortgage related securities. The Committee was persuaded that the protection provided by registration and disclosure made it unnecessary. On the other hand, the Committee was of the view that small banks, thrifts and credit unions lacking in financial expertise should be provided additional protection against risky purchases. *Accordingly, section 105 of the bill requires the appropriate regulators to consider this question and provide regulations where necessary governing the size and denomination of the purchases that are authorized. In this way, the bill endeavors to protect the liquidity of less financially sophisticated institutions on whom many of our citizens rely for the protection of their savings.* (Emphasis added.)

H.R. Rep. No. 994, 98th Cong., 2d Sess. at 13 (1984).

In S. Rep. No. 293, 98th Cong., 1st Sess. at 6 (1983), the Senate Committee, in commenting on Section 102 of the Secondary Mortgage Market Enhancement Act of 1983, the precursor to SMMEA section 105, noted that:

> Section 102 liberalizes existing statutory restrictions imposed on federally chartered financial institutions affecting their ability to invest in mortgage-backed securities. *Such restrictions would be lifted save for limitations imposed by their respective federal regulators.*
>
> . . . Likewise, the Federal Credit Union Act is amended to allow federal credit unions to invest in mortgage-backed securities for the first time, *again as regulated by the National Credit Union Administration.*

* * * * *

... Mortgage-backed securities are not inherently risky investments. They are backed by a pool of many mortgages with relatively low default risk as well as mortgage insurance on both the individual mortgages and the pool. Moreover, as is the case under existing law, *institutions are subject to continuous scrutiny of their regulators who require prudence and good business judgment in the management of investment accounts* .... [Emphasis added.]

The Board solicits public comments on the extent of regulation, if any, that should be promulgated governing the size and denomination of the securities purchased pursuant to section 107(15)(B) of the FCU Act.

(d) Liquidity

As seen from the above legislative history of SMMEA, Congress was concerned about the effect of investment in mortgage-related securities on the liquidity of financial institutions such as credit unions. Interest rate volatility can cause these securities to decline in value and become "underwater securities." If liquidity needs require the sale of these securities during periods of increased interest rates, they would have to be sold at the loss.

Since many of the mortgage-related securities and derivative securities such as CMO's, REMIC's, and FNMA Strips are relatively new to the marketplace, there is limited information available relative to prepayment histories on the underlying mortgages of these securities. There is no formalized existing secondary market for the sale or purchase of these securities. It is our understanding that information concerning price-to-yield calculations based on prepayment histories is becoming available, for example by the Public Securities Association ("PSA") to subscribers of their service. PSA has established a CMO data base of securities that are part of initial offerings over $25 million. However, overall, there is limited availability to information and no formalized secondary market.

In light of the potential for liquidity problems, comment is sought on what actions (e.g., regulation, IRPS, letter to credit unions) NCUA should take to address this issue.

By the National Credit Union Administration Board on July 15, 1987.

Becky Baker,

Secretary of the Board.

[FR Doc. 87-16938 Filed 7-24-87; 8:45 am]

BILLING CODE 7535-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 200

Assessment or Waiver of Interest, Penalties, and Administrative Costs With Respect to the Collection of Certain Debts

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to revise section 200.7 of its regulations to provide for the asessment of interest, penalties, and administrative costs with respect to the collection of certain debts, as authorized by the Debt Collection Act of 1982, in connection with the collection of certain debts arising from erroneous benefit payments under the several Acts administered by the Board. The Debt Collection Act of 1982 requires the Board to charge interest on claims for money owed the Board, to assess penalties on delinquent debts, and to assess charges to cover the costs of processing claims for delinquent debts. This revision sets forth the circumstances under which the Board may assess interest, penalties, and charges which arise from benefit or annuity overpayments made under any of the Acts which the Board administers.

DATE: Comments must be submitted on or before September 25, 1987.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Stanley Jay Shuman, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4568 (FTS 386-4568).

SUPPLEMENTARY INFORMATION: Section 11 of the Debt Collection Act of 1982 (Pub. L. 97-265) amended section 3(e) of the Federal Claims Collection Act of 1966, which was revised and recodified at 31 U.S.C. 3717 (Pub. L. 97-452, § 1(16)(A), Jan. 12, 1983, 96 Stat. 2472), to provide that the head of an agency shall charge interest on claims owed the agency, assess penalties on delinquent debts, and assess charges to cover the costs of processing claims for delinquent debts. The revised § 200.7 implements the provisions of 31 U.S.C. 3717 relating to assessment of interest, penalties, and administrative costs by establishing criteria therefor in conformity with the standards adopted by the Attorney General and the Comptroller General as set forth in 4 CFR 102.13.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no Regulatory Impact Analysis is required. In addition, this rule does not impose any information collections within the meaning of the Paperwork Reduction Act.

List of Subjects in 20 CFR Part 200

Claims, Debt collection, Employee benefit plans, Railroad employees, Railroad retirement, Railroad unemployment insurance.

Title 20 CFR, Chapter II, is proposed to be amended as follows:

1. The table of contents for Title 20, Chapter II, Subchapter A, Part 200, is proposed to be amended by removing "200. Waiver of interest, penalties, and collection costs with respect to certain debts." and inserting in lieu thereof "200. Assessment or waiver of interest, penalties, and administrative costs with respect to collection of certain debts."

2. The authority citation for 20 CFR Part 200 is revised to read as follows and the authority stations following the sections are removed:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362. § 200 also issued under 31 U.S.C. 3717.
§ 200.4 also issued under 5 U.S.C. 552.
§ 200.5 also issued under 5 U.S.C. 552a.
§ 200.6 also issued under 5 U.S.C. 552b.

3. Title 20 CFR 200 is proposed to be revised to read as follows:

§ 200.7 Assessment or waiver of interest, penalties, and administrative costs with respect to collection of certain debts.

(a) *Purpose.* The Debt Collection Act of 1982 requires the Board to charge interest on claims for money owed the Board, to assess penalties on delinquent debts, and to assess charges to cover the costs of processing claims for delinquent debts. The Act permits, and in certain cases requires, an agency to waive the collection of interest, penalties and charges under circumstances which comply with standards enunciated jointly by the Comptroller General and the Attorney General. Those standards are contained in 4 CFR 102.13. This section contains the circumstances under which the Board may either assess or waive interest, penalties, and administrative costs which arise from benefit or annuity overpayments made under any of the Acts which the Board administers.

(b) (1) Simple interest shall be assessed once a month on the unpaid principal of a debt.

(2) Interest shall accrue from the date on which notice of the debt and demand for repayment with interest is first mailed or hand-delivered to the debtor, or in the case of a debt which is subject to section 10(c) of the Railroad Retirement Act or section 2(d) of the

Railroad Unemployment Insurance Act, interest shall accrue from the date that a denial of waiver of recovery is mailed or hand-delivered to the debtor or, if waiver has not been requested, upon the expiration of the time within which to request waiver, except as otherwise specified in this section.

(3) The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury (*ie.*, the Treasury tax and loan account rate) as prescribed and published in the Federal Register and the Treasury Financial Manual Bulletins annually or quarterly, in accordance with 31 U.S.C. 3717.

(4) The rate of interest as initially assessed shall remain fixed for the duration of the indebtedness, except that where a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement, a new interest rate may be assessed.

(c)(1) A penalty charge of 6 percent per year shall be assessed on any debt that is delinquent for more than 90 days.

(2) The penalty charge shall accrue from the date on which the debt became delinquent.

(3) A debt is delinquent if it has not been paid in full by the 30th day after the date on which the initial demand letter was first mailed or hand-delivered, or, if the debt is being repaid under an installment payment agreement, at any time after the debtor fails to satisfy his or her obligation for payment thereunder.

(d)(1) Charges shall be assessed against the debtor for administrative costs incurred as a result of processing and handling the debt because it became delinquent.

(2) Administrative costs include costs incurred in obtaining a credit report and in using a private debt collector.

(e) When a debt is paid in partial or installment payments, amounts received shall be applied first to outstanding penalty and administrative cost charges, second to accrued interest, and third to outstanding principal. Where a debtor is in default under an installment repayment agreement, uncollected interest, penalties and administrative cost charges which have accrued under the agreement shall be added to the principal to be paid under any new installment repayment agreement entered into between the Board and the debtor.

(f) *Exemptions.* The assessment of interest, penalties, and administrative costs under this section does not apply to debts under sections 2(f) and 8(g) of the Railroad Unemployment Insurance Act (45 U.S.C. 352(f) and 358(g)).

(g)(1) The Board shall waive the collection of interest under the following circumstances:

(i) When the debt is paid within thirty days after the date on which notice of the debt was mailed or personally delivered to the debtor,

(ii) When, in any case where a decision with respect to waiver of recovery of an overpayment must be made:

(A) The debt is paid within thirty days after the end of the period within which the debtor may request waiver of recovery, if no request for waiver is received within the prescribed time period; or

(B) The debt is paid within thirty days after the date on which notice was mailed to the debtor that his or her request for waiver of recovery has been wholly or partially denied if the debtor requested waiver of recovery within the prescribed time limit; however, regardless of when the debt is paid, no interest may be charged for any period prior to the end of the period within which the debtor may request waiver of recovery or, if such request is made, for any period prior to the date on which notice was mailed to the debtor that his or her request for waiver or recovery has been wholly or partially denied;

(iii) When, in the situations described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section, the debt is paid within any extension of the thirty-day period granted by the Board;

(iv) With respect to any portion of the debt which is paid within the time limits described in paragraphs (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this section; or

(v) In regard to any debt the recovery of which is waived.

(2) The Board may waive the collection of interest, penalties and administrative costs in whole or in part in the following circumstances:

(i) Where, in the judgment of the Board, collecting interest, penalty and administrative costs would be against equity and good conscience; or

(ii) Where, in the judgment of the Board, collecting interest, penalty and administrative costs would not be in the best interest of the United States.

(h)(1) In making determinations as to when the collection of interest, penalty and administrative costs is against equity and good conscience the Board will consider evidence on the following factors:

(i) The fault of the overpaid individual in causing the underlying overpayment; and

(ii) Whether the overpaid individual in reliance on the incorrect payment relinquished a valuable right or changed his or her position for the worse.

(2) In rendering a determination as to when the collection of interest, penalties and administrative costs is not in the best interest of the United States the Board will consider the following factors:

(i) Whether the collection of interest, penalties and administrative costs would result in the debt never being repaid; and

(ii) Whether the collection of interest, penalties and administrative costs would cause undue hardship.

Dated: July 20, 1987.
By Authority of the Board.
Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 87-16928 Filed 7-24-87; 8:45 am]
BILLING CODE 7905-01-M

ARMS CONTROL AND DISARMAMENT AGENCY

22 CFR Parts 602 and 603

Freedom of Information Reform Act of 1986; Revision of Fees, Fee Waiver Policy, and the Law Enforcement Exemption

AGENCY: Arms Control and Disarmament Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) regarding fees, fee waivers, and law enforcement records and information. It revises the general fee schedule applicable to all requests under the FOIA, Privacy Act, and Executive Order 12356 as provided in Parts 602 and 603.

DATE: Comments must be received on or before August 26, 1987.

ADDRESS: Comments may be mailed to Frederick Smith, Jr., Information/Privacy Office, Room 5731, U.S. Arms Control and Disarmament Agency, 320 21st Street, NW., Washington, DC 20451.

FOR FURTHER INFORMATION CONTACT: Frederick Smith, Jr., Information/Privacy Office, (202) 647-3442.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) amended the Freedom of Information Act (5 U.S.C. 552) by modifying the terms of exemption 7 and by supplying new provisions relating to the charging and waiving of fees. The Reform Act specifically requires the Office of Management and Budget to develop and issue a schedule of fees and guidelines, pursuant to notice and comment, which

OMB did on January 16, 1987. OMB issued the final publication of fee schedule and guidelines implementing certain provisions of the Reform Act on March 27, 1987 (52 FR 10012). In addition to the OMB guidelines, the Department of Justice provided agencies with advisory fee waiver policy guidance regarding the Reform Act. The amendments to 22 CFR Part 602 conform with both the OMB and Justice guidance, as well as the amended language of exemption 7 pertaining to law enforcement records.

List of Subjects

22 CFR Part 602

Freedom of information.

22 CFR Part 603

Privacy.

The portions of Title 22, Chapter VI, Parts 602 and 603 proposed to be amended are set forth below:

PART 602—[AMENDED]

1. The authority citation for 22 CFR Part 602 continues to read as follows:

Authority: Sec.1, 81 Stat. 54, as amended by sec. 1, 88 Stat. 1561 (5 U.S.C. 552); sec. 41, 75 Stat. 635, (22 U.S.C. 2581); and sec. 501, 65 Stat. 290, (31 U.S.C. 483a).

2. Section 602.20 is revised to read as follows:

§ 602.20 Fees for records search, review, copying, certification, and related services.

The fees for search, review and copying services for Agency records under the Freedom of Information Act or the Privacy Act are as follows:

(a) When documents are requested for commercial use, requesters will be assessed the full direct costs of searching for, reviewing for release, and duplicating the records sought. A "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.

(b) Requesters from educational and noncommercial scientific institutions will be assessed only the cost of reproduction. 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 of scholarly research. The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. They must show that their request is authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but, instead, are in furtherance of scholarly or scientific research.

(c) Requesters who are representatives of the news media (persons actively gathering news for an entity that is organized and operated to publish or broadcast news to the public) will be assessed only for the cost of reproduction if they can show that their request is not made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered a request for a commercial use.

(d) All other requesters will be assessed fees which recover the full and reasonable direct cost of searching for and reproducing records that are responsive to the request.

(e) Requesters from educational and noncommercial scientific institutions, representatives of the news media, and all other noncommercial users, will not be assessed for the first 100 pages of reproduction or the first two hours of search time. Commercial use requesters will not be entitled to these free services. All requesters must reasonably describe the records sought.

(f) The search and review hourly fees will be based upon employee grade levels in order to recoup the full, allowable direct costs attributable to their performance of these functions.

(g) The fee for paper copy reproduction will be $.20 per page.

(h) The fee for duplication of computer tape or printout reproduction or other reproduction (e.g., microfiche) will be the actual cost, including operator time.

(i) If the cost of collecting any fee would be equal to or greater than the fee itself, it will not be assessed.

(j) A fee may be charged for searches that are not productive and for searches for records or those parts of records which subsequently are determined to be exempt from disclosure.

(k) Interest charges may be assessed on any unpaid bill starting on the 31st day following the day on which the billing was sent, at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of billing. The Debt Collection Act, including disclosure to consumer reporting agencies and the use of collection agencies, will be utilized to encourage payment where appropriate.

(l) If search charges are likely to exceed $25, the requester will be notified of the estimated fees unless requester willingness to pay whatever fee is assessed has been provided in advance.

(m) An advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed $250. Requesters who have previously failed to pay a fee in a timely fashion (i.e. within 30 days of the date of billing) may be required to pay this amount plus any applicable interest (or demonstrate that the fee has been paid) and then make an advance payment of the full amount of the estimated fee before the new or pending request is processed.

3. Section 602.21 is added to read as follows:

§ 602.21 Waiver or reduction of fees.

Documents shall be furnished without any charge or at a charge reduced below the fees set forth above 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. The following six factors will be employed in determining when such fees shall be waived or reduced:

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

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

(c) The contribution to an understanding of the subject by the general public likely to result from disclosure: whether disclosure of the information will contribute to the "public understanding";

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

(e) 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

(f) 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."

§ 602.22 [Removed and reserved]

4. Section 602.22 is removed and reserved.

5. Section 602.31(g) is revised to read as follows:

§ 602.31 Exemptions.

* * * * *

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (i) could reasonably be expected to interfere with enforcement proceedings; (ii) would deprive a person of a right to a fair trial or impartial adjudication; (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (iv) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement investigation, information furnished by a confidential source; (v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (vi) could reasonably be expected to endanger the life or physical safety of any individual.

PART 603—[AMENDED]

6. The authority citation for 22 CFR Part 603 continues to read as follows:

Authority: 75 U.S.C. 301; 5 U.S.C. 552a; 5 U.S.C. 553; 22 U.S.C. 2581; and 31 U.S.C. 483a.

§ 603.5 [Amended]

7. Section 603.5(c)(3)(iii) is removed.

8. Section 603.10 is added to read as follows:

§ 603.10 Fees.

Fees to be charged in responding to requests under the Privacy Act shall be, to the extent permitted by paragraph (f)(5) of the Act, the rates established in Title 22 CFR 602.20 for responding to requests under the Freedom of Information Act.

Dated: July 15, 1987.

William J. Montgomery,

Administrative Director.

[FR Doc. 87-16925 Filed 7-24-87; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

Statement of Procedural Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations, amending the Statement of Procedural Rules (SPR). The SPR sets forth the procedural rules of the Internal Revenue Service for all taxes administered by the Service as well as certian rules that apply to the Bureau of Alcohol, Tobacco and Firearms. These amendments update the SPR and make certain changes in the Service's procedure, including changes necessitated by recent legislation, to conform to changes in corresponding Department of the Treasury regulations, and to update organizational titles and addresses.

DATES: Written comments must be delivered or mailed by August 6, 1987. These regulations are proposed to be effective 30 days after publication of the final regulations.

ADDRESS: Send comments to: Commissioner of Internal Revenue, Attention: CC:D, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Margo Stevens of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attn: CC:D. Telephone 202-566-3074 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations to amend the SPR (26 CFR 601.702), issued under the authority contained in 5 U.S.C. 301 and 552. The principal amendments update the SPR to reflect changes in the fee and fee waiver provisions of the Freedom of Information Act, as enacted by the Freedom of Information Reform Act of 1986 (Pub. L. 99-570). Some amendments update the SPR to reflect changes in nomenclature and to eliminate references to a particular gender. The Disclosure Operations Division is now the Office of Disclosure. The Civil Service Commission is now the Special Counsel. The Director, Foreign Operations District, is now the Assistant Commissioner (International). The SPR is also updated to reflect changes of addresses to be contacted for Freedom of Information requests. The other amendments are described in the order of the sections of the SPR being amended.

An editorial amendment is made to paragraphs (a)(1), (b)(1), and (c)(1) to change "paragraph (b) of § 601.701" to "paragraph (b)(1) of § 601.701."

An amendment is made to paragraphs (a)(1) and (c)(3)(v) to change "Internal Revenue Code of 1954" to "Internal Revenue Code of 1986."

Paragraph (b)(2), relating to deletion of identifying details, is amended to substitute section 6103 of the Internal Revenue Code as a statutory provision for disclosure in lieu of section 7213.

Paragraph (c)(2), relating to requests for records not in control of the Internal Revenue Service, is amended to conform to corresponding Department of the Treasury regulations.

Paragraph (c)(4) is amended to conform to IRC 6103(e)(1)(D) of the Internal Revenue Code; to enable the president or chief executive officer of a corporation to gain access to records without supplying additional proof of authority; to enable other officers or employees of a corporation to gain access to records with an appropriate certification of authority; to enable other persons to gain access to records with a board of directors' resolution of authority.

Paragraph (c)(11) is amended to eliminate the reference to 5 U.S.C. 552(a)(4)(D), relating to expedited judicial proceedings under the Freedom of Information Act, which was eliminated by the Federal Courts Civil Priorities Act (Pub. L. 98-620) in 1984.

Paragraph (c)(12) is redesignated (c)(13); and new paragraph (c)(12) is inserted to conform to corresponding Department of the Treasury regulations.

Paragraphs (d)(1), (3), and (4) are amended to reflect the requirement for a written request prior to public inspection of tax returns, return information and applications for tax exempt status, and to update certain cross references.

Paragraph (d)(2) is amended to clarify the records relating to seizure and sale of real estate that are open to public inspection.

Paragraph (d)(5) is redesignated (d)(8) and is amended to conform to IRC 6103(k)(1), which authorizes full disclosure of accepted offers in compromise, notwithstanding the confidentiality requirements of 18 U.S.C. 1905, relating to trade secrets, processes, operations, styles of work, etc.

Paragraph (d)(8) is redesignated (d)(5) and to update certain cross references.

Paragraph (f) is amended to reflect changes necessitated by the Freedom of Information Reform Act (Pub. L. 99-570).

Other changes and additions necessitated by the Freedom of Information Reform Act may be found in paragraphs (c)(4)(viii) and (ix); (c)(5)(i), (c)(6), and (c)(7)(ii).

Paragraph (g) is amended to reflect changes in nomenclature and addresses and to clarify that Regional and District Counsel records are under the jurisdiction of the Regional Commissioner and District Director, respectively.

Special Analyses

The Commissioner of Internal Revenue has determined that this rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although procedural rules do not normally require notices of proposed rulemaking pursuant to 5 U.S.C. 553, the Freedom of Information Reform Act required agencies to promulgate these regulations pursuant to notice and comment.

Drafting Information

The principal author of this proposed rulemaking of amendments to the Statement of Procedural Rules is Margo Stevens of the Disclosure Litigation Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service participated in developing the amendments, both on matters of substance and style.

List of Subjects in 26 CFR Part 601

Administrative practice and procedure, Aged, Alcohol and alcoholic beverages, Arms and munitions, Cigars and cigarettes, Claims, Freedom of information, Taxes.

Adoption of Amendments to Statement of Procedural Rules

Accordingly, 26 CFR Part 601 is amended as follows:

Paragraph 1. The authority citation for Part 601 continues to read as follows:

Authority: 5 U.S.C. 301 and 552.

§ 601.702 [Amended]

Par. 2. Section 601.702(a)(1) is amended as follows:

1. In the first sentence, the language "paragraph (b) of § 601.701" is removed and the language "paragraph (b)(1) of § 601.701" is added in its place.

2. In the flush material immediately following (v), the language "Internal Revenue Code of 1954" is removed and the language "Internal Revenue Code of 1986" is added in its place.

Par. 3. Section 601.702(b)(1) is amended by removing from the first sentence the language "paragraph (b) of § 601.701" and adding the language "paragraph (b)(1) of § 601.702" in its place.

Par. 4. Section 601.702(b)(2) is amended by removing from the last sentence the language "7213, dealing with disclosure of information obtained from members of the public." and adding the language "6103 of the Internal Revenue Code." in its place.

Par. 5. Section 601.702(b)(3) is amended as follows:

1. (ii) is revised to read as set forth below.

2. In (iii), the language "paragraph (f)(4)" is removed and the language "paragraph (f)(5)(iii)" is added in its place.

3. The first sentence of (iv) is revised to read as set forth below.

(b) * * *

(3) *Public reading rooms*— * * *

(ii) *Addresses of public reading rooms.* The addresses of the reading rooms are as follows:

National Office

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

Location: same as mailing address.

North Atlantic Region

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 120 Church Street, 11th Floor, New York, New York 10007.

Location: same as mailing address.

Mid-Atlantic Region

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 600 Arch Street, Philadelphia, Pa. 19105. Location: same as mailing address.

Southeast Region

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 275 Peachtree Street, NE., Room 342, Atlanta, Ga. 30043.

Location: same as mailing address.

Midwest Region

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 230 Dearborn Street, Room 1980, Chicago, Ill. 60604.

Location: same as mailing address.

Central Region

Mailing address: Freedom of Information Reading Room, Internal Revenue Srvice, 201 W. Fourth Street, Covington, Ky. 41019.

Location: same as mailing address.

Southwest Region

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 1100 Commerce Street, Room 11B15, Dallas, Texas 75242.

Location: same as mailing address.

Western Region

Mailing address: Freedom of Information Reading Room, Internal Revenue Service, 450 Golden Gate Avenue, Room 2307, San Francisco, Ca. 94102.

Location: same as mailing address.

(iv) *Inability to use public reading rooms.* If persons are unable or unwilling to visit a reading room in person but wish to inspect identifiable reading room material, they may request permission to inspect such material at any office of the Internal Revenue Service. * * *

* * * * *

Par. 6. Section 601.702(c)(1) is amended by removing from the first sentence the language "paragraph (b) of § 601.701" and adding the language "paragraph (b)(1) of § 601.701" in its place.

Par. 7 Section 601.702(c)(2) is amended as follows:

1. In (i), the third sentence, the language "31 CFR Part 1.5 (g) and (h)" is removed and the language "31 CFR Part 1.5 (g), (h), and (i)" is added in its place.

2. (ii) is revised to read as set forth below.

3. A new (iii) is added immediately following (ii) to read as set forth below.

* * * * *

(C) * * *

(2) *Requests for records not in control of the Internal Revenue Service.* * * *

(ii) Where the record requested was created by another agency or Department of the Treasury constituent unit (*i.e.*, in its control) and a copy thereof is in the possession of the Internal Revenue Service, the Internal Revenue Service official to whom the request is delivered shall refer the request to the agency or constituent unit which originated the record for direct reply to the requester. The requester shall be informed of such referral. This referral shall not be considered a denial of access within the meaning of these regulations. However, where the record is determined to be exempt from disclosure under 5 U.S.C. 552, the referral need not be made, but the Internal Revenue Service shall inform the originating agency or constituent unit of its determination. Where notifying the requester of its referral may cause a harm to the originating agency or constitutent unit which would enable the originating agency or constituent unit to withhold the record under 5 U.S.C. 552, then such referral need not be made. In both of these circumstances, the Internal Revenue Service official to whom the request is delivered shall process the request in

accordance with the procedures set forth in this subpart.

(iii) When a request is received for a record created by the Internal Revenue Service (*i.e.*, in its possession and control) that includes information originated by another agency or Department of the Treasury constituent unit, the record shall be referred to the originating agency or constituent unit for review, coordination, and concurrence. The Internal Revenue Service official to whom the request is delivered shall not issue its determination with respect to that record without prior consultation with the originating agency or constituent unit.

* * * * *

Par. 8. Section 601.702(c)(3) is amended as follows:

1. In (v), the language "sections 6103 and 7213 of the Internal Revenue Code of 1954" is removed and the language "section 6103 of the Internal Revenue Code of 1986" is added in its place.

2. In (vii), the final "and" is removed.

3. In (viii), "." is removed at the end and ", and" is added in its place.

4. A new (ix) is added to read as set forth below.

5. The flush language is revised to read as set forth below.

* * * * *

(c) * * *

(3) *Form of request.* * * *

(ix) Identify the category of the requester and state how the records will be used, as required by paragraph (f)(3) of this section.

Where the initial requests, rather than stating a firm agreement to pay the fees ultimately determined in accordance with paragraph (f) of this section, place an upper limit on the amount the requesters agree to pay, which upper limit is deemed likely to be lower than the fees estimated to ultimately be due, or where the requesters ask for an estimate of the fees to be charged, the requesters shall be promptly advised of the estimate of fees and asked to agree to pay such amount. Where the initial requests include a request for reduction or waiver of fees, the Internal Revenue Service officials responsible for the control of the requested records (or their delegates) will determine whether to grant the requests for reduction or waiver in accordance with paragraph (f) of this section and notify the requesters of their decisions and, if their decisions result in the requesters being liable for all or part of the fees normally due, ask the requesters to agree to pay the amounts so determined. The requirements of this subparagraph will not be deemed met until the requesters have explicitly agreed to pay the fees applicable to their requests for records, if any, or have made payment in advance of the fees estimated to be due. In addition, requesters are advised that only requests for records which fully comply with the requirements of this subparagraph can be processed in accordance with this section. Requesters will be promptly notified in writing of any requirements which have not been met or any additional requirements to be met. However, every effort will be made to comply with the requests as written.

* * * * *

Par. 9. Section 601.702(c)(4) is amended as follows:

1. In (i) (A), the second and fourth sentences are revised to read as set forth below.

2. In (i) (B), first sentence, the language "601.701(b)" is removed and the language "601.701(b)(1)" is added in its place.

3. (ii) is revised to read as set forth below.

(C) * * *

* * * * *

(4) *Reasonable description of records; identity and right of the requester.* (1) (A) * * * While no specific formula for a reasonable description of a record can be established, the requirement will generally be satisfied if the requester gives the name, subject matter, location, and years at issue, of the requested records. If the request seeks records pertaining to pending litigation, the request should indicate the title of the case, the court in which the case was filed, and the nature of the case. * * * Where the requester does not reasonably describe the records being sought, the requester shall be afforded an opportunity to refine the request. * * *

* * * * *

(ii) In the case of records containing information with respect to particular persons the disclosure of which is limited by statute or regulations, persons making requests shall establish their identity and right to access to such records. Persons requesting access to such records which pertain to themselves may establish their identity by—

(A) The presentation of a single document bearing a photograph (such as a passport or identification badge), or the presentation of two items of identification which do not bear a photograph but do bear both a name and signature (such as a driver's license or credit card), in the case of a request made in person,

(B) The submission of the requester's signature, address, and one other identifier (such as a photocopy of a driver's license) bearing the requester's signature, in the case of a request by mail, or

(C) The presentation in person or the submission by mail of a notarized statement swearing to or affirming such person's identity.

Additional proof of persons' identity shall be required before the request will be deemed to have met the requirement of paragraph (c)(3)(v) of this section if it is determined that additional proof is necessary to protect against unauthorized disclosure of information in a particular case. Persons who have identified themselves to the satisfaction of Internal Revenue Service officials pursuant to this subdivision shall be deemed to have established their right to access records pertaining to themselves. Persons requesting records on behalf of or pertaining to another person must provide adequate proof of the legal relationship under which they assert the right to access the requested records before the requirement of paragraph (c)(3)(v) of this section will be deemed met. In the case of an attorney-in-fact, the requester shall furnish an original of a properly executed power of attorney together with one other identifier bearing the signature of the person executing such power of attorney. In the case of a corporation, if the requester has the authority to legally bind the corporation under applicable state law, such as its president or chief executive officer, then a written statement that the person making the request on behalf of the corporation, on corporate letterhead, shall be sufficient. If the requester is an officer or an employee of a corporation, then such person shall furnish a certification by one of the corporation's officers (other than the requester) that the person making the request on behalf of the corporation is properly authorized to make such request. If the requester is other than one of the above, then such person shall furnish a resolution by the corporation's board of directors providing that the person making the request on behalf of the corporation is properly authorized to make such a request. A person requesting access to records of a one-man corporation or a partnership shall provide a notarized statement that the requester is in fact an officer or official of the corporation or a member of the partnership.

Par. 10. Section 601.702 (c) (5) is amended as follows:

1. In the first sentence of the introductory text, the language "official responsible for the control of the records requested (or his delegate)" is removed

and the language "officials responsible for the control of the records requested (or their delegates)" is added in its place.

2. In (i), the language "search and duplication" is removed and the language "search, duplication, and review" is added in its place.

3. In the flush material following (iii), the language "he may expect a response" is removed and the language "a response may be expected" is added in its place.

Par. 11. Section 601.702 (c) (6) is amended by adding the following two, new sentences between the first and second sentences:

* * * * *

(C) * * *

(6) *Search for records requested.* * * * Search time includes any and all time spent looking for material responsive to the request, including page-by-page or line-by-line identification of material within records. However, where duplication of an entire records would be less costly than a line-by-line identification, duplication should be substituted for this kind of search. * * *

* * * * *

Par. 12. Section 601.702 (c) (7) is amended by revising (i), (ii), and (iv) to read as follows:

* * * * *

(C) * * *

(7) *Initial determination*—(1) *In general.* The Director of the Office of Disclosure or his/her delegate shall have the authority to make initial determinations with respect to all requests for records of the Internal Revenue Service. With the exception of records which are controlled by the Assistant Commissioner (Inspection), the Director of the Internal Revenue Service Data Center, the Assistant Commissioner (International), or the Director of Practice, the Director of the Office of Disclosure or his/her delegate shall have the sole authority to make such determinations with respect to records controlled by the National Office. Except where the Director of the Office of Disclosure or his/her delegate has such sole authority, the initial determination as to whether to grant the request for records may be made either by the Director of the Office of Disclosure or by the Internal Revenue Service officials responsible for the control of the records requested or their delegates (see paragraph (g) of this section), including those officials mentioned in the preceding sentence. The initial determination will be made and notification thereof mailed within 10 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (c) (5) of this section or the requester otherwise agrees to an extension of the 10-day time limitation.

(ii) *Granting of request.* If it is determined that the request is to be granted, and if the person making the request desires a copy of the requested records, a statement of fees, if any, in accordance with paragraph (f) of this section, will be mailed to the requester, requesting such payment prior to release of the records determined to be available. Upon receipt of such fees, the Internal Revenue Service official responsible for the control of the records (or his/her delegate) will promptly mail such copies to the requester, with any explanation of the deletions or withholdings, as applicable. However, if no fees are due, then a copy of the available records will be promptly mailed to the requester. In the case of a request for inspection, the requester will be notified in writing of the determination, when and where the requested records may be inspected and of the fees involved in complying with the request for inspection of records shall be submitted prior to making the records available for inspection. The records will promptly be made available for inspection, at the time and place stated, normally at the appropriate office where the records requested are controlled. However, if the person making the request has expressed a desire to inspect the records at another office of the Internal Revenue Service, every reasonable effort will be made to comply with the request. Records will be made available for inspection at such reasonable and proper times as not to interfere with their use by the Internal Revenue Service or to exclude other persons from making inspections. In addition, reasonable limitations may be placed on the number of records which may be inspected by a person on any given date. The person making the request will not be allowed to remove the records from the office where inspection is made. If, after making inspection, the person making the request desires copies of all or a portion of the requested records, copies will be furnished upon payment of the established fees prescribed by paragraph (f) of this section.

* * * * *

(iv) *Inability to locate and evaluate within time limits.* Where the records requested cannot be located and evaluated within the initial 10-day period or any extension thereof in accordance with paragraph (c) (9) of this section, the search for the records or evaluation will continue, but the requesters will be so notified, advised that they may consider such notification a denial of their requests for records, and provided with the address to which an administrative appeal may be delivered. However, the requesters may also be invited, in the alternative, to agree to a voluntary extension of time in which to locate and evaluate the records. Such voluntary extension of time will not constitute a waiver of the requesters' right to appeal any denial of access ultimately made or their right to appeal in the event of failure to comply with the time extension granted.

* * * * *

Par. 13. Section 601.702 (c) (8) is amended as follows:

1. (v) is revised to read as set forth below.

2. In the flush material following (vi), the language "Commissioner or his delegate" is removed from the second sentence and the language "Commissioner or his/her delegate" is added in its place; and the word "appellant" is removed from the fifth sentence and the word "requester" is added in its place.

* * * * *

(C) * * *

(8) *Administrative appeal.* * * *

(v) Specify the date of the request, and the office to which the request was submitted and, where possible, enclose a copy of the initial request and the initial determination being appealed, and

* * * * *

Par. 14. Section 601.702 (c) (9) is amended as follows:

1. In (i)(B), the language "or related requests" is added following "single request," and before "or".

2. In (i)(C), the language "Disclosure Operations Division" is removed and the language "Office of Disclosure" is added in its place.

Par. 15. Section 601.702(c)(10) is revised to read as follows:

* * * * *

(c) * * *

(10) *Failure to comply.* If the Internal Revenue Service fails to comply with the time limitations specified in paragraphs (c) (7), (8), or (9)(i) of this section, any persons making requests for records satisfying the requirements of subdivisions (i) through (ix) of paragraph (c)(3) of this section, shall be deemed to have exhausted their administrative remedies with respect to such requests. Accordingly, these persons may initiate suit in accordance with paragraph (c)(11) of this section.

Par. 16. Section 601.702(c)(11) is revised to read as follows:

(c) * * *

(11) *Judicial review.* If a request for records is denied upon appeal pursuant to paragraph (c)(8) of this section, or if no determination is made within the 10-day or 20-day periods specified in paragraphs (c) (7) and (8) of this section, or the period of any extension pursuant to paragraph (c)(9)(i) of this section, or by grant of the requester, respectively, the person making the request may commence an action is a U.S. district court in the district in which the requester resides, in which the requester's principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C 552(a)(4)(B). The statute authorizes an action only against the agency. With respect to records of the Internal Revenue Service, the agency is the Internal Revenue Service, not an officer or an employee thereof. Service of process in such an action shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C App.) applicable to actions against an agency of the United States. Delivery of process upon the Internal Revenue Service must be directed to the Commissioner of Internal Revenue, Attention: CC:GLS, 1111 Constitution Avenue, NW., Washington, DC 20224. The Internal Revenue Service will serve an answer or otherwise plead to any complaint made under this paragraph within 30 days after service upon it, unless the court otherwise directs for good cause shown. The district court will determine the matter *de novo*, and may examine the contents of the Internal Revenue Service records in question in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions described in paragraph (b)(1) of § 601.701. The burden will be upon the Internal Revenue Service to sustain its action in not making the requested records available. The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred by the person making the request in any case in which the complainant has substantially prevailed.

* * * * *

Par. 17. Section 601.702(c)(12) is amended as follows:

1. The language "Civil Service Commission" is removed from the first and third sentences and the word "Commission" is removed from the second sentence, and the language "Special Counsel" is added in each such place.

2. The language "his representative" is removed at the end of the second sentence and the language "his/her representative" is added in its place.

3. Paragraph (12) is redesignated paragraph (13).

4. A new paragraph (12) is added to read as follows:

* * * * *

(c) * * *

(12) *Preservation of records.* All correspondence relating to the requests received by the Internal Revenue Service under this chapter, and all records processed pursuant to such requests, shall be preserved, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code. Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under 5 U.S.C. 552.

* * * * *

Par. 18. Section 601.702(d)(1) is amended by adding the following sentence at the end of the paragraph:

* * * * *

(d) *Rules for disclosure of certain specified matters*—(1) *Inspection of tax returns and return information.* * * * Written requests for this information shall be made in accordance with Rev. Proc. 66–3, as modified by Rev. Proc. 84–71, 1984–2 C.B. 735 and Rev. Proc. 85–56, 1985–2 C.B. 739.

* * * * *

Par. 19. Section 601.702(d)(2) is amended as follows:

1. The language "Part 2," is added following "Record 21,".

2. The following sentence is added at the end of the paragraph.

(d) * * *

(2) *Record of seizure and sale of real estate.* * * * However, Record 21 does no list real estate seized for forfeiture under the internal revenue laws (see IRC 7302).

* * * * *

Par. 20. Section 601.702(d)(3) is revised to read as follows:

(d) * * *

(3) *Information returns of certain tax-exempt organizations and certain trusts.* Information furnished on Form 990, Form 1041-A, and on the annual report by private foundations pursuant to sections 6033, 6034, 6056 (as in effect before its repeal by Pub. Law No. 96–1969, is open to public inspection. This information will be made available for public inspection in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, as well as in the office of any district director. Copies of these records may, upon written request, be obtained from these offices or from the office of any service center director. The applicability of this subparagraph is subject to the rules on disclosure set forth in section 6104(b) and § 301.6104(b)–1.

* * * * *

Par. 21. Section 601.702(d)(4) is revised to read as follows:

(d) * * *

(4) *Applications of certain organizations for tax exemption.* Subject to the rules on disclosure set forth in section 6104(a) and § 301.6104 (a)–1, (a)–5, and (a)–6, applications and certain papers submitted in support of such applications, filed by organizations described in section 501 (c) or (d) and determined to be exempt from taxation under section 501(a), and any letter or other document issued by the Internal Revenue Service with respect to such applications, will be made available for public inspection, upon written request, in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or the office of any district director.

* * * * *

Par. 22. Section 601.702(d)(5) is removed.

Par. 23. Section 601.702(d)(7) is revised to read as follows:

* * * * *

(d) * * *

(7) *Comments received in response to a notice of proposed rule making.* Written comments received in response to a notice of proposed rule making may be inspected, upon written request, by any person upon compliance with the provisions of this paragraph. Comments which may be inspected are located in the Freedom of Information Reading Room, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. The request to inspect comments must be in writing and signed by the person making the request and should be addressed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, DC 20224. Upon delivery of such a written request to the place where the comments are located during the regular business hours of that office, the person making the request may inspect those comments that are the subject of the request. Copies of comments may be made in the Freedom of Information Reading Room by the person making the request or may be requested, in writing, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, DC 20224. The person

making the request for copies should allow a reasonable time for processing the request. The provisions of paragraph (f)(5) of this section, relating to fees, shall apply with respect to requests made in accordance with this subparagraph.

* * * * *

Par. 24. Section 601.702(d)(8) is amended as follows:

1. In the last sentence, the language "§ 301.6104–1" is removed and the language "§ 301.6104 (a)–1 through (a)–6" is added in its place.

2. § 601.702, paragraph (d)(8) is redesignated as paragraph (d)(5).

Par. 25. In § 601.702, a new paragraph (d)(8) is added to read as follows:

* * * * *

(d) * * *

(8) *Accepted offers in compromise.* A copy of the Abstract and Statement and the attached narrative report for each accepted offer in compromise with respect to any liability for a tax imposed by Title 26 will be made available for inspection and copying in the following locations:

(i) Except for Exempt Organizations, in the district office (or the Office of the Assistance Commissioner (International)) having jurisdiction over the place in which the taxpayer resides and

(ii) For Exempt Organizations, in the key district which has jurisdiction over the particular organization.

* * * * *

Par. 26. Section 601.702 (f) is revised to read as follows:

* * * * *

(f) *Fees for services*— (1) *In general.* The fees to be charged for search, duplication, and review services performed by the Internal Revenue Service, whether or not such services are performed pursuant to the Freedom of Information Act or the regulations thereunder, shall be determined and collected in accordance with the provisions of this paragraph. A fee shall not be charged for monitoring a requester's inspection of records which contains exempt matter. The Internal Revenue Service may recover the applicable fees even if there is ultimately no disclosure of records. Should services other than the services described in this paragraph be requested and rendered, appropriate fees will be established by the Commissioner or his/her delegate, and imposed and collected pursuant to 31 U.S.C. 483(a), subject, however, to the constraint imposed by 5 U.S.C. 552(a)(4)(A).

(2) *Waiver or reduction of fees.* The fees authorized by this paragraph may be waived or reduced—

(i) At the discretion of any Internal Revenue Service official—

(A) Who is authorized to make the initial determination pursuant to paragraph (c)(7) of this section, in the case of a record which is not located for any reason, or

(B) Who determines any portion of the requested record to be exempt from disclosure; or

(ii) On a case-by-case basis in accordance with this subdivision by any Internal Revenue Service official who is authorized to make the initial determination pursuant to paragraph (c)(7) of this section, provided such waiver or reduction has been requested in writing. Fees will be waived or reduced by such official when it is determined that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Internal Revenue Service and is not primarily in the commercial interest of the requester. Such officials shall consider several factors, including, but not limited to, those set forth below, in determining requests for waiver or reduction of fees—

(A) Whether the subject of the releasable records concerns the agency's operations or activities;

(b) Whether the releasable records are likely to contribute to an understanding of the agency's operations or activities;

(C) Whether the releasable records are likely to contribute to the general public's understanding of the agency's operations or activities (*e.g.*, how will the requester convey the information to the general public);

(D) The significance of the contribution to the general public's understanding of the agency's operations or activities (*e.g.*, is the information contained in the releasable records already available to the general public);

(E) The existence and magnitude of the requester's commercial interest, as that term is used in paragraph (f)(3)(i)(A) of this section, being furthered by the releasable records; and

(F) Whether the magnitude of the requester's commercial interest is sufficiently large in comparison to the general public's interest.

(iii) Requesters asking for reduction or waiver of fees must state the reasons why they believe disclosure meets the standards set forth in paragraph (f)(2)(ii) of this section.

(iv) Requesters who base their request for reduction or waiver of fees soley on the basis of their indigency will not be entitled to a reduction or waiver of fees.

(v) No charge will be made for providing records to Federal, state, or foreign governments, international governmental organizations, or local governmental agencies or offices thereof.

The initial request for waiver or reduction of fees should be addressed to the official of the Internal Revenue Service to whose office the request for disclosure is delivered pursuant to paragraph (c)(3)(iii) of this section. Appeals from the denials of requests for waiver or reduction of fees shall be decided by the Commissioner in accordance with the criteria set forth in subdivision (iii) of this subparagraph. Appeals shall be addressed in writing to the Office of the Commissioner within 35 days of the denial of the initial request for waiver or reduction and shall be decided promptly. See paragraph (c)(8) of this section for the appropriate address. Upon receipt of the determination on appeal to deny a request for waiver of fees, the requester may initiate an action in U.S. district court to review the request for waiver of fees. In such actions, the courts will consider the matter *de novo*, except that the court's review of the matter shall be limited to the record before the Internal Revenue Service official to whose office the request for waiver is delivered. Upon receipt of the determination on appeal to deny a request for reduction of fees, the requester may initiate an action in U.S. district court to review the request for reduction of fees. In such actions, the courts will consider the matter under the arbitrary and capricious standard.

(3) *Categories of requesters*— (i) *In general.* A request for records under this section shall include an attestation, under penalty of perjury, as to the status of the requester solely for use by the Internal Revenue Service official to whose office the request is delivered in determining the appropriate fees to be assessed. Requesters shall attest that they fall into one of the categories set forth below—

(A) *Commercial use requester.* Any person 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.

(B) *Media requester.* Any person actively gathering news for an entity that is organized and operated to publish or broadcast news (*i.e.*, information about current events or of current interest to the public) to the public. News media entities include, but are not limited to, television or radio stations broadcasting to the public at

large, publishers of periodicals, to the extent they disseminate news, who make their periodicals available for purchase or subscription by the general public, and telecommunications. Free lance journalists shall be included as media requesters if they can demonstrate a solid basis for expecting publication through a qualifying news entity (*e.g.*, publication contract, past publication record). Specialized periodicals, although catering to a narrower audience, may be considered media requesters so long as they are available to the public generally, via newsstand or subscription.

(C) *Educational institution requester.* Any person who, on behalf of a preschool, pubic or private elementary or secondary school, institution of undergraduate or graduate higher education, institution or professional or vocational education, which operates a program or programs of scholarly research, seeks records in furtherance of the institution's scholarly research and is not for a commercial use.

(D) *Noncommercial scientific institution requester.* Any person on behalf of an institution that is not operated on a commercial basis, that is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(E) *Other requester.* Any requster who falls outside the above categories.

(ii) Allowable charges—

(A) *Commercial use requesters.* Records shall be provided for the cost of search, duplication, and review (including doing all that is necessary to excise and otherwise prepare records for release) of records. Commercial use requesters are not entitled to 2 hours of free search time or 100 pages of duplication.

(B) *Media requesters.* Records shall be provided for the cost of duplication alone, excluding fees for the first 100 pages.

(C) *Educational institution requesters.* Records shall be provided for the cost of duplication alone, excluding fees for the first 100 pages.

(D) *Noncommercial scientific institution requesters.* Records shall be provided for the cost of duplication alone, excluding fees for the first 100 pages.

(E) *Other requesters.* Requesters who do not fit into any of the above categories shall be charged fees that will cover the full direct cost of searching for and duplicating records, except that the first 2 hours of search time and first 100 pages of duplication shall be furnished without charge.

(4) *Avoidance of unexpected fees.* In order to protect requesters from unexpected fees, all requests for records shall state the agreement of the requesters to pay the fees determined in accordance with paragraph (f)(5) of this section or state the upper limit they are willing to pay to cover the costs of processing their requests. When the fees for processing requests are estimated by the Internal Revenue Service to exceed that limit, or when requesters have failed to state a limit and the costs are estimated to exceed $250, and the Internal Revenue Service has not then determined to waive or reduce the fees, a notice shall be sent to the requesters. This notice shall—

(i) Inform the requester of the estimated costs;

(ii) Extend an offer to the requester to confer with agency personnel in an attempt to reformulate the request in a manner which will reduce the fees and still meet the needs of the requester;

(iii) If the requester is not amenable to reformulation, which would reduce fees to under $250, then advance payment shall be required; and

(iv) Inform the requester that the time period, within which the Internal Revenue Service is obliged to make a determination on the request, will not begin to run, pending a reformulation of the request or the receipt of advance payment from the requester, as appropriate.

(5) *Fees for services.* The fees for services performed by the Internal Revenue Service shall be imposed and collected as set forth in this paragraph. No fees shall be charged if the costs of routine collecting and processing the fees allowable under 5 U.S.C. 552(a)(4)(A) are likely to equal or exceed the amount of the fee.

(i) *Search services.* Fees charged for search services are as follows—

(A) Searches other than for computerized records—$17.00 for each hour or fraction thereof for time spent by each clerical, professional, and supervisor in finding the records and information within the scope of the request.

(B) Searches for computerized records—Actual direct cost of the search. The fee for computer printouts will be actual costs.

(C) Searches requiring travel or transportation—Shipping charges to transport records from one location to another, or for the transportation of an employee to the site of requested records when it is necessary to locate rather than examine the records, shall be at the rate of the actual cost of such shipping or transportation.

(D) Other services and materials requested, pursuant to the Freedom of Information Act, which are not covered by this part are chargeable at the actual to the Internal Revenue Service.

(ii) *Review services.* (A) Review is the process of examining records in response to a commercial use requester, as that term is defined in paragraph (f)(3)(i)(A) of this section, upon initial consideration of the applicability of an exemption described in paragraph (b)(1) of § 601.701 to the requested records, be it at the initial request or administrative appeal level, to determine whether any portion of any record responsive to the request is permitted to be withheld. Review includes doing all that is necessary to excise and otherwise prepare the records for release. Review does not include the time spent on resolving general legal or policy issues regarding the applicability of exemptions to the requested records.

(B) Fees charged for review services—$21.00 for each hour or fraction thereof for time spent by each clerical, professional, and supervisor in reviewing the records for disclosure.

(iii) *Duplication other than for returns and related documents.* Fees charged for duplication other than for returns and related documents are as follows—(A) $.15 per copy of each page, up to 8½" x 14", made by photocopy or similar process.

(B) Photographs, films, and other materials—actual cost of reproduction.

(C) Records may be released to a private contractor for copying and the requester will be charged for the actual cost of duplication charged by the private contractor, so long as the cost to the requester is not higher than if the Internal Revenue Service had duplicated the records itself.

(D) When other duplications not specifically identified above are requested and provided pursuant to the Freedom of Information Act their direct cost to the Internal Revenue Service shall be charged.

(iv) *Charges for copies of returns and related documents.* Charges for furnishing copies of returns and related documents are as follows:

(A) A charge of $4.25 will be made for each request for a copy of a return or other related documents (other than Employee Plans and Exempt Organization returns). Payments are to be submitted in advance using IRS Form 4506, Request for Copy of Tax Form.

(B) A charge of $1.00 for the first page and $.15 for each subsequent page will be made for copies of Employee Plans and Exempt Organizations tax returns and related documents. Payments will

be submitted subsequent to receipt of IRS Form 2860, Document Transmittal and Bill.

(6) *Printed material.* Certain relevant government publications which will be placed on the shelves of the reading rooms and similar public inspection facilities will not be sold at these locations. However, copies of pages of these publications may be duplicated on the premises and a fee for such services may be charged in accordance with paragraph (f)(5)(iii) of this section. A person desiring to purchase the complete publication, for example, an Internal Revenue Bulletin, should contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(7) *Search and deletion services with respect to records open to public inspection pursuant to section 6110 of the Code.* Fees charged for searching for and making deletions in records open to public inspection pursuant to section 6110 of the Code only upon written request shall be at actual cost, as the Commissioner may from time to time establish.

(8) *Form of payment.* Payment shall be made by check or money order, payable to the order of the Treasury of the United States or the Internal Revenue Service.

(9) *Advance payments.* (i) If previous search, review, or duplication fees have not been paid in a timely fashion as defined in paragraph (f)(10) of this section by a person making a request for records, the Internal Revenue Service shall require that person to remit any outstanding balance plus interest as authorized in paragraph (f)(10) of this section plus payment of estimated fees in advance before processing the request. The "person making the request" for purposes of this section is the person in whose name a request is made, except that if such person is making the request on behalf of another person whose identity is apparent on the face of the request (including attached documents), such other person is considered the "person making the request." The person who made the prior request to which fees are outstanding is identified in the same manner.

(ii) Where it is estimated or determined that allowable fees required to be paid by a requester are likely to exceed $250, the requester will be required to make an advance payment of the entire fee before the Internal Revenue Service official to whom the request is delivered will begin to process the request.

(iii) When the Internal Revenue Service acts pursuant to paragraph (f)(9)(i) or (ii) of this section the administrative time limits prescribed in paragraphs (c)(7) and (8) of this section, plus permissible extensions of these time limits as prescribed in paragraph (c)(9)(i) of this section, will begin only after the Internal Revenue Service official to whom the request is delivered has received the fees described above.

(10) *Interest.* Interest shall be charged to requesters who fail to pay the fees in a timely fashion; that is, within 30 days following the day on which the statement of fees as set forth in paragraph (c)(7)(i) of this section was sent by the Internal Revenue Service official to whom the request was delivered. Interest accrues from the date the statement of fees was mailed to the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717. Pursuant to the Debt Collection Act of 1982, Pub. L. 97–365, the Internal Revenue Service may take all steps authorized by the Debt Collection Act of 1982, including administrative offset, disclosure to consumer reporting agencies, and use of collection agencies, as otherwise authorized by law to encourage repayment.

(11) *Aggregating requests.* When the Internal Revenue Service official to whom a request is delivered reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, the Internal Revenue Service shall aggregate such requests and charge accordingly, upon notification to the requester and/or requesters.

Par. 27. Section 601.702 (g) is revised to read as follows:

* * * * *

(g) *Responsible officials and their addresses.* For purposes of this section, the Internal Revenue Service officials responsible for the control of records are the following officials, in the case of records under their jurisdiction: the Assistant Commissioner (Inspection), Assistant Commissioner (International), the Director of Practice, Regional Commissioners, District Directors, Service Center Directors, and the Director of the Internal Revenue Service Data Center. In the case of records of the National Office not under the jurisdiction of one of the officials referred to in the preceding sentence (including records of the National Office of the Chief Counsel), the Director, Office of Disclosure is the responsible official. Records of a Regional Counsel's Office shall be deemed to be under the jurisdiction of the Regional Commissioner; records of a District Counsel's office shall be deemed to be under the jurisdiction of the District Director. The addresses of these officials are:

National Office

Mailing Address

Director, Office of Disclosure
Internal Revenue Service
FOIA Request
P.O. Box 388
c/o Ben Franklin Station
Washington, DC 20044

Walk-in Address

1111 Constitution Avenue, NW.
Washington, DC.

Mailing Address

Assistant Commissioner (Inspection)
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
1111 Constitution Avenue, NW.
Washington, DC 20224

Walk-in Address

Same as mailing address

Mailing Address

Director, IRS Data Center
Attn: Disclosure Officer
Internal Revenue Service
FOIA Request
1300 John C. Lodge Drive
Detroit, Michigan 48226

Walk-in Address

Same as mailing address

Mailing Address

Director of Practice
Attn: Disclosure Officer
Internal Revenue Service
FOIA Request
1111 Constitution Avenue, NW.
Washington, DC 20224

Walk-in Address

1200 Pennsylvania Avenue, NW.
Ariel Rios Bldg. Room 1413
Washington, DC.

Mailing Address

Assistant Commissioner (Intern't.)
Attn: Disclosure Officer
Internal Revenue Service
FOIA Request
950 L'Enfant Plaza
Washington, DC 20024

Walk-In Address

Same as mailing address

North Atlantic Region

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
90 Church Street
New York, New York 10007

Walk-in Address

Same as mailing address

Augusta District

Mailing Address

Director, Augusta District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 787
Augusta, Maine 04330

Walk-in Address

64 Sewall Street
Augusta, Maine

Albany District

Mailing Address

Director, Albany District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
Leo O'Brien Fed. Office Bldg.
Clinton Ave. & N. Pearl St.
Albany, New York 12207

Walk-in Address

Same as mailing address

Brooklyn District

Mailing Address

Director, Brooklyn District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
35 Tillary Street
Brooklyn, New York 11201

Walk-in Address

Same as mailing address

Boston District

Mailing Address

Director, Boston District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 9097 JFK Post Office
Boston, Massachusetts 02203

Walk-in Address

JFK Federal Building
Boston, Massachusetts

Buffalo District

Mailing Address

Director, Buffalo District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1040 Niagra Square Station
Buffalo, New York 14201

Walk-in Address

111 West Huron Street
Buffalo, New York

Burlington District

Mailing Address

Director, Burlington District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
11 Elmwood Avenue
Burlington, Vermont 05401

Walk-in Address

Same as mailing address

Hartford District

Mailing Address

Director, Hartford District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
135 High Street
Hartford, Connecticut 06103

Walk-in Address

Same as mailing address

Manhattan District

Mailing Address

Director, Manhattan District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
120 Church Street
New York, New York 10007

Walk-in Address

Same as mailing address

Portsmouth District

Mailing Address

Director, Portsmouth District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
80 Daniel Street
Portsmouth, NH 03801

Walk-in Address

Same as mailing address

Providence District

Mailing Address

Director, Providence District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
300 Westminister Mall
Providence, RI 02903

Walk-in Address

Same as mailing address

Andover Service Center

Mailing Address

Director, Andover Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
310 Lowell Street Stop 218
Andover, Massachusetts 01812

Walk-in Address

Same as mailing address

Brookhaven Service Center

Mailing Address

Director, Brookhaven Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 400, Stop 241
Brookhaven, New York 11719

Walk-in Address

1040 Waverly Avenue
Holtsville, New York

Mid-Atlantic Region

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Office
P.O. Box 12010
Philadelphia, Pa. 19105

Walk-in Address

600 Arch Street, 7th Floor
Philadelphia, Pennsylvania

Baltimore District

Mailing Address

Director, Baltimore District
Internal Revenue Service
FOIA Request
Attn: Disclosure Office
P.O. Box 1018
Baltimore, Maryland 21203

Walk-in Address

31 Hopkins Plaza
Baltimore, Maryland

Newark District

Mailing Address

Director, Newark District
Internal Revenue Service
FOIA Request
Attn: Disclosure Office
P.O. Box 270, Rm. 1535
Newark, New Jersey 07101

Walk-in -Address

970 Broad Street
Newark, New Jersey

Philadelphia District

Mailing Address

Director, Philadelphia District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 12010
Philadelphia, Pa. 19105

Walk-in Address

600 Arch Street, 7th Floor
Philadelphia, Pennsylvania

Pittsburgh District

Mailing Address

Director, Pittsburgh District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. 2488
Pittsburgh, Pa. 15230

Walk-in Address

1000 Liberty Avenue
Pittsburgh, Pennsylvania

Richmond District

Mailing Address

Director, Richmond District
P.O. Box 10107
Richmond, Virginia 23240

Walk-in Address

400 North Eighth Street

Richmond, Virginia

Wilmington District

Mailing Address

Director, Wilmington District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 2415
Wilmington, Delaware 19899

Walk-in Address

844 King Street, 2nd Floor
Wilmington, Delaware

Philadelphia Service Center

Mailing Address

Director, Philadelphia Service Center
Internal Revenue Service
FOIA Reqeust
Attn: Disclosure Officer
P.O. Box 245, Drop Point 590A
Bensalem, Pennsylvania 19020

Walk-in Address

11601 Roosevelt Boulevard
Bensalem, Pennsylvania

Southest Region

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 926 Room 626
Atlanta, Georgia 30370

Walk-in Address

275 Peachtree Street, NE.
Room 626
Atlanta, Georgia

Atlanta District

Mailing Address

Director, Atlanta District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1037 Room 554
Atlanta, Georgia 30370

Walk-in Address

275 Peachtree Street, NE.
Atlanta, Georgia

Birmingham District

Mailing Address

Director, Birmingham District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
500 22nd Street So., Rm. 312
Birmingham, Alabama 35233

Walk-in Address:

Same as mailing address

Columbia District

Mailing Address

Director, Columbia District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
Federal Office Bldg. Rm. 408
1835 Assembly Street
Columbia, SC 29202

Walk-in Address:

Same as mailing address

Ft. Lauderdale District

Mailing Address

Director, Ft. Lauderdale District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
1 University Drive Suite 220
Ft. Lauderdale, Florida 33324

Walk-in Address:

Same as mailing address

Greensboro District

Mailing Address

Director, Greensboro District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
320 Federal Place Room 240
Greensboro, NC 27401

Walk-in Address:

Same as mailing address

Jackson District

Mailing Address

Director, Jackson District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
100 W. Capitol Street
Suite 504, Room 31
Jackson, Mississippi 39269

Walk-in Address:

Same as mailing address

Jacksonville District

Mailing Address

Director, Jacksonville District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 35045, Stop 4030
Jacksonville, Florida 32202

Walk-in Address:

Same as mailing address

Little Rock District

Mailing Address

Director, Little Rock District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 3778 Stop 3
Little Rock, Arkansas 72203

Walk-in Address:

700 W. Capitol Avenue
Room 1002
Little Rock, Arkansas

Nashville District

Mailing Address

Director, Nashville District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1107, Room 375
Nashville, Tennessee 37202

Walk-in Address:

801 Broadway Room 375
Nashville, Tennessee

New Orleans District

Mailing Address

Director, New Orleans District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
500 Camp Street
Room 705 Stop 40
New Orleans, La. 70130

Walk-in Address:

Same as mailing address

Atlanta Service Center

Mailing Address

Director, Atlanta Service Center
Internal Revenue Service
FOIA Request
4800 Buford Highway
Chamblee, Georgia 30006

Walk-in Address:

Same as mailing address

Memphis Service Center

Mailing Address

Director, Memphis Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 30309 Stop 30
Memphis, Tennessee 38130

Walk-in Address:

3131 Democrat Road Room 30
Memphis, Tennessee

Midwest Region

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
One N. Wacker Drive
Chicago, Illinois 60606

Walk-in Address

Same as mailing address

Aberdeen District

Mailing Address

Director, Aberdeen District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 370
Aberdeen, SD 57402

Walk-in Address

115 Fourth Avenue, SE.
Aberdeen, South Dakota

Chicago District

Mailing Address

Director, Chicago District
Internal Revenue Service
FOIA Request

Attn: Disclosure Officer
230 S. Dearborn St. Rm. 1980
Chicago, Illinois 60604

Walk-in Address

Same as mailing address

Des Moines District

Mailing Address

Director, Des Moines District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O Box 1337 Stop 15–1
Des Moines, Iowa 50305

Walk-in Address

210 Walnut Street
Des Moines, Iowa

Fargo District

Mailing Address

Director, Fargo District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O Box 8
Fargo, North Dakota 58107

Walk-in Address

653 Second Avenue North
Fargo, North Dakota

Omaha District

Mailing Address

Director, Omaha District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1052 Downtown Sta.
Omaha, Nebraska 68101

Walk-in Address

106 South 15th Street
Omaha, Nebraska

Milwaukee District

Mailing Address

Director, Milwaukee District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 495 Room 436
Milwaukee, Wisconsin 53201

Walk-in Address

Federal Bldg. & Courthouse
517 E. Wisconsin Avenue
Milwaukee, Wisconsin

Helena District

Mailing Address

Director, Helena District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
301 S. Park Avenue, 2d Floor
Helena, Montana 59626

Walk-in Address

Same as mailing address

St. Louis District

Mailing Address

Director, St. Louis District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1548 Room 935
St. Louis, Missouri 63188

Walk-in Address

1114 Market Street
St. Louis, Missouri

St. Paul District

Mailing Address

Director, St. Paul District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
316 N. Robert Street
Stop 2
St. Paul, Minnesota 55101

Walk-in Address

Same as mailing address

Springfield District

Mailing Address

Director, Springfield District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O Box 19206
Springfield, Illinois 62705

Walk-in Address

320 W. Washington Street
Springfield, Illinois

Kansas City Service Center

Mailing Address

Director, Kansas City Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 24551 Stop 7
Kansas City, Missouri 64131

Walk-in Address

2306 East Bannister Road
Kansas City, Missouri

Central Region

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1818
Cincinnati, Ohio 45201

Walk-in Address

550 Main Street
Cincinnati, Ohio.

Cincinnati District

Mailing Address

Director, Cincinnati District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1818
Cincinnati, Ohio 45201

Walk-in Address

550 Main Street
Cincinnati, Ohio

Cleveland District

Mailing Address

Director, Cleveland District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 99181
Cleveland, Ohio 44199

Walk-in Address

1240 East 9th Street
Cleveland, Ohio

Detroit District

Mailing Address

Director, Detroit District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 32500 Stop 11
Detroit, Michigan 48232

Walk-in Address

Patrick McNamara Bldg.
477 Michigan Ave. Rm. 2483
Detroit, Michigan

Indianapolis District

Mailing Address

Director, Indianapolis District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 44242 Stop 27
Indianapolis, Indiana 46244

Walk-in Address

Federal Office Building
575 N. Pennsylvania Avenue
Indianapolis, Indiana

Louisville District

Mailing Address

Director, Louisville District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1735, Stop 27
Louisville, Kentucky 40201

Walk-in Address

Post Office Building
Seventh & Broadway
Louisville, Kentucky

Parkersburg District

Mailing Address

Director, Parkersburg District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1388
Parkersburg, W. Va. 26102

Walk-in Address

425 Juliana Street
Parkersburg, West Virginia

Cincinnati Service Center

Mailing Address

Director, Cincinnati Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer

P.O. Box 267 Stop 68
Covington, Kentucky 41019

Walk-in Address

200 West Fourth Street
Covington, Kentucky

Southwest Region

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
7839 Churchill Way LB-70
Stop 7000 SWRD
Dallas, Texas 75222

Albuquerque District

Mailing Address

Director, Albuquerque District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1967 Stop 7000 ALB
Albuquerque, NM 87103

Walk-in Address

517 Gold Avenue, SW.
Albuquerque, New Mexico

Dallas District

Mailing Address

Director, Dallas District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
1100 Commerce St. Stop 7000 DAL
Dallas, Texas 75242

Walk-in Address

Same as mailing address

Denver District

Mailing Address

Director, Denver District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
1050 17th St. Stop 7000 DEN
Denver, Colorado 80265

Walk-in Address

Same as mailing address

Austin District

Mailing Address

Director, Austin District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 1448 Stop 7000 AUS
Austin, Texas 78767

Walk-in Address

300 E. 8th Street Stop 100D
Austin, Texas

Cheyenne District

Mailing Address

Director, Cheyenne District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
308 West 21 Street
Stop 7000 CHE
Cheyenne, Wyoming 82001

Walk-in Address

Same as mailing address

Houston District

Mailing Address

Director, Houston District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
3223 Briarpark Stop 7000 H-BP
Houston, Texas 77042

Walk-in Address

Same as mailing address

Oklahoma City District

Mailing Address

Director, Oklahoma City District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 66 Stop 7000 OKC
Oklahoma City, OK 73102

Walk-in Address

200 N.W. Fourth Street
Oklahoma City, Oklahoma

Phoenix District

Mailing Address

Phoenix District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
2120 North Central Avenue
Mail Stop 7000 PH
Phoenix, Arizona 85004

Walk-in Address

Same as mailing address

Salt Lake City District

Mailing Address

Director, Salt Lake City District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
465 S. 400 East Street
Mail Stop 7000 SLC
Salt Lake City, Utah 84111

Walk-in Address

Same as mailing address

Austin Service Center

Mailing Address

Director, Austin Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 934 Stop 7000 AUSC
Austin, Texas 78767

Walk-in Address

3651 S. Interregional Hwy.
Austin, Texas

Ogden Service Center

Mailing Address

Director, Ogden Service Ctr.
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 9411 Stop 7000 OSC
Ogden, Utah 84409

Walk-in Address

1160 West 1200 South Street
Ogden, Utah

Wichita District

Mailing Address

Director, Wichita District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
412 S. Main St. Stop 7000 WIC
Wichita, Kansas 67202

Walk-in Address

Same as mailing address

Western Region

Regional Office

Mailing Address

Regional Commissioner
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
450 Golden Gate Avenue
Room 2301 Stop 2231
San Francisco, Ca. 94102

Walk-in Address

Same as mailing address.

Anchorage District

Mailing Address

Director, Anchorage District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 101500
Anchorage, Alaska 99510

Walk-in Address

949 E. 36th Ave., Suite 101
Anchorage, Alaska.

Boise District

Mailing Address

Director, Boise District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
550 W. Fort Street
Box 041 Room 291
Boise, Idaho 83724

Walk-in Address

Same as mailing address

Honolulu District

Mailing Address

Director, Honolulu District
Internal Revenue Service,
FOIA Request.
Attn: Disclosure Officer,
P.O. Box 50089,
Honolulu, Hawaii 96850.

Walk-in Address

300 Ala Moana Blvd.,
Federal Bldg. Rm. 2104,
Honolulu, Hawaii.

Laguna Niguel District

Mailing Address

Director, Laguna Niguel District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box C–8
Laguna Niguel, Ca. 92677

Walk-in Address

24000 Via Avila Road
Laguna Niguel, California

Las Vegas District

Mailing Address

Director, Las Vegas District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 16045
Las Vegas, Nevada 89101

Walk-in Address

300 Las Vegas Blvd. South, Las Vegas, Nevada

Los Angeles District

Mailing Address

Director, Los Angeles District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 391 Room 5202
300 N. Los Angeles Street Los Angeles, California 90012

Walk-in Address

Same as mailing address

Portland District

Mailing Address

Director, Portland District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 3341
Portland, Oregon 97208

Walk-in Address

1220 SW Third Ave. Rm. 817
Portland, Oregon

Sacramento District

Mailing Address

Director, Sacramento District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 2900 Stop 5201
Sacramento, Ca. 95812

Walk-in Address

2345 Fair Oaks Blvd.
Sacramento, California

Seattle District

Mailing Address

Director, Seattle District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
915 Second Avenue
Stop 625 Room 2056
Seattle, Washington 98174

Walk-in Address

Same as mailing address

San Franciso District

Mailing Address

Director, San Francisco District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
450 Golden Gate Avenue
Room 2301 Stop 2231
San Francisco Ca. 94102

Walk-in Address

Same as mailing address

San Jose District

Mailing Address

Director, San Jose District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
55 S. Market Street, 9th Floor
Stop 3246
San Jose, California 95113

Walk-in Address

Same as mailing address

Seattle District

Mailing Address

Director, Seattle District
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
915 Second Avenue
Room 2056 Stop 625
Seattle, Washington 98174

Walk-in Address

Same as mailing address

Fresno Service Center

Mailing Address

Director, Fresno Service Center
Internal Revenue Service
FOIA Request
Attn: Disclosure Officer
P.O. Box 24014 Stop 891
Fresno, California 93779

Walk-in Address

5045 E. Butler Avenue
Fresno, California

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 16836 Filed 7–21–87; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Revegetation

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) proposes to amend its revegetation regulations for the repair of rills and gullies, replanting of trees and the time period for measuring revegetation success. This action is necessary because the previous rules were found in Federal district court to have been promulgated without sufficient supporting evidence in the record. The intended effect of the proposals is to allow State regulatory authorities to demonstrate that the repair of rills and gullies is a normal husbandry practice in their State that may occur without restarting the operator's period of responsibility, and, subject to State forestry and wildlife agency approval, to allow certain trees planted during the responsibility period to be counted in the measurement of revegetation success. This rule would also base the determination of whether revegetation has been achieved on a minimum two-year time period where the postmining land use is grazing land, pasture land or cropland.

DATES:

Written comments: OSMRE will accept written comments on these proposed rules until 5:00 p.m. Eastern time on October 5, 1987.

Public hearings: Upon request, OSMRE will hold public hearings on the proposed rule in Washington, DC; Denver, Colorado; and Pittsburgh, Pennsylvania at 9:30 a.m. local time. The hearing will be held in Washington, DC on September 28, 1987; in Denver, Colorado, on October 5, 1987; and in Pittsburgh, Pennsylvania, on October 12, 1987. Upon request, OSMRE will also hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5:00 p.m. Eastern time on August 26, 1987. Individuals wishing to attend but not testify at any hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that the hearing will be held.

ADDRESSES:

Written comments: Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St., NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L,

1951 Constitution Avenue, NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 18th and C Streets, NW., Washington, DC, Brooks Towers, 2nd Floor Conference Room, 1020 15th Street, Denver, Colorado; and Ten Parkway Center, Pittsburgh, Pennsylvania. The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington will be announced prior to the hearings.

Requests for public hearings: Submit requests orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT".**

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–2084 or 202–343–1473 (Commercial or FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written comments

Written comments submitted on the proposed rules should be specific and should be confined to issues pertinent to this proposed rulemaking. Submissions should include data, views, arguments and other explanations in support of the commenter's recommendations. Commenters should properly and adequately identify documentary evidence in support of the views and arguments. When possible, the commenter should supply pertinent documents or copies of excerpts from the original document. Where practicable, commenters are requested to submit three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) or delivered to addresses other than those listed above, may not necessarily be considered or be included in the Administrative Record for the final rule.

Public Hearings

OSMRE will hold public hearings on the proposed rule on request only. The times, dates and addresses scheduled for the hearings at three locations are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The times, dates and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least seven days prior to any hearings which are held at these locations.

Any person wishing to participate at a hearing at a particular location should inform the person listed under **"FOR FURTHER INFORMATION CONTACT"** either orally or in writing of the desired hearing location by 5:00 p.m. Eastern time August 26, 1987. If no one has contacted Mr. Boyd to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a public hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons in attendance who wish to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a copy of their testimony. To assist OSMRE in preparing appropriate questions, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

The provisions of Title V of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, that are relevant to this proposed rulemaking are found in section 515(b)(19) and (20). These sections set forth criteria for establishment of postmining vegetation. Specifically, the operator is required to assume responsibility for the success of revegetation for either five or ten full years after the last year of augmented seeding, fertilizing, irrigation or other work to assure a vegetative cover at least equal to the natural vegetation of the area. The five-year period of responsibility applies to areas or regions receiving an annual average precipitation greater than 26 inches, and the ten-year period is applicable to areas or regions where the annual average precipitation is 26 inches or less.

On March 13, 1979, OSMRE published regulations implementing the permanent regulatory program required by the Act (44 FR 14902). The regulations were challenged in lawsuits brought by representatives of two States, the coal industry and citizen and environmental group. These lawsuits were consolidated and heard by the U.S. District Court for the District of Columbia. See *In Re: Permanent Surface Mining Regulations Litigation*, No. 79–1144 (D.D.C. 1980). The coal industry contended that the provision that delayed starting a coal operator's responsibility for successful revegetation until the planted vegetation reached 90 percent of the natural cover lacked support in the Act or the legislative history. The district court agreed in a decision issued on February 26, 1980, and remanded the rule. In response to the district court ruling, OSMRE suspended the regulations insofar as they extend the period of responsibility for revegetation from the point at which the operator meets the revegetation standards of section 515(b)(19) of the Act. This action allowed States to permit the period of liability to begin after the last year in which the operator had completed augmented seeding, fertilizing, and irrigation or other work. The suspension notice also specified that the period of liability shall begin again wherever augmented seeding, fertilizing, irrigation or other work is required or conducted on the site prior to bond release (45 FR 51549).

OSMRE published new regulations at 30 CFR 816.116(c) and 817.116(c) (48 FR 40140) on September 2, 1983, that essentially repeated the statutory language. These regulations also provided for regulatory authority approval of "selective husbandry practices." These approved practices were allowed to occur during the liability period without restarting the five- or ten-year period of responsibility for successful revegetation provided the practice was a "normal conservation practice" and was not augmented seeding, fertilizing, irrigation, or other work. The preamble to these regulations stated that under certain conditions the repair of rills and gullies, including reseeding or transplanting necessitated by such repair, can occur without extending the minimum period of responsibility for revegetation success. The preamble to these regulations should be consulted for additional background information.

A related provision at § 816.116(b)(3)(iii) set minimum conditions that allowed selective planting/replanting of trees and shrubs during the minimum responsibility period. This planting or replanting could occur without restarting the responsibility period when the planting or replanting was approved as a normal husbandry practice under § 816.116(c)(4). Furthermore, OSMRE's regulations at § 816.116(c)(2) provided that for areas that receive more than 26 inches annual average precipitation proof of revegetation success could be based on the results achieved during the

growing session of the last year of the responsibility period.

Citizen and environmental groups, as well as State and industry representatives, again challenged parts of these new regulations in *In Re: Permanent Surface Mining Regulations Litigation (II)*, No. 79–1144 (D.D.C. 1984) (hereafter *In Re: Permanent (II)*). The plaintiff citizen and environmental groups contended that certain provisions ran counter to the requirements of sections 515(b)(19) and 515(b)(20) of the Act. The challengers argued that the repair of rills and gullies is not a normal conservation practice; that the rules do not sufficiently assure that the planting of trees during the period of responsibility is a normal husbandry practice, rather than an augmentative practice prohibited by the Act; and that it is impossible to determine whether self-generation and plant succession have been achieved if success levels are met only for the last year of the responsibility period. On July 15, 1985, the court remanded the challenged provisions of the regulations because the lack of supporting evidence in the record precluded a determination that the regulations support the goals set forth in the Act.

Subsequent to the July 15, 1985, decision, OSMRE published on November 20, 1986, a suspension notice for those portions of the revegetation regulations remanded by the court (51 FR 41952). OSMRE suspended the rules concerning the repair of rills and gullies insofar as they allow the repair of rills and gullies to occur without restarting the period of responsibility for the areas of repair. OSMRE suspended the rules concerning the replanting of trees to the extent that they authorize the inclusion of trees and shrubs which have been in place less than the full period of responsibility in determining the success of stocking. Thus, OSMRE will not approve the determination of reclamation success or authorize bond release on the basis of trees or shrubs in place less than the applicable period of liability. OSMRE suspended the rules concerning the period for measuring revegetation success to the extent that they allow the determination of revegetation success to be measured over less than the growing seasons of the last two years of the responsibility period in areas with an average of 26 inches or more of precipitation per year.

III. Discussion of Proposed Rules

The proposed rules apply to areas disturbed by surface mining activities and to the surface effects of underground mining activities. The proposed rules are identical for surface and underground mining activities because OSMRE has not identified any differences that support adopting revegetation rules for surface mining activities that differ from rules adopted for underground mining activities. In this preamble, 30 CFR Part 816, dealing with surface mining activities, will be discussed with the understanding that the discussion also applies to 30 CFR Part 817, which regulates underground mining activities. These proposed rules were developed based on a review of the legislative history of SMCRA, the administrative record of these rules, the orders of the court, and pertinent technical literature.

These proposed rules will address the court's order in *In Re: Permanent (II)* relating to the repair of rills and gullies (816.116(c)(4)), the replanting of trees (816.116(b)(3)(ii)) as normal husbandry practices during the operator's period of responsibility, and the period of time required for measuring revegetation success for areas receiving more than 26 inches annual average precipitation (816.116(c)(2)). In addition to the revegetation regulations remanded by the court, OSMRE proposes to amend § 816.116(b)(3)(i). The proposed amendment would require the approval of minimum stocking and planting arrangements by State agencies responsible for the administration of forestry and wildlife programs. The citizen plantiffs in *In Re: Permanent II* contended that this approval is essential to assure that tree planting during the period of responsibility is not an augmentation practice.

1. Sections 816.116(b)(3)(i) and 817.116(b)(3)(i) Approval of Success Standards

For areas where the postmining land use will be fish and wildlife habitat, recreation, shelterbelts or forest products, the proposed § 816.116(b)(3)(i) requires minimum stocking and planting arrangements to be specified by the regulatory authority on the basis of local and regional conditions and after consultation with, and approval by, the State agencies responsible for the administration of forestry and wildlife programs. The existing regulations require consultation with, but not approval by, the appropriate State agencies. The proposed regulation requires regulatory authorities not only to consult with State forestry and wildlife agencies, but also to receive the approval of these agencies when determining minimum stocking levels and planting arrangements.

The citizen plaintiffs in *In Re: Permanent II* objected to rules that allowed normal replanting as a husbandry practice during the period of operator responsibility. They asserted that without approval of State agencies responsible for the administration of forestry and wildlife programs the rules did not sufficiently assure that the planting of trees during the period of responsibility is a normal husbandry practice rather than an augmentative practice prohibited by the Act. The court remanded this rule to OSMRE because the record lacked supporting evidence indicating that the practice may in some instances be a normal conservation measure. Without this evidence, the court was concerned that a prohibited augmentative practice could be allowed.

The requirement in the proposed rule for obtaining State forestry and wildlife agency approval of the success standards for land uses that necessitate tree and shrub plantings should assure that only the husbandry practices normally practiced in the region for the postmining land use occur without restarting the period of liability. This is in keeping with the Act, wherein program responsibility rests with the regulatory authority. The proposal will provide the regulatory authorities with flexibility to set specific allowable practices.

2. Sections 816.116(b)(3)(ii) and 817.116(b)(3)(ii) Replanting of Trees

Proposed § 816.116(b)(3)(ii) would reinstate the requirement that trees and shrubs used in determining the success of stocking and the adequacy of the planting arrangements must be healthy, must have utility for the approved postmining land use and shall have been in place for at least two growing seasons. OSMRE has based its decision to propose reinstatement of the provision from the 1983 rule requiring that all trees and shrubs used to determine success of stocking shall have been in place for at least two growing seasons on several sources of information.

The Oregon Forest Practices Rules and Statute establishes minimum standards for forest practices. These administrative rules specify the minimum number of trees per acre and the period of time allowed after an operation for establishment of such trees. For a seedling to be considered established, it must be an acceptable forest tree species which has survived two years on the site. The Washington Forest Practices Rules and Regulations require postharvest reforestation of certain lands within a specified time frame. Stocking levels of the area disturbed are acceptable when a specified minimum number of

commercial species have survived on the site for at least one growing season. Davidson (1979), in research on tree and shrub plantings on low pH stripmine banks, found that most of the mortality occurs in the first three years after planting. Sturges, in research on shelterbelt establishment and growth at a windswept Wyoming rangeland site, reported that most mortality of nine tree and shrub species occurred within two years of planting. OSMRE has used this literature as a basis for proposing that seedlings in place less than two years should not be counted when determining success of stocking.

As proposed, § 816.116(b)(3)(ii) also specifies that at least 80 percent of the trees and shrubs used to determine success shall have been in place for 60 percent of the applicable period of responsibility. The proposed regulation would require that 80 percent of the trees and shrubs must have been in place for three or more years before they can be used to demonstrate successful stocking (for areas where the minimum period of responsibility is five years). For areas where the minimum period of responsibility is ten years, the proposed regulations would require that 80 percent of the trees and shrubs must have been in place no less than six years. This would be a change from the current figure of eight years. The 60 percent figure is used with both the five- and ten-year periods of responsibility primarily for the sake of simplicity and consistency. It should be noted that States are free to impose more stringent requirements if local conditions dictate.

The proposed regulation makes allowance for selective replanting of trees to ensure full stocking without restarting the responsibility period anew. Based on the literature used to develop these regulations, OSMRE believes that reforestation normally requires a continuing effort beyond the initial planting. Several factors beyond the control of the forester may necessitate replanting of some portions of the area to be reforested. Hidden damage to seedlings from cold injury that occurs in the nursery and seedling dessication that occurs during handling can occasionally lead to substantial mortality in the first year of planting. Many of the letters received by OSMRE in response to the regulatory outreach effort support this position. These letters have been made part of the Administrative Record of this rulemaking and are available for public inspection. In addition, this position is supported by the findings of Rafaill and Vogel and Balmar and Williston. Lack of summer moisture can be expected to affect markedly seedling survival in some years while frost heaving may cause severe seedling losses in other years (Rafaill and Vogel). Girdling damage from rodents and rabbits can be severe (Sturgis, Casey *et al.*). Furthermore, saturated soils may preclude planting during the normal season (Casey *et al.*). Planting stock of the necessary age and species may not always be available (Rafaill and Vogel).

Under this proposed rule, the initial planting must occur prior to the start of the responsbility period. However, OSMRE believes that re-entry during plantation establishment is not unusual and, in fact, is often necessary for dealing with the unexpected and uncontrolled events of natural systems. To discourage normal husbandry, i.e. replanting, by always restarting the liability period makes little sense. The rule is designed to allow and encourage normal husbandry practices as accepted by the responsible forestry and fish and wildlife agencies during the period of extended liability. To do otherwise discourages use of normal conservation measures if the use of such measures always restart the period of extended liability. OSMRE feels that the proposed rule gives full meaning to the extended liability period of section 515(b)(20) of the Act while encouraging the ongoing use of sound conservation and land husbandry practices which can contribute significantly to assuring the long-term productivity of the reclaimed land. The Washington forest practices rules provide for replanting when acceptable stocking levels have not been attained. Oregon's forest practices rules permit interplanting during the maximum period of time allowed for establishment of trees when interplanting is necessary to assure adequate stocking. The USDA—Forest Service (1981) recommends conducting stocking examinations after the first growing season and in time to schedule replanting during the coming planting season.

These rules do not preclude the planting or replanting of trees and shrubs at any time during the period of operator responsibility. However, the replanted trees or shrubs that have not been in place for the required time (60 percent of the period of liability) may not be used for determining that the success standard has been satisfied. The dual requirement that (1) 80 percent of the trees and shrubs must have been in place for 60 percent of the period of liability and (2) no tree or shrub in place for less than two growing seasons can be counted when determining success should ensure the establishment of viable trees and shrubs and prevent vegetation failure after bond release.

3. Sections 816.116(c)(2) and 817.116(c)(2) Period for Measuring Revegetation Success

Proposed § 816.116(c)(2) would require the period of responsibility to continue for a minimum of five years where the annual average precipitation is more than 26 inches. Vegetative parameters identified in § 816.116(b) for grazing land, pasture land or cropland would have to equal or exceed the approved success standard during the growing seasons of the last two years of the responsibility period. Revegetation rates on areas approved for the other uses identified in § 816.116(b) would be required to equal or exceed the success standard during the growing season of the last year of the responsibility period. This is in contrast to the 1983 regulation, which required proof of performance based on the last year of the responsibility period for all uses.

In developing the proposed rules, OSMRE considered the literature cited in OSMRE's previous rulemakings that indicates that crop yield (production) is sensitive to variations in weather conditions. Year-to-year differences in crop yield results from a wide array of factors, especially timeliness and amount of precipitation. Since most States are subject to pronounced year-to-year variability in weather conditions, OSMRE is proposing measurement of production for two consecutive years when crop yield is a parameter used to determine revegetation success.

The prime farmland regulations at 30 CFR 823.15(b)(3) specify that the proof of soil productivity can be based on three nonconsecutive crop years. In light of this, OSMRE will consider comments on the appropriateness of using any two years of the responsibility period, except the first year, as a basis for the determination of productivity. OSMRE is also interested in receiving comments on whether the last year of the responsibility period must be used in the determination of productivity.

The reinstatement of the one-year period for measuring revegetation success on areas being developed for fish and wildlife habitat, recreation, shelterbelts or forest products finds support in the cited literature. For example, the Washington forest practices rules impose a one-year period for attainment of acceptable stocking levels. Also, ground cover of perennials is fairly consistent from year to year.

4. Sections 816.116(c)(4) and 817.116(c)(4) Repair of Rills and Gullies

OSMRE proposes to retain the existing rule with one minor change. Proposed § 816.116(c)(4) would continue to allow the use of certain husbandry practices during the responsibility period if approved by the regulatory authority, providing the husbandry practice can be expected to continue as part of the postmining land use or if it can be demonstrated that discontinuance of the husbandry practice after the release of permittee responsibility will not reduce the probability of continued revegetation success. The approved practices cannot include augmented seeding, fertilization, or irrigation without extending the period of responsibility. However, seeding, fertilization, or irrigation performed at levels that do not exceed those normally applied in maintaining comparable unmined land in the surrounding area would not be considered prohibited augmentive activities.

The minor change from the existing rule is to substitute the phrase "normal husbandry practices" for the phrase "normal conservation practices." The 1983 rule allowed the regulatory authority to approve selective husbandry practices that are normal conservation practices. This change will help to clarify the rule since use of the term "conservation practices" is most common in the field of soil science while the phrase "husbandry practices" includes the use and management of the soil, vegetation and livestock. OSMRE intends by this change to avoid restricting approvable practices to manipulation of the soil alone.

The approved selective husbandry practices must be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area. The proposed regulation retains the enumerated examples of practices that may be approved. These include disease, pest, and vermin control; and pruning, reseeding and/or transplanting specifically necessitated by such actions. The cited literature supports this position.

These proposed regulations and the Act explicitly require that the responsibility period not start until after the last augmented seeding, fertilization, or irrigation. Section 101(f) of the Act also recognizes the diversity in terrain, climate, biologic, chemical and other physical conditions in areas subject to mining operations. OSMRE believes the primary responsibility for implementing a regulatory program that addresses those practices that are normal husbandry should rest with the State because the State regulatory authorities are most familiar with local and regional factors to be considered when determining normal husbandry practices. Rather than proposing a national rule which would universally allow repair and reseeding of rills and gullies to be considered a normal husbandry practice, OSMRE will evaluate such practices if submitted by a State as a program amendment. Therefore, under the provisions of 30 CFR 732.17 governing State program amendments, OSMRE would consider, on a practice-by-practice basis, the administrative record supporting each practice proposed by a regulatory authority as normal husbandry practice. The regulatory authority would be expected to demonstrate (1) that the practice is the usual or expected state, form, amount or degree of management performed habitually or customarily to prevent exploitation, destruction or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands and (2) that the proposed practice is not an augmentative practice prohibited by section 515(b)(20) of the Act.

OSMRE further believes that the proposed regulations would allow State regulatory authorities to develop rules that would provide for reasonable and prudent flexibility, that would provide for systematic documentation of the technical decisionmaking process, and that would help simplify technical decisionmaking associated with selection and approval of normal husbandry practices.

In its July 15, 1985, decision, the court remanded the 1983 rule at § 816.116(c)(4) that allowed the repair of rills and gullies to be considered a normal husbandry practice (48 FR 40157). The court held that the administrative record did not support OSMRE's position that such repairs are not augmentative in nature. However, the court did not find that 30 CFR 816.116(c)(4), as promulgated in 1983, violated the Act. OSMRE has reconsidered the 1983 rule and concluded that it granted flexibility that is inappropriate in a national performance standard. However, OSMRE believes that it may be appropriate for a State to determine that repair of rills and gullies is a normal husbandry practice if the State's administrative record supports the repair of rills and gullies as normal husbandry and such repair is a land management practice typically used on similar unmined lands.

Reference Materials

The following technical literature was used in the preparation of these proposed rules. All of the reports are on file in OSMRE's Administrative Record. The technical literature cited in the March 13, 1979, March 23, 1982, and September 2, 1983 issues of the **Federal Register** (44 FR 15311, 47 FR 12601 and 48 FR 40159 respectively) was also used to develop these proposed regulations.

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Ashley, W. Clark, Kolar, Clay A., and Philo, Gary R., 1982, Reclamation with trees: Reclamation Report 82–1a, Coal Extraction and Utilization Research Center, Southern Illinois University at Carbondale.

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Drake, Lon, 1986, Survival and growth of conservation shrubs and trees, with thin-cover reclamation on acid substrate, Iowa, USA: Environmental Geochemistry and Health, Vol. 8, No. 3.

McPherson, Adra, 1984, Living snow fences: A renewed look at an old problem: Forestry Research West, Rocky Mountain Forest and Range Experiment Station.

Oregon, 1985, Oregon Forest Practice Rules and Statute, State of Oregon Department of Forestry, eighth printing.

Rafaill, B.L. and Vogel, W.G., 1978, A guide for vegetating surface-mined lands for wildlife in Eastern Kentucky and West Virginia: U.S. Fish and Wildlife Service, FWS/OBS–78/84.

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U.S. Department of Agriculture, 1979, Uses guide to vegetation; mining and reclamation in the West: U.S. Forest Service, General Technical Report INT–64.

U.S. Department of Agriculture, 1981, The Yazoo—Little Tallahatchie flood prevention project: Reforestation procedures for erosion contol: U.S. Forest Service, Forestry Report SA–FR16.

U.S. Department of Agriculture and the Institute of Agriculture, 1981, Guide to

revegetating surface coal-mined areas in Tennessee: University of Tennessee, SP-248.

U.S. Environmental Protection Agency, 1975. Methods of quickly vegetating soils in low productivity, construction activities: EPA-400/9-75-006.

Washington, 1982, Forest Practices Rules and Regulations, Washington State Forest Practices Board.

Effect in Federal Program States and on Indian Lands

The proposed rules apply through cross-referencing in those States with Federal programs. They are Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947 respectively. The proposed rules also apply through cross-referencing to Indian lands under Federal programs for Indian lands as provided in 30 CFR Part 750. Comments are specifically solicited as to whether unique conditions exist in any of these States or on Indian lands relating to this proposal that should be reflected either as changes to the national rules or as specific amendments to any or all of the Federal programs.

IV. **Procedural Matters**

Federal Paperwork Reduction Act

This rule does not contain information collection requirements that must be approved by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act, 5 U.S.C 601 *et seq.*

National Environmental Policy Act

OSMRE has prepared a draft environmental assessment (EA) and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is anticipated that a finding of no significant impact will be approved for the final rule in accordance with OSMRE procedures under NEPA. The EA is on file in the OSMRE Administrative Record at the address listed in the "**ADDRESSES**" section of the preamble. An EA will be completed on the final rule and a conclusion reached on the significance of any resulting impacts before promulgation of the final rule.

Author

The principal author of this rule is Arlo V. Dalrymple, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 343-5840 or (202) 343-5361 (Commercial or FTS).

List of Subjects

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, it is proposed to amend 30 CFR Parts 816 and 817 as set forth below.

Dated: June 24, 1987.

J. Steven Griles,

Assistant Secretary-Land and Minerals Management.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

1. The authority citation for Part 816 is revised to read as follows:

Authority: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*), as amended; and Pub. L. 100-34.

2. Section 816.116 is amended by revising paragraphs (b)(3)(i), (b)(3)(ii), (c)(2), and (c)(4) to read as follows:

§ 816.116 Revegetation: Standards for success.

* * * * *

(b) * * *

(3) * * *

(i) Minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility.

* * * * *

(c) * * *

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than five full years. Vegetation parameters identified in paragraph (b) of this section for grazing land or pasture land and crop land shall equal or exceed the approved success standard during the growing seasons of the last two years of the responsibility period. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

* * * * *

(4) The regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

* * * * *

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

3. The authority citation for Part 817 is revised to read as follows:

Authority: Pub. L. 95-87 (30 U.S.C. 1201 *et seq.*), as amended; and Pub. L. 100-34.

4. Section 817.116 is amended by revising paragraphs (b)(3)(i), (b)(3)(ii), (c)(2), and (c)(4) to read as follows:

§ 817.116 Revegetation: Standards for success.

* * * * *

(b) * * *

(3) * * *

(i) Minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with and approval by the State agencies responsible for the administration of forestry and wildlife programs.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of the plant arrangement shall have utility for the approved postmining land use. Trees and shrubs counted in determining such success shall be healthy and have been in place for not less than two growing seasons. At the time of bond release, at least 80 percent of the trees and shrubs used to determine such success shall have been in place for 60 percent of the applicable minimum period of responsibility.

* * * * *

(c) * * *

(2) In areas of more than 26.0 inches of annual average precipitation, the period of responsibility shall continue for a period of not less than five full years. Vegetation parameters identified in paragraph (b) of this section for grazing land or pasture land and crop land shall equal or exceed the approved success standard during the growing seasons of the last two years of the responsibility period. Areas approved for the other uses identified in paragraph (b) of this section shall equal or exceed the applicable success standard during the growing season of the last year of the responsibility period.

* * * * *

(4) The regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

* * * * *

[FR Doc. 87-16929 Filed 7-24-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-87-18]

Drawbridge Operation Regulations: Atlantic Intracoastal Waterway, SC

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the South Carolina Department of Highways and Public Transportation (SCDHPT), the Coast Guard is considering a change to the regulations governing the Lady's Island drawbridge at Beaufort, South Carolina, to permit limitations on the number of opening during certain periods. This proposal is being made because of complaints about vehicular traffic delays. This action should accommodate the needs of highway traffic and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before September 10, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130-1608. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Lee, Chief, Bridge Section, Seventh Coast Guard District, telephone (305) 536-4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

The Lady's Island bridge presently opens on signal, but from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Saturday, except federal holidays, the draw is required to open only on the hour. SCDHPT has asked for permission to eliminate the 8 a.m. and 5 p.m. openings and to open the bridge only on the hour, 20 minutes past the hour, and 40 minutes past the hour from 9 a.m. to 4 p.m., Monday through Saturday.

The Coast Guard has carefully evaluated information about highway traffic volumes and drawbridge operations at this location. Although additional limitations on bridge openings may be needed to reduce highway traffic delays, the data do not appear to justify the extensive restrictions proposed by SCDHPT.

Weekday openings at 8 a.m. and 5 p.m. occur only about two to three times each week. Some of these openings are for government vessels and tugs with tows, which would not be affected by the SCDHPT request. Eliminating the morning and afternoon openings would offer only minimal highway traffic relief, while forcing many waterway users to wait for up to two hours for passage. Therefore, no change is proposed in the morning and afternoon "closed" periods.

Scheduled "off-peak" operations appear to be justified during those months when waterway use is greatest. The spring and fall seasonal movements of vessels cause the largest number of bridge openings and "back-to-back" openings would be reduced by implementation of the proposed rule.

The regulation developed by the Coast Guard would establish a 20-minute schedule of operations for the period from 9 a.m. to 4 p.m., Monday through Saturday, except federal holidays, during the months of April, May, June, September, October, and November. Monday through Saturday morning and afternoon closed periods would be unchanged. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would continue to be passed at any time. The changes should reduce highway traffic congestion with minimal additional delay to vessels.

Economic Assessment and Certification

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

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. Section 117.911(f) is revised to read as follows:

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

* * * * *

(f) *Lady's Island bridge across the Beaufort River, mile 536 at Beaufort.* The draw shall open on signal; except that from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., Monday through Saturday, except federal holidays, the draw need open only on the hour. During the months of April, May, June, September, October and November, from 9 a.m. to 4 p.m., Monday through Saturday, except federal holidays, the draw need open only on the hour, twenty minutes after the hour, and forty minutes after the hour.

Dated: July 15, 1987.

H.B. Thorsen,

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

[FR Doc. 87–16981 Filed 7–24–87; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 166

[CGD 85–097]

Port Access Routes, Approach to Tampa Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: This notice proposes to eliminate the Southern Tampa fairway anchorage area and to establish a new fairway anchorage area in the approach to Tampa Bay, Florida. In addition, this notice proposes to rename the northern Tampa fairway anchorage area. The new fairway anchorage area is intended to increase navigation safety by providing an anchorage area contiguous to and associated with the Tampa Shipping Safety Fairway. This action is necessary to permit deep draft vessels to anchor safely in the approach to Tampa Bay. These proposals would implement the results of the port access route study as reported in the **Federal Register** on December 29, 1986 (52 FR 46880).

DATE: Comments must be received on or before September 25, 1987.

ADDRESS: Comments should be submitted to Commandant (G–CMC/21) (CGD 85–097), U.S. Coast Guard, Washington, DC 20593–0001. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council, room 2110 between the hours of 8 a.m. and 4 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LTJG D. Reese, Project Manager, Office of Navigation (G–NSS–2), Room 1606, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington DC, 20593, telephone (202) 267–0364, between 8:00 a.m. and 3:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her name and address, identify this notice as CGD 85–097, and give the reasons for the comment. Persons desiring acknowledgment that their comment has been received should enclose a stamped self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a subsequent notice if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will be beneficial to this rulemaking.

Drafting Information

The principal persons involved in drafting this proposed rulemaking are: Lieutenant (j.g.) Daphne Reese, Project Manager, and Lieutenant Sandra Sylvester, Project Attorney, Office of Chief Counsel.

Discussion of Proposed Regulations

The Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1223) authorizes the Coast Guard to designate necessary shipping safety fairways and fairway anchorages to allow vessels an unobstructed, safe access to United States ports.

A shipping safety fairway is an area in which no fixed structures are permitted, and therefore may inhibit exploration and exploitation of mineral resources in the designated area. A shipping safety fairway may be viewed as a necessary compromise between convenient mineral exploitation and concern for navigation safety.

A fairway anchorage is an anchorage area contiguous to and associated with a fairway in which fixed structures may be permitted with a two mile spacing limitation (33 CFR 166.200(c)(1)).

To ensure the interests of all affected parties are considered, the PWSA mandates that a port access route study be conducted before new shipping safety fairways or fairway anchorages are designated. Publication of a study notice advises all bidders in future lease sales within the study area that occupancy rights may be restricted by a routing system developed as a result of the study (33 U.S.C. 1223(c)(4)). Once a designation is made under the authority of the PWSA, the paramount right of navigation is recognized within the designated area. In the interest of promoting a multiple use approach to offshore waters, the Coast Guard, as far as practicable, will try to minimize impacts on leases which were granted before a study is announced.

The study for this rulemaking was initiated by a notice in the **Federal Register** on December 12, 1985 (50 FR 50808 corrected at 51 FR 1257). The Seventh Coast Guard District performed the study after the Tampa Port Authority, on behalf of the Tampa Bay maritime community, expressed concern about fairway anchorages in relation to a Tampa Harbor deepening project. The Tampa Harbor deepening project is being conducted by the Corps of Engineers (COE) and is expected to result in an increase in deep draft vessel traffic. The project has required the use of designated spoil areas within the Tampa Shipping Safety Fairway adjacent to the southern Tampa fairway anchorage area (33 CFR 166.200(d)(49)(i)). The resulting depth of water (operational draft of 33 feet, 6 inches) has reduced the safety and convenience of access to and from the southern anchorage area to the fairway.

Study Results were published in the **Federal Register** on December 29, 1986 (51 FR 46880). The study recommended the southern Tampa fairway anchorage area be eliminated; a new fairway anchorage area be established to the west of the existing northern Tampa fairway anchorage area; and the new fairway anchorage area and the northern Tampa fairway anchorage area be designated the Western Tampa Fairway Anchorage and the Eastern Tampa Fairway Anchorage respectively. The present rulemaking is intended to implement these study recommendations.

The National Ocean Service conducted a wire drag test of the proposed fairway anchorage areas. The data from the test is being processed and evaluated and final results are due in September of 1987.

All channel work on the Tampa Harbor Deepening Project is now complete. Dockside work is to be completed at a future date but is not yet scheduled.

The Army Corps of Engineers informed the Coast Guard there are no dredging disposal areas proposed in or adjacent to the proposed fairway anchorage or the existing northern fairway anchorage area.

The Minerals Management Service (MMS) of the Department of Interior anticipates no conflicts between their oil and gas activities and the fairway anchorage proposal. MMS also stated "indications are that any impact on oil and gas resources would be low."

A new fairway anchorage area is proposed in the approach to Tampa Bay, Florida adjacent to the Tampa Shipping Safety Fairway. The proposed new fairway anchorage area encompasses approximately 6 square nautical miles and is approximately 15 miles offshore (at its closest point). The anchorage area has a depth of 42–66 feet and would be recommended for deep draft vessels. The proposed fairway anchorage will provide better holding grounds, deeper water, better landmarks, and a natural lee for boarding pilots in rough weather.

The existing northern fairway anchorage area (33 CFR 166.200(d)(49)(i)) lies to the east of this proposed new anchorage area and has a depth of 27–36 feet. The existing northern fairway anchorage area will be recommended for shallower draft vessels and renamed the Eastern Tampa Fairway Anchorage Area. Vessel use of fairways and fairway anchorages is not mandatory, nor is the direction of traffic in a fairway. However, vessel traffic traditionally stays to the right to create an inbound and outbound flow of traffic. Under the existing northern and southern fairway anchorages, vessels inbound would use the southern anchorage and vessels outbound would use the northern anchorage. Establishing the proposed anchorage would place both anchorages on the same side of the fairway. Present statistics indicate an average of two vessels per day use the anchorages. The cross traffic generated by this change will have a negligible impact upon safe navigation in this area.

Siting of structures in these anchorages will be governed by the spacing limitations described in 33 CFR 166.200(c).

This notice will also delete the southern Tampa fairway achorage area (33 CFR 166.200(d)(49(ii)). The use of spoil areas adjacent to the anchorage area interfered with the unobstructed and safe anchoring in the approach to Tampa Bay, Florida.

Regulatory Evaluation

This proposed rulemaking will not have adverse energy or environmental impact. To the contrary, the risk of environmental damage will decrease if this proposal is implemented because vessels will have an established anchorage area where the placement of structures will be limited to a two mile spacing.

The Coast Guard is directed by the PWSA to anticipate development on the Outer Continental Shelf and vessel traffic requirements and to reconcile the potential conflict with navigation by establishing routing measures in frequently used corridors. Since no conflicts have been identified with the MMS offshore leasing program and since the proposed fairway anchorages are governed by rules which allow structures within certain spacing limitations, no significant interference with access to oil and gas is anticipated. On the other hand, the proposed new fairway anchorage will benefit navigation safety in the approach to Tampa Bay by providing a deeper, safer, and more navigable fairway anchorage.

When there is evidence fixed structures must be placed in an area designated as a shipping safety fairway or fairway anchorage to gain access to significant quantities of oil or gas, a request for an adjustment of the fairway or fairway anchorage will be given the appropriate consideration by the Coast Guard. The request will be handled in accordance with the PWSA and rulemaking procedures to determine whether navigation safety will be jeopardized by a modification. In most cases, a modification will require a PWSA port access study before rulemaking can be commenced.

These proposed regulations are considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). There are not costs associated with the proposed new fairways which can be identified and calculated at this time. These designations will contribute to navigation safety without interfering significantly with development of the OCS. The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. Since the impact of this proposal is expected to be so minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 166

Anchorage grounds, Marine safety, Navigation (water), Waterways, Shippping safety fairways.

PART 166—[AMENDED]

In consideration of the foregoing, Part 166 of Title 33 CFR is amended as follows:

1. The authority citation for Part 166 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46(n)(4).

2. Section 166.200 is amended by revising paragraph (d)(49) to read as follows:

§ 166.200 Shipping safety fairways and anchorage areas, Gulf of Mexico.

* * * * *

(d) * * *

(49) Tampa Anchorage Areas—(i) Eastern Tampa Fairway Anchorage Area. The area enclosed by rhumb lines [North American Datum of 1927 (NAD–27)] joining points at:

Latitude	*Longitude*
27°36'48" N.	83°00'00" W..
27°39'00" N.	83°00'00" W..
27°39'00" N.	82°55'54" W..
27°36'48" N..	82°55'54" W.

(ii) Western Tampa Fairway Anchorage Area. The area enclosed by rhumb lines [North American Datum of 1927 (NAD–27)] joining points at:

Latitude	*Longitude*
27°39'00" N.	83°01'99" W..
27°36'48" N.	83°01'00" W..
27°36'48" N.	83°05'06" W..
27°39'00" N.	83°05'06" W.

* * * * *

Dated: June 24, 1987.

Martin H. Daniell,

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

[FR Doc. 16982 Filed 7–24–87; 8:45 am]

BILLING CODE 4910-14-M

POSTAL SERVICE

39 CFR Part 111

Forwarding of Fourth-Class Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This rulemaking proposes to modify the process by which the Postal Servies forwards fourth-class mail. Currently, the addressee determines whether forwarding to a different post office occurs by agreeing to pay forwarding postage. Under this proposal, all fourth-class mail will be forwarded unless the sender specifically endorses the package to the contrary.

DATES: Comments must be received on or before August 31, 1987.

ADDRESS: Written comments should be directed to John Sadler, Office of Address Information System, Delivery Services Department, U.S. Postal Service Headquarters, 475 L'Enfant Plaza West SW., Washington, DC 20260–7230. 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 the Office of Address Information Systems, Delivery Services Department, Room 7417, U.S. Postal Services Headquarters, 475 L'Enfant Plaza West SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Sadler, (202) 268–3523.

SUPPLEMENTARY INFORMATION:

Currently, the forwarding rules for fourth-class mail provide that nonlocal forwarding will be provided to relocating customers who guarantee on Postal Service Form 3575, *Change of Address Order*, to pay forwarding postage. Local (forewardng is free.) Customers are asked to check a box on the change of address form to indicate whether they will pay for articles which are forwarded. A customer's indication that he will not pay forwarding postage on fourth-class mail overrides any mailer request that a specific mail piece be forwarded. Under these circumstances, no forwarding is attempted, the mail piece is returned with the new address noted and the mailer pays the return postage due. The only exception it this override feature occurs when the mailer endorses the mail piece *Do Not Forward.*

Current forwarding regulations also allow individual refusal of a mail piece by the relocated customer, even though the customer has agreed to pay forwarding postage by checking the "Yes" box on the form. In this case, the piece is returned and both forwarding and return postage is charged to the mailer.

A large fourth-class mailer, through its representation on the Mailer Technical Advisory Committee, has requested a change in the fourth-class forwarding regulations to allow all fourth-class mail to be forwarded, postage due, to endorsement that the mail piece not be forwarded. The reason for this request is a belief that many postal customers who indicate on the change of address form that they will not guarantee payment of forwaring postage on fourth-class mail in fact would be willing to pay for forwarding of certain individual parcels sent to them, such as book club mailings or individual parcel post mailings. The Postal Service believes that such a cirumstance is possible. Because of space limitations, the line on Form 3575 related to the treatment of fourth-class mail does not explain the various types of materials that are sent fourth-class. Moreover, customers are not specifically informed that they may refuse to pay for forwarding of individual pieces and still continue to have other fourth-class mail forwarded to them.

Based upon this mailer request, the Postal Service has decided to propose such a change in its forwarding and return rules and seek comment on the desirability of the change. The proposed change would eliminate the current procedure by which the relocating customer is asked to indicate on Form 3575 whether he wants fourth-class mail to be forwarded to the new address. Instead, all fourth-class mail would be forwarded unless other treatment is specifically requested by the mailer through an endorsement on the mail piece or unless a relocated customer subsequently submits a Form 3546, *Notice to Change Forwarding Order*, requesting that the forwarding of all fourth-class mail be discontinued. If the customer had moved locally (within the area served by a single post office), the mail would be forwarded without any postage due. If the move was non-local, the customer without any postage due. If the move was non-local, the customer would be requested to pay for the forwarded piece. If the customer does not want the forwarded piece, he may refuse to pay the postage due. In that case, the piece would be returned to the sender who would be charged both forwarding and return postage at the applicable single-piece fourth-class rate. Under this proposal, fourth-class mail which is not endorsed by the mailer will receive the same treatment as a piece that is endorsed *Forwarding and Return Postage Guaranteed.* The sender would be obligated to pay for both forwarding (where attempted) and return if the addressee declines payment. Although not required, the Postal Service will continue to encourage mailers to use the specific endorsement to obtain forwarding and return treatment because it makes the mailer's wishes clear. The other endorsements for fourth-class mail would be *Do Not Forward, Address Correction Reguested, Return Postage Guaranteed*, and combinations of these four. For details, see proposed Exhibit 159.151f. This exhibit and sections 159.212, 159.24 and 790 have been revised to clarify the effect of these endorsements, including the clarification that mail endorsed *Do Not Forward* will not be forwarded locally or non-locally.

The impact of the proposed change is not completely clear. The current option extended to mail recipients, who submit a change of address request on Form 3575, to indicate whether they want fourth-class mail forwarded to their new address would be eliminated. A limited Postal Service study indicates that approximately 18 percent of customers choose not to pay for forwarding of fourth-class mail. Thus, under the proposed change, some mail would be forwarded to customers who may not be willing to pay the forwarding postage. However, the change should have only minor impact on parcel recipients because such customers retain the right to refuse to accept individual mail pieces. Moreover, relocated customers who find that they do not want to receive any more forwarded fourth-class mail would still have the option to discontinue that mail by filling out a form 3546, *Notice to Change Forwarding Order*, at their new post office. *See* proposed sections 159.212 and 791.

The proposed change could also cost fourth-class mailers some additional postage since some pieces (those which are refused by customers who would check "No" to forwarding if given such a choice) would be returned to mailers for payment of both forwarding and return postage, not just the return postage that would be due today. However, it is not clear whether this situation would occur. If enough of the pieces that are forwarded as a consequence of this change (instead of being returned) are accepted by the recipient, then those mailers could incur lower postage costs than under the current system. In addition, this change would help fulfill the prime Postal Service objective of getting the most mail delivered. Because of these trade-offs, this proposed change would allow individual mailers to make their own judgment about the recipients of their fourth-class mailings and decide whether to have the mail forwarded,

returned, or disposed of by the Postal Service. Because there is uncertainty over the full impact of the proposed change, the Postal Service would very much like to have the comments of individual mailers and mail recipients on the various aspects of the change. Some examples of the information that is desired are: Will the change result in more mail being delivered to the intended addressee? Are customers uncertain about what types of mail they may be receiving at fourth-class rates, and thus cannot fairly choose between forwarding options? Do mailers find the more flexible proposed endorsement options an advantage?

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. of 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

PART 159—UNDELIVERABLE MAIL

2. In 159, revised Exhibit 159.151f to read as follows:

Mailer endorsement	USPS action
No Endorsement	Forward locally at no charge; forward out of town postage due. If undeliverable, or addressee refuses to pay postage, return mail price with new address or reason for nondelivery; charge both forwarding (where attempted) and return postable at the appropirate single-piece fourth-class rate.
Do Not Forward	No forwarding or return service is provided; mail piece is disposed of by Postal Service
Address Correction Requested	Forward locally no charge; forward out of town postage due. If forwarded, provide a separate address correction notice; charge address correction fee. If mail piece is undeliverable, or addressee refuses to pay postage, return mail piece with new addressor reason for nondelivery; charge both forwarding (where attempted) and return postage at the appropriate single-piece fourth-class rate.
Forwarding and Return Postage Guaranteed	Same as no endorsement.
Forwarding and Return Postage Guaranteed, Address Correction Requested [1].	Same as address Correction Requested.
Do Not Forward, Address Correction Requested	No forward or return service is provided; provide a separate address correction notice; charge address correction fee; mail piece is disposed of by Postal Service.
Do Not Forward, Address Correction Requested. Return Postage Guaranteed [2].	No Forwarding service is provided; return mail piece with new address or reasons for nondelivery; charge return postage at the appropriate single piece fourth-class rate.

[1] The authorized abbreviation for this endorsement is FWD & RET Postage Guaranteed-ACR.
[2] The authorized abbreviation for this endorsement is Do Not Forward-ACR-RPG or DNF-ACR-Return Postage Guaranteed.

Note.—These regulations apply to mail associated with a customer change of address. Do not provide temporary change of address information at any time.

Exhibit 159.151f—Treatment of Undeliverable Fourth-Class Mail Including Parcel Post (Forwarded up to 12 months)

3. In 159.2, revise .212 and .24d to read as follows:

159.2 Forwarding

* * * * *

.212 Unless endorsed *Do Not Forward,* fourth-class mail is forwarded locally for 1 year free of charge. The addressee is charged forwarding postage for pieces forwarded nonlocally. However, the addressee is not required to accept each article; it is the addressee's option to refuse any piece of fourth-class mail. Such refusal does not revoke the right to have other fourth-class mail forwarded. If the addressee intends to refuse to pay forwarding postage on all fourth-class mail and desires that the Postal Service not forward such mail, the addressee must request the postmaster to send Form 3546, *Notice to Change Forwarding Order,* to the postmaster at the old address, requesting that the forwarding of fourth-class mail be discontinued.

* * * * *

.24 Postage for Forwarding

* * * * *

d. Fourth-class mail is subject to the collection of additional postage for nonlocal forwarding at the appropriate single-piece rate. Unless endorsed *Do Not Forward,* all fourth-class will be delivered as directed when the old and new addresses are served by the same single-ZIP Coded or multi-ZIP Coded post office. Additional postage is not charged.

PART 790—ANCILLARY SERVICES (FOURTH-CLASS MAIL)

4. In 790, revise 791, 792 and 793 to read as follows:

790 Ancillary Services

791 Forwarding and Return

Unless endorsed *Do Not Forward,* fourth-class mail will be forwarded locally for 1 year at no charge. (For forwarding purposes, local is defined as the same single-ZIP Code or multi-ZIP Coded post office.) Unless specifically endorsed *Do Not Forward* or unless the customer has filed a Form 3546, *Notice to Change Forwarding Order,* nonlocal forwarding for 1 year will be provided at an additional charge. Undeliverable fourth-class mail bearing no endorsement or the endorsement *Forwarding and Return Postage Guaranteed, Address Correction Requested* is forwarded, when the new address is known. Forwarding postage will be collected from the addressee if the mail piece is accepted. The recipient may refuse to pay the forwarding postage on any piece of fourth-class mail (and have the piece returned) and still continue to have other fourth-class mail forwarded. Form 3546 will be used only if the addressee intends to refuse to pay for forwarding on all fourth-class mail and requests the postmaster of the new address to notify the postmaster of the old address that forwarding service on fourth-class mail is not desired. The appropriate single-piece rates and conditions are applicable to forwarding and return of fourth-class items mailed at single piece, presort, and bulk rates. If the piece cannot be forwarded because the new address is not known, it will be given return service (see 792). Unless endorsed *Do Not Forward,* during months 13 through 18 the piece will be returned with the correct new (forwarding) address or the reason for nondelivery attached.

792 Return

792.1 Endorsed and Unendorsed Pieces.

Unless endorsed *Do not Forward,* all undeliverable fourth-class mail (after forwarding has been attempted) will be returned postage due to the sender (or the person designated by the sender) with the reason for nondelivery attached. No address correction fee is charged.

792.2 Pieces Bearing a Meter Stamp.

When fourth-class mail bearing a postage meter stamp of a private mailer is received unaddressed and without return address, and delivery cannot be made, the piece must be returned to the post office of mailing. The reason for nondelivery will be attached without charging the address correction fee. The office of mailing will deliver the piece to the meter licensee on payment of the return postage.

793 Address Correction

The addressee's new (forwarding) address, or the reason for nondelivery if the new address is not known, may be obtained by the sender either independently of or in combination with the return and forwarding services provided by 791 and 792. To obtain this service, the mailing piece must bear the endorsement: *Address Correction Requested;* or *Forwarding and Return Postage Guaranteed, Address Correction Requested;* or *Do Not Forward, Address Correction Requested;* or *Do Not Forward, Address Correction Requested, Return Postage Guaranteed* according to the service desired. See Exhibit 159.151f for details. Temporary changes of address are not provided. The following conditions govern these services:

a. When a piece bears the endorsement *Address Correction Requested* or *Do Not Froward, Address Correction Reqeusted,* Form 3579, *Undeliverable 2d, 3d, 4th Class Matter,* or a markup label is used to notify the sender. The address-correction fee is charged (See 712.2). Form 3579 or a markup label utilizing the customer's old address will be prepared for mailing to the sender in an envelope in the same manner that address correction notices are prepared for mailing to second-class publishers.

Exception: When address labels are affixed to plastic wrappers, or a window-address format is used on a mail piece, making compliance with the foregoing instructions difficult, Form 3547, *Notice to Mailer of Correction in Address,* will be substituted to provide the requested information.

b. If a piece bearing the endorsement *Address Correction Requested* or *Forwarding and Return Postage Guaranteed, Address Correction Requested* must be returned to the sender by the post office of original address because the piece cannot be forwarded, Form 3579 or a markup label is affixed to the piece, and it is returned to the sender at the applicable single-piece forth-class postage for the piece. No address correction fee is charged.

c. If a piece bearing the endorsement *Address Correction Requested* or *Forwarding and Return Postage Guaranteed, Address Correction Requested* is forwarded to the addressee, then Form 3547 is used by the post office of original address to furnish the sender with the new address. The address correction fee is charged (see 712.2).

d. Forwarding address information will not be provided for mail bearing an exceptional address format (see 122.422).

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-16946 Filed 7-24-87; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 799

[OPTS-42094A; FRL-3238-9]

Proposed Test Standards and Requirements; Extension of Comment Period; Cyclohexane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Extension of comment period.

SUMMARY: EPA is extending the comment period for the proposed test rule on cyclohexane for 45 days until September 3, 1987 as requested by the Chemical Manufacturers Association (CMA). Extension of the comment period was requested to allow industry additional time to better define the nature and extent of exposure to cyclohexane and because industry had difficulty locating several documents that were not in the public docket. EPA is extending the comment period to provide interested parties full opportunity to review documents in the rulemaking record.

DATES: Written comments on the proposed rule should be submitted on or before September 3, 1986. Requests to make oral comments at a public meeting were submitted to the Agency on July 6, 1987, and a public meeting will be held this October.

ADDRESSES: Address written comments in triplicate identified by the document control number OPTS-42094A to:

TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room NE-G004, 401 M St., SW., Washington, DC 20460.

The public records supporting these actions are available for inspection in Room NE-G004 at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room E-543, 401 M St., SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: Proposed rulemaking for cyclohexane (40 CFR 799.1295 *Cyclohexane*) in response to the 17th and 18th Interagency Testing Committee (ITC) Reports was published in the **Federal Register** of May 20, 1987, (52 FR 19096). EPA made a finding of "significant or substantial human exposure" to cyclohexane under section 4(a)(1)(B) of TSCA. On July 6, 1987, the CMA requested an extension of the comment period for 45 days until September 3, 1987 (Ref. 1) to allow industry additional time to better define the nature and extent of exposure to cyclohexane and because industry had difficulty locating several documents that were not in the public docket.

A survey of cyclohexane users is being conducted for the cyclohexane program panel of the Chemical Manufacturers Association (CMA) by a contractor. The contractor initiated the survey in mid-June with the aim of producing results to be incorporated in the Panel's comments. However, unforeseen difficulties in identifying and contacting the small-volume cyclohexane users have slowed the contractor's progress and the data gathering and analysis have not yet been concluded.

EPA does not believe the delay in the completion of the survey is an adequate basis for extending the comment period because CMA was aware in the fall of 1986 that the nature and extent of exposure to cyclohexane was a critical issue, and therefore EPA believes that industry should not have waited until mid-June to initiate its survey.

The CMA also stated in its July 6 letter (Ref. 1) that it could not locate five references in EPA's rulemaking proposal in the EPA rulemaking docket [OPTS-42094]. EPA was notified of these five missing references by the CMA on Friday, July 26, 1987 (Ref. 3). Copies of these five references were placed in the docket and carried by messenger to CMA on Monday, June 29, 1987. The CMA also stated in its July 6 letter (Ref. 1) that since over half of the comment period has expired, reviewing the five references and incorporating a discussion of them into the CMA's comments by the existing comment deadline would be unreasonably difficult. EPA is therefore granting an extension of the comment period for 45 days until September 3, 1987, as requested by the CMA (Ref. 1), on the basis of the incomplete docket.

Requests to make oral comments at a public meeting were submitted to the Agency on July 6, 1986 (Ref. 3), and a public meeting will be held this October. Information on the exact time and place

of the meeting will be available from the TSCA Assistance Office.

References

(1) CMA. Letter, request for extension of comment period, from Geraldine V. Cox, Chemical Manufacturers Association, Washington, DC to Charles L. Elkins, Director, Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, DC (July 6, 1987).

(2) Letter from Henry J. Sauer, Chemical Manufacturers Association, Washington, DC to John Harris, Test Rules Development Branch, Office of Pesticides and Toxic Substances, U.S. Environmental Protection Agency, Washington, DC (June 26, 1987).

(3) Letter, requesting an opportunity to submit oral comments on Cyclohexane; Proposed Test Standards and Requirements, from Henry J. Sauer, Chemical Manufacturers Association, Washington, DC to John Harris, Test Rules Development Branch, Office of Pesticides and Toxic Substances, Washington, DC (July 6, 1987).

Authority: 15 U.S.C. 2603.

Date: July 19, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-16954 Filed 7-24-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-320-07-4212-02]

43 CFR Parts 2920 and 9260

Leases, Permits and Easements and Criminal Law Enforcement; Amendment To Provide Procedures for Action for Unauthorized Use of the Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would provide procedures for dealing with unauthorized use of the public lands for agricultural, industrial, residential or commercial purposes where the user has not obtained a lease, permit or easement authorizing such use. These procedures will protect the public lands and their resources from unauthorized use, which deprives the United States of a fair return for the use of its lands.

DATE: Comments should be submitted by August 26, 1987. Comments not received or postmarked by the above date may not be considered in the decisionmaking process on the issuance of a final rulemaking.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

Comments will be available in Room 5555 of the above address for public review during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Ralph Conrad, (202) 343-8693

or

Robert C. Bruce, (202) 343-8735.

SUPPLEMENTARY INFORMATION: The existing regulations in 43 CFR Part 2920 provide the procedures for obtaining a land use authorization in the form of a lease, permit or easement to use the public lands for agricultural, industrial, residential, or commercial purposes. The authorizations are based on a determination of the fair market rental value of the lands and are issued only for those uses that conform to Bureau of Land Management plans, policy, objectives, and resource management programs.

The unauthorized use of the public lands for various purposes, mostly agricultural or residential occupancy, has been a growing problem over the past several years. This unauthorized use has resulted in financial loss to the United States because of the loss of rental fees, sales revenues, and damage to the public lands and their resources from misuse, abuse, fire, theft, and vandalism. The Bureau of Land Management has tried to resolve cases involving unauthorized use of the public lands, most of which are unintentional, through the process of sitting down with the individual and negotiating an amicable solution. In most circumstances, this process has worked, but there are instances where this process has not worked, particularly in those cases where the unauthorized use was knowingly and willfully committed. In these instances, a process was needed to allow the United States to take steps to recover civil and/or criminal penalties against those making the unauthorized use of the public lands. This proposed rulemaking would provide this procedure.

Before resorting to the civil and criminal procedures that would be provided by this proposed rulemaking, the Bureau of Land Management would employ its best effort to reach an amicable solution to the issue unless the nature and severity of the unauthorized use would result in unacceptable damage to the public lands and their resources. In those instance where law enforcement action is required for the prevention or abatement of an unauthorized use, occupancy, or development, such action will be aggressively pursued by the Bureau in cooperation with other Federal, State, and local law enforcement agencies and the courts.

In those instances where unauthorized residential occupancy of the public lands is found and such occupancy is unwitting, the Bureau of Land Management will consider authorizing the occupancy, providing the occupancy is in compliance with State and local requirements for such occupancy and the occupancy conforms to Bureau programs, policies, and objectives. In certain situations, residential occupants may be eligible for a nonassignable life estate lease under the provisions of 43 CFR Part 2920 if the occupant acknowledges that the lands being occupied are owned by the United States and the site is the sole residence of the occupant.

The provisions of this proposed rulemaking are applicable only to activities authorized under 43 CFR Part 2920 and has no impact on other areas, i.e., grazing trespass, mineral trespass, timber trespass.

The principal author of this proposed rulemaking is Ralph Conrad, Division of Lands, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it 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.).

This rulemaking will provide procedures for use by the Bureau of Land Management in carrying out its responsibility to protect the public lands and their resources from unauthorized use. The procedures will be equally applicable to all entities, regardless of size, found to be making an unauthorized use of the public lands and their resources.

There are no new information collection requirements in this proposed rulemaking that require the approval of the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects

43 CFR Part 2920

Public lands, Reporting and recordkeeping requirements.

43 CFR Part 9260

Continental shelf, Forests and forests products, Law enforcement, Penalties, Public lands, Range management, Recreation and recreation areas, Wildlife.

Under the authority of sections 302, 303 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, 1740), it is proposed to amend Part 2920, Group 2900, Subchapter B, and Part 9260, Group 9200, Subchapter I, both of Chapter II of the Code of Federal Regulations as set forth below:

PART 2920—[AMENDED]

1. The authority citation for Part 2920 is revised to read:

Authority: 43 U.S.C. 1732, 1733 and 1740.

2. Section 2920.0–3 is revised to read:

§ 2920.0–3 Authority.

Sections 302, 303 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, 1740) authorize the Secretary of the Interior to issue regulations providing for the use, occupancy, and development of the public lands through leases, permits, and easements.

3. Section 2920.0–5 is amended by adding a new paragraph (m) to read:

§ 2920.0–5 Definitions.

* * * * *

(m) "Knowing and willful" means that a violation is "knowingly and willfully" committed if it constitutes the voluntary or conscious performance of an act which is prohibited or the voluntary or conscious failure to perform an act or duty that is required. The term does not include performances or failures to perform which are honest mistakes or which are merely inadvertent. The term includes, but does not require, performances or failures to perform which result from a criminal or evil intent or from a specific intent to violate the law. The knowing or willful nature of conduct may be established by plain indifference to or reckless disregard of the requirements of law, regulations, orders, or terms of a lease. A consistent pattern of performance or failure to perform also may be sufficient to establish the knowing or willful nature of the conduct, where such consistent pattern is neither the result of honest mistake or mere inadvertency. Conduct which is otherwise regarded as being knowing or willful is rendered neither accidental nor mitigated in character by the belief that the conduct is reasonable or legal.

4. Section 2920.1 is revised and §§ 2920.1–1 and 2920.1–2 are added to read:

§ 2920.1 Uses.

§ 2920.1–1 Authorized use.

Any use not specifically authorized under other laws or regulations and not specifically forbidden by law may be authorized under this Part. Uses which may be authorized include residential, agricultural, industrial, and commercial, and uses that cannot be authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act. Land use authorizations shall be granted under the following categories:

(a) Leases shall be used to authorize uses of public lands involving substantial construction, development, or land improvement and the investment of large amounts of capital which are to be amortized over time. A lease conveys a possessory interest and is revocable only in accordance with its terms and the provisions of § 2920.9–3 of this title. Leases shall be issued for a term, determined by the authorized officer, that is consistent with the time required to amortize the capital investment.

(b) Permits shall be used to authorize uses of public lands for not to exceed 3 years that involve either little or no land improvement, construction, or investment, or investment which can be amortized within the term of the permit. A permit conveys no possessory interest. The permit is renewable at the discretion of the authorized officer and may be revoked in accordance with its terms and the provisions of § 2920.9–3 of this title. Permits shall be issued on a form approved by the Director, Bureau of Land Management, that has been filed by the applicant with the appropriate Bureau of Land Management office.

(c) Easements may be used to assure that uses of public lands are compatible with non-Federal uses occurring on adjacent or nearby land. The term of the easement shall be determined by the authorized officer. An easement granted under this Part may be issued only for purposes not authorized under title V of the Federal Land Policy and Management Act or section 28 of the Mineral Leasing Act.

(d) No land use authorization is required under the regulations in this Part for casual use of the public lands.

§ 2920.1–2 Unauthorized use.

(a) Any use, occupancy, or development of the public lands, other than casual use as defined in § 2920.0–5(k) of this Title, without authorization under the procedures in § 2920.1–1 of this Title, shall be considered a trespass. Anyone determined by the authorized officer to be in trespass on the public lands shall be notified of such trespass and shall be liable to the United States for:

(1) The administrative costs incurred by the United States as a consequence of such trespass; and

(2) The fair market value rental of the lands for the current year and past years of trespass; and

(3) Rehabilitating and stabilizing the lands that were the subject of such trespass, or if the person determined to be in trespass does not rehabilitate and stabilize the lands determined to be in trespass within the period set by the authorized officer in the notice, he/she shall be liable for the costs incurred by the United States in rehabilitating and stabilizing such lands.

(b) In addition, the following penalties may be assessed by the authorized officer for a trespass not timely resolved under paragraph (a) of this section and where the trespass is determined to be:

(1) Nonwillful, twice the fair market rental value which has accrued since the inception of the trespass, not to exceed a total of 6 years; or

(2) Knowing and willful, three times the fair market rental value which has accrued since the inception of the trespass, not to exceed a total of 6 years.

(c) For any person found to be in trespass on the public lands under this section, the authorized officer may take action under § 2920.9–3 of this Title to terminate, revoke, or cancel any land use authorization issued to such person under this Part.

(d) Failure to satisfy the liability and penalty requirements imposed under this section for unauthorized use of the public lands may result in denial of:

(1) A use authorization under this Part; and

(2) A request to purchase or exchange public lands filed under Subparts 2711 and 2201 of this Title.

(e) Any person who knowingly and willfully violates the regulations in this Part by using the public lands without the authorization required by this Part shall be subject to a fine of not more than $1,000 or imprisonment of not more than 12 months, or both.

PART 9260—[AMENDED]

5. The authority citation for Part 9260 continues to read:

Authority: 16 U.S.C. 433; 16 U.S.C. 460 1–6a; 16 U.S.C. 670 g–n; 16 U.S.C. 1241–1249; 16 U.S.C. 1331 et seq.; 18 U.S.C. 3410; 18 U.S.C. 1851–1853; 43 U.S.C. 315 et seq.; 43 U.S.C. 315(a); 43 U.S.C. 315(c); 43 U.S.C. 1061–1064; 43 U.S.C. 1334; 43 U.S.C. 1701 et seq.; 43 U.S.C. 1733.

6. Part 9260 is amended by adding Subpart 9262 to read:

Subpart 9262—Land Resource Management

§ 9262.0–3 Authority.

The provisions of this Subpart are issued under sections 302, 303 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, 1740).

§ 9262.1 Penalties for unauthorized use of public lands.

Any person who knowingly and willfully violates the regulations in Part 2920 of this Title by using the public lands without the authorization required by that Part shall be subject to a fine of not more than $1,000 or imprisonment of not more than 12 months, or both.

(43 CFR 2920.1–2)

James E. Cason,

Acting Assistant Secretary of the Interior.

June 29, 1987.

[FR Doc. 87–16782 Filed 7–24–87; 8:45 am]

BILLING CODE 4310–84–M

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Withdrawal of the Proposed Rule To List Mammillaria Thornberi as a Threatened Species; Withdrawal of Proposed Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Withdrawal of proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service is withdrawing the proposed rule (April 24, 1984; 49 FR 17551) to list *Mammillaria thornberi* (Thornber's fishhook cactus) as a threatened species. New data have revealed a wider distribution and greater numbers than previously known. The Service has determined that this species is not likely to become endangered in the foreseeable future.

ADDRESSES: The complete file for this notice is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Regional Office, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Endangered Species Botanist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

The proposed rule to list *Mammillaria thornberi* as a threatened species was published in the **Federal Register** on April 24, 1984 (49 FR 17551). This proposal was supported by biological information in the status report (Phillips *et al.* 1981), which indicated that this species was limited in distribution and numbers, and had a variety of threats. Two major population areas were known at the time of the proposal; the species was locally common in the Avra Valley, and occasional to rare on the Tohono O'odham (formerly Papago) Indian Reservation. About 600 plants were observed on the two areas; nearly 200 of these occurred on the Indian Reservation. Surveyors estimated 9 square kilometers (3.4 square miles) of potential habitat in the Avra Valley. Because grazing and agriculture had degraded the habitat on the Reservation, the potential habitat area was difficult to estimate. The plants on the Reservation were in poor condition, were rarer and smaller than those in the Avra Valley, and there were a higher percentage of dead plants. Populations in the Avra Valley appeared healthy. All populations faced a variety of threats, including habitat loss or degradation due to residential and agricultural development, construction of the Central Arizona aqueduct (CAP), grazing, and groundwater depletion.

After the proposal was published, the Service received new data that indicated *Mammillaria thornberi* was more abundant and widespread than previously believed. On June 10, 1985 (50 FR 24241), the proposed rule was extended because more time was needed to gather and evaluate new biological information. Several studies documented new populations or supplied new data on previously identified populations. Reichenbacher (1984a) observed 1,635 plants along the proposed CAP route in the Avra Valley. A 1985 survey of Organ Pipe Cactus National Monument, the westernmost locality of *Mammillaria thornberi*, located 235 individuals. Rutman (1985) observed 454 plants on Saguaro National Monument West, the species' easternmost locality. Nearly 900 plants were found on Bureau of Land Management lands in the Avra Valley (Butterwick, BLM-Phoenix, pers. comm., 1985). Additional surveys of selected areas on the Tohono O'odham Indian Reservation located nearly 1,700 plants (Tierra Madre Consultants 1984, Reichenbacher 1984b). About 5,000 plants were observed on the total area of land searched. No accurate estimate of total plant numbers is available because the amount of potential habitat is difficult to assess. *Mammillaria thornberi* occurs on lower bajadas (alluvial slopes) and large-scale basins separated by mountain ranges. The patchy distribution of habitat on a regional scale, as well as on a local scale, are features that have complicated the estimation of habitat area.

At this time *Mammillaria thornberi* is sufficiently abundant and widely distributed, and the magnitude and immediacy of threats are sufficiently limited, that withdrawal of the rule as proposed is not inconsistent with the purposes of the Endangered Species Act. The ecosystem on which *M. thornberi* depends will be sufficiently conserved that it is not likely to become an endangered or threatened species within the foreseeable future throughout all or a significant portion of its range.

In the proposed rule the Service identified the following threats: (1) Habitat loss due to development in the Avra Valley and Tohono O'odham Indian Reservation; (2) recreational use of habitat increasing the take of this cactus; and (3) construction of the CAP aqueduct will also destroy plants and habitat. Despite these threats, there are three reasons why the Service believes it is appropriate to withdraw the proposed rule. First, distribution and abundance information obtained after publication of the proposed rule has expanded the known range and abundance of the species. The known range now includes localities spanning an area 120 miles from east to west. Researchers have counted at least 5,000 plants, and have speculated that more than 250,000 plants may exist. Secondly, *Mammillaria thornberi* will be protected on four safe sites: Saguaro National Monument, Organ Pipe Cactus National Monument, Tucson Mountains County Park, and 11.1 square kilometers (4.25 square miles) of land set aside in the Avra Valley by the Bureau of Reclamation for CAP mitigation. Thus, populations will be protected on both the easternmost and the westernmost extensions of the species' range. Third, land management policies and mitigation efforts have diminished the

effects of two severe threats. The City of Tucson requires landowners in the Avra Valley to retain 80 percent of their land as undisturbed space. In addition, the Bureau of Reclamation is seeking to minimize losses of *Mammillaria thornberi* by monitoring construction activity to prevent unnecessary habitat destruction and by transplanting *Mammillaria thornberi* plants to a protected mitigation area.

On reviewing the current distribution, abundance, degree of protection, and severity of threats to this species, the Service has determined that the withdrawal of the proposed rule to list *Mammillaria thornberi* as threatened is consistent with the Endangered Species Act.

Ongoing studies will contribute to our understanding of this species. The Desert Botanical Garden, in cooperation with the University of Arizona and the National Park Service, is conducting a study that will analyze land use patterns in the Avra Valley from 1935 to 1985, and will also predict future changes. Other studies are presently being conducted to further define the distribution and abundance of *Mammillaria thornberi*. These studies are expected to help the Service continue to assess the status of this species.

References Cited

Phillips, A.M., B.G. Phillips, N. Brian, L.T. Green, and J. Mazzoni. 1981. Status report on *Mammillaria thornberi*. U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, NM. 15 pp.

Reichenbacher, F.W. 1984a. Rare plants of the Central Arizona Project, Tucson Aqueduct, Phase B. Final Report. U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, NM. 61 pp.

Reichenbacher, F.W. 1984b. Rare plant survey: Selected areas of the Shuk Toak and San Xavier Districts of the Papago Indian Reservation. Franzoy-Corey Engineering Co., Tempe, AZ. 62 pp.

Rutman, S. 1985. The distribution of *Mammillaria thornberi* on Saguaro National Monument, Tucson Mountain Unit, AZ. Saguaro National Monument, Tucson, AZ. 24 pp.

Tierra Madre Consultants. 1984. Letter on file. U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, NM. 2 pp. plus map.

Author

This rule was prepared by Sue Rutman, Endangered Species Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

Accordingly, the proposed rule published April 24, 1984 (49 FR 17551) is hereby withdrawn.

Dated: July 9, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–16912 Filed 7–24–87; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 662

[Docket No. 70749–7149]

Fishery Conservation and Management; Northern Anchovy

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

ACTION: Notice of preliminary determination.

SUMMARY: NOAA announces the estimated spawning biomass and preliminary determination of harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) for the 1987–1988 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. These regulations require this announcement to be made on or about July 1 each year. This action provides data and requests comments for NOAA's determination of the final specifications for the 1987–1988 fishing year.

DATE: Comments must be received on or before July 31, 1987.

ADDRESS: Comments should be addressed to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Craig (Fishery Biologist), NMFS, 213–514–6662.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the NMFS Southwest Fisheries Center, the NMFS Director, Southwest Region (Regional Director) has made a preliminary determination that the spawning biomass of the central subpopulation of northern anchovy (*Engraulis mordax*) is estimated to be 1,212,000 metric tons (mt).

This biomass estimate is derived from, and is equivalent to, the Egg Production Method (EPM) measurement, but is based upon the Stock Synthesis Model, a new quantitative model that combines available information on abundance and age composition. This model is directly calibrated with EPM spawning biomass observations, thus its output is equivalent and it is more cost-effective. Amendment 5 to the FMP, effective April 8, 1984 (49 FR 9572, March 15, 1984), changed certain management measures for determination of commercial harvest quotas and adopted the improved stock estimates. It also deleted the reduction quota reserve established by Amendment 4.

The Regional Director has made the following preliminary determinations for the 1987–1988 fishing season, applying the formulas in the FMP and in § 662.20 to calculate the harvest quotas and expected processing levels:

1. The total U.S. harvest quota or optimum yield (OY) of northern anchovy is 144,900 mt plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes is 140,000 mt.

a. Of the total reduction harvest quota, 9,072 mt is reserved for the reduction fishery in subarea A (north of Pt. Buchon).

b. The reduction quota for subarea B (south of Pt. Buchon) is 130,928 mt.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovy for use as dead bait and direct human consumption) is 4,900 mt. However, non-reduction fishing is not limited until the total catch in both the reduction and non-reduction fisheries reaches the total harvest quota of 144,900 mt.

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing (DAP) capacity for the reduction and non-reduction industry is 2,950 mt.

6. The amount allocated to joint venture processing is zero because there is no history of, nor are there applications for, joint ventures.

7. The domestic annual harvest (DAH) capacity for the reduction fishery is 2,950 mt.

8. The total allowable level of foreign fishing (TALFF) is 67,050 mt. The FMP states that TALFF in the U.S. EEZ will be based upon the U.S. portion of the OY minus the DAH and minus that amount of expected harvest in the Mexican fishery zone which is in excess of that allocated by the FMP. The excess Mexican harvest in 1987–88 is expected to be 74,900 mt. Applying the formula in the FMP results in this TALFF.

A summary of the information on which this preliminary determination is based has been provided to the Pacific Fishery Management Council. Consultations with the Council will continue through July. In addition, the Regional Director will consider, until July 31, any evidence received from domestic land-based processors that the preliminary DAP should be modified. A final determination of the harvest quotas will be announced on or about August 1, 1987.

Classification

This action is authorized by 50 CFR Part 662 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 662

Fisheries.

(16 U.S.C. 1801 et seq.)

Dated: July 22, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-16983 Filed 7-22-87; 4:33 pm]

BILLING CODE 3510-22-M

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50 CFR Part 681

[Docket No. 70751-7151]

Western Pacific Crustacean Fisheries

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

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 5 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP) adopted by the Western Pacific Regional Fishery Management Council (Council) at its 57th meeting in Honolulu, Hawaii on June 4–5, 1987. Amendment 5 would implement a size limit for slipper lobster, require escape vent panels for all lobster traps, and change existing reporting requirements. The amendment also changes the name of the existing FMP. The intended effect of this action is to protect the spiny and slipper lobster resources of the western Pacific.

DATE: Written comments will be received on or before September 4, 1987.

ADDRESS: Send comments to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731. A copy of the amendment may be obtained from the Regional Director.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Administrator, Western Pacific Program Office, 2570 Dole Street, Room 106, Honolulu, HI 96822-2396, 808-955-8831.

SUPPLEMENTARY INFORMATION: When the FMP was implemented (February 7, 1983, 48 FR 5560), only a directed fishery for spiny lobster (*Panulirus*) existed in the Northwestern Hawaiian Islands (NWHI), and a size limit as well as other conservation measures were adopted to protect the long term yield of that resource. Since then a directed fishery for the common slipper lobster (*Scyllarides*) has developed without any conservation measures. The total catch of slipper lobster rose from 25,610 animals in 1983 to over 1,200,000 animals in 1986, almost matching the total harvest of spiny lobster in 1985 and 1986, resulting in a multispecies lobster fishery. At-sea experiments and experience in other lobster fisheries indicate that properly placed escape vents will provide additional protection to spiny lobster from heavy fishing pressure. Undersized spiny lobsters that are caught in traps and released are believed to suffer high mortality from predation and handling.

Therefore, two management measures are necessary: (1) establish an appropriate size limit for slipper lobster that protects the resource from overfishing, and (2) develop an escape vent for lobster traps that is effective for the two major species in the fishery, spiny and slipper lobster.

The Honolulu Laboratory, Southwest Fisheries Center, NMFS, established a size limit for slipper lobster based on a study that sampled 3,396 female lobsters from Maro Reef, Pearl and Hermes Reef, and Kure Atoll. This work was reviewed by the Council's Crustacean Planning Team and their recommendation was made to the Council. The Honolulu Laboratory also conducted laboratory tank trials of escape vents in March–April, 1986, and field-tested various configurations of escape vents in the NWHI aboard a commercial fishing vessel (Administrative Report H-87-3).

At its 57th regular meeting in June, the Council adopted a minimum tail width of 5.6 cm for slipper lobster and a trap configuration of escape vents consisting of four circular holes 67mm in diameter. Based on studies done by the NMFS Honolulu laboratory, the adopted arrangement is expected to catch 10 percent more legal spiny lobster and 10 percent less legal slipper lobster than traps without escape vents. The total number of legal-sized lobsters that are caught is virtually the same with or without the escape vents. However, use of the escape vents will allow escape of 83 percent of the sublegal spiny lobsters and 93 percent of the sublegal slipper lobsters which would have been captured in unvented traps.

The Council also adopted the requirement that egg-bearing slipper lobster be released to protect the slipper lobster resource. In addition, reporting requirements have been modified to add the price paid for a vessel and its date of purchase to the application for the permit required for fishing in the EEZ to better depict capital investment. The annual processor's report requirement is removed because of unnecessary duplication of data collection now taken as part of the Trip Processing and Sale Report. The name of the FMP has been changed to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region to reflect the broader scope of management.

The Council presented these proposals at a public information meeting in Honolulu, Hawaii on April 29, 1986 and at a public hearing in Honolulu on May 18, 1987. In addition, the Council informed all lobster permit holders of the issues contained in Amendment 5, soliciting comments from all interested individuals. The issues have been reviewed by the Council's Advisory Panel, Planning Team, and Scientific and Statistical Committee. Reviews have been made by the Honolulu Laboratory and the Southwest Region of the National Marine Fisheries Service, including the General Counsel.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Pub. L. 99-659, requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 15 days of receipt of any amendment to an FMP. At this time the Secretary has not determined that the FMP amendment that these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and the other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment as part of the FMP and concluded that there will be no significant impact on the environment as a result of this rule.

The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The present action will not have a cumulative effect on the economy of $100 million or more nor will it result in a major increase in costs to consumers,

industries, government agencies, or geographical regions. No significant adverse effects on competition, employment, investments, productivity, innovation, or competitiveness of U.S. based enterprises are anticipated.

The Council prepared a regulatory impact review which concludes that this rule will have the following economic effects: Lobster fishermen will lose $413,000 from a diminished slipper lobster catch due to escape vent panels and establishment of a size limit, but will recover $603,000 in an increased spiny lobster catch from an increased initial catch due to escape vents and through the preservation of undersized lobster. Adding escape vent panels at a cost of $2.50 per trap to the approximately 19,200 traps in the fishery will require a one time cost to the industry of approximately $48,000. Increased enforcement costs will be minimal. Since the greatest effect of this action is preservation of the slipper lobster resource and additional protection of the spiny lobster resource, the long term benefits are expected to be substantial. Approximately $2,280,000 in ex-vessel income from slipper lobster was realized by fishermen in 1986. Currently no regulations on slipper lobster exist and all sizes of animals are harvested; therefore, the resource is expected to decline greatly if no controls on harvest are implemented.

This proposed rule is exempt from the review procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended by Pub. L. 99–659, require the Secretary to publish this proposed rule 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow procedures of the order.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small businesses because fishermen generally target fishing effort on both slipper and spiny lobsters, and any short-term adverse effects from regulations on slipper lobsters are expected to be more than offset by gains associated with fishing for spiny lobsters. The cost to the 16 vessels in the fleet of putting escape vents in traps is expected to average less than 1 percent of average annual revenue. The cost will be less than the maximum because many traps will be replaced during normal operations and the cost of a new trap with or without vents will be the same. The reporting burden will remain essentially unchanged since more of the changes involve a substitution of one type of data for another or the reformatting of reporting forms. As a result, a regulatory flexibility analysis was not prepared.

This rule contains collection of information requirements subject to the Paperwork Reduction Act. The collection of information requirements contained in this rule have been submitted to OMB for review under Section 3504(h) of the Act. Comments on the proposed information collections should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for NOAA.

The Council has determined that the measures established in Amendment 5 are consistent to the maximum extent practicable with the approved coastal zone management program in Hawaii. A letter requesting the State of Hawaii's concurrence was forwarded by the Council to Hawaii on July 2, 1987.

List of Subjects in 50 CFR Part 681

Fisheries, Reporting and recordkeeping requirements.

Dated: July 20, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 681 is proposed to be amended as follows:

1. The authority citation for 50 CFR Part 681 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. The heading of Part 681 is revised to read as follows:

PART 681—WESTERN PACIFIC CRUSTACEAN FISHERIES

3. In § 681.1, paragraphs (a) and (b) are revised to read as follows:

§ 681.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific (FMP) developed by the Western Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

(b) These regulations govern commercial fishing for spiny lobsters and slipper lobsters by fishing vessels of the United States within the U.S. exclusive economic zone (EEZ) seaward of American Samoa, Guam, and Hawaii. The management measures specified in Subpart B apply only in the EEZ seaward of the Northwestern Hawaiian Islands (Permit Area 1). The management measures specified in Subpart C apply only in the EEZ seaward of the main Hawaiian Islands (Permit Area 2).

4. In § 681.2, in the definition for *Authorized Officer*, paragraph (b) is revised; the definitions for *Carapace length* and *Commercial fishing* are revised; the definition of *Tail width* is removed and new definitions for *Tail width of slipper lobster* and *Tail width of spiny lobster* are added in its place; Figure 2—TAIL WIDTH is redesignated Figure 3—TAIL WIDTH OF SPINY LOBSTER; and a new Figure 2—TAIL WIDTH OF SLIPPER LOBSTER is added, to read as follows:

§ 681.2 Definitions.

* * * * *

Authorized officer means:

* * * * *

(b) Any special agent of the National Marine Fisheries Service;

* * * * *

Carapace length means a measurement in a straight line from the ridge between the two largest spines above the eyes, back to the rear edge of the carapace of a spiny lobster (see Figure 1).

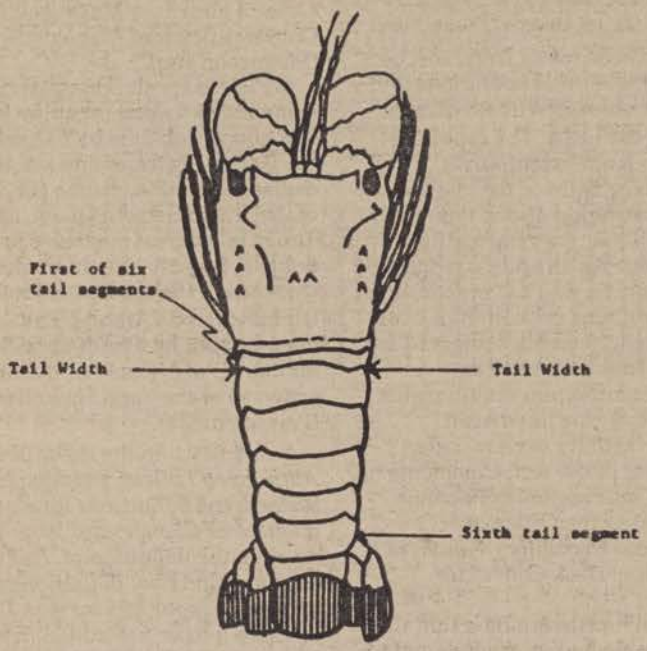
* * * * *

Commercial fishing means fishing with the intent to sell all or part of the catch of lobsters. All lobster fishing in the Northwestern Hawaiian Islands (Permit Area 1) is considered commercial fishing.

* * * * *

Tail width of slipper lobster means the straight line distance across the tail measured at the widest spot between the first and second tail segments (see Figure 2).

Figure 2. Tail Width of Slipper Lobster



Tail width of spiny lobster means the straight line distance across the tail measured at the widest spot between the first and second abdominal spines (see Figure 3).

* * * * *

5. In § 681.4, paragraphs (b)(2) (ix) through (xiv) are revised and new paragraphs (b)(2) (xv) through (xx) are added to read as follows:

§ 681.4 Permits.

* * * * *

(b) * * *

(2) * * *

(ix) The processing capacity of the vessel;

(x) The gross registered tons of the vessel;

(xi) The registered length of the vessel;

(xii) The purchase price of the vessel;

(xiii) The age of the vessel;

(xiv) The vessel hold capacity;

(xv) The refrigeration types and capacity;

(xvi) Types and amounts of other fishing gear employed;

(xvii) The type and quantity of lobster fishing gear used by the vessel;

(xviii) The permit area in which the applicant proposes to fish;

(xix) Whether the application is for a new permit or a renewal; and

(xx) The number and expiration date of any prior permit for the vessel issued under this part.

* * * * *

6. In § 681.5, paragraphs (b)(1) (iv) and (v) and (d) are removed; paragraphs (b)(1) (ii) and (iii) and paragraph (b)(2) are revised, to read as follows:

§ 681.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(1) * * *

(ii) Permit number of vessel; and

(iii) Size of crew.

(2) Fishing information—

(i) Location of lobster catch by statistical area as depicted in the NMFS Daily Lobster Catch Report form;

(ii) Date and time of trap deployment and number of traps deployed;

(iii) Date and time of trap retrieval and number of traps retrieved;

(iv) Number and species of legal spiny lobsters and slipper lobsters per trap deployment;

(v) Number and species of sublegal spiny lobsters and slipper lobsters per trap deployment;

(vi) Number and species of berried female spiny lobsters and berried slipper lobsters per trap deployment;

(vii) Number of Kona crabs per trap deployment; and

(viii) Number of octopus and other species per trap deployment.

* * * * *

7. Section 681.21 is revised to read as follows:

§ 681.21 Size restrictions.

Only spiny lobsters with a tail width of 5.0 cm or greater and slipper lobsters with a tail width of 5.6 cm or greater may be retained.

8. In § 681.24, a new paragraph (c) is added to read as follows:

§ 681.24 Gear restrictions.

* * * * *

(c) All lobster traps must have a minimum of two escape vent panels meeting the following requirements:

(1) Panels must have at least four circular holes no smaller than 67 millimeters in diameter with centers 82 millimeters apart.

(2) The lowest part of any opening in an escape vent panel must not be more than 85 millimeters above the floor of the trap.

§§ 681.4, 681.20, 681.23, 681.25, 681.30 [Amended]

9. In addition to the amendments set forth above, the initials "FCZ" are removed and the initials "EEZ" are added in their place in the following places: §§ 681.4(k), 681.20, 681.23(b), 681.25, and 681.30.

§§ 681.2, 681.7, 681.20, 681.22, 681.24, 681.25, 681.26, 681.27, 681.28, 681.30, 681.31, 681.32, 681.34, 681.35 [Amended]

10. In addition to the amendments set forth above, the word "spiny" is removed wherever it appears in the following places: §§ 681.2, definition of *Commercial fishing*, 681.7(a)(7), 681.7(a)(12), 681.7(b)(2), 681.7(b)(3), 681.7(b)(4), 681.7(c)(1), 681.7(c)(2), 681.7(c)(3), 681.7(c)(4), 681.20, 681.22, 681.24(a), 681.24(b), 681.25, 681.26(a), 681.27(a), 681.27(b), 681.28(a), 681.30, 681.31, 681.32, 681.34, and 681.35.

[FR Doc. 87-16752 Filed 7-22-87; 9:44 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 143
Monday, July 27, 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

Office of the Secretary

Agriculture Biotechnology Research Advisory Committee; Intent To Establish

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Secretary of Agriculture proposes to establish the Agriculture Biotechnology Research Advisory Committee (ABRAC). The purpose of the Committee is to advise the Secretary through the Assistant Secretary for Science and Education with respect to policies, programs, operations and activities associated with the conduct of agricultural biotechnology research.

This function was previously performed on a government-wide basis by the National Institutes of Health Recombinant DNA Advisory Committee (NIH–RAC). Inasmuch as the NIH has indicated its intention to limit the future activity of the RAC to health and biomedical-related research, the services of this NIH Committee will no longer be available to the Department of Agriculture. Consequently, the Department needs to form its own advisory structure for research in agricultural biotechnology.

The Secretary has determined that the work of the Committee is in the public interest and is relevant to the duties of the Department of Agriculture. The authority for the establishment of this advisory committee is section 1404 (2) of the National Agricultural Research, Extension and Teaching Policy Act Amendments of 1985. These amendments, Pub. L. No. 99–198, made the Secretary of Agriculture responsible for establishing "appropriate controls with respect to the development and use of the application of biotechnology to agriculture." No other advisory committee or agency of the Department is performing the tasks assigned to the Agriculture Biotechnology Research Advisory Committee.

The Committee, including the Chair and Vice-Chair, will consist of 13 voting members of whom no more than four will be federal employees. The members of the Committee will have professional or personal qualifications or experience in one or more of the following areas: recombinant-DNA research in plants, animals and microbes, ecology/environmental science, agricultural production practices, biological containment and field release, applicable laws and regulations, standards of professional conduct and practice, public attitudes, public health/epidemiology, and occupational health and ethics.

The Department invites nominations for Committee membership of individuals who are qualified in one or more of the above-mentioned subject areas. Such nominations should describe and document the nominee's qualifications in the relevant subject areas. The Department will select Committee members from the pool of qualified nominees in accordance with its established regulations on advisory committees (Departmental Regulation 1041–1).

Nominations for the initial formation of the Committee may be submitted to the Assistant Secretary for Science and Education, U.S. Department of Agriculture, Room 217–W, Administration Building, Washington, DC 20250, until August 26, 1987. Comments may be submitted to the same address until August 11, 1987. Submitted comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

Done at Washington, DC this 20th day of July 1987.

Charles L. Grizzle,

Deputy Assistant Secretary for Administration.

[FR Doc. 87–16936 Filed 7–24–87; 8:45 am]

BILLING CODE 3410-22-M

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act System of Records.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture (USDA), in accordance with the Privacy Act of 1974 (5 U.S.C. 552a) proposes to revise an existing system of records: USDA/SCS–1, Program Cooperators—Soil Conservation Service. This action is necessary to add new routine uses and to provide for automated retrieval of data within the system. The intended effect is to enable the Soil Conservation Service (SCS) to improve the efficiency of the underlying program and to allow disclosure of information from the system to Federal, State, and local agencies, as necessary, in accordance with the new routine uses.

DATES: Public comments must be received by August 26, 1987. This system shall take effect without further notice on September 25, 1987, unless comments received during the comment period cause a contrary decision. Any comments should be submitted to the person and address listed under the **"FOR FURTHER INFORMATION CONTACT"** section.

ADDRESS: Interested individuals may comment on this notice by writing to Gerald D. Seinwill, Director, Information Resources Management Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013. All comments will be available for public inspection during business hours in room 6844–S, South Agriculture Building, 14th and Independence Ave. SW., Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Gerald D. Seinwill, at the above address, telephone (202) 475–4047.

SUPPLEMENTARY INFORMATION: USDA hereby amends its system of records, USDA-SCS–1, Program Cooperators, Soil Conservation Service. This system of records is the primary source of information to SCS offices about conservation plans and practices and resource problems of each conservation district cooperator. It is being revised from the present manual system to include use of automated data retrieval. This revision will allow more accurate and more consistent application of standards and improved efficiency. Further revision consists of adding five new routine uses of the information. The first routine use allows information contained in the system of records to be disclosed to cooperating Federal, State, and local agencies, as necessary, for implementation of conservation plans. The second routine use provides for

disclosure of information to Federal, State, and local agencies when necessary, in accordance with the Food Security Act of 1985, to certify that a conservation plan is in effect for land users to qualify for other USDA program benefits. The third and fourth routine uses allow information which is relevant and necessary to litigation to be disclosed, in certain limited circumstances, to the Department of Justice and in proceedings before a court or adjudicative body. These uses are being promulgated to address concerns expressed by the district court in *Krohn v. Department of Justice*, Civil No. 78-1536 (D.D.C. March 19, 1984) and is designed to restrict the amount of information released during litigation. The fifth routine use allows release, in limited circumstances, of information of Federal, State, local, or foreign agencies charged with investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, or regulation issued pursuant to that law.

A "Report on Revised System," required by 5 U.S.C. 552a(o), as implemented by OMB Circular A-130, was sent to the President of the Senate, the Speaker of the House of Representatives, and the Office of Management and Budget on July 22, 1987.

Signed at Washington, D.C., on July 22, 1987.

Richard E. Lyng,

Secretary.

USDA-SCS-1

SYSTEM NAME:

Program Cooperators—Soil Conservation Service, USDA/SCS

SYSTEM LOCATION:

All field offices of the Soil Conservation Service, usually located in county seats of government. Addresses of each field office are listed in the telephone directories of the field office locations under the heading, "United States Government, Department of Agriculture, Soil Conservation Service."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cooperators with SCS programs including soil and water conservation district cooperators.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of an automated retrieval system and file folders on individual cooperators recording the planning, development, and accomplishments of the plan on his or her land. These files contain personal and economic data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 590 a–f, q, q-1 and 42 U.S.C. 3271–3274

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Records may be disclosed to cooperating Federal, State, and local agencies, as necessary for implementation of conservation programs. (2) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. (3) Disclosure to Federal, State, and local agencies, when necessary to certify that a conservation plan is in effect for land users to qualify for other USDA program benefits. (4) Referral to the Department of Justice when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (5) Disclosure in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when (a) the agency, or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the court is a use of the information contained in the records that is compatible with the purpose for which the records were collected. (6) Referral to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing the statute, rule, regulation or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic media in an automated retrieval system and in file folders in field offices.

RETRIEVABILITY:

Records can be retrieved by name of cooperator, operator unit identification number, location code, farm type, soil survey area, soil conservation district code, resource management systems and practices, and contract information.

SAFEGUARDS:

System access is restricted to authorized Soil Conservation Service employees and conservation district employees. The automated data retrieval system is secured by a series of restricted user passwords. Manual files are maintained in file cabinets. Offices are locked during non-business hours.

RETENTION AND DISPOSAL:

Records are maintained as long as land remains in agricultural uses.

SYSTEM MANAGER(S) AND ADDRESS:

District conservationists or other designees in charge of field offices. Addresses of each field office are listed in the telephone directories of the field office locations under "United States Government, Department of Agriculture, Soil Conservation Service."

NOTIFICATION PROCEDURE:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to him by contacting the respective district conservationist or other designee. If the specific location of the record is not know, the individual should address his request to the Chief, Records Management Branch, Information Resources Management Division, USDA Soil Conservation Service, P.O. Box 2890, Washington, D.C.

20013, who will refer it to the appropriate field office. A request for information pertaining to an individual should contain: Name, address, and particulars involved (i.e., name or nature of program, name of cooperating body, etc.)

RECORD ACCESS PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the district conservationist or his designated representative or to the Chief, Records Management Branch, USDA–SCS, Washington, D.C. 20013.

CONTESTING RECORD PROCEDURES:

Any individual may obtain information as to the procedures for gaining access to a record in the system which pertains to him by submitting a written request to the District Conservationist or his designated representative or to the Chief, Records Management Branch, USDA–SCS, Washington, D.C. 20013.

RECORD SOURCE CATEGORIES:

Information in this system comes from land users (cooperators) and SCS technicians who develop and manage plans with them.

[FR Doc. 87–16988 Filed 7–24–87 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Western Pacific Spiny Lobster Fishery Management Plan
Form Number: Agency—N/A; OMB—N/A
Type of Request: New Collection
Burden: 46 respondents; 58 burden hours
Needs and Uses: The Fishery Management Plan for the Spiny Lobster Fisheries of the Western Pacific Region was prepared by the Western Pacific Management Council. Among the management measures proposed is a federal permit requirement for harvesting lobster in the exclusive economic zone and logbook reporting requirements on the amount of lobster harvested. The fishing permits will allow the National Marine Fisheries Service to track which management area each vessel fishes as the regulations vary by area. Reporting requirements allow stock assessments to be done using the data received on effort, catch amd species composition
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Annually, on occasion (by trip)
Respondent's Obligation: Mandatory
OMB Desk Officer: John Griffen, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: July 20, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–16921 Filed 7–24–87; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Unemployment and Labor Immobility, Survey in Commercial Fishery
Form No.: Agency—N/A; OMB—N/A
Type of Request: New collection
Burden: 600 respondents; 150 reporting hours
Needs and User: Fishery management policies often impose restrictions on fishing activity which, in turn, impact the demand for labor. An issue in the evaluation of such policies is how to properly assess the impact of labor inputs. This data collection will provide more accurate information on opportunity cost than is currently available and will be used by the National Marine Fisheries Service when doing public expenditure cost/benefit analysis.
Affected Public: Individuals
Frequency: One-time only
Respondent's Obligation: Voluntary
OMB Desk Officer: John Griffen, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: July 22, 1987.

Edward Michals,

Departmental of Clearance Officer, Office of Management and Organization.

[FR Doc. 87–16966 Filed 7–24–87; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–588–607]

Final Determination of Sales at Less Than Fair Value:, Amophous Silica Filament Fabric From Japan

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

ACTION: Notice.

SUMMARY: We have determined that amorphous silica filament fabric from Japan is being, or is likely to be, sold in the United States at less than fair value and have notified the U.S. International Trade Commission (ITC) of our determination.

EFFECTIVE DATE: July 27, 1987.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–5288.

SUPPLEMENTARY INFORMATION:

Final Determination:

We have determined that amorphous silica filament fabric from Japan is being, or is likely to be, sold in the United States at less than fair value as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The period of investigation was November 1, 1985 through October 31, 1986. The margin found for the company investigated is listed in the "Suspension of Liquidation" section of this notice.

Case History

On May 6, 1987, we made an affirmative prelminary determination (52 FR 17997, May 13, 1987). Since then, the following event has occurred: On May 26, 1987, we received notice that the respondent had withdrawn from further participation in the investigation.

Scope of Investigation

The product covered by this investigation is certain commercial grade woven fabric, of glass (silica filaments), whether or not colored, containing not over 17 percent of wool by weight, as currently provided for in items 338.2500 and 338.2700 of the

Tariff Schedules of the United States Annotated (TSUSA).

Fair Value Comparisons

After our preliminary determinaton, we were unable to verify the respondent's response to our questionnarie because of the respondent's withdrawal from our investigation. The Act requires, in the absence of verified information, that the "best information available" be used in our final determination. In light of the respondent's withdrawal from the investigation, we sought the best information availble that would reflect appropriate adverse assumptions. That information would generally be information drawn from the petition. However, after reviewing petitioner's data, we determined that respondent's data as contained in its response would be more adverse than use of information from the petition. We have, therefore, for purposes of our final determination used the same information from the respondent and the same methodology as employed in our preliminary determination.

United States Price

As provided in section 772(b) of the Act, we based the United States price on purchase price. We made deductions from the c.i.f. duty paid, delivered, packed prices for ocean freight, marine insurance, brokerage and handling, U.S. inland freight, U.S. duty and foreign inland freight.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based the foreign market value on sales in the same market. We made adjustments, where appropriate, for differences in credit costs and for differences in the physical characteristics of the merchandise, in accordance with §.353.15 and 353.16 of the Commerce Regulations.

Pursuant to § 353.56 of the Commerce regulations, we made currency conversions at the rates certified by the Federal Reserve Bank.

Final Affirmative Determination of Critical Circumstances

To determine whether critical circumstances exist, section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(3)) requires that we examine whether:

(A)(i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known, that the exporter was selling the merchandise which is the subject of the investigation at less than fair value; and

(B) these have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

A review of all available data shows no history of dumping in the United States or elsewhere.

In determining whether the importers knew, or should have known, that the exporter was selling the merchandise at less than fair value, we find that the level of margins calculated indicate imputed knowledge on the part of the importer.

In determining whether imports have been massive over a relatively short period, we analyzed recent Department of Commerce IM–146 trade statistics on imports of this merchandise for equal periods immediately preceeding and following the filing of the petition from May 1986 through February 1987. Although these statistics include merchandise other than that under investigation, they are the only relevant publicly available statistics. These statistics showed a significant increase in imports in the post-filing period over the pre-filing period. Further, information submitted to the International Trade Commission, which is limited to the product under investigation, indicates significant increases in market penetration in 1986 compared to 1985. Since imports of the merchandise did not begin until 1983, we have not included the start up years of 1983 and 1984 in our import pattern analysis.

For the above reasons, we determine that "critical circumstances" exist with respect to imports of amorphous silica filament fabric from Japan.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of amorphous silica filament fabric from Japan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or the posting of a bond on all entries equal to the estimated average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below.

Since we have made a final affirmative critical circumstances determination, we are continuing the retroactive suspension of liquidation ordered by our May 13, 1987, preliminary affirmative critical circumstances determination. The effective date for the suspension of liquidation of this investigation is February 12, 1987, ninety days prior to the date of publication of our preliminary affirmative determination of sales at less than fair value.

This suspension of liquidation will remain in effect until further notice. The margins are as follows:

Manufacturers/producers/exporters	Average margin percentage (in percent)
Nippon Muki	193.94
All others	193.94

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on amorphous silica filament fabric from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

July 20, 1987.

[FR Doc. 87-16967 Filed 7-24-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-701]

Postponement of Preliminary Antidumping Duty Determination; Potassium Chloride From Canada

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

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a second request from the petitioners in this investigation to postpone the preliminary determination as permitted by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act). Based on this request, we are postponing our preliminary determination of whether sales of potassium chloride from Canada have occured at less than fair value until not later than August 20, 1987.

EFFECTIVE DATE: July 27, 1987.

FOR FURTHER INFORMATION CONTACT: Michael Ready, (202) 377-2613 Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On March 5, 1987 (52 FR 6336), we published a notice of initiation of an antidumping duty investigation to determine whether potassium chloride from Canada is being, or is likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by July 20, 1987.

As detailed in the notice, the petition alleged that imports of potassium chloride from Canada are being, or are likely to be, sold in the United States at less than fair value.

On July 1, 1987, we published a notice postponing the preliminary determination of whether sales of potassium chloride from Canada have occured at less than fair value until not later than August 7, 1987.

On July 14, 1987, counsel for petitioners, Lundberg Industries, Ltd., and New Mexico Potash Corporation, requested that the Department extend the period for the preliminary detrmination a second time until not later than 191 days after the date of receipt of the petition in accordance with section 733(c)(1)(A) of the Act. Accordingly, the period for determination in this case is hereby extended. We intend to issue a preliminary determination not later than August 20, 1987.

This notice is published pursuant to section 733(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

July 21, 1987.

[FR Doc. 87-16968 Filed 7-24-87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public fact-finding meeting, August 6, 1987, at 1 p.m., at the Ramada Inn, 76 Industrial Highway, Essington, PA (telephone: 215-521-9600), to gather information from the fishing industry on changes to the Council's fishery development policy, particularly as the policy may relate to the quantities of Atlantic mackerel, and *Loligo* and *Illex* squid specified for joint ventures and foreign fishing in 1988. In particular, the Council would like public comments as to whether or not there is a continuing need to allow foreign fishing and joint ventures for *Loligo* and *illex* squid, and for Atlantic mackerel.

Written comments should be submitted by August 14, 1987, to the Council's address below.

For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, 300 South New Street, Room 2115, Dover, DE 19901; telephone: (302) 674-2331.

Dated: July 27, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-16984 Filed 7-24-87; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to KBO Robotics, having a place of business in Cambridge, MA, an exclusive right in the United States to manufacture, use, and sell products embodied in the invention entitled "Robot End Effector," U.S. Patent Application S.N. 6-829,052. The patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 87-16937 Filed 7-24-87; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education

ACTION: Notice of proposed information collection requests.

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

DATE: Interested persons are invited to submit comments on or before August 26, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: July 22, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Bilingual and Minority Languages Affairs

Type of Review: NEW
Title: Application for Assistance to Develop an Employability Demonstration Component
Agency Form Number: T85–5P
Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden: Responses: 20; Burden Hours: 40
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: This form will be used by Family English Literacy grantees to apply for additional grants to develop employability demonstration programs. The Department uses this information to make grant awards.

Office of Educational Research and Improvement

Type of Review: NEW
Title: FRSS Survey on Library Services to Young Adults in Public Libraries
Agency Form Number: G50–35P
Frequency: Once Only
Affected Public: Individuals or households
Reporting Burden: Responses: 900; Burden Hours: 450
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: This survey will collect information from librarians in 900 public libraries regarding the availability and usage of services for young adults. The Department will use these data to help guide efforts to expand and improve library services to young adults.

Office of Educational Research and Improvement

Type of Review: REVISION
Title: National Assessment of Educational Progress (NAEP) 1987–88 Assessment for Attitude, Reading, Writing, Civics, and U.S. History
Agency Form Number: ED 2371–19
Frequency: Once only
Affected Public: Individuals or households; state or local governments
Reporting Burden: Responses: 120,470; Burden Hours: 106,014
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: Congress mandated the collection of National Assessment survey data. Data collection during the 1987–88 school year includes cognitive exercises in reading, writing, civics, U.S. history, math and science, and achievement related student, teacher, and school background and attitude questionnaires. A national sample of 9, 13, and 17 year old students, and teachers and principals will be surveyed. The Department will use the survey results to identify the most relevant student and school characteristics that affect achievement and to disseminate assessment results so that relevant public policies can be reviewed and revised or new policies formulated.

Office of Postsecondary Education

Type of Review: NEW
Title: Lenders Manifest for Federally Insured Loans
Agency Form Number: ED 1151
Frequency: On occasion
Affected Public: Business or other for profit
Reporting Burden: Responses: 36,000; Burden Hours: 7,200
Recordkeeping Burden: Recordkeepers: 36,000; Burden Hours: 36,000
Abstract: This form is used by lenders to report all disbursements, conversion of loan repayments, and loans paid in full under the Federally Insured Student Loan program. The Department uses this information to track the status of Federally insured student loans.

[FR Doc. 87–16948 Filed 7–24–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CI86–745–001]

Application for Limited-Term Pregranted Abandonment for Sales Under Small Producer Certificate; Harry Allen Chapman

July 22, 1987.

Take notice that on July 14, 1987, Harry Allen Chapman (Chapman), c/o Gable and Gotwals, Inc., 20th Floor, Fourth National Bank, Tulsa, Oklahoma 74119, filed in Docket No. CI86–745–001 an application requesting authorization for a three-year limited-term pregranted abandonment of his sale of gas from the M. D. Hoover No. 1 Well, Section 3–23N–7W, Garfield County, Oklahoma under his small producer certificate in Docket No. CS74–241. Chapman's application in Docket No. CI86–745–000 for permanent abandonment of his sale of gas to Arkla Energy Resources, a division of Arkla, Inc., was previously noticed on October 21, 1986, and was published in the **Federal Register** on October 27, 1986 (51 FR 37966). Chapman states that he plans to sell the gas in the spot market.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 4, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Chapman to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–16964 Filed 7–24–87; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI87-719-000]

Application for Permanent Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate; Kaiser-Francis Oil Co.

July 22, 1987.

Take notice that on June 22, 1987, as supplemented on July 7 and 8, Kaiser-Francis Oil Company (Kaiser-Francis) filed an application pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules for a permanent abandonment of its sale of gas to El Paso Natural Gas Company (El Paso) from the State K-4401 Well, Section 2-T24S-R26E, Carlsbad Field, Eddy County, New Mexico. Kaiser-Francis also requests a three-year pregranted abandonment for sales of such gas under its small producer certificate in Docket No. CS73-605.

In support of its application Kaiser-Francis states El Paso is unable to obtain a market for this gas and has not requested volumes since April 1986. The well has been shut-in and, according to Kaiser-Francis, it is possible the reservoir has been damaged. Kaiser-Francis states that although El Paso consistently reduced the level of takes under the contract, payment in the form of take-or-pay payments was not received as a result of these reduced takes.[1] Kaiser-Francis states it is attempting to locate a spot market for this production. Kaiser-Francis' share of production from the well is 130 Mcf/d. The gas in NGPA section 104 1973-1974 biennium gas.

Since Kaiser-Francis indicates its well is shut-in without payment and has requested that its application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests files with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Kaiser-Francis to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-16965 Filed 7-24-87; 8:45 am]

BILLING CODE 6717-01-M

[1] The United States Court of Appeals for the District of Colimbia vacated the Commission's Order No. 346 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject substantially reduced takes without payment.

[Docket No. CI87-584-000]

Application for Limited-Term Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificate; Barbour Energy Corp.

July 22, 1987.

Take notice that on May 13, 1987, Barbour Energy Corporation (Barbour) filed an application pursuant to section 7(b) of the Natural Gas Act and § 2.77 of the Commission's rules. Barbour requests limited-term abandonment of the sale of gas to ANR Pipeline Company through April 30, 1989, from the Strecker No. 1 Well, Woodward Area, Oklahoma. Barbour requests pregranted abandonment authorization through April 30, 1989, for sales of released volumes under its small producer certificate in Docket No. CS80-50.

Barbour states in support of its application that ANR cannot purchase the gas due to market constraints.[1] Deliverability is approximately .75 MMCF/d. The gas is NGPA section 104 flowing gas. Barbour anticipates selling the volumes on the spot market.

Since Barbour states that ANR cannot purchase the gas due to market constraints and has requested that its application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Barbour to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-16962 Filed 7-24-87; 8:45 am]

BILLING CODE 6717-01-M

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

[Docket No. CI87-711-000]

Application for Limited-Term Abandonment With Pregranted Abandonment for Sales Under Small Producer Certificates; Torrid Energy Company and Ensign Oil and Gas, Inc.

July 22, 1987.

Take notice that on June 17, 1987, TORRID ENERGY COMPANY (Torrid), 200 Cresent Court, Suite 1310, Dallas, Texas 75201 and ENSIGN OIL AND GAS, INC. (Ensign), 621 Seventeenth Street, Suite 1800, Denver, Colorado 80293 (hereinafter referred to collectively as Applicants) filed, pursuant to section 7 of the Natural Gas Act (NGA) and § 2.77 and Parts 154 and 157 of the Commission's Regulations, an application for an order granting the Applicants three-year limited-term abandonment with pregranted abandonment of sales to ANR Pipeline Company (ANR) applicable to all volumes producible by the Applicants from their interest in the Boston Bayou Field, Vermilion Parish, Louisiana. The Applicants state that their wells, located in the Boston Bayou Field, are completely shut-in at this time. The Applicants request expedited processing of their application pursuant to 18 CFR § 2.77 because the gas is completely shut-in without benefit of payment.[1] The

[1] The United States Court of Appeals for the District of Columbia vacated the Commission's

Continued

Applicants state that granting their request will permit the Applicants to sell the subject gas on the spot market under their small producer certificate.

Applicants state that the August 9, 1965, contract expired on November 7, 1986, and that under the expired contract ANR has no take-or-pay obligation. Applicants state that the gas qualifies under NGPA section 106(a) and that the deliverability is approximately 650 Mcf/d.

Since Applicants allege that they are subject to substantially reduced takes without payment and have requested that their application be considered on an expedited basis, all as more fully described in the application which is on file with the Commission and open to public inspection, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in a proceeding must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-16963 Filed 7-24-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3238-7]

Superfund Program; Covenants Not To Sue

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The Agency is publishing its Interim Guidance governing the issuance of covenants not to sue under Section 122(f) of the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), in order to inform the public and to solicit public comment on this important aspect of the Superfund enforcement process. The guidance applies to private party cleanup and cost recovery settlements under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by SARA.

DATE: Comments must be provided on or before September 25, 1987.

ADDRESS: Comments should be addressed to Jon Fleuchaus, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, Waste Enforcement Division, LE-134S, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Jon Fleuchaus, U.S. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring, LE-134S, 401 M St. SW., Washington, DC 20460, (202 382-3077.

SUPPLEMENTARY INFORMATION: Previously, on February 5, 1985, the Agency issued an Interim Settlement Policy which provided guidance on the appropriateness of the use of releases from liability, or convenants not to sue, in settlement of CERCLA cases. 50 FR 5034 (1985). The guidance published today on covenants not to sue reflects Congress' adoption of a provision governing the use of such covenants in section 122(f) of SARA.

Briefly, section 122(f) permits EPA, by delegation from the President, to issue covenants not sue for CERCLA liability, including future liability, if certain criteria are met. Section 122(f)(4) of CERCLA identifies a number of factors for the Agency to consider in determining whether to provide a covenant not to sue. These factors include:

- The effectiveness and reliability of the remedy;
- The nature of the risks remaining at the facility;
- The extent to which performance standards are included;
- The extent to which the response action provides a complete remedy;
- The extent to which the technology has been demonstrated to be effective;
- Whether the Fund would be available for any additional remedial action;
- Whether the remedial action will be carried out, in whole or in part, by the responsible parties.

Section 122(f)(3) provides that any covenant not to sue concerning future liability shall not take effect until EPA certifies that the remedial action is complete. Section 122(f)(6)(A) specifies that convenants not to sue for future liability generally must not apply to liability arising from unknown conditions. Finally, section 122(f)(6)(C) allows EPA to include in a covenant not to sue provisions for future enforcement action necessary to protect public health, welfare, and the environment.

Implementation of section 122(f) raises three major issues. The first of these issues is what type of "reopeners" should be included in covenants not to sue. A "reopener" is a provision which reserves EPA's right to require settling parties to take further response action, in addition to cleanup measures already provided for in a settlement agreement, notwithstanding the covenant not to sue. Under the Interim CERCLA Settlement Policy, EPA had required that, at a minimum, there must be reopeners permitting the government to seek further response action if information is received after entry of the consent decree regarding previously unknown site conditions or new scientific determinations, and such information indicates there is an imminent and substantial endangerment to public health or the environment. As noted above, section 122(f)(6)(A) of SARA mandates that, subject only to narrow exceptions, a reopener for unknown conditions be included in all covenants not to sue. One difference from the Settlement Policy, however, is that Congress did not limit the unknown conditions reopener by requiring an imminent and substantial endangerment threshold. Since the unknown conditions reopener has been established by the statute, the primary question is what additional reopeners are appropriate.

The statute not only requires the inclusion of the unknown conditions reopener in virtually all settlements, but also authorizes the inclusion of other limitations in covenants not to sue if necessary and appropriate to protect public health or the environment. Section 122(f)(6)(C). EPA has decided to implement section 122(f)(6)(C) by including in covenants not to sue a second reopener covering situations where additional information reveals that the remedy no longer protects public health or the environment. Further, this reopener is triggered by a threshold of "protection of public health or the environment" rather than the "imminent and substantial endangerment" threshold prescribed in the Settlement Policy.

Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment.

EPA's reasons for adopting this second reopener are several. First, although SARA does not explicitly require this reopener, both the statute and the legislative history evince a Congressional concern that responsible parties remain liable for failure of the remedial action to protect public health or the environment. For example, the mixed funding provision in section 122(b) clearly anticipates that the responsible parties who have settled retain liability for additional work necessary to address remedy failure. The five-year review provision in section 121(c) also reflects Congress' concern for remedy failure by mandating periodic reviews to ensure that remedial actions continue to protect public health and the environment. If a remedy does not meet this standard, EPA may take or require such additional remedial action as is necessary.

The second major issue addressed in the guidance is how EPA will exercise its discretion to seek additional remedial relief in the period following settlement but prior to the effective date of the covenant not to sue for future liability. Responsible parties have expressed concern that prior to the date on which the covenant becomes effective, EPA can alter its Record of Decision and impose additional costs upon settlors without the slightest change in circumstances. To assure settling parties that EPA does not intend such a result, EPA will include language in covenants, limiting EPA's ability to reopen a settled remedial matter to those situations where additional information is received, in whole or in part, after entering of the consent decree indicating that the remedy no longer protects public health or the environment. As explained above, EPA thinks that such a provision preserves Congressional intent as to the proper allocation of the risk or remedy failure while also assuring those same parties that some degree of certainty attaches to a settled matter.

The third issue involves the Agency's responsibility to certify completion of the remedial action. Section 122(f)(3) provides that a covenant not to sue for future liability cannot take effect until EPA has certified that remedial action has been completed. Section 122 does not include specific guidance on when a cleanup has been completed. CERCLA cleanups often involve the construction of some type of facility designed to correct contamination at the site and the operation and maintenance of that facility for the indefinite future. In this circumstance, certification of completion should not have to wait until all operation and maintenance activities are completed. Specific distinctions between remedial action and operation and maintenance are drawn in section 104(c)(6) of SARA. Although these distinctions are not strictly applicable as a legal matter to releases from liability, the Agency believes that it is unneccessarily confusing and inefficient to have two separate sets of definitions applied to remedial action, and will therefore as a matter of policy apply the distinctions in section 104 to releases from liability.

Section 104(c)(6) of CERCLA establishes definitions for purposes of the States' cost share of CERCLA response actions. It defines completed remedial action to include the completion of treatment or other measures necessary to restore surface and ground water quality to a level that assures protection of human health and the environment. The operation of such measures for a period of up to ten years after the construction or installation of the remedy shall be considered remedial action. Activities required to maintain the effectiveness of such measures following this ten-year period or the completion of remedial action, whichever is sooner, shall be considered operation or maintenance.

Questions have arisen in determining whether pumping and treating of goundwater constitutes part of the remedial action, or part of operation and maintenance, for purposes of funding. Section 104(c)(6) indicates that the completion of treatment or other measures necessary to restore surface and gound water quality falls within the definition of remedial action, rather than operation and maintenance, and can therefore be paid for out of the Fund for a period of up to ten years. However, ground or surface water cleanup measures initiated for reasons other than restoration would be treated as operation and maintenance, as would source control actions.

We recognize that this guidance addresses important and complex issues and for that reason are requesting public comment. We will evaluate all comments received for the purpose of determining whether any modifications to the guidance are warranted.

The interim guidance follows.

Date: July 17, 1987.

Edward E. Reich,

Acting, Assistant Administrator for Enforcement and Compliance Monitoring.

Date: July 17, 1987.

J. Winston Porter,

Assistant Administrator for Solid Waste and Emergency Response.

July 10, 1987.

Memorandum

Subject: Covenants Not To Sue Under SARA.

From: Thomas L. Adams, Jr., Assistant Administrator for Enforcement and Compliance Monitoring, J. Winston Porter, Assistant Administrator for Solid Waste and Emergency Response, F. Henery Habicht II, Assistant Attorney General, U.S. Department of Justice.

To: Regional Administrators, Regions I–X

I. Introduction

In the Interim CERCLA Settlement Policy, 50 FR 5034 (1986), EPA provided guidance on when releases from liability were appropriate as consideration for an agreement involving a private party cleanup or reimbursement of EPA's costs. That policy expressed a strong preference for issuing releases in the form of covenants not to sue. The Superfund Amendments and Reauthorization Act (SARA) confirms the authority of EPA to release responsible parties from certain liabilities in settlement of an EPA claim under CERCLA. In section 122(f) of SARA, Congress adopted EPA's policy of drafting releases in the form of covenants not to sue and also established specific requirements governing the Agency's ability to issue such covenants. SARA includes several express requirements regarding covenants not to sue and also gives the Agency discretion to place further conditions on the extent of such covenants. This memorandum updates the Interim Settlement Policy by providing guidance on the implementation of the mandatory and discretionary provisions of SARA relating to use of covenants not to sue in consent decrees. Attached to this guidance is a model covenant not to sue.

II. Summary of Statutory Provisions

Section 122(f)(1) authorizes EPA to covenant not to sue responsibile parties for "any liability to the United States under this Act, including future liability, resulting from a release or threatened release addressed by a remedial action. . . ." Such covenants may be provided if each of the following conditions are met:

(A) The covenant not to sue is in the public interest;

(B) The covenant not to sue would expedite the response;

(C) The settlor is in full compliance with a consent decree under § 106 addressing the release or threatened release:

(D) EPA has approved the response action.

Section 122(f)(1).

Prior to entering a covenant not to sue under section 122(f)(1), EPA must assess the appropriateness of the covenant under seven factors set forth in section 122(f)(4). These factors, which relate to the effectiveness, reliability, and enforceability of the remedy, and the nature of the risk remaining at the site, include:

(A) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the facility concerned.

(B) The nature of the risks remaining at the facility.

(C) The extent to which performance standards are included in the order or decree.

(D) The extent to which the response action provides a complete remedy for the facility, including a reduction in the hazardous nature of the substances at the facility.

(E) The extent to which the technology used in the response action is demonstrated to be effective.

(F) Whether the Fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the facility.

(G) Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

Section 122(f)(4)

In addition to authorizing EPA, in its discretion, to covenant not to sue for liabilty, including future liability, section 112(f) mandates that EPA grant a covenant not to sue for future liability in two specific circumstances. Section 122(f)(2) provides that where the four conditions in section 122(f)(1) have been met, EPA must issue a covenant not to sue for "future liability for future releases" if: (1) EPA selects a remedial action involving offsite disposal of a hazardous substance after rejecting an onsite response which fully complies with the National Contingency Plan (NCP); or (2) the selected remedial action requires the destruction, elimination, or permanent immobilization of hazardous substances. Such a covenant may only address the portion of the remedial action which involves these two situations.

Assuming that a covenant not to sue for future liability is otherwise authorized under section 122(f), section 122(f)(3) prescribes that a covenant not to sue for future liability shall not take effect until EPA has certified that the remedial action has been completed in accordance with the terms of CERCLA. Moreover, whether the covenant is for future or present liability, section 122(f)(5) conditions such covenants upon satisfactory performance of the terms of the settlement agreement.

Finally, section 122(f)(6) addresses exceptions to covenants not to sue for future liability provided under Section 122(f)(1). For example, EPA must except from any covenant not to sue for future liability any future liability related to the release or threatened release which is the subject of the covenant where such liability arises from conditions unknown at the time the remedial action is certified complete. Section 122(f)(6)(A). This "reopener" for unknown conditions is not required for special covenants granted under section 122(f)(2) or for de minimis settlements under section 122(g). In addition, section 122(f)(6)(B) provides that a waiver for the unknown conditions reopener in section 122(f)(6)(A) may be granted in "extraordinary circumstances." In determining whether extraordinary circumstances exist, EPA must consider "such factors as those referred to in [section 122(f)](4)] and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, pubilc interest considerations, precedential value, and inequities and aggravating factors." Section 122(f)(6)(B). Nonetheless, even if extraordinary circumstances exist, the unknown conditions exception may not be waived if the terms of the agreement do not provide reasonable assurances that public health and the environment will be protected from any future releases. Section 122(f)(6)(C) authorizes EPA to except from covenants not to sue future enforcement actions necessary to protect public health, welfare, and the environment.

III. Explanation of Key Statutory Provisions

In interpreting Section 122(f) and developing a policy for its implementation, EPA has looked to the expressions of Congressional intent contained in other parts of SARA and the relevant legislative history. These courses indicate that section 122(f) serves several goals, including:

(1) Encouraging private party cleanups by providing EPA with the authority to grant covenants not to sue;

(2) Encouraging more permanent cleanups by codifying the principle that the more permanent the cleanup the more complete the release;

(3) Protecting the public by ensuring that responsible parties remain liable for future releases requiring future remedial action.

A. Present Liability and Future Liability

In section 122(f)(1), Congress authorizes EPA to issue covenants not to sue for both present liability and future liability. In the context of settlements involving remedial action, EPA interprets present liability as a responsible party's obligation to pay those response costs already incurred by the United States related to a site and to complete those remedial activities set forth in the Record of Decision (ROD) for that site, including meeting any performance standards or other measures estabished through the remedial design (RD) process. Future liability refers to a responsible party's obligation to perform any additional response activities at the site which are necessary to protect public health and the environment.

In deciding whether to provide a covenant not to sue for present liability, EPA must consider the criteria in sections 122(f)(1) and 122(f)(4). These factors essentially codify the approach taken in EPA's Interim CERCLA Settlement Policy. There, EPA stated as a general principle that "the more effective and reliable the remedy, the more likely it is that the Agency can negotiate a more expansive release." In judging the reliability and effectiveness of the remedy, the Interim Settlement Policy placed special emphasis on whether the remedy requires that health-based performance standards be met. As noted above, section 122(f)(4) explicitly makes performance standards a factor to be considered and EPA continues to regard this factor as critical. Where the criteria in section 122(f)(1) are fulfilled and where consideration of the factors in section 122(f)(4) suggests the remedy is reliable, effective, and enforceable (such as, for example, where the remedy includes numerical performance standards), a covenant not to sue for present liability may be provided which takes effect upon approval of the consent decree by the court. On the other hand, where the criteria in paragraph (f)(1) are met but the factors in section 122(f)(4) indicate that some questions remain about the reliability, effectiveness, and enforceability of the remedy, any convenant not to sue for present liability, if appropriate at all, would have to be conditioned on a

demonstration of the effectiveness and reliability of that remedy.

Covenants not to sue for future liability are also made contingent on the criteria set forth in section 122(f)(1) and the factors enumerated in section 122(f)(4). When these conditions are met, EPA may, in its discretion, provide a convenant not to sue for future liability but such a covenant, according to section 122(f)(3), may not take effect until EPA certifies that the remedial action has been completed. Prior to certification, therefore, the settling party remains fully responsible for any future liability for future remedial action necessary at the site. Following certification, unless a special covenant under section 122(f)(2) is required or extraordinary circumstances are present, the covenant not to sue for future liability is subject to a reopener covering (1) unknown conditions as mandated by section 122(f)(6)(A), (2) any other conditions EPA deems advisable based on the section 122(f)(4) factors, and (3) future enforcement activity necessary and appropriate to assure protection of public health, welfare, and the environment as provided in section 122(f)(6)(C).

B. Certification of Completion of the Remedial Action

Section 122(f)(3) specifies that a covenant not to sue for future liability shall not take effect until EPA certifies the remedial action is complete. In the context of paragraph 122(f)(3), EPA interprets completion of the remedial action as that date at which remedial construction has been completed. Where a remedy requires operational activities, remedial construction would be judged complete when it can be demonstrated that the operation of the remedy is successfully attaining the requirements set forth in the ROD and RD.

The exact point when EPA can certify completion of a particular remedial action depends on the specific requirements of that remedial action. Each consent decree should include a detailed list of those activities which must be completed before certification can occur.

Certification of completion under section 122(f)(3) does not in any way affect a settling party's remaining obligations under the consent decree. All remedial activities, including maintenance and monitoring, must be continued as required by the terms of the consent decree.

C. Reopeners

Under the CERCLA Interim Settlement Policy, EPA required that there be included in every consent decree reopeners covering situations where EPA received additional information after the time of the agreement regarding site conditions or scientific determinations which indicates that the site may pose an imminent and substantial endangerment to the public health or welfare or to the environment. Under section 122(f), a slightly different approach to reopeners must be followed. Section 122(f) provides that for future liability, no covenant not to sue shall be effective prior to certification of completion of the remedical action. Technically, therefore, since there is no release of future liability prior to certification, there is no need for reopeners in that time period. Reopeners for future liability only becomes necessary after certification, when the covenant not to sue takes effect.

As to reopeners regarding future liability, Congress expressly required a reopener for unknown conditions. In contrast to the Interim Settlement Policy, however, Congress expressly eliminated any endangerment threshold for that reopener. Congress also authorized EPA, in section 122(f)(6)(C), to include any other reopeners "necessary and appropriate to assure protection of public health, welfare, and the environment." EPA believes that it is in the public interest and consistent with Congressional intent to require a second reopener covering situations where additional information reveals that the remedy is no longer protective of public health or the environment. It is not in the public interest to release responsible parties from liability for additional response actions made necessary by new information, given, as noted in the Interim Settlement Policy, "the current state of scientific uncertainty concerning the impacts of hazardous substances, our ability to detect them, and the effectiveness of remedies at hazardous waste sites." 50 FR 5039.

Congressional concern with situations where the remedy fails to protect public health or the environment can be seen in SARA's mixed funding and five-year review provisions. The mixed funding provision in section 122(b) states that if mixed funding is adopted at a particular site, "the Fund shall be subject to an obligation for subsequent remedial actions at the same facility but only to the extent that such subsequent actions are necessary by reason of the failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the Fund for the original remedial action." This provision anticipates that the responsible parties who have settled retain liability for additional work necessary to address remedy failure. Further support for this proposition can be found in the Conference Report statement that the continuing proportional Fund obligation in mixed funding cases is a settlement incentive. H.R. Rep. No. 99–962, 99th Cong., 2d Sess. 252 (1986). The Fund's continuing obligation would only be an incentive to settlement if in non-mixed funding cases settling parties retained liability where the remedy fails to protect public health or the environment.

The five-year review provision in section 121(c) also addresses Congress' concern for situations where the remedy fails to protect public health and the environment by mandating periodic reviews to assure that remedial actions do just that. If a remedy is found not to protect public health or the environment, the statute provides that EPA may take or require such additional remedial action as is necessary.

Congressional concern that remedial action might fail to protect public health and the environment was not limited narrowly to a focus on the reliability of the remedial technology at the site. Rather, this concern apparently extended to any situation in the future at the site which is judged to present a threat to public health and the environment. EPA will follow this interpretation of remedy failure. For example, should health effects studies reveal that the health-based performance levels relied upon in the ROD are not protective of public health or the environment, *and* that public health or the environment will be threatened without further response action, then the EPA could invoke the remedy failure reopener. The reopener for remedy failure, however, is not meant to require changes purely based on advances in technology. Under the reopener, EPA would not compel settling parties to implement newly-developed, more permanent remedial technological unless EPA can show that the present remedy does not protect public health or the environment. Neither is the remedy failure reopener intended to give EPA the option to make changes in a remedial action absent additional information received following the entry of the consent decree. EPA does not consider the phrase "information received, in whole or in part, after entry of the consent decree," as used in the attached model covenant, to include a new analysis of the same information comprising the record of the initial remedy selection decision.

In short, this reopener is similar to the reopener for new scientific information provided for in the Interim Settlement

Policy, although the imminent and substantial endangerment threshold has not been included. To require a showing of imminent and substantial endangerment would be inconsistent with the provision in section 122(f) of SARA with regard to unknown conditions as well as the provisions concerning future response work in section 122(f)(6)(C) and section 121(c). Moreover, it is the Agency's view that requiring different showings for the two reopeners would lead to protracted disputes about which reopener applied to situations necesitating additional response activity.

EPA believes that in order to give settlors some measures of certainly prior to certification, the most reasonable means to implement the authority in section 122(f) is to specify in consent decrees those pre-certification situations in which EPA would seek further remedial action. Those situations at a minimum would include the circumstances described in the future liability reopeners:

(1) Discovery of previously unknown conditions; and

(2) Situations where additional information reveals that the remedy is no longer protective of public health and the environment.

Thus, prior to certification of completion of the remedial action, EPA will reserve its right to institute new proceedings to compel, or recover costs for further response action made necessary by information received, in whole or in part, after entering of the consent degree related to either unknown conditions or remedy failure. Following certification of completion of the remedial action, EPA will reserve its right to institute proceedings only to address information received after certification of completion of the remedial action related to unknown conditions or remedy failure. Pre-certification reopeners for unknown conditions and remedy failure apply to all covenants not to sue, even to special convenants under section 122(f)(2).

Particularly in the pre-certification period, the relationship of the remedy to the covenant and the reopeners should be carefully considered. EPA may insist on broader reopeners where the consent decree does not provide for a remedy that meets the preference in section 121(b)(1) for a permanent and significant reduction of the volume, toxicity, or mobility of the hazardous substances. In those instances, EPA shall assess the need for broader reopeners in the covenant not to sue based on the factors identified in section 122(f)(4). Nevertheless, once EPA has determined what reopeners are appropriate for the pre-certification period, EPA will agree in the covenant to institute new proceedings only where those reopener provisions are met.

Although covenants not to sue must include, at a minimum, the above-described reopeners during the pre-certification period, reopeners are not mandated in all circumstances in covenants not to sue applicable to the period following completion of the remedial action. Two statutory provisions address this period. First, section 122(f)(2) mandates that EPA issue a special covenant not to sue for future liability in two narrow circumstances: (1) Offsite disposal following rejection of an onsite remedy complying with the NCP; and (2) complete destruction of the hazardous substances. Such a special covenant may not contain reopeners for the post-completion period. Second, section 122(f)(6)(B) specifies that in extraordinary circumstances EPA may exclude a post-completion reopener for unknown conditions. This extraordinary circumstance waiver is only available where other terms in the agreeement provide all reasonable assurances that public health and the environment will be protected. As a policy matter, EPA would also not include the reopener for later-received information relating to failure in a situation where the conditions in section 12(f)(6)(B) are met. EPA, however, is barred from granting covenants not to sue without reopeners absent a finding that a special covenant is appropriate or that extraordinary circumstances exist.

D. Extraordinary Circumstances

Section 122(f)(6)(B) provides that EPA may forego including a reopener for unknown conditions when extraordinary circumstances exist *and* "other terms, condition, or requirements of the agreement . . . are sufficient to provide all reasonable assurances that public health and the environment will be protected from any future releases at or from the facility."

The legislative history on this provision indicates that it should be narrowly applied. The House-Senate Conference Report states that "[t]his provision should be implemented in an manner consistent with the current application of the Administration settlement policy as to unknown conditions." Conference Report, H.R. Rep. No. 99-962, 99th Cong., 2d Sess. 255 (1986). By this statement, the Conference Committee endorsed EPA's extremely limited use of the extraordinary circumstances waiver for reopeners contained in the CERCLA Interim Settlement Policy.

In section 122(f)(6)(B), Congress lists as relevant factors regarding extraordinary circumstances: "those [factors] referred to in [section 122(f)](4) and volume, toxicity, mobility, strength of evidence, ability to pay, litigative risks, public interest considerations, precedential value, and inequities and aggrevating factors." EPA has already explained how many of these factors will be interpreted in the Interim Settlement Policy.

A finding of extraordinary circumstances alone is not sufficient to meet the requirements of section 122(f)(6)(B). That provision also mandates that the unknown conditions reopener may only be waiver if other terms of the agreement provide all reasonable assurances that public health and the environment will be protected. One factor which may be considered in determining whether all reasonable assurances have been provided is whether a settling party has offered a premium payment to insure against the risk that future remedial action will be required at the site.

One of the instances where EPA has used the extraordinary circumstances exception in the past is where a responsible party has filed for bankruptcy. Whether or not a responsible party's bankruptcy filing presents extraordinary circumstances will depend on a number of case-specific factors involving, among other things, the grounds upon which the party is liable, and the type of bankruptcy relief-liquidation or reorganization-that is being sought by the debtor. EPA will not grant a debtor a convenant not to sue which is broader than a discharge under the bankruptcy laws but neither will EPA make settlement impossible by insisting on a convenant narrower than the discharge the debtor is entitled to by operation of the bankruptcy laws.

Waivers of reopeners under section 122(f)(6)(B) will require prior approval by the Assistant Administrators for OECM and OSWER and the Assistant Attorney General as provided in the Interim Settlement Policy. 50 FR at 5040.

E. Special Convenants

Special convenants not to sue under section 122(f)(2) are authorized for two extremely limited circumstances. First, under section 122(f)(2)(A) a special covenant is appropriate where EPA selects a remedial action involving offsite disposal after rejecting a proposed onsite remedy which is consistent with the NCP. This special convenant, it should be emphasized, it only available where EPA has determined that an onsite remedy fully

complies with the requirements of the NCP, but that onsite remedy is rejected in favor of offsite disposal. It is not sufficient for EPA to have merely considered onsite proposals in choosing the remedy. Further, the Conference Report makes clear that this provision was adopted in the context of section 121 requirements regarding offsite disposal and therefore EPA will only grant this special covenant in decrees involving remedies selected under section 121. Conference Report, H.R. Rep. 99–962, 99th Cong., 2d Sess. 254 (1986).

Second, under section 122(f)(2)(B), EPA will issue a special covenant where the remedy involves each of the following elements:

(1) Treatment of hazardous substances so as to

(2) Destroy, eliminate, or permanently immobilize the hazardous constituents of such substances, *and*

(3) EPA determines that

(a) The substances no longer present any current or currently forseeable future significant risk to public health, welfare, or the environment,

(b) No byproduct of the treatment or destruction process presents any significant hazard to public health, welfare, or the environment, *and*

(c) All byproducts are themselves treated, destroyed, or contained in a manner which assures that such byproducts do not present any current or currently foreseeable future significant risk to public health, welfare, or the environment.

The term "permanent immobilization" applies only to a site where treatment technologies change the fundamental nature and character of the hazardous substances so that no person faces a significant risk of being exposed to the hazardous substance. Conference Report, H.R. Rep. No. 99–962, 99th Cong., 2d Sess. 254–55 (1986). Use of "permanent" storage containers or other containment technology does not qualify as permanent immobilization under this provision.

Finally, under either of the two circumstances in section 122(f)(2), the special covenant applies only to those hazardous substances actually transported offsite or destroyed, eliminated, or permanently immobilized. Thus to the extent that hazardous substances remain onsite, the standard reopeners for future liability must be included in the convenant not to sue. For example, Site X has soil contamination to a depth of 30 feet but under present health standards only the first five feet need to be incinerated. Assuming the incineration process meets the requirements of section 122(f)(2)(B), a special convenant may be granted for the incinerated soil but under no circumstances would a covenant not to sue for future liability without the standard reopeners be issued for the contaminated lower 25 feet of soil.

IV. Status of Interim Settlement Policy

The Interim Settlement Policy remains in effect to the extent not contradicted by SARA or by this or any other subsequent guidance. Nonetheless, a number of points from that policy are worth re-emphasizing:

(1) Covenants not to sue will not be issued for redisposal liability unless section 122(f)(2)(A) applies;

(2) Covenants not to sue in agreements where EPA has performed the remedy and EPA is seeking only the recovery of its costs should be no more expansive than covenants not to sue in consent decrees where the responsible parties agree to do the remedy;

(3) A covenant not to sue may be given only to the responsible party providing consideration for the covenant;

(4) The covenant not to sue must not cover any claims other than those involved for that site—thus unless unusual factors are present the covenant not to sue will apply only to claims under sections 106 and 107 of CERCLA and section 7003 of RCRA;

(5) The covenant not to sue must expressly be limited to civil claims;

(6) A covenant not to sue for a remedial investigation and feasibility study or a removal action must be limited to the work actually completed;

(7) A covenant not to sue regarding natural resources may only be provided by the Federal trustee responsible for those resources;

(8) Responsible parties must release any related claims against the Hazardous Substances Superfund.

Disclaimer

The policies and procedures established in this document are intended solely for the guidance of government personnel. They are not intended and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. The Agency reserves the right to act at variance with these policies and procedures and to change them at any time without public notice.

Covenant Not To Sue

1. A. Except as specifically provided in Subparagraph C, the United States covenants not to sue the settling parties for Covered Matters. Covered Matters shall include any and all civil liability to the United States for causes of action arising under §§ 106 and 107(a) of CERCLA and § 7003 of RCRA relating to the Site.

B. With respect to future liability, this covenant not to sue shall take effect upon certification by EPA of the completion of the remedial action. A determination regarding certification of completion will be made by EPA within [one year] of successful completion of the activities listed in Appendix _____.

C. Notwithstanding any other provision in this Consent Decree, the United States reserves the right to institute proceedings in this action or in a new action (1) seeking to compel Settling Parties to perform additional response work at the Site or (2) seeking reimbursement of the United States' response costs, if:

(1) For proceedings prior to EPA certification of completion of the remedial action,

(i) Conditions at the Site, previously unknown to the United States, are discovered after the entry of this Consent Decree, or

(ii) Information is received, in whole or in part, after the entry of this Consent Decree,

and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment;

(2) For proceedings subsequent to EPA certification of completion of the remedial action,

(i) Conditions at the Site, previously unknown to the United States, are discovered after the certification of completion by EPA, or

(ii) Information received, in whole or in part, after the certification of completion by EPA,

and these previously unknown conditions or this information indicates that the remedial action is not protective of human health and the environment.

D. The United States' right to institute proceedings in this action or in a new action seeking to compel Settling Parties to perform additional response work at the Site or seeking reimbursement of the United States for response costs at the Site, may only be exercised where the conditions in subparagraph C are met. [Caution: check to insure that this subparagraph does not waive other reserved rights in the decree relating to additional response work.]

E. Notwithstanding any other provision in this Consent Decree, the covenant not to sue in subparagraph A shall not relieve the settling parties of their obligation to meet and maintain

compliance with the requirements set forth in this Consent Decree including the Record of Decision and Remedial Design for the Site which is incorporated herein.

[FR Doc. 87-16955 Filed 7-27-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of Information Collection

Consolidated Reports of Condition and Income (Insured State Nonmember Commercial Banks) (OMB No. 3064-0052).

Background

In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

Comments:

Comments on this collection of information should be submitted on or before August 26, 1987.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY: The FDIC is submitting for OMB review changes to the Consolidated Reports of Condition and Income (Call Reports) filed quarterly by insured state nonmember commercial banks. These revisions were approved at the April 21, 1987, meeting of the Federal Financial Institutions Examination Council (FFIEC) and are designed to reduce the reporting burden imposed by Call Report Schedule RC-J, "Repricing Opportunities for Selected Balance Sheet Categories," while preserving rate sensitivity data essential to the commercial bank surveillance activities of the three federal banking agencies. The proposed changes involve simplifying the methods used for presenting maturity and repricing frequency data. These changes, if approved, would become effective as of the March 31, 1988, report date.

The FFIEC approved one other change in the Call Report requirements that is unrelated to Schedule RC-J. This involves a change in reporting the "Loans secured by 1-4 family residential properties" item in the loan schedule (Schedule RC-C). This change would become effective as of the December 31, 1987, report date.

As a result of the proposed changes it is estimated that insured state nonmember banks, collectively, would receive an annual reduction in reporting burden of 121,008 hours. The annual reporting burden on these banks would then amount to 668,996 hours.

Dated: July 22, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-16944 Filed 7-24-87; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-795-DR]

Major Disaster and Related Determinations; Iowa

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa, (FEMA-795-DR), dated July 17, 1987, and related determinations.

DATED: July 17, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

Notice is hereby given that, in a letter of July 17, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from severe storms and flooding during the period May 26 through 31, 1987, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93-288. I, therefore, declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to provide Public Assistance only to assist State and local governments for repair of damages to public facilities required as a result of this incident. Consistent with the requirement that Federal assistance be supplemental, Federal funds provided under PL 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area. You are further authorized to allocate, from funds available for these purposes, such amounts as you find necessary for administrative expenses.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Paul Ward of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Iowa to have been affected adversely by this declared major disaster: Fremont, Mills, Montgomery, and Page Counties for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director.

[FR Doc. 87-16922 Filed 7-24-87; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-796-DR]

Major Disaster and Related Determinations; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio, (FEMA-796-DR), dated July 17, 1987, and related determinations.

DATED: July 17, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

Notice is hereby given that, in a letter of July 17, 1987, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Ohio resulting from severe storms and flooding beginning on July 1, 1987, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93–288. I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Consistent with the requirement that Federal assistance be supplemental, Federal funds provided under PL 93–288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of PL 93–288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Phil Zaferopolus of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster: Crawford, Marion, Morrow and Richland Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director.

[FR Doc. 87–16923 Filed 7–24–87; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Acquisition of Shares of Banks or Bank Holding Companies; Barton S. Burch et al.

The notificant listed below has 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 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 August 13, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Barton S. Burch*, Edna I. Burch, and Barton S. or Edna I. Burch, Lindenwood, Illinois; to acquire 14.67 percent of the voting shares of Holcomb Bancorp, Inc., Holcomb, Illinois, and thereby indirectly acquire Holcomb State Bank, Holcomb, Illinois.

2. *Barton S. Burch* and Barton S. or Edna I. Burch, Lindenwood, Illinois; to acquire 12.67 percent of the voting shares of Holcomb Bancorp, Inc., Holcomb, Illinois, and thereby indirectly acquire Holcomb State Bank, Holcomb, Illinois.

Board of Governors of the Federal Reserve System, July 21, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–16914 Filed 7–24–87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; FNB Rochester Corp. et al.

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 August 17, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *FNB Rochester Corporation*, Rochester, New York; to acquire 100 percent of the voting shares of Atlanta National Bank, Atlanta, New York.

B. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Minnesota-Wisconsin Bancshares, Inc.*, Newport, Minnesota; to merge with Town & Country Bancshares, Inc., Newport, Minnesota, and thereby indirectly acquire Town and Country Bank, Maplewood, Minnesota. Comments on this application must be received by August 20, 1987.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Crown Bancshares II, Inc.*, Topeka, Kansas; to become a bank holding company by acquiring 51 percent of the voting shares of Johnson County Bankshares, Inc., Prairie Village, Kansas, and thereby indirectly acquire Johnson County Bank, N.A., Prairie Village, Kansas.

2. *Mission Hills Bancshares, Inc.*, Mission Woods, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Mission Hills Bank, N.A., Mission Woods, Kansas.

Board of Governors of the Federal Reserve System, July 21, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–16915 Filed 7–24–87; 8:45 am]

BILLING CODE 6210-01-M

Applications To Engage de Novo in Permissible Nonbanking Activities; Norstar Bancorp, Inc., et al.

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 August 17, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Norstar Bancorp Inc.*, Albany, New York; to engage *de novo* through its subsidiary, Norstar Trust Company of Florida, N.A., Naples, Florida, in performing functions or activities that may be performed by a trust company pursuant to section 225.25(b)(3) of the Board's Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Landmark Bancorp*, La Habra, California; to engage *de novo* through its subsidiary, Excelmark Financial Services, Inc., La Habra, California, in performing functions or activities that may be performed by a trust company pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 21, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-16916 Filed 7-24-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; Centers for Disease Control

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 52 FR 13318, April 22, 1987), is amended to reflect the following changes:

(1) Correct the mission statement for the National Center for Health Statistics (NCHS);

(2) Establish the organizational substructure for NCHS;

(3) Transfer the responsibility for administering the Preventive Health and Health Services Block Grant from the Office of the Director, CDC, to the Office of the Director, Center for Prevention Services;

(4) Within the Office of Program Support, update mission statements for the Engineering Services Office and the Financial Management Office to reflect current operations;

(5) Transfer responsibility for violence epidemiology from the Center for Health Promotion and Education to the Center for Environmental Health;

(6) Within the Center for Environmental Health, (a) transfer radiation activities from the Division of Chronic Disease Control to the Division of Environmental Hazards and Health Effects; (b) transfer munitions demilitarization activities from the Division of Injury Epidemiology and Control to the Special Projects Activity, Office of the Director; and (c) transfer intentional injuries activities from the Center for Health Promotion and Education to the Division of Injury Epidemiology and Control; and

(7) Update the list of officials in the Order of Succession.

Section HC-B, Organization and Functions, is hereby amended as follows:

1. After (HCR), delete in its entirety the heading and mission statement for the National Center for Health Statistics and substitute the following:

National Center for Health Statistics (HCS). (1) Provides national leadership in health statistics and epidemiology; (2) collects, analyzes, and disseminates national health statistics on vital events and health activities, including the physical, mental, and physiological characteristics of the population, illness, injury, impairment, the supply and utilization of health facilities and manpower, the operation of the health services system: health costs and expenditures, changes in the health status of people, and environmental, social and other health hazards; (3) administers the Cooperative Health Statistics System; (4) stimulates and conducts basic and applied research in health data systems and statistical methodology; (5) coordinates to the maximum extent feasible, the overall health statistical and epidemiological activities of the program and agencies of PHS and provides technical assistance in the planning, management, and evaluation of statistical programs of PHS; (6) maintains operational liaison with statistical units of other health agencies, public and private, and provides technical assistance within the limitations of staff resources; (7) fosters research, consultation, and training programs in international statistical activities; (8) participates in the development of national health statistics policy with other Federal agencies; (9) directs the environmental and epidemiological statistics programs of the Center; (10) in its role as the Government's principal general-purpose health statistics organization as designated by the Office of Management and Budget, provides the Assistant Secretary for Health with consultation and advice on statistical matters.

2. After the heading and statements for *National Center for Health Statistics (HCS)*, insert the following:

Office of the Director (HCS1). (1) Plans, directs, administers, coordinates and evaluates the total vital, health, and health-related statistics programs of the Center; (2) stimulates basic and applied research and developmental activities; (3) provides national and international leadership in vital and health statistics and epidemiology; (4) conducts a variety of professional activities to provide assistance to government agencies, to foster international relationships, and to improve the broad fields of vital and health statistics and epidemiology; (5) coordinates the Center's activities with public and private health statistical agencies; (6) provides advice and guidance on disease classification

problems in the Center; coordinates activities within the Center on classification of diseases and procedures; and has responsibility for development of revision proposals and U.S. position on decennial revisions of the International Classification of Diseases; (7) directs the Center's environmental and epidemiological statistics programs; (8) directs the Office of Planning and Extramural Programs; (9) provides management and administrative support for the Center; (10) provides program planning and development for the Center; (11) develops and coordinates legislative activities; (12) directs and coordinates Center activities in support of the Department's Equal Employment Opportunity program.

Office of Management (HCS12). (1) Participates in the development of policy, long-range plans, and programs of the National Center for Health Statistics; (2) plans, coordinates, directs, and conducts the management operations of the National Center for Health Statistics; (3) reviews the effectiveness and efficiency of the operation and administration of all programs of the Center; (4) conducts organizational and procedural studies; (5) monitors the performance appraisal system; (6) develops and directs systems for personnel, procurement, paperwork management, staff resources utilization, and management by objectives; (7) plans, develops, and conducts a Centerwide management information system; (8) develops administrative policies and procedures; (9) manages the Reimbursable Work Program for the Center; (10) provides services in the areas of delegations of authority, grants and contracts management, reports and records management, and organization and management analysis; (11) serves as principal advisor in areas of financial management activities and manages a system of budgetary, expenditure, and position controls.

Office of Research and Methodology (HCS13). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) plans, coordinates, and stimulates the Center's applied and basic research program which includes the fields of mathematical statistics, survey design and methodology, cognition and survey measurement, and automated statistical and graphical technologies, and conducts research in each of these fields; (3) formulates statistical standards regarding the survey design, data collection, coding, data analysis, data presentation, and statistical computing for all NCHS data systems and coordinates activities directed at the implementation and maintenance of these standards; (4) actively supports all of the Center's basic and applied research activities by serving as the Center's consultants in the fields of mathematical statistics, survey design and methodology, cognition and survey measurement, and automated statistical and graphical technologies; (5) consults and collaborates on statistical research projects with PHS agencies and other Federal organizations, State and local governments, universities, private research organizations, and international health agencies; (6) reviews for statistical merit all research contracts and intramural projects and all research projects undertaken through contracts, interagency agreements, or intramural activities.

Office of Planning and Extramural Programs (HCS14). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) develops proposed policies for the coordination of NCHS programs with external agencies, both public and private; (3) serves as the focal point for coordination of health statistical activities within NCHS and for developing and coordinating the collaborative statistical activities of NCHS with other organizations and agencies; (4) provides a focus within NCHS for statistical program planning, evaluation, and legislative affairs; (5) evaluates or arranges for the evaluation of the adequacy, completeness, and responsiveness of Center programs both nationally and internationally to the NCHS mission and user needs for data; (6) plans and conducts NCHS international activities; (7) directs the definition, development, and coordination of cooperative programs in health statistics, working with the Regional Offices, State and local governments, and other organizations including the private and academic sectors in the development and strengthening of subnational statistical systems; (8) conducts research, analyses, and demonstrations related to subnational systems; (9) provides Executive Secretariat and related services to the National Committee on Vital and Health Statistics; (10) provides program leadership and coordination for the NCHS Reimbursable Work Program; (11) provides guidance and staff support for major Center conferences and committee meetings; (12) provides advice and assistance to outside agencies and organizations in the conduct of statistical training activities; (13) participates with appropriate agencies and organizations to improve the quality, comparability, and timeliness of standard health data sets and to promote and disseminate their use; maintains current information concerning Federal and non-Federal health statistics systems; (14) coordinates required clearances of NCHS projects.

Office of Vital and Health Statistics Systems (HCS2). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) directs, plans, and coordinates the vital and heath care statistics programs and the interview and examination statistics programs of the Center; (3) provides policy guidance, technical liaison, leadership, and evaluation of Federal-State conjoint vital and health care statistics programs and interview and examination statistics programs; (4) provides leadership for the monitoring and statistical evaluation of national vital and health care, interview and examination statistics; (5) provides operating liaison with other programs of the Center and other public and private agencies on vital, health care interview and examination statistics; (6) determines the need for new data systems or capabilities in present systems to provide needed health statistics; (7) provides statistical consultation and technical assistance to other producers and users of health statistics; and (8) conducts developmental and evaluation research to assess the quality and cost-effectiveness of these programs.

Division of Vital Statistics (HCS22). (1) Plans and administers statistical programs based on the nationwide collection of data from vital records, vital record followback surveys, and demographic surveys of women in the childbearing ages; (2) designs, develops, and implements computer data processing systems and software and produces statistical data for analysis and publication; (3) analyzes data and prepares reports for publication; (4) analyzes and provides data to users through publications, computer tapes, special tabulations, and unpublished data; (5) plans and administers the Division programs related to the Vital Statistics Cooperative Program (formally established as the Cooperative Health Statistics System); (6) develops standards for data collection, data reduction, and tabulation; (7) defines, conducts, or participates in research programs on data collection methodology, survey methodology, data quality and reliability, computer technology, and statistical computation as related to the vital statistics programs; (8) participates in the

development of quality control specifications; (9) conducts methodological research in presentation, evaluation, and utilization of vital and related survey statistics data; (10) monitors, evaluates, and provides technical assistance for State and local registration areas on matters of legal and statistical concern and data processing; (11) prepares life tables and analyses of life table data; (12) plans and administers a National Death Index.

Division of Health Care Statistics (HCS23). (1) Plans and administers statistical programs based on nationwide collection of data on the characteristics and use of health resources; (2) designs, develops, and implements computer data processing systems and software and produces statistical data for analysis and publication; (3) analyzes data and prepares statistical reports for publication; (4) provides health care data to the using public through publication, computer tapes, special tabulations, and unpublished data; (5) plans and administers its programs which are related to the Vital Statistics Cooperative Program; (6) develops standards for data collection, data reduction, and tabulation; (7) defines, conducts, or participates in research programs on data collection methodology, survey methodology, data quality and reliability, computer technology, and statistical computation as related to health care statistics; (8) participates in the development of quality control specifications; (9) conducts methodological research on presentation, evaluation, and utilization of data in the field of health resources and utilization statistics; (10) plans, supports, and conducts special projects on health care; (11) provides specialized responses to requests from data users; (12) provides technical assistance in health care survey design and methodology, data processing, and analysis.

Division of Health Interview Statistics (HCS24). (1) Plans, develops, and administers statistical programs based on systematic nationwide and special health interview surveys; (2) designs, develops, and implements computer data processing systems and software and produces statistical data for analysis and publication; (3) analyzes data and prepares statistical reports for publication on the prevalence and incidence of disease and associated disabilities and on the utilization of medical care resources, medical care expenditures, and other health related topics; (4) develops and monitors quality control programs for ongoing data collection and processing activities; (5) defines, conducts, or participates in research programs on data collection methodology, survey methodology, data quality and reliability, computer technology, and statistical computation, as related to health interview statistics; (6) provides technical assistance in health interview survey design and methodology, data processing, and analysis; (7) provides specialized responses to requests from data users.

Division of Health Examination Statistics (HCS25). (1) Plans, develops, and administers statistical programs based on systematic nationwide and special health and nutrition examination surveys; (2) designs, develops, and implements computer data processing systems and software and produces statistical data for analysis and publication; (3) analyzes data and prepares statistical reports for publication on the prevalence of disease or health-related characteristics, including data on dental, nutrition, psychological, mental health and health behavior areas, on needs for care, on descriptive or normative data, and on the interrelationships of these variables as observed in the general population; (4) develops and monitors quality control programs for ongoing data collection and processing activities; (5) defines, conducts, or participates in research programs on data collection methodology, survey methodology, data quality and reliability, computer technology, and statistical computation, as related to health examination statistics; (6) plans, supports, and conducts special projects on health examination of individuals; (7) provides technical assistance in health examination survey design, methodology, data processing, and analysis; (8) provides specialized responses to requests from data users.

Office of Data Processing and Services (HCS3). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) directs, plans, and coordinates the Data Services and Data Processing Program of the Center; (3) provides policy guidance and direction regarding the data processing services, publication services, and scientific and technical information dissemination services of the Center; (4) provides operating liaison with other programs of the Center and other public and private health agencies on data processing and services activities.

Division of Data Processing (HCS32). (1) Plans, directs, coordinates, and evaluates data processing, i.e., computer operations for the Center; (2) conducts data reduction and data preparation services in support of NCHS data collection and analysis programs; (3) provides systems programming services to all Center operations; (4) conducts research programs to improve data processing technology and methodology; (5) implements the NCHS Automated Data Processing (ADP) security program and procedures.

Division of Data Services (HCS33). (1) Plans, directs, coordinates, and evaluates data dissemination, publications, and intramural data collection services for the Center; (2) provides technical information services to all NCHS data users; (3) provides publications services and data collection services for NCHS programs; (4) coordinates data services with other NCHS divisions and programs to meet Center goals effectively; (5) promotes and conducts research to improve methods and operations of intramural data collection, data dissemination, and publication services; (6) designs, develops, and implements automated systems for data dissemination; (7) provides specialized data services to the Center.

Office of Analysis and Epidemiology (HCS4). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) directs, plans, and coordinates the Analysis and Epidemiology Program of the Center; (3) develops policy for the Analysis and Epidemiological Health Statistics Program of the Center; (4) provides operating liaison with other programs of the Center and other public and private health agencies on analytic and epidemiologic activities; (5) provides consultation and technical assistance to Federal agencies, States, and other public and private sector institutions in epidemiology and the analysis and interpretation of national health statistics; (6) conducts developmental and evaluation research in the fields of epidemiology and analysis of national health statistics; (7) designs, develops, and implements computer data processing systems and software and produces statistical data for analysis and publication.

Division of Epidemiology and Health Promotion (HCS42). (1) Plans, directs, and manages the Center's epidemiologic research program on the effects of social, behavioral, and environmental factors on health; (2) conducts epidemiologic research and research on the epidemiologic uses of alternative concepts of level of health status; (3) conducts research, demonstrations, and evaluations of the utility of environmental health statistics and

health status measurements in health program planning, policy analysis, and program direction; (4) provides operational liaison with health statistical programs of other public and private agencies concerned with environmental and health status measurement; (5) recommends the need for new health data systems or improvements in capabilities of present systems to meet the needs of the Center's overall epidemiologic and health status research programs; (6) provides technical assistance to other producers and users of health status and environmental data; (7) collects and disseminates sources of current information on the conceptualization and measurement of health status, including the maintenance of a Clearinghouse on Health Indexes; (8) coordinates the health promotion and disease prevention related data collection activities of the Center and serves as a liaison with the Department's health promotion and disease prevention initiative.

Division of Analysis (HCS43). (1) Plans, directs, and conducts a program of in-depth analysis of health and demographic data; (2) stimulates the development of concepts and statistical data programs throughout the Center; (3) conducts economic analyses of health, including health status, resources and utilization, cost, and financing of services; (4) conducts research related to the use and analysis of health data in planning and evaluating health programs and policy; (5) augments the policy analysis activities of OASH; (6) proposes a general schedule of data to be collected by the Center; (7) prepares an overall plan for the analysis and presentation of data on Center programs; (8) conducts a research program on etiologic inference from observation studies.

3. Under the heading *Office of the Director, CDC (HCA),* in item (14) change the semicolon to a period and delete item (15).

4. Within the *Center for Prevention Services (HCM),* after the heading *Office of the Director (HCM1),* insert the following as item (5): "(5) administers the Preventive Health and Health Services Block Grant;" and renumber items (5) and (6) as (6) and (7).

5. After the heading and statements for the *Office of Program Support (HCA5),* make the following changes:

a. Under the heading *Engineering Services Office (HCA52),* change item (6) to read: (6) maintains liaison with the Division of Health Facilities Planning of the Office of the Assistant Secretary for Health.

b. Under the heading *Financial Management Office (HCA53),* delete item (9) and renumber items (10) through (12) as (9) through (11).

6. Within the *Center for Health Promotion and Education (HCK),* after the heading *Office of the Director (HCK1),* delete the words "and interpersonal violence" from item (5).

7. Within the *Center for Environmental Health (HCN),* make the following changes:

a. Under the heading *Division of Chronic Disease Control (HCN6),* delete item (5) and renumber items (6) through (10) as items (5) through (9).

b. Under the heading *Division of Environmental Hazards and Health Effects (HCN7),* make the following changes:

(1) Change item (1) to read: (1) Conducts and disseminates findings of surveillance and epidemiologic research and investigations of human exposure to environmental hazards, including radiation and man-made and naturally occurring toxins, and resultant and presumed health effects, including environmentally related syndromes of unknown etiology;

(2) Change item (3) to read: (3) plans, develops, implements, and maintains surveillance systems, including registries relating to exposure to environmental hazards, e.g., lead, radiation, weather phenomena, and natural hazards, and to resultant diseases or syndromes;

(3) Change item (6) to read: (6) provides consultation and technical assistance on the development and implementation of environmental health programs addressing the prevention of human health problems associated with environmental toxicants, radiation, climate extremes, lead hazards, and other health hazards;

c. Under the heading *Division of Injury Epidemiology and Control (HCN9),* delete the statement in its entirety and substitute the following: (1) Proposes goals and objectives for national nonoccupational, unintentional and intentional injury prevention and control programs, monitors progress toward these goals and objectives, and recommends priority prevention activities; facilitates similar activities by other Federal, State, and local agencies, academic institutions, and private and other public organizations; (2) plans, directs, conducts, and supports research focused on development and evaluation of strategies to prevent injuries; (3) plans, establishes, and evaluates surveillance systems to monitor national trends in morbidity, mortality, and costs of injuries and to facilitate surveillance by State and local agencies; (4) develops, implements, directs, and evaluates demonstration programs to prevent injuries; (5) serves as a primary Federal resource of technical assistance and management expertise in the epidemiology and prevention of nonoccupational injuries; (6) provides technical and management consultation and assistance to States and localities in assessing the problem of injuries, conducting surveillance, planning prevention programs, and evaluating prevention activities; (7) coordinates the provision of technical and managerial training in the prevention of injuries; (8) supports the dissemination of findings from all activities to Federal, State, and local agencies, private organizations, and other national and international groups; (9) coordinates Division activities with other CDC organizations, PHS agencies, and other Federal agencies and private organizations, as appropriate.

Section HC–C Order of Succession. After the first sentence, delete the listing of officials and substitute the following: (1) Deputy Director, (2) Assistant Director for Public Health Practice, (3) Director, Office of Program Support, (4) Assistant Director for International Health, (5) Director, Office of Program Planning and Evaluation, (6) Deputy Director (AIDS).

Dated: July 20, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87–16943 Filed 7–24–87; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–87–1705; FR–2365]

Availability of Funding Under the Fair Housing Assistance Program; Non-Competitive Solicitation

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

ACTION: Notice of funding availability.

SUMMARY: HUD is soliciting applications from eligible State and local fair housing agencies for Type I funding under the Fair Housing Assistance Program. Agencies must meet specific eligibility criteria, set out in this announcement as well as in 24 CFR Part 111, in order to qualify for consideration under this program.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Holbert, Acting Director, Office of Fair Housing Enforcement and Section 3 Compliance, Office of Fair Housing and Equal Opportunity, Room 5208, 451 Seventh Street SW., Washington, DC 20410–2000. Telephone: (202) 755–0455. (This is not a toll-free number.) Application kits are available to eligible State and local fair housing agencies upon written or telephone request from the above. Telephone requests are encouraged to ensure that eligible agencies receive their application kits at the earliest possible date.

DATE: Applications for Type I funding may be submitted between July 27, 1987 and August 26, 1987. No application received after the closing date will be considered unless it is received before awards are made and qualifies for a later application exception as specified in the Application Kit.

SUPPLEMENTARY INFORMATION: This announcement of solicitation for noncompetitive funding under the Fair Housing Assistance Program (FHAP) is issued pursuant to 24 CFR Part 111. It should be noted that Part 111 permits all eligible agencies to apply for and receive training funds. Additionally, Section 111.104 permits participation in Type I funding by agencies that have entered into agreements providing for interim referrals of complaints or for other utilization of such agencies' services. See 24 CFR 115.11, authorizing interim referrals.

Interested agencies are urged to review 24 CFR Part 111 and 115 and the information in this announcement to determine eligibility for application.

The FHAP has two types of funding: Type I-Non-Competitive Funding and Type II-Competitive Funding. Type I-Non-Competitive Funding includes support for capacity building, training, complaint monitoring and reporting systems, and contributions for complaint processing. Type II-Competitive Funding includes support for specialized project proposals developed by State and local agencies to enhance their fair housing programs. Under this announcement, eligible agencies can apply for Type I funding only.

Background

Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19 (the Federal Fair Housing Law), prohibits discrimination in the sale, rental or financing of housing and in the provision of brokerage services. Section 810(c) of that title provides that, wherever a State or local fair housing law is recognized as providing rights and remedies substantially equivalent to those in the Federal Fair Housing Law, the Secretary of HUD is required to notify the appropriate State or local agency of any complaint filed with HUD that appears to constitute a violation of the State or local law. Section 816 provides that the Secretary may cooperate with State and local agencies charged with the administration of State and local fair housing laws and, with the consent of such agencies, may use their services and their employees and may reimburse the agencies for services rendered in carrying out the Federal Fair Housing Law. The FHAP was authorized by Congress to provide HUD with the resources to enhance the fair housing capabilities of State and local civil rights agencies.

Other Matters

This program is described in the Catalog of Federal Domestic Assistance at 14.401, Fair Housing Assistance Program.

Collection of information requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Number 2529–0005.

FHAP Funding Requirements in This Announcement

I. *Eligibility:* To be eligible to apply for funds under the Program, an agency must meet the criteria prescribed in 24 CFR 111.104. Specifically, an agency must be certified as a substantially equivalent agency under the standards set forth at 24 CFR Part 115, and must have executed a written Memorandum of Understanding; or an agency must have entered into a written agreement for interim referral or other utilization of services, as set forth at 24 CFR 115.11. The Memorandum of Understanding/Written Agreement must describe the working relationship to be in effect between the agency and the appropriate HUD Regional Office of Fair Housing and Equal Opportunity.

However, if an agency has applied to the Department for recognition as a substantially equivalent agency, and has been found by the Department to have statutory authority substantially equivalent to the Federal Fair Housing Law but has not been granted final or interim recognition, it will be eligible to apply for Type I funds if either of two conditions are met:

1. The agency was proposed for recognition as a substantially equivalent agency by the Secretary under 24 CFR Part 115, as in effect prior to October 8, 1984, or

2. The Department has published a notice advising the public that the law which the agency administers is, on its face, substantially equivalent to the Federal Fair Housing Law and seeking public comments on the current practices and past performance of the agency, pursuant to 24 CFR 115.6, as amended effective October 8, 1984.

Such an agency may enter into negotiations with the Regional Office of Fair Housing and Equal Opportunity to develop a Memorandum of Understanding meeting the criteria set forth in 24 CFR 115.6(c), and may at the same time submit funding proposals. No funds will be obligated to such an agency until it has received final recognition as equivalent, or has entered into an Interim Agreement in accordance with 24 CFR 115.11.

All Type I proposals for funding must pertain to housing discrimination based on race, color, religion, sex or national origin.

II. Methods of Distribution

A. *Scope.* Applications are solicited for non-competitive funding as described at 24 CFR 111.102. A total of $3,000,000 is available under this Announcement.

B. *Categories of Funding.* 1. Capacity Building—Under 24 CFR 111.102(a), HUD will provide all agencies seeking capacity building support for the first and second year of their participation in the FHAP with a level of funding based upon HUD records showing the number of complaints of housing discrimination received by HUD from that agency's jurisdiction during the period of January–December 1986. The maximum payments will be determined by HUD in accordance with the following formulas:

Number of complaints	Maximum payment
25 or less	$25,000
26–50	45,000
51–75	60,000
76–100	75,000
For each additional complaint over 100	750

Under 24 CFR 111.105(b), all agencies seeking capacity building support must submit a written narrative justification documenting that within their jurisdiction there is a sufficient volume of current or potential complaint activity to justify the requested allocation of funds.

2. *Training.* Agencies receiving Type I funds will be required to participate in HUD-sponsored training (24 CFR 111.105(a)(4)). Funds to support participation in this training are available to the agency at 15% of its

capacity building or contributions allocation, but funds for training participation shall not exceed $8,000, nor be less than $4,000. Any agency which is otherwise eligible to receive funding for capacity building or contributions, but elects not to apply for it, may apply for training support funds up to the level which the agency would have been entitled to receive had it applied for capacity building or contributions funding.

These funds are intended to support attendance at HUD-sponsored training at National and Regional training sites. These monies may also be used to support additional in-house training by agencies for agency-specific problems, and for training of staff unable to attend National or Regional training, subject to the approval of the HUD Regional Government Technical Monitor.

3. *Complaint Monitoring and Reporting Systems.* Any agency applying for capacity building funds will be entitled to receive funds for the creation, modification or improvement of the agency's complaint information and monitoring capability, to result in a system compatible with HUD's, provided that the agency has not previously been funded for that purpose. (Complaint monitoring and reporting systems funds are available on a one-time only basis.) Agencies can receive Complaint Monitoring and Reporting Systems support to a maximum of $5,000. Agencies seeking such support must submit a narrative justification documenting the need for the requested level of funding under this component.

4. *Contributions.* Agencies eligible for their third-or-later year of non-competitive support will be provided with support for complaint processing based solely on the number of dual-filed housing discrimination complaints actually processed by the agency during the annual period beginning July 1, 1986 and ending June 30, 1987. (See 24 CFR 111.102(b).) (A dual-filed complaint is a complaint which has been docketed at both HUD and the agency.) The unit reimbursement level will be $750 per complaint.

C. *Applications.* To receive first or second year funding, applicants must submit all information required in the Type 1-Non-competitive Application Kit. Applicants eligible for third-or-later year funding will be sent a Cooperative Agreement based solely on the number of dual-filed housing discrimination complaints actually processed by the agency in the twelve-month period from July 1, 1986 through June 30, 1987. HUD will incorporate the training allotment that into that Agreement. (This collection of information requirement has been assigned OMB control number 2529-0005.)

D. *Award Procedure.* Applications for Type I funding will be reviewed upon receipt for completeness and conformity with 24 CFR 111.105. (See also paragraph III. below).

III. Application Notification and Award Procedures:

A. *Notification.* All Applicants will be notified of the action on their Type I applications as soon as the evaluation of applications is completed.

B. *Negotiations.* After submission of the application, but before the award, HUD may require that applicants participate in negotiations and submit application revisions resulting from those negotiations. Awards for Type I applications are expected to be made within four weeks after negotiations are successfully completed.

C. *Type of Funding Instrument.* Applicants most likely will be funded under fixed-price Cooperative Agreements. However, HUD reserves the right to employ the form of agreement determined to be most appropriate after negotiation.

Authority: Title VIII, Civil Rights Act of 1968 (42 U.C. 3601-19); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 10, 1987.

Judith Y. Brachman,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 87-16958 Filed 7-24-87; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Proposed Irrigation Ratesetting Policy; Central Valley Project (CVP), California; Supplement To Original Notice

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Reopening of the Comment Period on the Proposed CVP Irrigation Ratesetting Policy.

SUMMARY: On May 4, 1987, the Department of the Interior, through the Bureau of Reclamation, proposed a new irrigation water ratesetting policy for the CVP. The proposed policy was developed pursuant to the Reclamation Act of 1902 (32 Stat. 388), as amended and supplemented, particularly by section 9(e) of the Reclamation Project Act of 1939 (53 Stat. 1196), as amended by the Act of July 2, 1956 (70 Stat. 483), the Reclamation Reform Act of 1982 (96 Stat. 1263), and by sections 105 and 106 of the Act of October 27, 1986 (Pub. L. 99-546).

The Bureau of Reclamation hereby reopens the comment period on the Proposed CVP Ratesetting Policy, made available for public review and comment by notice in the **Federal Register** Vol. 52, No. 91, page 17839, May 12, 1987. The time period for submitting written comments, which closed July 12, 1987, has been reopened and comments will be accepted through August 15, 1987. The proposed CVP ratesetting policy is expected to become final on September 9, 1987, 120 calendar days following the date of the announcement of the proposed policy, unless public comment received prior to August 15, 1987, justifies reconsideration of the proposed policy.

Reclamation Contact: Written requests for the policy document or written comments should be addressed to the Regional Director, Bureau of Reclamation, Water Rate Policy, MP-440, 2800 Cottage Way, Sacramento, California 95825. Telephone inquiries may be made to Donna Tegleman at (916) 978-5035 in Sacramento, California.

Dated: July 22, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87-16995 Filed 7-24-87; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc., Unit Operator of the Main Pass Block 40 Federal Unit Agreement No. 14-08-0001-3847, has submitted a DOCD describing the activities it proposes to conduct on the Main Pass Block 40 Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Venice and Harvey, Louisiana.

DATE: The subject DOCD was deemed submitted on July 16, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood

Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Roy Bongiovanni: Minerals Management Service: Gulf of Mexico OCS Region: Production and Development: Development and Unitization Section: Unitization Unit: Telephone (504) 736–2650.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 20, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–16926 Filed 7–24–87; 8:45 am]

BILLING CODE 4310–MR–M

Development Operations Coordination Document; Mark Producing

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mark Producing has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6655, Block 346, East Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Morgan City and Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on July 6, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 20, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–16927 Filed 7–24–87; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Environmental Assessment for Proposed Lockheed Boulevard Connector Road in Fairfax, VA; Workshop to Discuss Mitigation Measures

Notice is hereby given in accordance with the National Park Service Guidelines (NPS–12; 526 DM 3.3; 40 CFR 1506.6) that Fairfax County will hold an informal workshop to discuss mitigation measures discussed in the Environmental Assessment for the Proposed Lockheed Boulevard Connector Road across Huntley Meadows Park, Fairfax County, Virginia.

The meeting will be held at 3:00 p.m., Saturday, August 8, 1987, at the Lee District Park Recreation Center.

For further information contact Mr. Richard Little, Fairfax County Office of Comprehensive Planning, 10640 Page Avenue, Fairfax County, Virginia, 22030 (telephone: 703/691–4253).

Date: July 21, 1987.

John Parsons,

Acting Regional Director, National Capital Region.

[FR Doc. 87–16918 Filed 7–24–87; 8:45 am]

BILLING CODE 4310–70–M

National Capital Region, Public Affairs; 1987 Christmas Pageant of Peace

The National Park Service is seeking public comments and suggestions on the planning of the 1987 Christmas Pageant of Peace, which opens December 10 on the Ellipse, south of the White House.

A public meeting will be held at the Park Service's National Capital Region Building in East Potomac Park at 1100 Ohio Drive, SW., Room 234, at 10 a.m., October 7, 1987.

Interested persons who would like to comment at the meeting should notify the National Park Service by September 30, by calling the Office of Public Affairs between 9 a.m., and 4 p.m., weekdays at 485–9651. Persons who cannot attend the meeting may send written comments to Regional Director, National Capital Region, 1100 Ohio Drive, SW., Washington, DC 20242. Written comments will be accepted until September 30, 1987.

Dated: July 17, 1987.

John Parsons,

Acting Regional Director, National Capital Region.

[FR Doc. 87–16919 Filed 7–24–87; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31077]

Midlouisiana Rail Corp. Acquisition and Operation Exemption;

MidLouisiana Rail Corporation (MidLou Rail), has filed a notice of exemption to (1) acquire and operate certain properties of North Louisiana & Gulf Railroad Company (NorLou) and

Central Louisiana & Gulf Railroad Company (CenLouRial) between Hodge, LA (milepost 0.00) and Gibsland, LA (milepost 40.0), a distance of about 40 miles, and between Hodge (milepost 0.00) and Winnfield, LA (milepost 25.0) a distance CenLou Rail's trackage rights over Kansas City Southern Railway track between Winnfield (milepost 25.00) and Alexandria, LA (milepost 73.00) a distance of about 48 miles. Any comments must be filed with the Commission and served on: Mark M. Levin, Weiner, McCaffrey, Brodsky & Kaplan, P.C. Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797, (202) 628–2000. This transaction will also involve the issuance of securities by MidLou Rail. Because MidLou Rail will be a Class III carrier, the issuance of these securities will be an exempt transaction under 49 CFR 1175.1.

This notice is related to Finance Docket No. 31063, where the MidSouth Corporation, the parent of MidLou Rail and MidSouth Rail Corporation (MS Rail), has concurrently filed a notice of exemption to continue in control of MidLou Rail. Midsouth Corporation already controls MS Rail.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: July 16, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–16934 Filed 7–24–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Registration

By Notice dated May 14, 1987, and published in the **Federal Register** on May 26, 1987; (52 FR 19605), McNeilab, Inc., Welsh and McKeen Roads, Spring House, Pennsylvania 19477, made application to the Drug Enforcement Administration to be registered as an importer of Difenoxin (9168), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of the controlled substance listed above.

Dated: July 22, 1987.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 87–16947 Filed 7–24–87; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

Meeting

Pursuant to Public Law 99–660, notice is hereby given of the first meeting of the National Commission To Prevent Infant Mortality.

Date: Thursday, July 30

Time: 12:00–3:00 P.M.

Place: Room EF 100, Capitol Building

Status: Open

Purpose: To discuss the goals of the Commission and future meetings, hearings, and the release of documents.

Senator Lawton Chiles,

Chairman.

[FR Doc. 87–16959 Filed 7–24–87; 8:45 am]

BILLING CODE 6820–SK–M

NATIONAL COMMUNICATIONS SYSTEM

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held Tuesday, October 6, 1987. The meeting will be held at the MITRE Corporation, 7525 Colshire Drive, McLean, Virginia. Registration will begin at 8:30 a.m. and the meeting will start at 9 a.m. The agenda is as follows:

A. Opening remarks.

B. Administrative remarks.

C. Briefings on industry and government activities.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202) 692–9274 or write the Manager, National Communications System, Washington, DC 20305–2010.

Robert V. Downey,

Captain, USN, Assistant Manager, NCS Joint Secretariat.

[FR Doc. 87–16920 Filed 7–24–87; 8:45 am]

BILLING CODE 3610–05–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following packages are being submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Subject: Loans to Members and Lines of Credit To Members

Abstract: Federal credit unions are required to establish written lending policies and obtain a legal opinion regarding mortgage forms used if standard forms are not used

Frequency: A federal credit union must comply with this information collection only when it establishes its lending policies and when the policies are changed

Burden: On the average a federal credit union will revise its lending policies twice a year. The average time required by a credit union over a year to record lending policy changes is twelve hours

Respondents: Federal credit unions.

Subject: Federal Credit Union Ownership of Fixed Assets

Abstract: Federal credit unions are required to obtain agency approval prior to investing in fixed assets in excess of 5% of the credit union's shares plus retained earnings

Frequency: A federal credit union must complete this information collection only if its planned investments in fixed assets will exceed 5% of its total shares plus retained earnings

Burden: On the average the required information collection may be completed in 10 hours

Respondents: Federal credit unions which meet the criteria outlined in the abstract must complete this information collection

OMB Desk Officer: Robert Fishman.

Copies of the above information collection clearance package may be obtained by calling the National Credit Union Administration, Administrative Office on (202) 357–1055.

Written comments and recommendations for the listed

information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Building, Room 3208, Washington, DC 20503.

Dated: July 21, 1987.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 87-16941 Filed 7-24-87; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

Environmental Assessment and Finding of No Significant Impact; Gulf States Utilities River Bend Station, Unit 1

[Docket No. 50-458]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a proposed exemption to 10 CFR Part 50, Appendix J, Paragraph III.D.3 for Facility Operating License No. NPF-47 issued to the Gulf States Utilities (the licensee) for operation of the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

Environmental Assessment

Identification of Proposed Action. This proposed exemption would suspend the requirement to conduct Type C leakage testing at intervals no greater than 24 months, as stated in 10 CFR Part 50, Appnedix J, Paragraph III.D.3, for 5 containment isolation valves until the first refueling outage which is scheduled to begin on September 15, 1987.

The proposed exemption is responsive to the licensee's application for exemption dated March 10, 1987 as supplemented by letters dated June 9, 1987 and July 8, 1987.

The Need for the Proposed Action. The proposed exemption from the regulation is required in order to allow continued operation of the plant until the first refueling outage, when the plant will be shutdown for extensive maintenance and surveillance testing activities. Without this exemption, a forced shutdown, beginning on August 16, 1987 would be required in order to perform the necessary surveillance tests.

Environmental Impacts of the Proposed Action. There are no environmental impacts of the proposed action. During the period of the extension, the plant will continue with normal operations. The plant will be shutdown, and the containment isolation valve Type C leakage tests will be peformed while the plant is shutdown for the first refueling outage. The surveillance tests will be performed at that time, in every other respect, the same as if they had been performed during an outage prior to August 16, 1987. The staff has reviewed the information provided by the licensee and finds that postponing these leakrate tests until the first refueling outage would have little effect on containment integrity. No changes are being made in the allowable amounts and no significant changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

Alternative to the Proposed Actions. Since we have concluded that there is no measurable environmental impact associated with the granting of the proposed exemption, any alternative to this exemption will have the same or grater environmental impact.

The principal alternative would be to deny the exemption which would require a shutdown beginning no later than August 16, 1987.

Alternative Use of Resources. This action does not involve the use of resources not previously considered in conntection with "Final Environmental Statement" related to the operaton of the River Bend Station, Unit 1, dated January 1985.

Agencies and Persons Consulted. The NRC staff performed the entire review of the licensee's position and did not consult other agencies or persons.

Findings of No Significant Impact. The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated March 10, 1987, as supplemented by letters dated June 9, 1987 and July 8, 1987, which is available for public inspection at the Commission's Public Ducument Room, 1717 H Street NW., Washington, DC 20555 and at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Bethesda, Maryland, this 21st day of July, 1987.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Director, Project Directorate—IV Division of Rector Projects—III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 87-16961 Filed 7-24-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24715; File No. SR-OCC-87-14]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change; Options Clearing Corp.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on June 14, 1987, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission a proposed rule change as described below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposal establishes a valid option series file to be made available to OCC Clearing Members and a fee structure related to that service. All OCC-issued options are entered into OCC's valid option series file. This file contains all pertinent information related to the option.[1] Any changes in that information is reflected in the file within one day of occurrence. Thus, OCC Clearing Members having access to this file will be able to provide their customers with necessary information related to standardized options and daily changes in that information.

OCC's fees for the option series file service vary according to the type of user involved. "Leased Line Users," are Clearing Members that currently lease OCC computer equipment and pay a monthly fee to cover line costs related to the transmission of OCC data files. These users will receive the option series file at no additional cost because there is no incremental cost to OCC for the transmission of the series file. "Dial-Up Users" on the other hand, do not lease OCC equipment and only pay transmission costs related to specific requests for data. These users will be assessed a monthly fee of $200 for the use of the option series file. OCC states that this fee reflects the averge daily

[1] The information includes securities identification number, strike multiplier, and activation/deactivation dates, as well as actual series data.

time required to transmit the series file. In addition to leased line and dial-up services, OCC provides a "Regular Data Service." Firms opting for this service receive a series file tape in their lock box at OCC facilities. A fee of $250 per month, reflecting handling and tape management costs, will be charged for this service.

OCC believes that this proposal is consistent with section 17A(b)(3)(D) of the Act because it provides for the equitable allocation of dues, fees, and other charges among its members. OCC also believes that it is well equipped to provide this service because it is issuer and guarantor for all standardized options and has established communication links with most of its major Clearing Members for the purpose of providing OCC data files.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR–OCC–87–14.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing (SR–OCC–87–14) and of any subsequent amendments also will be available for inspection and copying at OCC's the principal office.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 17, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–16971 Filed 7–24–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15884; File No. 812–6465]

Notice of Application; CIGNA Aggressive Growth Fund, et al.

July 21, 1987

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: CIGNA Funds Group: CIGNA Aggressive Growth Fund, CIGNA Cash Fund, CIGNA Growth Fund, CIGNA Income Fund, CIGNA Money Market Fund, CIGNA Municipal Bond Fund, CIGNA Tax-Exempt Cash Fund, and CIGNA Value Fund; CIGNA Annuity Funds Group: CIGNA Annuity Aggressive Equity Fund, CIGNA Annuity Equity Fund, CIGNA Annuity Growth and Income Fund, CIGNA Annuity Income Fund, CIGNA Annuity Money Market Fund, and Companion Fund; CIGNA High Yield Fund, Inc.; Horace Mann Balanced Fund, Inc.; Horace Mann Growth Fund, Inc.; Horace Mann Income Fund, Inc.; Horace Mann Short-Term Investment Fund, Inc.; and INA Investment Securities, Inc., all future investment companies for which subsidiaries or affiliated persons of CIGNA Corporation ("CIGNA") serve as investment adviser and/or principal underwriter (collectively, "Funds"); and CIGNA.

Relevant 1940 Act Sections and Rule: Exemption requested *under* sections 17(b) *from* section 17(a) and pursuant to 17(d) and Rule 17d–1.

Summary of Application: Applicants seek an order permitting the partial indemnification of the Funds' fidelity bond issuer by CIGNA and future similar arrangements and permitting any claims under the fidelity bond to be settled in accordance with guidelines set forth in the Application.

Filing Date: The application was filed on August 29, 1986 and amended on April 27, 1987. A final amendment, clarifying certain points, will be filed during the notice period.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 P.M. on August 13, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o CIGNA Investments, Inc., Hartford, CT 06152.

FOR FURTHER INFORMATION CONTACT: Philip J. Niehoff, Esq., (202) 272–7714, or Karen L. Skidmore, Special Counsel, (202) 272–3023 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Subsidiaries or affiliated persons of CIGNA serve as investment adviser and/or principal underwriter for the Funds, each of which is an investment company registered under the 1940 Act.

2. The Funds are presently joint insured under a $10 million fidelity bond ("Bond") issued by the Aetna Casualty and Surety Company ("Aetna") which complies with the requirements of Rule 17g–1 under the 1940 Act. The Aetna Bond was initially issued in May 1983.

3. Prior to April 30, 1986, Aetna notified CIGNA that it was willing to continue the coverage provided by the bond only if CIGNA would agree to indemnify Aetna for the first $5 million of claims paid under the bond. CIGNA retained an insurance consultant specializing in business insurance to solicit bids from insurance companies to provide $10 million of fidelity bond coverage for the Funds. Of the five insurance companies asked to provide quotes (one of which was Aetna), only three provided quotes for the fidelity bond coverage (one carrier provided a premium quote for the coverage without an underlying indemnification agreement while the other two carriers required a $5 million indemnification agreement). The premium quote from Aetna was significantly less than both the premium quote received from the other carrier requesting a $5 million indemnification agreement (two and one-half times the Aetna quote) and the only premium quote received for $10 million of coverage without an

underlying indemnification (ten times the Aetna quote).

4. In order to prevent the Funds' fidelity bond coverage from lapsing, CIGNA executed an Agreement of Indemnity covering the first $5 million of claims under the Bond effective September 1, 1986 in order to prevent cancellation of the Bond by Aetna. Although the Bond was issued by Aetna, CIGNA could be regarded as the effective insurer of the Funds for up to the first $5 million of claims paid under the Aetna Bond, since CIGNA will be obligated to indemnify Aetna for such claims paid. However, the Aetna Bond issued to the Funds is an independent contract between Aetna and the Funds, the validity and effectiveness of which does not depend upon the Agreement of Indemnity; Aetna is fully liable to the Funds whether or not CIGNA honors its indemnity agreement.

5. The Board of Directors, or Trustees, as the case may be, of the Funds ("Boards") concluded and Applicants hereby represent that the purchase of the Bond from Aetna and the execution by CIGNA of an Agreement of Indemnity would provide the best available protection for the shareholders of the Funds at the lowest cost available consistent with such coverage. Applicants also state, however, that they will not rely on the requested exemptive order prior to its issuance as authority for CIGNA to enter into the Agreement of Indemnity with Aetna.

6. The Funds also propose the following procedures to permit them to settle claims arising under the Bond without further exemptive orders: (a) *Reporting of loss.* The officers of each Fund will continue to be required to report all losses covered under the fidelity bond to the Board; (b) *Determination of amount of loss.* A majority of the disinterested directors who are not "interested persons" as that term is defined under the 1940 Act ("Disinterested Directors"), with the advice of independent counsel, will determine the amount of the loss. The determination will then be submitted to the entire Board for majority approval, and if a majority of the Board and a majority of the Disinterested Directors agree to the amount thereof, the Fund will submit a claim for payment for that amount to Aetna; (c) *Settlement of claim.* If Aetna agrees to pay the amount submitted, the Fund will accept payment and relieve Aetna from further liability with respect to the loss. If Aetna proposes a settlement offer in an amount less than the amount submitted, the Board, including the Disinterested Directors of the Fund, would evaluate the adequacy of the settlement offer. If a majority of the Board and a majority of the Disinterested Directors (upon the advice of their independent counsel) conclude that the proposed settlement offer meets the elements of section 17(b) and section 17(d), then the settlement offer will be accepted without the need for an exemptive order or any other action. The reasons for such Board actions will be recorded in the minutes of the Board, and made available for inspection by the staff of the SEC. Otherwise the Board would reject the proposed settlement offer and continue negotiations with Aetna or institute litigation or other appropriate proceedings. All settlement negotiations will be conducted by the Fund directly with Aetna without the participation of CIGNA; CIGNA will not attempt to influence the negotiations in any way.

Applicants' Legal Conclusions

1. Because subsidiaries or affiliated persons of CIGNA serve as investment adviser and/or principal underwriter for the Funds, if the Agreement of Indemnity were viewed as a sale of property to the Funds, the agreement may be prohibited under section 17(a). Similarly, the settlement of claims by the Funds may be prohibited because a settlement may entail the release of a property right by a Fund and therefore prohibited under section 17(a). Further, the Agreement of Indemnity and the settlement of any claims by the Funds could be construed as a joint enterprise or other joint arrangement between CIGNA and the Funds prohibited by section 17(d).

2. Granting the requested relief for the Agreement of Indemnity is appropriate under section 17(a) because it is reasonable, fair, and does not involve overreaching on the part of any entity concerned, and is consistent with the policy of the Fund and the purposes of the Act. It is also appropriate under section 17(d) and Rule 17d–1 because the transaction is consistent with the provisions, policies, and purposes of the 1940 Act and is not on a basis different from or less advantageous than that of other participants. The coverage provided by Aetna is the best available protection for the shareholders at the lowest cost available.

3. Granting the requested relief for the proposed settlement procedures is also appropriate. The reliance placed on the Disinterested Directors in the settlement process, similar to that used in Rules 17a–7 and 17e–1, alleviates any possibility of overreaching or unfairness while at the same time sparing the Funds the additional expenses that would be incurred by the necessity of having to file an application for an order for exemption for permission each time a settlement offer is made.

Applicants' Conditions

Applicants agree that if an order is granted, it will be expressly conditioned on the following conditions:

1. The Funds' Boards have determined that the ultimate fidelity bond coverage selected will provide the best available protection for the shareholders of the Funds at the lowest cost available, consistent with such coverage. The Boards must make this finding on each occasion in the future before CIGNA would be asked to enter into a similar indemnification agreement in connection with a renewal of the Aetna Bond. Further, any such future agreements of indemnity with Aetna in connection with the purchase of future, similar fidelity bonds from Aetna will be on substantially the same terms and conditions as the Agreement of Indemnity.

2. Under the arrangement discussed in the application, the premiums for the joint policy are paid by the Funds directly to Aetna; CIGNA has not been and will not be compensated by Aetna or the Funds, directly or indirectly, for entering into the Agreement of Indemnity.

3. The above representatives regarding the proposed settlement of claims under the Bond are made express conditions to the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–16972 Filed 7–24–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15882; File No. 812–6741]

Notice of Application; Counselors Capital Appreciation Fund, et al.

July 17, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption Under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Counsellors Capital Appreciation Fund ("Appreciation Fund"); Counsellors Fixed Income Fund ("Income Fund") (together, the "Funds"); Warburg, Pincus Capital Appreciation Fund, L.P. ("Appreciation Partnership"); Warburg, Pincus Fixed Income Fund, L.P. ("Income Partnership") (together, the "Partnerships"); Warburg, Pincus

Capital Growth Fund, L.P. (the "Growth Partnership"); and Warburg, Pincus Counsellors, Inc. ("Counsellors").

Relevant 1940 Act Sections: Exemption requested under section 17(b) from section 17(a).

Summary of Application: Applicants seek an order to permit (1) an exchange of shares of the Appreciation Fund for portfolio securities of the Appreciation Partnership, (2) an exchange of shares of the Income Fund for portfolio securities of the Income Partnership, and (3) the exchange of shares of another mutual fund, which may be organized in the future, for which Counsellors would serve as investment adviser for portfolio securities of the Growth Partnership on the same basis as the exchanges between the Funds and the Partnerships.

Filing Date: The application was filed June 2, 1987 and amended on July 13, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on August 7, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicants, c/o Warburg, Pincus Counsellors, Inc., 466 Lexington Avenue, New York, New York 10017–3147, Attention: Mr. Arnold M. Reichman.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney, (202) 272–2799, or Brion R. Thompson, Special Counsel, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282, (in Maryland (301) 258–4300).

Applicants' Representations

1. The Funds are registered under the 1940 Act as open-end diversified management investment companies and were organized under the laws of the Commonwealth of Massachusetts as Massachusetts business trusts on January 20, 1987. Counsellors will serve as the investment adviser of the Funds.

2. The investment objective of the Appreciation Fund is long-term capital appreciation, and that of the Income Fund is the generation of high current income consistent with reasonable risk, with capital appreciation as a secondary objective. The Funds will be no-load funds and will not pay a distribution fee. The funds will not enlist the assistance of an outside broker-dealer to market their shares and there is no intention to advertise the Funds in newspapers or other media.

3. The Partnerships were formed as limited partnerships organized under the laws of the State of New York. The Partnerships are investment partnerships that have not been registered under the 1940 Act, in reliance on section 3(c)(1) of the 1940 Act and the interests therein have not been registered under the 1933 Act in reliance on section 4(2) of the 1933 Act. Counsellors is the sole general partner of the Partnerships and has exclusive control of the management of the business of the Partnerships. Counsellors has maintained an investment in each of the Partnerships equal to not less than 1% of the net assets of each Partnership and is allocated net income, gains and losses of each Partnership in proportion to its investment.

4. The investment objective of the Appreciation Partnership is long-term capital appreciation; the primary investment objective of the Income Partnership is the generation of high current income without assuming undue risk in light of the overall mix of securities in its portfolio and its secondary objective is capital appreciation. Like the Partnerships, the Growth Partnership was formed as a New York limited partnership and is an investment partnership that has not been registered under the 1940 Act and the interests in which have not been registered under the 1933 Act. Counsellors is the sole general partner of the Partnership and maintains an investment in it at least equal to 1% of its net assets.

5. Prior to the offering of shares of beneficial interest par value $.001 per share in the Appreciation Fund to the public, the Appreciation Fund would exchange its shares for portfolio securities of the Appreciation Partnership, after which the Appreciation Partnership would dissolve and distribute the shares received pro rata to its partners (including Counsellors as general partner), along with cash received from the sale of portfolio securities, if any, of the Appreciation Partnership not acquired by the Appreciation Fund. It is proposed that a like exchange of shares of beneficial interest, par value $.001 per share in the Income Fund for portfolio securities of the Income Partnership would take place, followed by a like dissolution and distribution to partners. Following each exchange transaction (together, the "Exchanges"), partners of the Partnerships, including Counsellors as general partner to the extent of its interest in the Partnerships, will constitute all of the shareholders of the Funds, except for shares representing seed capital contributed to each of the Funds pursuant to section 14(a) of the 1940 Act.

6. Each Fund will attempt to assemble a portfolio of securities substantially similar to that held by the corresponding Partnership. The same person that selected the investments for a Partnership will be selecting them for the corresponding Fund. The Funds will acquire portfolio securities from the Partnerships at their independent "current market price," as defined in Rule 17a–7 under the 1940 Act. Neither the Limited Partners nor Counsellors will be in a position to influence the valuation of the securities acquired by the Funds, none of which will be illiquid or restricted. The price at which the Funds will acquire securities from the Partnerships will be as advantageous to the Funds as open market purchases. In addition, by acquiring suitable securities from the Partnerships, the Funds would avoid the incurrence of brokerage and other transaction costs.

7. The Funds will not acquire any portfolio securities from the Partnerships that are overvalued or that would cause the acquiring Fund's investment objectives, policies or restrictions to be violated. Although Counsellors will determine which securities will be acquired by the Funds, subject, of course, to the supervision of the Funds' Boards of Trustees, Counsellors will have a strong disincentive to harm the Funds causing them to purchase unsuitable securities because of its continuing relationships with the Funds as investment adviser. No brokerage commission, fee or other remuneration will be paid in connection with the Exchanges. Neither limited partners nor Counsellors will receive any financial benefit from the Exchanges (except as described in (d) immediately below), apart from their pro rata interests in Shares and other property distributed by the Partnerships upon dissolution. In addition, Counsellors, rather than the Funds, the Partnerships or its limited partners, will

bear any costs incurred in connection with the Exchanges. Under the ruling received from the Internal Revenue Service ("Tax Rulings"), the Exchanges will result in no gain or loss being recognized by partners of the Partnerships. Thus, as a body, they will become investors in an entity that is not limited in the number of investors it may accept and that offers greater liquidity than the Partnerships without immediate tax consequences and without having incurred transaction and brokerage charges in order to do so.

8. The Exchanges wil be effectuated pursuant to agreements and plans of reorganization (the "Plans") to be approved unanimously by the limited partners of each Partnership (collectively, the "Limited Partners"), in accordance with the Uniform Limited Partnership Act of the State of New York. A Registration Statement under the 1933 Act on Form N–14 (the "N–14 Registration Statements") was filed on behalf of each Fund. Solicitation of the limited Partners' approval of the Plans will be made by means of a prospectus/information statement, which will describe the nature of and reasons for the Exchanges, the tax and other consequences to the partners of the Partnerships and other relevant matters, including comparisons of the Funds and the Partnerships in terms of their investment objectives and policies, fees structures, management structures and other aspects of their operations, as well as the financial information provided in the N–14 Registration Statement. The current prospectus of each Fund will accompany the prospectus/information statement soliciting the approval of the Plan by the Limited Partners of the corresponding Partnership. The Funds' statements of additional information will be available to Limited Partners on request.

9. A majority of the members of the Boards of Trustees of the Funds are not interested persons within the meaning of section 2(a)(19) of the 1940 Act. Each Board considered the desirability of the Exchanges from the point of view of the Funds, and a majority of the Board of Trustees of each Fund, including a majority of the non-interested Trustes concluded that (a) The Exchange is desirable as a business matter from the point of view of the Fund, (b) the Exchange is in the best interest of the Fund and (c) the terms of the Exchange as reflected in the Plan have been designed to meet the critieria contained in Section 17(b) of the 1940 Act that the exchange be reasonable and fair, not involve overreaching and is consistent with the policy of the Fund.

10. In connection with the consideration of the Exchanges, the Board of Trustees of each Fund received copies of the Funds' Registration Statements, copies of the application, and the Tax Rulings received from the Internal Revenue Service outlining the tax consequences of the exchanges. Also, non-interested Trustees were given the opportunity to retain independent counsel and caucus separately from management of the Funds and the other Trustees. After the discussion, the non-interested Trustees determined not to utilize independent counsel because they believed they were capable of applying their business judgement and experience to the consideration of the Exchanges and the assessment of the financial implications of the Exchanges for the Funds. Further, each Board considered various aspects of the Exchanges, including the method of valuing the Partnerships' portfolio securities, the net asset value of shares, the procedure for selecting among the portfolio securities, the possibility of the Funds' incurring excessive brokerage costs and other costs, the adverse tax consequences to future shareholders of the Funds resulting from the carrying forward of unrealized capital gains from the Partnerships to the Funds and the benefits accruing to Counsellors from the Exchanges as general partner of the Partnerships and the investment adviser of the Funds.

11. The Exchanges have been proposed because the Exchanges will permit Limited Partners to pursue as shareholders of the Funds substantially the same investment objectives and policies in larger mutual funds. Further, the Funds will be simpler to operate than the Partnerships, since the operation as a registered investment company would eliminate certain administrative burdens and filing requirements currently faced by the Partnerships as limited partnerships. Each Fund has been designed as a successor investment vehicle to one of the Partnerships with investment objectives and policies substantially the same as those of the Partnership.

12. After the Exchanges are accomplished, the former portfolio managers of the Partnerships and then-current managers of the Funds intend for the foreseeable future to manage the assets of the Funds in substantially the same manner as they had previously managed the Partnerships, except as may be necessary or desirable (a) in order to qualify as a regulated investment company under the Internal Revenue Code, (b) in order to comply with investment restrictions adopted by the Funds in accordance with the requirements of the 1940 Act or securities laws of states where shares will be offered or (c) in light of changed market conditions.

13. The Growth Partnership has no current intention of discontinuing its operation as a private investment partnership or of engaging in an exchange transaction similar to the Exchanges requested herein. The Growth Partnership has been included in the exemption in order to save the time and expense that would be incurred in seeking relief identical to that sought in this application if, at some future time, it determined to engage in such an Exchange. Any future Exchange would be on the same basis as the current Exchanges.

Applicants' Legal Conclusion

1. Unless the requested relief is granted, the proposed Exchanges may be deemed to be prohibited under section 17(a) of the 1940 Act if the Exchanges are viewed either as principal transactions (a) betwen the Funds and the partners of the Partnerships (including Counsellors as general partner) or (b) between the Funds and the Partnerships. Applicants submit that, because the investment objections and policies of the Funds and their corresponding Partnerships are substantially similar, it is consistent with the policies of the Funds to acquire securities that Consellors has previously purchased on the basis of substantially similar objectives and policies. Further, the Funds have the opportunity to purchase the portfolio securities of the Partnerships at the current market price and with lower transaction cost than would been possible purchasing such securities in the open market.

2. Applicants submit that the proposal Exchanges do not give rise to the abuses that section 17(a) was designed to prevent and, in fact, they are consonant with one of the purposes underlying rule 17a–7 under the 1940 Act. A primary underlying section 17(a) was to prevent a person with a pecuniary interest as a seller of securities from using his position with a registered investment company to benefit himself to the detriment of the company's shareholders. In the distant case, Applicants submit that the Funds will not have commenced operations prior to the Exchanges and will have no assets to dissipate or shareholders to dilute. After the Exchanges, Limited Partners will hold substantially the same assets as Fund shareholders as they had previously held as Limited Partners. In this sense, the Exchanges can be viewed

as a change in the form in which assets are held, rather than as a disposition giving rise to section 17(a) concerns.

3. Applicants submit that the terms of the Exchanges are reasonable and fair to the Funds involved, to the Limited Partners who, with Counsellors and its affiliate that provides the Fund's seed capital, will be the initial shareholders of the Funds, and to future shareholders of the Funds, and do not involve overreaching on the part of any Applicant.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-16973 Filed 7-24-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15881; 812-6712]

Integrated Medical Venture Partners, L.P., and Integrated Health Care Management, Inc.; Notice of Application

July 17, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Integrated Medical Venture Partners, L.P. ("Partnership") and Integrated Health Care Management, Inc. ("Managing General Partner").

Summary of Application: Applicants seek an order (1) declaring that the Independent General Partners of the Partnership are not interested persons, within the meaning of section 2(a)(19) of the 1940 Act, of the Partnership solely by reason of their being general partners of the Partnership; (2) declaring that any limited partner of the Partnership that has the power to vote less than five percent of the outstanding shares not be deemed an affiliated person, within the meaning of section 2(a)(3) of the 1940 Act, of the Partnership or any general partner thereof solely by reason of being a limited partner; and (3) exempting the proposed acquisition by the Partnership from the Managing General Partner or an affiliate thereof of certain initial venture capital investments.

Relevant 1940 Act Section: Exemption requested under Sections 6(c) and 57(c) from Sections 2(a)(3), 2(a)(19), and 57(a).

Filing Dates: The application was filed on May 8, 1987, and amended on July 2, 1987.

Hearing on Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 7, 1987. Request a hearing in writing, given the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. Applicants, 733 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney (202) 272-2799, or Brion R. Thompson, Special Counsel (202) 272-3016, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership is a newly-formed Delaware limited partnership governed by an Agreement of Limited Partnership dated as of February 10, 1987 ("Partnership Agreement"). The Partnership has elected to be a business development company pursuant to Section 54 of the 1940 Act. Thus, the Partnership is subject to Sections 55 through 65 of the 1940 Act, which among other things, make various other sections applicable. The investment objective of the Partnership is significant long-term (i) capital appreciation, (ii) cash distributions to the partners within four to six years and, (iii) global diversification. The Partnership seeks to achieve its objective by making venture capital investments in a variety of new and developing companies engaged in the area of health care. The Partnership will terminate not later than December 31, 2001, and is an investment vehicle of limited duration which will have particular stages of development.

2. The Partnership filed a registration statement under the Securities Act of 1933 on Form N-2 (File No. 33-11926 which includes a copy of the Partnership Agreement) with respect to a public offering of up to 60,000 units of limited partnership interest ("Units"), designed to raise a maximum amount of $30 million. That registration statement was declared effective on June 30, 1987. The proceeds of the offering will be invested in 10 to 25 venture capital investments. Each of these investments will be liquidated once it reaches a state of maturity when disposition can be considered (typically four to seven years from the dates of investment). The proceeds of liquidation will not be reinvested except in limited circumstances but will be distributed to the partners.

3. The Managing General Partner, a Delaware partnership, will be responsible for the venture capital investment of the Partnership. The partners of the Managing General Partner are Integrated Medical Investments, Inc., a wholly owned subsidiary of Integrated Resources, Inc. ("Integrated") and BSW, Inc. The Managing General Partner will provide various management and administrative services necessary for the ongoing operation of the Partnership and in addition will manage the Partnership's short-term money market instruments. The Managing General Partner is a registered investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Units will be offered for sale to the public on a "best efforts" basis through Integrated's wholly-owned subsidiary, Integrated Resources Marketing, Inc.

4. Under the Partnership Agreement, the Managing General Partner will receive a percentage of the aggregate of the Partnership's investment income and net realized gains from venture capital investments as described more fully in the application. Pursuant to the management agreement, the Partnership will also pay to the Managing General Partner a management fee of the lesser of (i) partners' capital contributions, reduced by capital distributed to the partner or (ii) net asset value of the Partnership. It should be noted that the foregoing "Managing General Partners Allocation" has been included in the Partnership Agreement on the basis exclusively of an opinion of legal counsel to the Partnership that such allocation would not violate the provisions of Section 205 of the Advisers Act. Applicants have not requested SEC review or approval of such legal opinion and the SEC expresses no view as to counsel's opinion that Section 205 of the Advisers Act permits the aforementioned "Managing General Partners Allocation".

5. The General Partners of the Partnership will consist of the Individual General Partners (partners who are natural persons) and the Managing

General Partner. Several Individual General Partners will be Independent General Partners (defined to be individuals who are not "interested persons" of the Partnership within the meaning of Section 2(a)(19) of the 1940 Act), except to the extent that they will be partners of the Partnership, and by virtue of such position, co-partners of any Managng General Partner.

6. The Individual General Partners will perform the same duties as the directors of a business development company organized in corporate form, and will monitor the Partnership's activities and performance of the companies that provide services to the Partnership. The Independent General Partners will have the same responsibilities and obligations which the 1940 Act imposes on the "disinterested directors" of a business development company.

7. The Partnership Agreement provides that the General Partners are to be elected at the meeting of the limited partners to be held subsequent to the public offering of the Units and serve for an unlimited duration until their resignation, removal or death. The Partnership Agreement also provides that a majority of the General Partners must be Independent General Partners. The Managing General Partner undertakes that it will not resign, or withdraw, from its position unless certain specified procedures are followed and consented to by the limited partners.

8. The limited partners have no right to control the Partnership's business, but may exercise certain rights and powers under the Partnership Agreement, including voting rights and giving consents and approvals. Applicants have obtained an opinion of the Delaware legal counsel for the Partnership that the existence or exercise of these voting rights does not subject the limited partners to liability as general partners under the Delaware Revised Uniform Limited Partnership Act. In addition, the Partnership Agreement obligates the General Partners to take all action which may be necessary or appropriate to protect the limited liability of the limited partners. The Partnership does not presently have an insurance policy that would provide coverage to persons who become limited partners, but it undertakes that the General Partners will review periodically the question of the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

9. During the period before the public offering of Units is consummated and after the Partnership receives the proceeds from the sale of Units, it is expected that several venture capital opportunities suitable for the Partnership (i.e., within the investment objectives and policies stated in its prospectus) will come to the attention of the Managing General Partner. The Partnership will not have the funds to make such investments during this period, and such investment opportunities could be lost to the Partnership if not then acquired. Therefore, Applicants propose that the Managing General Partner or an affiliate thereof ("Management") make such investment, structured as if the Managing General Partner were negotiating for the Partnership to make the acquisition directly. Management will hold such investments on behalf of the Partnership until the sale of Units takes place, at which time the Parnership will acquire such investments from Management at the less or of (i) market value at the time of acquisition, as determined by the Managing General Partner, subject to review by the Independent General Partners, or (ii) cost to Management of purchasing and holding such investment. With respect to clause (ii), such cost shall be the original purchase price paid by Management plus permitted carrying costs as described below. No carrying costs will be paid by the Partnership in respect of the period prior to the later of (1) the date of acquisition of the proposed investment by Management or (2) the date the Independent General Partners were notified of the investment and given the opportunity to object to such acquisition by Management on behalf of the Partnership. For purposes of the order requested herein, carrying costs consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A. during the period for which carrying costs are permitted to be paid until the date the Partnership acquires the investment, or (ii) the effective cost of borrowings by Management during such period.

10. The Partnership will not be obligated to acquire such investments if the acquisition of the investments is not approved by the Independent General Partners, or if the public offering of Partnership Units is not consummated. If the Partnership does not acquire the investments, Management will retain the investments for its own account. If the Partnership acquires any of such investments, it will do so within 90 days after the closing of its public offering. If the acquisition of the investments is approved by the Independent General Partners, Management must transfer each investment so acquired in its entirety to the Partnership following the sale of the Units to the public. Each such investment and the cost thereof shall be disclosed in the prospectus or a supplement thereto.

Applicants' Legal Conclusions

1. Under section 2(a)(3) of the 1940 Act, the Independent General Partners are "affiliated persons" of the Partnership since they are partners of the Partnership, and are "affiliated persons" of the Managing General Partner of the Partnership because they are or will be co-partners of such Managing General Partner. As "affiliated persons" of the Partnership and of any Managing General Parner, which could be deemed to be an "investment adviser" of the Partnership as defined by section 2(a)(20) of the 1940 Act, the Independent General Partners are also "interested persons" of the Partnership unless the exception from the definition of "interested persons" available to the directors of incorporated investment companies is applicable. Section 2(a)(19) exempts from the definition of "interested person" of an investment company those individuals who would be "interested person" solely because they are directors of the investment company; there is no equivalent exception for partners or co-partners of an investment company. Thus, Applicants request that the Partnership and its Independent General Partners be exempted from the provisions of section 2(a)(19) to the extent that the Independent General Partners would be deemed to be "interested persons" of the Partnership and the Managing General Partner solely because such Independent General Partners are partners of the Partnership and co-partners of the Managing General Partners. Applicants state that the Partnership has been structured so that the Independent General Partners are the functional equivalents of the disinterested directors of an incorporated registered investment company.

2. The rights of the limited partners to vote on certain matters are either equivalent to or more limited than those of corporate shareholders. Section 2(a)(3) of the 1940 Act specifically excludes from the definition of "affiliated persons," shareholders with less than a 5% ownership in such corporation. Applicants state that the limited partners of the Partnership may be deemed affiliates of the Partnership because section 2(a)(3) of the 1940 Act contains no comparable exclusion for limited partners of partnerships.

Applicants therefore seek exemption from the provisions of section 2(a)(3) of the 1940 Act to the extent that limited partners with less than a 5% interest in the Partnership will not be deemed "affiliated persons" of the Partnership, any of the other limited partners and the General Partners of the Partnership. Applicants submit that the exemptions requested from sections 2(a)(3) and 2(a)(19) are necessary and appropriate in the public interest and consistent with the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Applicants also request an order under section 57(c) of the 1940 Act exempting from the provisions of section 57(a) the proposed acquisition by the Partnership from Management of certain initial venture capital investments as described above. Applicants submit that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable, fair and do not involve overreaching on any person concerned; and are consistent with the policy of the Partnership and general purposes of the 1940 Act. Any such initial investments which are the subject of the order herein requested will be acquired in arm's length transactions and will not involve any entity which is an affiliated person (within the meaning of section 2(a)(3) of the 1940 Act) of Management.

Applicants' Conditions: If the requested order is granted, Applicants agree to the following conditions:

1. Any investment made by Management on behalf of the Partnership before the public offering of Units is consummated and the Partnership has received the proceeds from the sale of Units, will be acquired on the terms described above.

2. Under the Partnership Agreement, the Partnership is authorized to make in-kind distributions of its portfolio securities to its partners. However, the Partnership agrees not to make any in-kind distributions of portfolio securities to its partners until it has obtained either a "no-action" letter from the staff of the Commission confirming the Partnership's interpretation of section 205 of the Advisers Act (i.e., that unrealized gains or losses attributable to securities distributed in-kind to Partners are properly deemed realized upon such distribution) or, in the alternative, the Partnership has obtained an exemption from section 205 by SEC order issued pursuant to section 206A of the Advisers Act, permitting the Partnership to deem such gains or losses to be realized upon in-kind distributions.

For the SEC, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-16974 Filed 7-24-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15876; 811-2976]

Application for Order; John Hancock Mutual Life Insurance Co.

July 17, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: John Hancock Variable Account A-1.

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant requests an order declaring that it has ceased to be an investment company.

Filing Date: March 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 11, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, John Hancock Place, P.O. Box 111, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272-3017 or Lewis B. Reich, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations

1. On December 8, 1979, Applicant, a separate account of John Hancock Mutual Life Insurance Company ("John Hancock"), filed a notification of registration on Form N-8A and a registration statement on Form N-1. The registration statement was declared effective on April 29, 1980, and the initial public offering commenced on the same day.

2. On February 20, 1987, all of Applicant's assets were transferred in a reorganization to a corresponding series of another investment company, John Hancock Variable Series Fund I, Inc. (the "Fund"). The purpose of the transfer was to reorganize John Hancock's six separate accounts, of which Applicant was one, in a single unit investment trust issuing variable like insurance contracts funded by a single underlying management investment company, the "Fund." The interests of Applicant's shareholders in Fund shares were the same as their interests before the transfer.

3. Applicant has retained no assets; it has no debts or other liabilities outstanding; and it is not a party to any litigation or adminsitrative proceedings. Applicant has no security holders and is not now engaged, nor does it propose to engage, in any business activities. On February 19, 1987, the day preceding the transfer, Applicant had issued and outstanding 2,288,162 shares of its securities and total assets of $50,526,965.

4. On June 10, 1986, Applicant's board of managers approved an Agreement and Plan of Reorganization providing for the transfer of all of Applicant's assets and for the recording of such shares proportionately on the individual account records of Applicant's shareholders. Applicant's shareholders approved the Agreement on February 18, 1987.

5. Proxy materials regarding the proposed reorganization were distributed to Applicant's shareholders and filed with the Commission. Applicant was granted an order of the Commission on November 12, 1986 (I.C. Rel. No. 15407), pursuant to sections 17(b) and 6(c) of the Act and Rule 17d-1 thereunder to permit the reorganization. Appplicant represents that all expenses in connection with the reorganization were paid by John Hancock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-16975 Filed 7-24-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15877; 811-3349]

Application for Order; John Hancock Mutual Life Insurance Co.

July 17, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: John Hancock Variable Account A-2.

Relevant 1940 Act Sections: Order requested under Section 8(f).

Summary of Application: Applicant requests an order declaring that it has ceased to be an investment company.

Filing Date: March 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 11, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant: John Hancock Place, P.O. Box 111, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272-3017 or Lewis B. Reich, Special Counsel (202) 272-2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations

1. On December 12, 1981, Applicant, a separate account of John Hancock Mutual Life Insurance Company ("John Hancock"), filed a notification of registration on Form N-8A and a registration statement on Form N-1. The registration statement was declared effective on April 30, 1982, and the initial public offering commenced on the same day.

2. On February 20, 1987, all of Applicant's assets were transferred in a reorganization to a corresponding series of another investment company, John Hancock Variable Series Fund I, Inc. (the "Fund"). The purpose of the transfer was to reorganize John Hancock's six separate accounts, of which Applicant was one, into a single unit investment trust issuing variable life insurance contracts funded by a single underlying management investment company, the "Fund." The interests of Applicant's shareholders in Fund shares were the same as their interests before the transfer.

3. Applicant has retained no assets; it has no debts or other liabilities outstanding; and it is not a party to any litigation or administrative proceedings. Applicant has no security holders and is not now engaged, nor does it propose to engage, in any business activities. On February 19, 1987, the day preceding the transfer, Applicant had issued an outstanding 982,168 shares of its securities and total assets of $13,812,413.

4. On June 10, 1986, Applicant's board of managers approved an Agreement and Plan of Reorganization providing for the transfer of all of Applicant's assets and for the recording of such shares proportionately on the individual account records of Applicant's shareholders. Applicant's shareholders approved the Agreement on February 18, 1987.

5. Proxy materials regarding the proposed reorganization were distributed to Applicant's shareholders and filed with the Commission. Applicant was granted an order of the Commission on November 12, 1986 (IC Rel. No. 15407), pursuant to section 17(b) and 6(c) of the Act and Rule 17d-1 thereunder to permit the reorganization. Applicant represents that all expenses in connection with the reorganization were paid by John Hancock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-16976 Filed 7-24-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15878; 811-2327]

Application for Order; John Hancock Mutual Life Insurance Co.

July 17, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: John Hancock Variable Account C.

Relevant 1940 Act Sections; Order requested under Section 8(f).

Summary of Application: Applicant requests an order declaring that it has ceased to be an investment company.

Filing Date: March 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 11, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, John Hancock Place, P.O. Box 111, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272-3017 or Lewis B. Reich, Special Counsel (202) 272-2061 (Divisions of Investment Managment).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicant's Representations

1. On October 27, 1972, Applicant, a separate account of John Hancock Mutual Life Insurance Company ("John Hancock"), filed a notification of registration on Form N-8A and a registration statement on Forms S-6 and N-8B-1. The registration statement was declared effective on May 30, 1973, and the initial public offering commenced on the same day.

2. On February 20, 1987, all of Applicant's assets were transferred in a reorganization to a corresponding series of another investment company, John Hancock Variable Series Fund I, Inc. (the "Fund"). The purpose of the transfer was to reorganize John Hancock's six separate accounts, of which Applicant was one, into a single unit investment trust issuing variable life insurance contracts funded by a single underlying management investment company, the "Fund." The interests of Applicant's

shareholders in Fund shares were the same as their interests before the transfer.

3. Applicant has retained no assets; it has no debts or other liabilities outstanding; and it is not a party to any litigation or administrative proceedings. Applicant has no security holders and is not now engaged, nor does it propose to engage, in any business activities. On February 19, 1987, the day preceding the transfer, Applicant had issued and outstanding 1,711,606 shares of its securities and total assets of $67,484,784.

4. On June 10, 1986, Applicant's board of managers approved an Agreement and Plan of Reorganization providing for the transfer of all of Applicant's assets and for the recording of such shares proportionately on the individual account records of Applicant's shareholders. Applicant's shareholders approved the Agreement on February 18, 1987.

5. Proxy materials regarding the proposed reorganization were distributed to Applicant's shareholders and filed with the Commission. Applicant was granted an order of the Commission on November 12, 1986 (IC Rel. No. 15407), pursuant to section 17(b) and 6(c) of the Act and Rule 17d–1 thereunder to permit the reorganization. Applicant represents that all expenses in connection with the reorganization were paid by John Hancock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–16977 Filed 7–24–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15880; 811–2977]

Application for Order; John Hancock Mutual Life Insurance Co.

July 17, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: John Hancock Variable Account C–1.

Relevant 1940 Act Sections: Order requested under Section 8(f).

Summary of Application: Applicant requests an order declaring that it has ceased to be an investment company.

Filing Date: March 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 11, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, John Hancock Place, P.O. Box 111, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney, (202) 272–3017 or Lewis B. Reich, Special Counsel, (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. On December 8, 1979, Applicant, a separate account of John Hancock Mutual Life Insurance Company ("John Hancock"), filed a notification of registration on Form N–8A and a registration statement on Form N–1. The registration statement was declared effective on April 29, 1980, and the initial public offering commenced on the same day.

2. On February 20, 1987, all the Applicant's assets were transferred in a reorganization to a corresponding series of another investment company, John Hancock Variable Series Fund I, Inc. (the "Fund"). The purpose of the transfer was to reorganize John Hancock's six separate accounts, of which Applicant was one, into a single unit investment trust issuing variable life insurance contracts funded by a single underlying management investment company, the "Fund." The interest of Applicant's shareholders in Fund shares were the same as their interests before the transfer.

3. Applicant has retained no assets; it has no debts or other liabilities outstanding; and it is not a party to any litigation or administrative proceedings. Applicant has no security holders and is not now engaged, nor does it propose to engage, in any business activities. On February 19, 1987, the day preceding the transfer, Applicant had issued and outstanding 2,895,151 shares of its securities and total assets of $61,527,466.

4. On June 10, 1986, Applicant's board of managers approved an Agreement and Plan of Reorganization providing for the transfer of all of Applicant's assets and for the recording of such shares proportionately on the individual account records of Applicant's shareholders. Applicant's shareholders approved the Agreement on February 18, 1987.

5. Proxy materials regading the proposed reorganization were distributed to Applicant's shareholders and filed with the Commission. Applicant was granted an order of the Commission on November 12, 1986 (IC Rel. No. 15407), pursuant to sections 17(b) and 6(c) of the Act and Rule 17d–1 thereunder to permit the reorganization. Applicant represents that all expenses in connection with the reorganization were paid by John Hancock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–16978 Filed 7–24–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15879; 811–3350]

Application for Order; John Hancock Mutual Life Insurance Co.

July 17, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: John Hancock Variable Account C–2.

Relevant 1940 Act Sections: Order requested under Section 8(f).

Summary of Application: Applicant requests an order declaring that it has ceased to be an investment company.

Filing Date: March 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 11, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also sent it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request

notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, John Hancock Place, P.O. Box 111, Boston, MA 02117.

FOR FURTHER INFORMATION CONTACT: Heidi Stam, Staff Attorney (202) 272–3017 or Lewis B. Reich, Special Counsel (202) 272–2061 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. On December 12, 1981, Applicant, a separate account of John Hancock Mutual Life Insurance Company ("John Hancock"), filed a notification of registration on Form N–8A and a registration statement on Form N–1. The registration statement was declared effective on April 30, 1982, and the initial public offering commenced on the same day.

2. On February 20, 1987, all of Applicant's assets were transferred in a reorganization to a corresponding series of another investment company, John Hancock Variable Series Fund I, Inc. (the "Fund"). The purpose of the transfer was to reorganize John Hancock's six separate accounts, of which Applicant was one, into a single, unit investment trust issuing variable life insurance contracts funded by a single underlying management investment company, the "Fund." The interests of Applicant's shareholders in Fund shares were the same as their interests before the transfer.

3. Applicant has retained no assets; it has no debts or other liabilities outstanding; and it is not a party to any litigation or administrative proceedings. Applicant has no security holders and is not now engaged, nor does it propose to engage, in any business activities. On February 19, 1987, the day preceding the transfer, Applicant had issued an outstanding 1,188,858 shares of its securities and total assets of $17,119,935.

4. On June 10, 1986, Applicant's board of managers approved an Agreement and Plan of Reorganization providing for the transfer of all of Applicant's assets and for the recording of such shares proportionately in the individual account records of Applicant's shareholders. Applicant's shareholders approved the Agreement on February 18, 1987.

5. Proxy materials regarding the proposed reorganization were distributed to Applicant's shareholders and filed with the Commission. Applicant was granted an order of the Commission on November 12, 1986 (IC Rel. No. 15407), pursuant to section 17(b) and 6(c) of the Act and Rule 17d–1 thereunder to permit the reorganization. Applicant represents that all expenses in connection with the reorganization were paid by John Hancock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–16979 Filed 7–24–87; 8:45 am]

BILLING CODE 8010–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 143
Monday, July 27, 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 DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, July 21, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Application of College Savings Bank, a proposed new bank to be located at 5 Vaughn Drive, West Windsor, New Jersey, for Federal deposit insurance.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendations regarding the Corporation's assistance agreement with an insured bank.

Memorandum re: Request for Supplemental Budget.

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Matters relating to the possible failure of certain insured banks: Names and locations of banks authorized to be exempt from disclosure pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(9)(10)).

Dated: July 22, 1987.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 87-17039 Filed 7-23-87; 12:05 pm]

BILLING CODE 6714-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

July 22, 1987.

TIME AND DATE: 10:00 a.m., Thursday, July 30, 1987.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Emery Mining Company*, Docket No. WEST 86-126-R. (Issues include whether a mon-employee representative of miners may exercise a "walkaround right" pursuant to Section 103(f) of the Mine Act.)

2. Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Emery Mining Corporation*, Docket No. WEST 86-35-R, WEST 86-36-R. (Issues include consideration of whether the violations occurred as the result of the operator's unwarrantable failure.)

2. *Youghiogheny & Ohio Coal Company*, Docket No. LAKE 86-56. (Issues are same as above.)

3. *Emery Mining Corporation*, Docket No. WEST 86-126-R. (See oral argument listing.)

4. *Secretary of Labor on behalf of Price & Vacha v. Jim Walter Resources, Inc.*, Docket No. SE 87-87-D. (Issues include consideration of a Petition for Review of Temporary Reinstatement Order.)

It was determined by a unanimous vote of Commissioners that these items be discussed in closed session.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-17005 Filed 7-23-87; 10:39 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM

Committee on Employee Benefits

TIME AND DATE: 3:00 p.m., Thursday, July 23, 1987. The business of the Committee requires that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: CLOSED.

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) the general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans' (d) the preparation and submission of an annual report on the operations of each of such Plans; (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific items include: Proposed early retirement program for employees of a Federal Reserve Bank.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyns, Assistant to the Board; (202) 452-3204.

Dated: July 22, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-16989 Filed 7-22-87; 4:25 pm]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Provisions for the Delivery of Legal Services; Committee Meeting

TIME AND DATE: The meeting will commence at 9:00 a.m., Friday, August 7, 1987, and continue until all official business is completed.

PLACE: Sir Francis Drake Hotel, Franciscan Room, Mezz. Level, 450 Powell Street, San Francisco, California 94101.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes:
   —Meeting on January 29, 1987
   —Meeting on March 7, 1987
3. Consideration of National/State Support
4. Public Comment

CONTACT PERSON FOR MORE INFORMATION: Charles W. Jarvis, Executive Office, (202) 863–1839.

Date Issued: July 24, 1987.

Charles W. Jarvis,

Secretary.

[FR Doc. 87–17068 Filed 7–23–87; 3:55 pm]

BILLING CODE 6820–35–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

CHANGE IN MEETING TIME FOR OPEN PORTION: The time for commencement of the open portion of the Board of Directors meeting scheduled for July 28, 1987, has been changed from 4 p.m. to approximately 3:30 p.m. All other information as published in the **Federal Register** of July 16, 1987, remains the same.

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporate Secretary on (202) 457–7079.

Margaret A. Kole,

OPIC Corporate Secretary.

July 22, 1987.

[FR Doc. 87–16994 Filed 7–23–87; 9:08 am]

BILLING CODE 3210–01–M

PAROLE COMMISSION

Record of vote of meeting closure pursuant to the Government in The Sunshine Act (Pub. L. 94–409) (5 U.S.C. 552b).

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at nine o'clock a.m. on Tuesday, July 21, 1987, at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about 2:00 p.m. The purpose of the meeting was to decide approximately 16 appeals from National Commissioners' decisions pursuant to 28 CFR 2.27 and to conduct a record review on an application for a certificate of exemption under 29 U.S.C. 1111. Eight Commissioners were present, constituting a quorum, when the vote to close the meeting was submitted.

Public announcements describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present was submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Benjamin F. Baer, Cameron M. Batjer, Saundra Brown Armstrong, Jasper Clay, Jr., Carol Pavilack Getty, Daniel R. Lopez, G. MacKenzie Rast, and Victor M. F. Reyes. The Commissioners, a Parole Analyst, and an attorney from the Office of General Counsel attended.

In witness whereof, I make this official record of the vote taken to close this meeting, and authorize this record to be made available to the public.

Date: July 22, 1987.

Benjamin F. Baer,

Chairman, United States Parole Commission.

[FR Doc. 87–17015 Filed 7–23–87; 11:03 am]

BILLING CODE 4410–01–M

Corrections

Federal Register
Vol. 52, No. 143
Monday, July 27, 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.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 87F-0003]

Indirect Food Additives; Polymers

Correction

In rule document 87-16095 beginning on page 26666 in the issue of Thursday, July 16, 1987, make the following correction:

On page 26666, in the third column, in the second complete paragraph, in the 26th line, "heading" should read "hearing".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Animal Drugs, Feeds, and Related Products; Monensin

Correction

In rule document 87-16393 beginning on page 27197 in the issue of Monday, July 20, 1987, make the following correction:

On page 27197, in the third column, the heading for Part 520 should read as set forth below:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 102

[Docket No. 80N-0140]

Diluted Fruit or Vegetable Juice Beverages Other Than Diluted Orange Juice Beverages

Correction

In proposed rule document 87-16096 beginning on page 26690 in the issue of Thursday, July 16, 1987, make the following correction:

On page 26691, in the second column, in the second complete paragraph, in the sixth line, "1930" should read "1980".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0221]

Filing of Food Additive Petition; Phillips Petroleum Co.

Correction

In notice document 87-16394 beginning on page 27263 in the issue of Monday, July 20, 1987, make the following correction:

On page 27263, in the third column, in the **SUMMARY**, in the second line, "the" should read "that".

BILLING CODE 1505-01-D

Federal Register

Monday
July 27, 1987

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 54

Required Distributions From Qualified Plans and Individual Retirement Plans; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 54

[EE-113-82]

Required Distributions From Qualified Plans and Individual Retirement Plans

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to required distributions from qualified plans, individual retirement plans, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts. Changes to the applicable tax law were made by the Tax Reform Act of 1986, the Tax Reform Act of 1984 and the Tax Equity and Fiscal Responsibility Act of 1982. These regulations will provide the public with guidance necessary to comply with the law and will affect administrators of, participants in, and beneficiaries of qualified plans; institutions which sponsor and individuals who administer individual retirement plans, individuals who use individual retirement plans and simplified employee pensions for retirement income and beneficiaries of individual retirement plans; and employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts and beneficiaries of such contracts and accounts.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 25, 1987. These amendments generally apply to calendar years beginning after December 31, 1984, except as otherwise specified in the applicable Act.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-113-82) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Marjorie Hoffman of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3903) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) and to the Pension Excise Taxes Regulations (26 CFR Part 54) under sections 401, 403, 408, and 4974 of the Internal Revenue Code of 1986. These amendments are proposed to conform the regulations to sections 1121 and 1852 of the Tax Reform Act of 1986 (TRA of 1986) (100 Stat. 2464 and 2864), sections 521 and 713 of the Tax Reform Act of 1984 (TRA of 1984) (98 Stat. 865 and 955), and sections 242 and 243 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (96 Stat. 521).

Description of Distribution Rules

The basic principles of these regulations are illustrated by the following description of the rules for distributions made from an individual retirement account before the IRA owner's death. (Special rules in the regulations apply to distributions made after the IRA owner's death.) A distribution must be made for the year in which the IRA owner attains age 70½ (the 70½ year) and for each year thereafter. Essentially, the minimum distribution for each year is determined by dividing the account balance by the lesser of the applicable life expectancy or the applicable divisor. All calculations are based on calendar years.

The minimum distribution for the 70½ year must be made by April 1 of the following year. A further distribution must be made by December 31 of each year after the 70½ year. Thus, if no distribution is made in the calendar year in which the IRA owner attains age 70½, distributions for two years must be calculated and made in the year after the 70½ year (one by April 1 and one by December 31).

In general, the account balance used to determine the minimum distribution for a calendar year is the account balance as of the close of business on the last day of the previous calendar year. The account balance as of the close of business on the last day of the calendar year preceding the 70½ year is therefore used to determine the minimum distribution that must be made for the 70½ year, even if the actual distribution is made in the year following the 70½ year. However, if the distribution for the 70½ year is deferred until the first quarter of the subsequent year (January 1 through April 1), the account balance used to determine the second minimum distribution that must be made in that year is calculated by subtracting from the account balance as of the close of business on the last day of the 70½ year any distribution made in the first quarter of the subsequent year in order to satisfy the minimum distribution requirement for the 70½ year.

The applicable divisor is the divisor under the table in Q&A-4 of 1.401(a)(9)-2 used for purposes of satisfying the minimum distribution incidental benefit requirement. If the IRA has only one beneficiary other than the IRA owner, the applicable life expectancy is the joint life and last survivor expectancy of the IRA owner and the beneficiary. To determine this life expectancy, the first step is to determine the ages of the IRA owner and beneficiary as of their attained ages on their birthdays in the 70½ year. The individual's life expectancy may or may not be recalculated. If life expectancy is not recalculated, the applicable life expectancy for years after the 70½ year is the initial joint life and last survivor expectancy reduced by one for each subsequent calendar year.

If life expectancy is recalculated, the method of recalculation depends on whether the beneficiary is the IRA owner's spouse. If the spouse is the beneficiary, the applicable life expectancy for each year subsequent to the 70½ year is the joint life and last survivor expectancy of the IRA owner and spouse based on their attained ages on their birthdays in each subsequent year. If the beneficiary is not the IRA owner's spouse, the method of recalculation is explained in Question and Answer E-8 of § 1.401(a)(9)-1 and the examples therein. Also, as explained in Question and Answer E-8, if either life expectancy is being recalculated, distributions may be accelerated upon the death of the individual whose life expectancy is being recalculated.

In general, the rules applicable to minimum distributions from qualified plans are identical to those for IRAs. However, the employee's benefit under the plan is used in place of the account balance as of December 31 of the preceding calendar year. As explained in Question and Answer F-5 of § 1.401(a)(9)-1, the benefit is valued as of the last valuation date in the previous calendar year and is adjusted for contributions and forfeitures allocated and distributions made after that date.

The regulations also contain rules for special situations that affect the amount of the required minimum distribution from an IRA or a qualified plan, examples of which are the following:

1. Multiple beneficiaries and changes in beneficiaries. See Question and Answer E-5 of § 1.401(a)(9)-1.

2. Death of the IRA owner (or employee) after the date distributions are required to commence. See Questions and Answers B-4 through B-6 of § 1.401(a)(9)-1.

3. Death of the IRA owner (or employee) before the date on which distributions are required to commence. See Questions and Answers C–1 through C–6 of § 1.401(a)(9)–1.

4. Distribution in the form of an annuity. See Questions and Answers F–3 and F–4 of § 1.401(a)(9)–1.

5. A trust being named as a beneficiary. See Questions and Answers D–5 and D–6 of § 1.401(a)(9)–1.

6. Rollovers or transfers from one IRA (or plan) to another. See Questions and Answers G–1 through G–5 of § 1.401(a)(9)–1.

7. A division of the benefit (or IRA) into separate accounts with or without, different beneficiaries for each account. See Questions and Answer H–1 through H–2A of § 1.401(a)(9)–1.

8. A portion of an employee's benefit being payable to an alternate payee pursuant to a qualified domestic relations order. See Question and Answer H–4 of § 1.401(a)(9)–1.

Simplification of Required Distribution Rules

The Service is concerned that the regulations implementing the required distribution rules for qualified plans, IRAs, and tax-sheltered annuity contracts not cause practitioners, plan and IRA administrators, and taxpayers unnecessary difficulty. These statutory rules reflect an important policy objective. However, due to the inherent difficulty of the statutory rules, we believe that these regulations should provide as certain and simple rules as possible. In the preparation of these proposed regulations, the Service reviewed all available materials to identify issues that required resolution. The proposed regulations thus address as many of these issues as possible. Furthermore, the proposed regulations attempt to simplify compliance with the required distribution rules in several ways (e.g., by integrating the incidental benefit distribution requirement into the required distribution rules and by providing two alternative methods for calculating the distributions for 1985 and 1986 that must be made by the end of 1987). These efforts have added to the length of the proposed regulations, but should provide administrators and taxpayers with important certainty as to the requirements and thus should simplify compliance with the statutory rules.

Because of the time that many administrators will need to implement the required distributions rules, it is important that practitioners, administrators, and taxpayers provide the Service with comments on the proposed regulations at the earliest possible time. In particular, the Service specifically requests that comments consider further simplification to the rules contained in the proposed regulations, including alternative methods of complying with the statutory rules (including administrative safe harbors, particularly for IRAs). The Service will promptly review any comments and proposed alternatives so that any necessary modifications to these regulations applicable for 1987 can be announced well in advance of the end of 1987.

Transition Rules

Transition rules for determining the amounts of the minimum distributions required for qualified plans and IRAs for calendar years 1985, 1986, and 1987 are contained in Questions and Answers I–1 through I–15 of § 1.401(a)(9)–1 and Questions and Answers B–1 through B–11 of § 1.408–8. In accordance with Notice 86–14, 1986–48 IRB 10, these transition rules provide that minimum distributions for calendar years 1985 and 1986 are not required to be made from qualified plans and IRAs until December 31, 1987.

Incidental Benefit Requirement

Section 401(a)(9)(G), added by section 1852 of TRA of 1986 and effective for years after 1984, provides that distributions must be made in accordance with the incidental benefit requirements in order to satisfy section 401(a)(9). Section 403(b)(10), as added, and section 408 (a)(6) and (b)(3), as amended by section 1852 of TRA of 1986, provide that requirements similar to the incidental benefit requirements of section 401(a) apply to annuity contracts, custodial accounts, and retirement income accounts described in section 403(b) and to IRAs.

Section 1.401(a)(9)–2 provides rules for satisfying the minimum distribution incidental benefit requirement (MDIB requirement). § 1.401(a)–1 is proposed to be amended to incorporate the provisions of § 1.401(a)(9)–2 and the existing incidental benefit requirement in § 1.401–1(b)(1) (i) and (ii). For calendar years before 1989, the rules in existing revenue rulings continue to apply for purposes of determining whether distributions satisfy the MDIB requirement. For calendar year after 1988, revised MDIB requirements apply for purposes of determining whether distributions satisfy this requirement. For calendar years before 1989, the MDIB requirement will also be satisfied if distributions are made in accordance with the revised requirements.

The revised requirements provide objective rules for determining whether the amount distributed for a calendar year satisfies the MDIB requirement. These revised requirements have been developed to be integrated with the other minimum distribution requirements in section 401(a)(9). Consequently, taxpayers can apply both of these requirements, which are designed to work together, to determine on an annual basis whether plan distributions for a year are acceptable. The examples in Question and Answer F–3A of 1.401(a)(9)–1 illustrate how these requirements work together.

Essentially, the revised rules provide that, where the spouse is not the designated beneficiary, the amount of the payments to be made to the employee before death must be determined in accordance with the principles of section 401(a)(9) using a hypothetical individual not more than 10 years younger than the employee as the employee's designated beneficiary. Where the distribution is in the form of a joint and survivor annuity, the revised rules were developed using an interest rate of eight percent. In general, if an employee's spouse is the employee's beneficiary, the MDIB requirement will be satisfied if distributions are made in accordance with section 401(a)(9), without regard to the MDIB requirement.

While these new objective rules are based on the principles in the existing rulings, they reach different results in certain cases. Thus, on an individual basis the operation of the new rules may require more or less to be distributed for a calendar year depending on the circumstances, such as the date the employee separated from service and the earliest retirement date under the plan.

Existing revenue rulings continue to provide guidance with respect to the application of the incidental benefit requirements to pre-retirement distributions in the form of permissible nonretirement benefits such as life, accident, or health insurance.

Amount Required To Be Distributed by the Required Beginning Date

As indicated above in the description of the distribution rules, the amount required to be distributed by an employee's or IRA owner's required beginning date is treated as the amount required to be distributed for the immediately preceding year, the year the employee or IRA owner attained age 70½ or retired, whichever is applicable. Under section 401(a)(9) as amended by TEFRA, distributions were required to commence by the end of the taxable year in which an employee either retired or attained age 70½. Under TRA of 1984,

the date by which distribution must commence was extended to the April 1 of the calendar year following the calendar year in which the employee either attains age 70½ or retires. The required commencement date was not extended to the end of the calendar year following the calendar year in which the employee either attains age 70½ or retires. Thus, the extension to April 1 is merely an extension of the time to make the distribution previously required under TEFRA to be made by the end of the year in which the employee either attains age 70½ or retires. This extension was intended to solve the administrative problems that a plan would have faced if it were required to make a December 31 distribution to an employee who retires in December. There is no indication that the extension to April 1 for the first distribution was intended to provide a full additional year of tax deferral. Thus, the distribution for the calendar year after the employee attains age 70½ (or retires if applicable) must still be made by the end of that year.

When Distributions Have Begun in Accordance With Section 401(a)(9)(A)

Section 401(a)(9) provides different rules for determining the minimum distributions required after an employee's death depending on whether or not distributions have begun in accordance with section 401(a)(9) before the employee's death. Question and Answer B–5 of § 1.401(a)(9)–1 generally provides that distributions are not treated as having begun until the employee's required beginning date even though payments were made before that date. However, Question and Answer B–5 provides an exception for certain distributions in the form of an annuity which commence before the required beginning date.

This interpretation was adopted because it is more administrable than other possible interpretations and places the least burden on plan administrators. If another interpretation had been adopted, additional rules would be required to determine when distributions made before the required beginning date are in accordance with section 401(a)(9)(A)(ii), placing both a burden on plan administrators to conform earlier distributions to such rules and on the Service to administer the additional rules. Further, other interpretations considered would have provided that distributions commencing under a distribution option before the required beginning date would be required to be made in accordance with section 401(a)(9) both before and after the required beginning date in order to satisfy section 401(a)(9). This interpretation would have reduced the flexibility in choosing benefit options which plans may provide to employees without violating section 401(a)(9).

Use of Unisex Annuity Tables

The unisex expected return multiples in Table V and VI of § 1.72–9 as amended by Treasury Decision 8115 published in the **Federal Register** on December 19, 1986 (51 FR 45690) must be used to compute life expectancies for purposes of determining required distribution under section 401(a)(9). Thus, these tables must be used for determining the amount of minimum distributions required for calendar years after 1984. The July 1, 1986 effective date, provided in Treasury Decision 8115 for using these tables does not apply to § 1.401(a)(9)–1.

Designated Beneficiaries

In general, designated beneficiaries who may be taken into account under section 401(a)(9) are limited to those individuals who are designated as beneficiaries under the plan. Question and Answer D–2 of § 1.401(a)(9)–1 further provides that a beneficiary under the plan is an individual who is entitled to a portion of an employee's benefit, contingent on the employee's death or another specified event. Thus, a distribution such as that described in Rev. Rul. 72–240, 1972–1 CB 108, will not satisfy section 401(a) unless the same individual is both the beneficiary under the plan and the person whose life is being used to measure the payment period under the survivor portion of the joint and survivor annuity.

Amendment of Qualified Plans

Although minimum distributions are required to be made from qualified plans under section 401(a)(9) in order to retain a plan's tax-qualified status for calendar years after 1984, a plan will not be disqualified solely because it is not amended for section 401(a)(9) and the regulations thereunder prior to the amendment period contained in section 1140 of TRA of 1986 if the plan amendments are adopted retroactively to the effective date of section 401(a)(9) and the regulations thereunder. See Question and Answer A–4 of § 1.401(a)(9)–1. However, distributions must satisfy the distribution requirements in section 401(a)(9) and the regulations thereunder in operation beginning with calendar year 1985 notwithstanding the absence of plan provisions.

Amendment of IRAs

In general, the minimum distribution rules in section 401(a)(9) and § 1.401(a)(9)–1 will apply to IRAs, beginning with calendar year 1985. The minimum distribution incidental benefit requirement in § 1.401(a)(9)–2 will apply to distributions from IRAs, beginning with calendar year 1989. The trust instrument or custodial agreement for an IRA with a favorable opinion letter need not be amended to provide the distribution rules in section 408(a)(6) and (b)(3) and these regulations until the later of December 31, 1988, or such time as the Commissioner prescribes. See Question and Answer B–5 of § 1.408–8. (The date prescribed by the Commissioner will be established after the Service has published sample language for IRAs, including IRAs used for funding simplified employee pensions (SEPs), that, if adopted, will satisfy section 408(a)(6) and (b)(3).) Existing IRAs or newly established IRAs, established by executing Form 5305 or Form 5305A, may be the current (Rev. 11–83) editions of those forms until such time as the Commissioner prescribes. An IRA which does not have a favorable opinion letter and which is not established by executing Form 5305 or Form 5305A will satisfy section 408(a)(6) and 408(b)(3) until the date as of which IRAs with a favorable opinion letter must be amended if such IRA contains the statutory provisions in section 401(a)(9) applicable to IRAs. Notwithstanding the absence of trust provisions, Question and Answer B–5 of § 1.408–8 provides that distributions must satisfy the additional distribution requirements in 1.408–8 in operation.

Reliance on These Proposed Regulations

Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. Because these regulations are generally effective for calendar years after 1984, the Service will apply the questions and answers in these proposed regulations in issuing determination letters, opinion letters, and other rulings and in auditing returns with respect to taxpayers and plans. If future guidance is more restrictive, such guidance will be applied without retroactive effect.

PART 1—[AMENDED]

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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 not required.

Although this document is a notice of proposed rulemaking which solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and 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 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 herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs, of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting copies of the comments to OMB also to send copies of the comments to the Service.

Drafting Information

The principal author of these proposed regulations is Marjorie Hoffman of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

List of Subjects

26 CFR 1.401–0–1.425–1

Income taxes, Employee benefit plans, Pensions.

26 CFR Part 54

Excise taxes.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Parts 1 and 54 are as follows:

PART 1—INCOME TAX REGULATIONS

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

Authority: 26 U.S.C. 7805 * * * Section 1.401(a)(9)–1 is also issued under 26 U.S.C. 401(a)(9), 408(a)(6), 408(b)(3), and 403(b)(10). Section 1.408–8 is also issued under 26 U.S.C. 408(a)(6) and 408(b)(3). Section 1.403(b)–2 is also issued under 26 U.S.C. 403(b)(10).

Par. 2. Section 1.401(a)–1 is amended by adding a new paragraph (c) to read as follows:

§ 1.401(a)–1 Post-ERISA qualified plans and qualified trusts; in general.

* * * * *

(c) *Incidental death benefit requirement.* In order for a pension, stock bonus, or profit-sharing plan to be a qualified plan under section 401(a), distributions under the plan must satisfy the incidental death benefit requirement. Section 1.401–1(b)(1), a pre-ERISA regulation, and § 1.401(a)(9)–2 provide rules applicable to this requirement.

Par. 3. There are added §§ 1.401(a)(9)–1 and 1.401(a)(9)–2 after § 1.401(a)–2 to read as follows:

§ 1.401(a)(9)–1 Required distributions from trusts and plans.

The following questions and answers relate to the distribution rules for qualified plans provided in section 401(a)(9) of the Internal Revenue Code of 1986 and section 401(a)(9) of the Internal Revenue Code of 1954, as amended by section 521 of the Tax Reform Act of 1984 (Pub. L. 98–369) (TRA of 1984) and by sections 1121 and 1852 of the Tax Reform Act of 1986 (TRA of 1986) (Pub. L. 99–514):

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A. In General

A–1. Q. What plans are subject to the new distribution rules in section 401(a)(9) of the Internal Revenue Code of 1986, as amended by section 521 of the Tax Reform Act of 1984, and by sections 1121 and 1852 of the Tax Reform Act of 1986, and the regulations thereunder?

A. All stock bonus, pension, and profit-sharing plans qualified under section 401(a) and annuity contracts described in section 403(a) are subject to the distribution rules in section 401(a)(9) of the Internal Revenue Code of 1986 and section 401(a)(9) of the Internal Revenue Code of 1954 as amended by section 521 of the Tax Reform Act of 1984 (TRA of 1984), and by sections 1121 and 1852 of the Tax Reform Act of 1986 (TRA of 1986) and the regulations thereunder. See § 1.403(b)–2 for the distribution rules applicable to annuity contracts or custodial accounts described in section 403(b), and see § 1.408–8 for the distribution rules applicable to individual retirement plans described in section 408. See also section 457(d)(2)(A) for distribution rules applicable to certain deferred compensation plans.

A–2. Q. Which employee account balances and benefits held under qualified trusts and plans are subject to the distribution rules of section 401(a)(9) of the Internal Revenue Code of 1986 and section 401(a)(9) of the Internal Revenue Code of 1954, as amended?

A. The distribution rules of section 401(a)(9) of the Internal Revenue Code of 1986 and 401(a)(9) of the Internal Revenue Code of 1954, as amended, apply to all account balances and benefits in existence on or after January 1, 1985. The new rules apply to such balances and benefits even though the employee has retired or died, or distributions have commenced prior to that time. However, section 521(e) (4) and (5) of TRA of 1984 provided delayed effective dates for governmental plans and plans maintained pursuant to collective bargaining agreements. Also see J–1 through J–5 concerning designations made pursuant to section 242(b)(5) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

A–3. Q. What specific provisions must a plan contain in order to satisfy section 401(a)(9)?

A. (a) *Required provisions.* In order to satisfy section 401(a)(9), the plan must include several written provisions reflecting section 401(a)(9). First, the plan must generally set forth the statutory rules of section 401(a)(9), including the incidental death benefit requirement in section 401(a)(9)(G). Second, the plan must provide that distributions will be made in accordance with the regulations under section 401(a)(9), including § 1.401(a)(9)–2. The plan document must also provide that the provisions reflecting section 401(a)(9) override any distribution options in the plan inconsistent with section 401(a)(9). Finally, the plan must include any other provisions reflecting section 401(a)(9) as are prescribed by the Commissioner.

(b) *Optional provisions.* The plan may also include written provisions regarding any optional provisions governing plan distributions that do not conflict with section 401(a)(9) and the regulations thereunder.

(c) *Absence of optional provisions.* (1) Plan distributions will be required to be made under the default provisions set forth in this section unless the plan document contains optional provisions that override such default provisions. (2) For example, if distributions have not commenced to the employee at the time of the employee's death, distributions after the death of an employee are to be made automatically in accordance with the default provisions in C–4(a) unless the plan either (i) specifies in accordance with C–4(b) the method under which distributions will be made or (ii) provides for elections by the employee (or beneficiary) (in accordance with C–4(c)) and such elections are made by the employee or beneficiary. (3) Similarly, life expectancies of employees and spouses of employees automatically will be recalculated pursuant to E–7(a) unless the plan either (i) specifies in accordance with E–7(b) that life expectancies of employees and spouses of employees will not be recalculated or (ii) provides for elections by the employee (or spouse) in accordance with E–7(c) (in which case life expectancy will not be recalculated if there is such an election or if a plan default provision so provides).

A–4. Q. When must plans be amended to satisfy section 401(a)(9) and how must they operate prior to such amendment?

A. (a) *Form requirements before 1989.* A plan will not be disqualified solely because it is not amended for section 401(a)(9) and the regulations thereunder prior to the end of the amendment period contained in section 1140 of TRA of 1986 if the plan amendments are adopted retroactively to the effective date of section 401(a)(9) and the regulations thereunder.

(b) *Operational requirements before 1989.* For plan years beginning in calendar years after 1984, a plan must satisfy section 401(a)(9) and the applicable regulations in operation in order to meet the qualification requirements of section 401(a). Therefore, distributions for calendar years after 1984 must be made in accordance with the provisions of section 401(a)(9) and the regulations thereunder notwithstanding any provisions of the plan to the contrary.

For plan years before the plan year in which the plan is required to be amended pursuant to paragraph (a), the plan will not fail to satisfy either the requirement that a plan be operated in accordance with its terms or the requirement that a pension plan provide definitely determinable benefits (or the requirement that a profit-sharing plan provide a definite predetermined formula for distributing the funds accumulated under the plan) merely because distributions are made to comply with section 401(a)(9) and the regulations thereunder rather than in accordance with the terms of the plan.

(c) *Default provisions.* For calendar years ending in plan years before the plan year in which the plan is required to be amended pursuant to paragraph (a), notwithstanding A–3(b), a plan will not be subject to the default provisions in this section if benefits are distributed in accordance with this section in a reasonable and consistent manner. For example, for purposes of determining pursuant to C–4 whether the five-year rule in section 401(a)(9)(B)(ii) or the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv) applies, a plan does not have to make distributions in accordance with the default provisions in C–4(a) if the plan administrator establishes a consistent policy of either (1) distributing benefits under one method or the other or (2) distributing benefits pursuant to an election by an employee or beneficiary (or in the absence of an election under one method or the other). Similarly, for purposes of determining whether or not the life expectancies of an employee and the employee's spouse will be recalculated pursuant to section 401(a)(9)(D) and E–7, a plan does not have to recalculate life expectancies of employees or their spouses if the plan administrator establishes a policy of either not recalculating such life expectancies or of allowing elections by employees or spouses. In the latter case, a plan does not have to recalculate the employee or the employee's spouse's life expectancy if the employee or spouse elects not to recalculate life expectancy (or in the absence of an election, of not recalculating life expectancies). However, if a plan administrator adopts a policy of not distributing in accordance with one of the default provisions, when the plan is amended to comply with section 401(a)(9), the amendment must be consistent with the policy established.

A–5. Q. To what extent will a plan be treated as failing to satisfy the qualification requirements of section 401(a) if the plan in operation fails to make distributions in accordance with section 401(a)(9)?

A. A plan will not satisfy the qualification requirements of section 401(a) with respect to a plan year unless all distributions required under section 401(a)(9) are made for the calendar year ending with or within such plan year. Notwithstanding the preceding sentence, for plan years beginning after December 31, 1988, a plan will not fail to satisfy the qualification requirements of section 401(a) because there are isolated instances when the minimum distribution requirements of section 401(a)(9) are not satisfied in operation. However, a pattern or regular practice of failing to meet the minimum distribution requirements of section 401(a)(9) with respect to one or more employees will not be considered an isolated instance even if each instance is de minimis.

B. Distributions commencing before an employee's death.

B–1. Q. In the case of distributions before an employee's death, how must the employee's entire interest be distributed in order to satisfy section 401(a)(9)(A)?

A. (a) In order to satisfy section 401(a)(9)(A), the entire interest of each employee (1) must be distributed to such employee not later than the required beginning date, or (2) must be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and the designated beneficiary (or over a period not extending beyond life expectancy of such employee or the joint life and last survivor expectancy of such employee and the designated beneficiary).

(b) See B–2 and B–3 for the definition of required beginning date. See D–1 through D–4 for the determination of the designated beneficiary of the employee. See E–1 and E–3 through E–8 for the rules for calculating the life expectancy of the employee (and the designated beneficiary). See F–1 through F–7 for the rules for determining the amount of the minimum distribution to be made each year.

B–2. Q. For purposes of section 401(a)(9)(C), what does the term "required beginning date" mean?

A. (a) For an employee who attains age 70½ after December 31, 1987 (i.e., age 70 after June 30, 1987), the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee attains age 70½.

(b) For an employee who attains age 70½ before January 1, 1988 (i.e., age 70 before July 1, 1987) and is not a "5-percent owner" (as defined in paragraph (d)), the term "required beginning date" means April 1 of the calendar year following the later of (1) the calendar year in which the employee attains age 70½ or (2) the calendar year in which the employee retires.

(c) For an employee who attains age 70½ before January 1, 1988 and is a "5-percent owner" (as defined in paragraph (d)), the term "required beginning date" means April 1 of the calendar year following the later of (1) the calendar year in which the employee attains age 70½, or (2) the earlier of (i) the calendar year with or within which ends the plan year in which the employee becomes a "5-percent owner," or (ii) the calendar year in which the employee retires.

(d)(1) An employee is treated as a "5-percent owner" for purposes of this Q&A, if such employee is a "5-percent owner" (as defined in section 416(i)) at any time during the plan year ending with or within the calendar year in which such owner attains age 66½ or any subsequent plan year. Once an employee is described in this subparagraph, distributions must continue to such employee even if such employee ceases to own more than 5 percent of the employer in a subsequent year.

(2) The determination of whether or not an employee is a 5-percent owner will be made in accordance with section 416 but will be made without regard to whether the plan is top-heavy.

(3) An employee's required beginning date is determined under paragraph (c) if the employee is a 5-percent owner during any plan year beginning after December 31, 1979. For example, if an employee attains age 66½ within calendar year 1980 and is a 5-percent owner during the plan year ending within calendar year 1980, but is not a 5-percent owner at any time during any other plan year, the employee is considered a 5-percent owner and the employee's required beginning date is determined under paragraph (c) and this paragraph.

B–3. Q. When does an employee attain age 70½?

A. An employee attains age 70½ as of the date six months after the 70th anniversary of the employee's birth. For example, if an employee's date of birth was June 30, 1919, the 70th anniversary of such employee's birth is June 30, 1989. Such employee attains age 70½ on December 30, 1989. Consequently, such employee's required beginning date is April 1, 1990. However, if the employee's date of birth was July 1, 1919, the 70th anniversary of such employee's birth would be July 1, 1989. Such employee

would then attain age 70½ on January 1, 1990.

B–3A. Q. Must distributions made before the employee's required beginning date satisfy section 401(a)(9)?

A. Lifetime distributions made before the employee's required beginning date for calendar years before the employee's first distribution calendar year, as defined in F–1, need not be made in accordance with section 401(a)(9). However, if distributions commence under a particular distribution option, such as in the form of an annuity, before the employee's required beginning date for the employee's first distribution calendar year, the distribution option will fail to satisfy section 401(a)(9) at the time distributions commence if, under the particular distribution option, distributions to be made for the employee's first distribution calendar year or any subsequent distribution calendar year will not satisfy section 401(a)(9).

B–4. Q. If distributions have begun to an employee before the employee's death (in accordance with section 401(a)(9)(A)(ii)), how must distributions be made after an employee's death?

A. Section 401(a)(9)(B)(i) provides that if the distribution of the employee's interest has begun in accordance with section 401(a)(9)(A)(ii) and the employee dies before his entire interest has been distributed to him, the remaining portion of such interest must be distributed at least as rapidly as under the distribution method being used under section 401(a)(9)(A)(ii) as of the date of his death. As explained further in D–3, in the case of distributions which began before the employee's death and which are being paid over the lives of the employee and a designated beneficiary (or over a period not exceeding the joint life and last survivor expectancy), the designated beneficiary whose life or life expectancy was being used to determine the period described in section 401(a)(9)(A)(ii) must be the beneficiary of such remaining portion unless otherwise provided in E–5.

B–5. Q. For purposes of section 401(a)(9)(B), when are distributions considered to have begun to the employee in accordance with section 401(a)(9)(A)(ii)?

A. (a) *General rule.* Except as provided in paragraph (b), distributions are treated as having begun to the employee in accordance with section 401(a)(9)(A)(ii) on the employee's required beginning date, even though payments may actually have been made before that date. For example, if employee A upon retirement in 1990 at age 65½ begins receiving installment distributions from a profit-sharing plan over a period not exceeding the joint life and last survivor expectancy of A and A's beneficiary, benefits are not treated as having begun in accordance with section 401(a)(9)(A)(ii) until April 1, 1996 (the April 1 following the calendar year in which A attains age 70½). Consequently, if such employee dies before April 1, 1996 (A's required beginning date), distributions to be made after A's death must be made in accordance with section 40l(a)(9)(B) (ii) or (iii) and (iv). This is the case even though the plan has distributed the minimum distribution for the first distribution calendar year (as defined in F–1) before A's death.

(b) *Annuities.* If distributions irrevocably (except for acceleration) commence to an employee on a date before the employee's required beginning date over a period permitted under section 401(a)(9)(A)(ii) and the distribution form is an annuity under which distributions are made in accordance with the provisions of F–3 (and if applicable F–4), distributions will be considered to have begun on the actual commencement date in accordance with section 401(a)(9)(A)(ii) even if the employee dies before the employee's required beginning date. Thus, pursuant to section 401(a)(9)(B)(i), after the employee's death, the remaining portion of the employee's interest must continue to be distributed at least as rapidly as under the method of distribution in effect as of the employee's date of death and the rules in section 401(a)(9)(B) (ii) or (iii) and (iv) do not apply. See D–3 and E–1 for special rules for determining the employee's designated beneficiary and for determining life expectancy.

(c) *Cross reference.* See F–3A for rules for satisfying the requirement that the employee's remaining interest be distributed at least as rapidly as under the method being used under section 401(a)(9)(A)(ii) as of the date of the employee's death.

C. Distributions commencing after an employee's death.

C–1. Q. In the case in which an employee dies before distributions are treated as having begun to the employee for purposes of section 401(a)(9)(A)(ii), how must the employee's entire interest be distributed in order to satisfy section 401(a)(9)?

A. (a) In the case in which an employee dies before distributions are treated as having begun to an employee in accordance with section 401(a)(9)(A)(ii), section 401(a)(9)(B) provides two methods for distributing the employee's interest. In order to satisfy section 401(a)(9), distributions must be made under one of these two methods. The first method (the five-year rule in section 401(a)(9)(B)(ii)) requires that the entire interest of the employee be distributed within 5 years of the employee's death regardless of to whom or to what entity the distribution is made. The second method (the exception to the five-year rule in section 401(a)(9)(B)(iii)) requires that any portion of an employee's interest which is payable to (or for the benefit of) a designated beneficiary be distributed, commencing within one year of the employee's death, over the life of such beneficiary (or over a period not extending beyond the life expectancy of such beneficiary). Section 401(a)(9)(B)(iv) provides special rules where the designated beneficiary is the surviving spouse the employee, including a special commencement date for distribution under section 401(a)(9)(B)(iii) to the surviving spouse.

(b) See C–2 to determine when the five-year period in section 401(a)(9)(B)(ii) ends. See C–3 to determine when distribution under the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv) must commence. See C–4 for the rules for determining which of the methods described in paragraph (a) applies. See D–1, D–2, and D–4 in order to determine the designated beneficiary under section 401(a)(9)(B) (iii) and (iv). See E–2 through E–8 for the rules for calculating the designated beneficiary's life expectancy. See F–1 through F–7 for the rules for determining the amount of the minimum distribution to be distributed each year.

C–2. Q. As of what date must the employee's entire interest be distributed in order to satisfy the five-year rule in section 401(a)(9)(B)(ii)?

A. In order to satisfy the five-year rule in section 401(a)(9)(B)(ii), the employee's entire interest must be distributed as of December 31 of the calendar year which contains the fifth anniversary of the date of the employee's death. For example, if an employee dies on January 1 of 1990, the entire interest must be distributed by December 31, 1995, in order to satisfy the five-year rule in section 401(a)(9)(B)(ii).

C–3. Q. When are distributions required to commence in order to satisfy the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv)?

A. (a) *Nonspouse beneficiary.* In order to satisfy the rule in section 401(a)(B)(iii) (the exception to the five-year rule for nonspouse beneficiaries), if the designated beneficiary is not the employee's surviving spouse, distributions must commence on or

before December 31 of the calendar year immediately following the calendar year in which the employee died. This rule also applies to the distribution of the entire remaining benefit if, as of the employee's date of death, an individual is designated as a beneficiary in addition to the employee's surviving spouse. See H–2 and H–2A, however, if the employee's benefit is divided into separate accounts (or segregated shares, in the case of a defined benefit plan).

(b) *Spousal beneficiary.* In order to satisfy the rule in section 401(a)(9)(B)(iii) and (iv), if the designated beneficiary is the employee's surviving spouse, distributions must commence on or before the later of (1) December 31 of the calendar year immediately following the calendar year in which the employee died and (2) December 31 of the calendar year in which the employee would have attained age 70½.

C–4. Q. How is it determined whether the five-year rule in section 401(a)(9)(B)(ii) or the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv) applies to a distribution?

A. (a) *No plan provision.* If a plan does not adopt an optional provision specifying the methods of distribution after the death of an employee, distribution must be made as follows:

(1) In the case in which the surviving spouse of an employee is a beneficiary of the employee, distributions are to be made in accordance with the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv).

(2) In all other cases, distributions are to be made in accordance with the five-year rule in section 401(a)(9)(B)(ii).

(b) *Optional methods.* The plan may adopt a provision specifying which of the two methods apply to distributions after the death of an employee. For example, the plan may specify that distribution in every case will be made in accordance with the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv). Further, a plan need not have the same method of distribution for the benefits of all employees, e.g., a plan may have one method of distribution for benefits of employees whose beneficiaries are not surviving spouses and another method of distribution for the benefits of employees whose beneficiaries are surviving spouses, so long as there is a single method with respect to the benefit of each employee. (If an employee's benefit is divided into separate accounts, see H–2 and H–2A).

(c) *Employee elections.* A plan may adopt a provision that permits employees (or beneficiaries) to elect on an individual basis whether the five-year rule in section 401(a)(9)(B)(ii) or the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv) applies to distributions. In operation, such an election must be made no later than the earlier of (1) December 31 of the calendar year in which distribution would be required to commence in order to satisfy the requirements for the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv) (see C–3 for the determination of such calendar year), or (2) December 31 of the calendar year which contains the fifth anniversary of the date of death of the employee. As of such date, the election must be irrevocable with respect to the beneficiary (and all subsequent beneficiaries) and must apply to all subsequent years. If a plan provides for elections, the plan may also specify, pursuant to paragraph (b), which method of distribution applies if neither the employee nor the beneficiary makes the election. If neither the employee nor the beneficiary elects a method and the plan does not specify which rule applies, distribution must be made in accordance with paragraph (a).

(d) *Other requirements.* A plan must satisfy other distribution requirements under the Code. For example, plan distributions must satisfy the survivor annuity requirements of sections 401(a)(11) and 417, except as otherwise provided in this section. These requirements may mandate a particular method of distribution to a surviving spouse. Any plan provision described in paragraphs (b) and (c), or method of distribution elected pursuant to paragraph (c), must satisfy these other distribution rules.

C–5. Q. If the employee's surviving spouse is the employee's designated beneficiary and such spouse dies after the employee, but before distributions have begun to the surviving spouse under section 401(a)(9)(B) (iii) and (iv), how is the employee's interest to be distributed?

A. Pursuant to section 401(a)(9)(B)(iv)(II), if the surviving spouse dies after the employee, but before distributions to such spouse have begun under section 401(a)(9)(B) (iii) and (iv), the five-year rule in section 401(a)(9)(B)(ii) and the exception to the five-year rule in section 401(a)(9)(B)(iii) are to be applied as if the surviving spouse were the employee. In applying this rule, the date of death of the surviving spouse shall be substituted for the date of death of the employee. However, in such case, the rules in section 401(a)(9)(B)(iv) are not available to the surviving spouse of the deceased employee's surviving spouse.

C–6. Q. For purposes of section 401(a)(9)(B)(iv)(II), when are distributions considered to have begun to the surviving spouse?

A. (a) *General rule.* Except as otherwise provided in paragraph (b), distributions are considered to have begun to the surviving spouse of an employee, for purposes of section 401(a)(9)(B)(iv)(II), on the date, determined in accordance with C–3, on which distributions are required to commence to the surviving spouse, even though payments have actually been made before that date. See paragraph (b) for special rule for annuities.

(b) *Annuity.* If distributions commence irrevocably (except for acceleration) to the surviving spouse of an employee over a period permitted under section 401(a)(9)(B)(iii)(II) before the date on which distributions are required to commence and the distribution form is an annuity under which distributions are made as of the date distributions commence in accordance with the provisions of F–3 (and F–4 if applicable), distributions will be considered to have begun on the actual commencement date for purposes of section 401(a)(9)(B)(iv)(II). Consequently, in such case, section 401(a)(9)(B) (ii) and (iii) will not apply upon the death of the surviving spouse as though the surviving spouse were the employee even if the spouse dies before the date, determined in accordance with C–3, on which distributions are required to commence to the surviving spouse. Instead, the annuity distributions must continue to be made, in accordance with the provisions of F–3 or F–4, at least as rapidly as under the method of distribution being used as of the date of the surviving spouse's death. The rules of F–3A shall apply in determining whether distributions are being made at least as rapidly as under the method of distribution being used as of the date of the surviving spouse's death.

D. Determination of the designated beneficiary.

D–1. Q. Must an employee (or the employee's spouse) make an affirmative election specifying a beneficiary for a person to be a designated beneficiary under section 401(a)(9)(E)?

A. No. A person's status as designated beneficiary is not dependent upon being selected by an employee (or by the employee's surviving spouse, in the case of certain distributions under section 401(a)(9)(B)(iv)(II)). Thus, for example, if the terms of the plan specify the beneficiary, then whoever is so specified is the designated beneficiary and is treated for purposes of section 401(a)(9) as having been designated by the employee (or the employee's surviving

spouse). The choice of beneficiary is subject to the requirements of sections 401(a)(11), 414(p), and 417.

D–2. Q. May an individual who is not designated as a beneficiary under the plan be considered a designated beneficiary for purposes of determining the minimum distribution required under section 401(a)(9)?

A. (a)(1) Except to the extent provided in E–5 with respect to former beneficiaries, designated beneficiaries are only individuals who are designated as beneficiaries under the plan. An individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary. A beneficiary designated as such under the plan is an individual who is entitled to a portion of an employee's benefit, contingent on the employee's death or another specified event. For example, if a distribution is in the form of a joint and survivor annuity over the life of the employee and another individual, the plan does not satisfy section 401(a)(9) unless such other individual is a designated beneficiary under the plan. A designated beneficiary need not be specified by name in the plan or by the employee to the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan as of the employee's required beginning date, or as of the date of the employee's death (in the case of distributions governed by section 401(a)(9)(B) (iii) and (iv)), and at all subsequent times. The members of a class of beneficiaries capable of expansion or contraction will be treated as being identifiable if it is possible at the applicable time to identify the class member with the shortest life expectancy. The fact that an employee's interest under the plan passes to a certain individual under applicable state law does not make such individual a designated beneficiary unless such individual is designated as a beneficiary under the plan.

(2) This paragraph (a) is illustrated by the following example.

Example. Employee X attains age 70½ in calendar year 1990. As of April 1, 1991, X designates as his beneficiaries under the plan his spouse and his children. X does not specify them by name. Even though X did not specify his spouse and his children by name, they are identifiable based on their relationship to X as of his required beginning date. Further, it is irrelevant that additional children of X may be born after his required beginning date and thus that the class of beneficiaries is capable of expansion.

(b) See E–5 for the rules which apply if there is a change in beneficiaries under the plan with respect to an employee.

D 2A. Q. May a person other than an individual be considered to be a designated beneficiary for purposes of section 401(a)(9)?

A. (a) No. Only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate, may not be a designated beneficiary. However, see D–5 and D–6 for special rules which apply to trusts.

(b) Except as otherwise provided in D–5, D–6, and E–5(e)(1), if a person other than an individual is designated as a beneficiary of an employee's benefit, the employee will be treated as having no designated beneficiary for purposes of section 401(a)(9). In such case, distribution under section 401(a)(9)(A)(ii) must be made over the employee's life or over a period not exceeding the employee's life expectancy. Further, in such case, if upon the employee's death section 401(a)(9)(B)(i) does not apply, distribution must be made in accordance with the 5-year rule in section 401(a)(9)(B)(ii).

D–3. Q. For purposes of calculating the distribution period described in section 401(a)(9)(A)(ii) (for distributions before death), when is the designated beneficiary determined?

A. (a) *General rule required beginning date.* For purposes of calculating the distribution period described in section 401(a)(9)(A)(ii) (for distributions before death), except as otherwise provided in paragraphs (b) through (d), the designated beneficiary will be determined as of the employee's required beginning date. If, as of that date, there is no designated beneficiary under the plan to receive the employee's benefit upon the employee's death, the distribution period described in section 401(a)(9)(A)(ii) is limited to the employee's life (or a period not extending beyond the employee's life expectancy). (If there is a beneficiary (other than a beneficiary whose rights are contingent on the death of another beneficiary) who is not designated in accordance with D–2, there is deemed to be no designated beneficiary for purposes of section 401(a)(9)(A)(ii).)

(b) *Exception for first distribution year.* Except to the extent that B–5(b) is applicable, if a designated beneficiary is added or replaces another designated beneficiary during the calendar year in which the employee's required beginning date occurs, but on or before the employee's required beginning date (January 1 through April 1 of such calendar year), the designated beneficiary of the employee for purposes of calculating the minimum distribution for the employee's first distribution calendar year (as defined in F–1) may be determined as of any date after December 31 of the employee's first distribution calendar year and before the employee's required beginning date. Thus, e.g., for purposes of determining the minimum distribution for the employee's first distribution calendar year, either designated beneficiary may be used to determine the joint life and last survivor expectancy of the employee and designated beneficiary. However, for purposes of determining the minimum distribution for subsequent distribution calendar years (including the distribution calendar year in which the employee's required beginning date occurs), the designated beneficiary will be determined as of the employee's required beginning date.

(c) *Annuity form.* If annuity payments commence to an employee (either on or before the employee's required beginning date), the employee's designated beneficiary may be determined as of any date during the 90 days before the date on which the annuity payments commence.

(d) *Multiple and substitute beneficiaries.* Notwithstanding anything in this D–3 to the contrary, the rules in E–5 apply if more than one beneficiary is designated with respect to an employee as of the applicable date (in paragraphs (a), (b), or (c)), on which the employee's designated beneficiary is determined or if a beneficiary is added or replaces another beneficiary (due to death or any other reason) after such date.

D–4. Q. For purposes of calculating the distribution period described in section 401(a)(9)(B) (iii) or (iv) (for distributions beginning after death in accordance with the exception to the five-year rule), when is the designated beneficiary determined?

A. (a) *Employee.* Except as provided in paragraph (b), for purposes of calculating the distribution period described in section 401(a)(9)(B) (iii) or (iv), the designated beneficiary will be determined as of the employee's date of death. If, as of the date of the employee's death, there is no designated beneficiary under the plan with respect to that employee, distribution must be made in accordance with the five-year rule in section 401(a)(9)(B)(ii). (If there is a beneficiary (other than a beneficiary whose rights are contingent on the death of another beneficiary) who is not designated in accordance with D–2, there is deemed to be no designated

beneficiary for purposes of section 401(a)(9)(B) (iii) and (iv).]

(b) *Surviving spouse.* As provided in C–5, in the case in which the employee's spouse is the designated beneficiary as of the date of the employee's death for distributions under section 401(a)(9)(B)(iii) and the surviving spouse dies after the employee and before the date on which distributions have begun to the spouse under section 401(a)(9)(B)(iii) and (iv), the rule in section 401(a)(9)(B)(iv)(II) will apply. Thus, the relevant designated beneficiary for determining the distribution period is the designated beneficiary of the surviving spouse. Such designated beneficiary will be determined as of the surviving spouse's date of death (rather than the employee's date of death). If, as of the date of the surviving spouse's death, there is no designated beneficiary under the plan with respect to that surviving spouse, distribution must be made in accordance with the 5-year rule in section 401(a)(9)(B)(ii). (If there is a beneficiary (other than a beneficiary whose rights are contingent on the death of another beneficiary) who is not designated in accordance with D–2, there is deemed to be no designated beneficiary for purposes of section 401(a)(9)(B)(iii).]

(c) *Multiple beneficiaries.* Notwithstanding anything in this D–4 to the contrary, the rules in E–5 apply if more than one beneficiary is designated with respect to an employee as of the date determined in accordance with paragraphs (a) and (b) on which the designated beneficiary is to be determined.

D–5. Q. In the case in which a trust is named as a beneficiary of an employee, are the beneficiaries of the trust with respect to the trust's interest in the employee's benefit treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(A)(ii)?

A. (a) In the case in which a trust is named as a beneficiary of an employee, all beneficiaries of the trust with respect to the trust's interest in the employee's benefit are treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(A)(ii) if, as of the later of the date on which the trust is named as a beneficiary of the employee, or the employee's required beginning date, and as of all subsequent periods during which the trust is named as a beneficiary, the following requirements are met.

(1) The trust is a valid trust under state law, or would be but for the fact that there is no corpus.

(2) The trust is irrevocable.

(3) The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable from the trust instrument within the meaning of D–2.

(4) A copy of the trust instrument is provided to the plan.

(b) Pursuant to D–2A, only an individual may be a designated beneficiary. Consequently, a trust itself may not be the designated beneficiary even though the trust is named as a beneficiary. However, if the requirements in paragraph (a) are met, for purposes of section 401(a)(9), distributions made to the trust will be treated as paid to the beneficiaries of the trust with respect to the trust's interest in the employee's benefit. If, as of any date on or after the employee's required beginning date, a trust is named as a beneficiary of the employee and the requirements in paragraph (a) are not met, the employee will be treated as not having a designated beneficiary under the plan for purposes of section 401(a)(9)(A)(ii). Consequently, for calendar years subsequent to such date, distribution must be made over the employee's life (or over the period which would have been the employee's remaining life expectancy determined as if no beneficiary had been designated as of the employee's required beginning date). In the case of payments to a trust having more than one beneficiary, see E–5 for the rules for determining the designated beneficiary whose life expectancy will be used to determine the distribution period.

D–6. Q. In the case in which a trust is named as a beneficiary of an employee, are beneficiaries of the trust with respect to the trust's interest in the employee's benefit treated as designated beneficiaries under the plan with respect to the employee for purposes of determining the distribution period under section 401(a)(9)(B) (iii) and (iv)?

A. (a) In the case in which a trust is named as a beneficiary of an employee, all beneficiaries of the trust with respect to the trust's interest in the employee's benefit are treated as designated beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(B) (iii) and (iv) if the requirements in paragraph (a) of D–5 are satisfied as of the date of the employee's death. If the requirements in paragraph (a) of D–5 are satisfied as of the date of the employee's death, distributions to the trust for purposes of section 401(a)(9) will be treated as being paid to the appropriate beneficiary of the trust with respect to the trust's interest in the employee's benefit. However, if a trust is named as a beneficiary of an employee and if, as of the date of the employee's death, the requirements of D–5 are not satisfied, the employee will be treated as not having a designated beneficiary under the plan. Consequently, distribution must be made in accordance with the five-year rule in section 401(a)(9)(B)(ii).

(b) The rules of D–5 and this D–6 also apply for purposes of applying the provisions of section 401(a)(9)(B)(iv)(II) if a trust is named as a beneficiary of the employee's surviving spouse.

E. Determination of Life Expectancy

E–1. Q. For required distributions under section 401(a)(9)(A), what age (or ages) is used to calculate the employee's life expectancy (or the joint life and last survivor expectancy of the employee and a designated beneficiary)?

A. (a) Except as otherwise provided in paragraph (b), for required distributions under section 401(a)(9)(A), life expectancies are calculated using the employee's (and the designated beneficiary's) attained age as of the employee's birthday (and the designated beneficiary's birthday) in the calendar year in which the employee attains age 70½. If life expectancy is being recalculated pursuant to E–6 through E–8, the life expectancy of the employee or spouse (or the joint life and last survivor expectancy of the employee and spouse) will be recalculated using the employee's (and the spouse's) attained age as of the employee's birthday (and the surviving spouse's birthday) in each succeeding calendar year in which recalculation is provided for purposes of calculating the minimum distribution for that distribution calendar year.

(b) If, pursuant to B–2(b), an employee's required beginning date is April 1 of the calendar year following the calendar year in which the employee retires or becomes a 5-percent owner, such calendar year is substituted in paragraph (a) for the calendar year in which the employee attains age 70½.

(c) If, in accordance with B–5(b), annuity payments commence to an employee before the employee's required beginning date, the calendar year in which the annuity payments commence is substituted in paragraph (a) for the calendar year in which the employee attains age 70½.

E–2. Q. In the case of any distribution under section 401(a)(9)(B) (iii) and (iv), what age is used to calculate the

designated beneficiary's life expectancy?

A. (a) In the case of any distribution under section 401(a)(9)(B) (iii) and (iv), the life expectancy of any designated beneficiary is calculated based on the beneficiary's attained age as of the beneficiary's birthday in the calendar year in which distributions are required to commence to such beneficiary in order to satisfy section 401(a)(9)(B) (iii) and (iv). For example, if an unmarried participant (A) dies at age 50 on January 31, 1987, A's designated beneficiary is A's brother (B), and B will receive A's interest over B's life expectancy, the date on which distributions are required to commence to B in order to satisfy section 401(a)(9)(B)(iii) is December 31, 1988 (see C–3). Therefore, B's life expectancy is calculated based on B's attained age as of B's birthday in calendar year 1988. This rule also applies to a designated beneficiary of a surviving spouse where such surviving spouse is treated as the employee for purposes of applying section 401(a)(9)(B)(iii). If the life expectancy of the surviving spouse is being recalculated pursuant to E–6 through E–8, the life expectancy of the surviving spouse will be recalculated using the surviving spouse's attained age as the surviving spouse's birthday in each succeeding calendar year in which recalculation is provided, for purposes of calculating the minimum distribution for that distribution calendar year.

(b) If distribution under section 401(a)(9)(B) (iii) and (iv) commences irrevocably (except for acceleration) over a period described in section 401(a)(9)(B)(iii)(II) in a calendar year prior to the calendar year in which distributions are required to commence and distribution is an annuity under which distributions are made in accordance with the provisions of F–3 (and if applicable F–4), the designated beneficiary's life expectancy (where applicable) is based on the designated beneficiary's attained age as of the designated beneficiary's birthday in the calendar year in which distribution commences.

(c) If a designated beneficiary of the employee, other than the employee's surviving spouse, dies after the employee but before the designated beneficiary's birthday in the calendar year in which life expectancy is determined under paragraphs (a) and (b), such beneficiary will be treated as being alive on such date for purposes of calculating the designated beneficiary's life expectancy. (See C–5 for the special rule which applies if the surviving spouse dies after the employee but before the date on which distributions have begun to the surviving spouse.)

E–3 & 4. Q. What life expectancies must be used for purposes of determining required distributions under section 401(a)(9)?

A. Life expectancies for purposes of determining required distributions under section 401(a)(9) must be computed by use of the expected return multiples in Tables V and VI of § 1.72–9.

E–5. Q. If an employee has more than one designated beneficiary or if a designated beneficiary is added or replaces another designated beneficiary after the date for determining the designated beneficiary, which designated beneficiary's life expectancy will be used to determine the distribution period?

A. (a) *General rule.* (1) Except as otherwise provided in paragraph (f), if more than one individual is designated as a beneficiary with respect to an employee as of the applicable date for determining the designated beneficiary, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the distribution period. However, except as otherwise provided in D–5, D–6, and paragraph (e)(1) of this E–5, if a person other than an individual is designated as a beneficiary, the employee will be treated as not having any designated beneficiaries for purposes of section 401(a)(9) even if there are also individuals designated as beneficiaries. The date for determining the designated beneficiary (under D–3 or D–4, whichever is applicable) is the applicable date. The period described in section 401(a)(9)(A)(ii) (for distributions commencing before the employee's death) or section 401(a)(9)(B)(iii) (for distributions over a life expectancy commencing after the employee's death), whichever is applicable, is the distribution period.

(2) See H–2 for special rules which apply if an employee's benefit under a plan is divided into separate accounts (or segregated shares in the case of a defined benefit plan) and the beneficiaries with respect to a separate account differ from the beneficiaries of another separate account.

(b) *Contingent beneficiary.* Except as provided in paragraph (e)(1), if a beneficiary's entitlement to an employee's benefit is contingent on an event other than the employee's death (e.g., death of another beneficiary), such contingent beneficiary is considered to be a designated beneficiary for purposes of determining which designated beneficiary has the shortest life expectancy under paragraph (a).

(c) *New beneficiary.* (1) Except as provided in paragraph (e)(2) (in the case of the death of a beneficiary), if, after the applicable date for determining the designated beneficiary, a new designated beneficiary with a life expectancy shorter than the life expectancy of the designated beneficiary whose life expectancy is being used to determined the distribution period is added or replaces a designated beneficiary, the new designated beneficiary is treated as the designated beneficiary for purposes of determining the distribution period. In such case, the new beneficiary's life expectancy will be used to calculate the distribution period in subsequent calendar years. In determining the beneficiary with the shorter life expectancy, the life expectancies will be calculated as of the applicable birthdays in the calendar year specified in and in the manner provided in E–1 through E–4. Consequently, the old distribution period must be replaced by a new distribution period. The new distribution period equals the period which would have been the remaining joint life and last survivor expectancy of the employee and the designated beneficiary if the new designated beneficiary had been designated as of the applicable date. If, instead, the new designated beneficiary has a life expectancy longer than the life expectancy of the designated beneficiary whose life expectancy is being used to determine the distribution period, the life expectancy of the old designated beneficiary will continue to be used for purposes of determining the distribution period even though such old designated beneficiary is no longer a beneficiary under the plan.

(2) If a new beneficiary who is not an individual is added or replaces a designated beneficiary after the applicable date, unless otherwise provided in D–5 and D–6, the employee will be treated as not having designated a beneficiary. Further, except as provided in paragraph (e)(2) in the case of the death of a designated beneficiary, if at any point in time after the applicable date there is no beneficiary designated with respect to the employee, the employee will also be treated as not having a designated beneficiary. In either case, the new distribution period described in subparagraph (1) will equal the period which would have been the employee's remaining life expectancy if no beneficiary had been designated as of the applicable date.

(3) Any adjustment described in this paragraph will only affect distributions for calendar years after the calendar

year in which the new designated beneficiary is added or replaces the prior beneficiary, or there is no beneficiary designated with respect to the employee.

(d) *Recalculation for spouse.* For purposes of determining the distribution period in accordance with paragraph (a) or (c)(1), if any designated beneficiary involved is the employee's spouse and the life expectancy of the spouse is being recalculated, the life expectancy of the spouse as recalculated will be compared in each calendar year to the remaining life expectancy of the other applicable designated beneficiary or beneficiaries, not recalculated, and the shortest life expectancy will be used for determining the minimum distribution required for that calendar year.

(e) *Death contingency.* (1) If a beneficiary's entitlement to an employee's benefit is contingent on the death of a prior beneficiary, such contingent beneficiary will not be considered a beneficiary for purposes of determining who is the designated beneficiary with the shortest life expectancy under paragraph (a) or whether a beneficiary who is not an individual is a beneficiary. This rule does not apply if the death occurs prior to the applicable date for determining the designated beneficiary.

(2) If the designated beneficiary whose life expectancy is being used to calculate the distribution period dies on or after the applicable date, such beneficiary's remaining life expectancy will be used to determine the distribution period whether or not a beneficiary with a shorter life expectancy receives the benefits. However, in accordance with E–8, if the designated beneficiary is the employee's spouse, the spouse's life expectancy is being recalculated, and the spouse dies, the spouse does not have any remaining life expectancy; therefore, in the calendar year following the spouse's death, the spouse's life expectancy will be reduced to zero.

(3) This paragraph is illustrated by the following example:

Example. The designated beneficiary of an unmarried participant (X) as of X's required beginning date on April 1, 1988, is X's sister (A), but X has specified that, in the event of A's death, X's brother (B) will become the beneficiary. A's life expectancy as of A's birthday in calendar year 1987 is 25 years. B's life expectancy as of B's birthday in calendar year 1987 is 10 years. On X's required beginning date, A is the designated beneficiary because B's entitlement to benefits is contingent on A's death. A dies on May 1, 1988. A's remaining life expectancy will continue to be used to determine the distribution period with respect to X for purposes of determining the minimum distribution for the 1988 distribution calendar year and each succeeding distribution calendar year. This is true even though, upon A's death, B will become X's beneficiary and B's life expectancy as of B's birthday in calendar year 1987 is shorter than A's life expectancy as of A's birthday in that calendar year. However, if B's entitlement was not contingent on A's death but was contingent for another reason, B would be the designated beneficiary for purposes of determining the period described in section 401(a)(9)(A)(ii), even during the period in which his entitlement is contingent, because B's life expectancy, as of B's birthday in calendar year 1987, is shorter than A's life expectancy, as of A's birthday in that calendar year.

(f) *Designations by beneficiaries.* If the plan provides (or allows the employee to specify) that, after the employee's death, any person or persons have the discretion to change the beneficiaries of the employee, then, for purposes of determining the distribution period for both distributions before and after the employee's death, the employee will be treated as not having designated a beneficiary. However, such discretion will not be found to exist merely because the employee's surviving spouse may designate a beneficiary for distributions pursuant to section 401(a)(9)(B)(iv)(II).

E–6. Q. After life expectancy has been determined as of the date provided in E–1 or E–2, may life expectancy be recalculated?

A. Pursuant to section 401(a)(9)(D), after life expectancy has been determined as of the date provided in E–1 and E–2, life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be recalculated in accordance with E–7 and E–8 but not more frequently than annually.

E–7. Q. How is it determined whether or not the life expectancies of the employee and the employee's spouse will be recalculated pursuant to section 401(a)(9)(D)?

A. (a) If the plan does not adopt an optional provision specifying whether life expectancies will be determined with or without regard to the permissive recalculation rule of section 401(a)(9)(D) and the employee or spouse has not made an election pursuant to paragraph (c), the life expectancy of the employee or spouse (or the joint life and last survivor expectancy of the employee and spouse) must be recalculated annually as provided in section 401(a)(9)(D) for purposes of determining all distributions required under section 401(a)(9).

(b) The plan may adopt a provision specifying whether life expectancies will be determined with or without regard to the permissive recalculation rule of section 401(a)(9)(D). The life expectancy of the employee may be recalculated even though the life expectancy of the spouse is not recalculated and, correspondingly, the life expectancy of the spouse may be recalculated even though the life expectancy of the employee is not recalculated.

(c) The plan may adopt a provision that permits the employee (or spouse, in the case of distributions described in section 401(a)(9)(B) (iii) and (iv)) to elect the applicability or inapplicability of section 401(a)(9)(D). If such election is permitted, the employee (or spouse) must elect whether or not life expectancy will be recalculated no later than the time of the first required distribution under section 401(a)(9). As of the date of the first required distribution under section 401(a)(9), a method (either recalculation of life expectancy or no recalculation of life expectancy) which is in effect with respect to an employee (or spouse) must be irrevocable with respect to the employee (or spouse) and must apply to all subsequent years. The plan may specify, pursuant to paragraph (b), whether or not life expectancy will be recalculated in the event that the employee (or spouse) fails to make the election. Absent such a plan provision, the life expectancy of the employee (and the spouse) must be recalculated annually pursuant to paragraph (a) in the event that the employee (or spouse) fails to make the election.

E–8. Q. How are life expectancies recalculated annually under section 401(a)(9)(D)?

A. (a) An employee's life expectancy (or the joint life and last survivor expectancy of the employee and spouse) is recalculated annually by redetermining the employee's life expectancy (or the joint life and last survivor expectancy of the employee and spouse) in each distribution calendar year using the employee's (and spouse's) attained age as of the employee's birthday (and the spouse's birthday) in that distribution calendar year. Upon the death of the employee (or the employee's spouse), the recalculated life expectancy of the employee (or the employee's spouse) will be reduced to zero in the calendar year following the calendar year of death. In any calendar year in which the last applicable life expectancy is reduced to zero, the plan must distribute the employee's entire remaining interest prior to the last day of such year in order to satisfy section 401(a)(9).

(b) If the designated beneficiary is not the employee's spouse (or if the spouse's

life expectancy is not being recalculated) and the life expectancy of the employee is being recalculated annually, the applicable life expectancy for determining the minimum distribution for each distribution calendar year will be determined by recalculating the employee's life expectancy but not recalculating the beneficiary's life expectancy. Such applicable life expectancy is the joint life and last survivor expectancy using the employee's attained age as of the employee's birthday in the distribution calendar year and an adjusted age of the designated beneficiary. The adjusted age of the designated beneficiary is determined as follows: First, the beneficiary's applicable life expectancy is calculated based on the beneficiary's attained age as of the beneficiary's birthday in the calendar year described in E–1, reduced by one for each calendar year which has elapsed since that calendar year. The age (rounded if necessary to the higher age) in Table V of § 1.72–9 is then located which corresponds to the designated beneficiary's applicable life expectancy. Such age is the adjusted age of the designated beneficiary. As provided in paragraph (a), upon the death of the employee, the life expectancy of the employee is reduced to zero in the calendar year following the calendar year of the employee's death. Thus, for determining the minimum distribution for such calendar year and subsequent calendar years, the applicable life expectancy is the applicable life expectancy of the designated beneficiary determined under this paragraph.

(c) This Question and Answer is illustrated by the following examples:

Example 1. (a) A participant in a qualified profit-sharing plan retires on January 1, 1987. The benefit for determining the 1987 calendar year minimum distribution (determined in accordance with F–5) is $100,000. As of the participant's birthday in calendar year 1987, the participant, who was born December 31, 1916 is age 71. The participant's spouse died some years earlier and the participant designates his brother as his sole beneficiary on his retirement date and his brother is still designated as his sole beneficiary as of April 1, 1988. As of his brother's birthday in calendar year 1987, his brother, who was born on July 2, 1920, is age 67. The plan does not provide that life expectancies will not be recalculated and does not permit employees to elect not to recalculate life expectancy. Thus, pursuant to E–7(a), the life expectancy of the participant will be recalculated.

(b) For calendar year 1987, the payment that is to be made pursuant to section 401(a)(9) is the benefit of $100,000 divided by the joint and last survivor life expectancy of the participant and his brother calculated using their ages as of their birthdays in calendar year 1987. Pursuant to Table VI of § 1.72–9, such joint life and last survivor expectancy is 21.7 years. The payment required for 1987 is therefore $4,608.30 ($100,000 divided by 21.7). $4,608.30 is distributed on April 1, 1988.

(c) The benefit for determining the 1988 minimum distribution (determined in accordance with F–5) before adjustment for the distribution on April 1, 1987 is $109,515.71. The amount of the minimum distribution for 1988 distributed on April 1, 1988 is then subtracted from that amount. (109,515.71 − 4,608.30 = 104,907.41.) Thus, $104,907.41 is the benefit to be used to determine the 1988 minimum distribution. The minimum payment for 1988 is determined by dividing the benefit of $104,907.41 by the recalculated joint life and last survivor expectancy of the participant and his brother. Such joint life and last survivor expectancy is recalculated as follows:

(1) Life expectancy of brother (using age as of birthday in calendar year 1987, from Table V of $1.72–9) = 18.4 years.

(2) Number of years elapsed since calendar year 1987 = 1 year.

(3) Remaining period of life expectancy of brother, (1)–(2) = 17.4 years.

(4) Age in Table V of $1.72–9 corresponding to life expectancy of 17.4 years (rounding to higher age) = 69.

(5) Age of participant (age determined as of birthday in calendar year 1988) = 72.

(6) Joint life and last survivor expectancy using the age in (4) and (5) from Table VI of $1.72–9 = 20.3.

The minimum payment for 1988 is therefore $5,167.85 ($104,907.41 divided by 20.3). This must be paid by December 31, 1988, to the participant.

(d) The benefit for determining the 1989 minimum distribution (determined in accordance with F–5) is $109,714.00. The minimum payment for 1989 is determined by dividing the benefit of $109,714.00 by the recalculated joint life and last survivor expectancy of the participant and his brother; such joint life and last survivor expectancy is recalculated as follows:

(1) Life expectancy of brother (using age as of birthday in calendar year 1987 from Table V of § 1.72–9) = 18.4 years.

(2) Number of years elapsed since 1987 = 2 years.

(3) Remaining period of life expectancy of brother (1)–(2) = 16.4 years

(4) Age in Table V of § 1.72–9 corresponding to life expectancy of 16.4 years (rounding to higher age) = 70.

(5) Age of participant (age determined using age as of birthday in calendar year 1989) = 73.

(6) Joint life and last survivor expectancy using the ages in (4) and (5) from Table VI of § 1.72–9 = 19.4 years.

The minimum payment for 1989 is therefore $5,655.36 ($109,714.00 divided by 19.4). This must be paid by December 31, 1989, to the participant.

Example 2. Assume the same facts as in Example 1, except that the participant dies in 1988 after the participant's required beginning date. The recalculation of life expectancy for the participant and the calculation of the minimum payment for 1988 will be the same as in Example 1. The participant's life expectancy is not reduced to zero until the calendar year following the year of death. The calculation of the minimum payment for 1989 is as follows:

(1) Life expectancy of brother (using age as of birthday in calendar year 1988 from Table V of § 1.79–9) = 18.4 years.

(2) Number of elapsed years since 1987 = 2 years.

(3) Remaining period, (1)–(2) = 16.4 years.

(4) Benefit for determining 1989 minimum distribution = $109,714.00.

(5) Minimum payment for 1989, (4) divided by (3) = $6,689.88.

Example 3. Assume the same facts in Example 1, except the brother (rather than the participant) dies in 1988 after the participant's required beginning date. The redetermination of life expectancy for the participant and the calculation of the minimum payment for 1988 and 1989 will be the same as in Example 1; the brother's life expectancy was fixed at the time benefits commenced and is used even after the brother dies.

F. Determination of the Amount Which Must be Distributed Each Year

F–1. Q. If an employee's benefit is in the form of an individual account, what is the amount required to be distributed for each calendar year in the case of either (1) distributions to an employee before death over a period described in section 401(a)(9)(A)(ii) or (2) to a beneficiary after the employee's death over a period described in section 401(a)(9)(B)(iii)?

A. (a) *General rule.* If an employee's benefit is in the form of an individual account and is to be distributed over (1) a period not extending beyond the life expectancy of the employee or the joint life and last survivor expectancy of the employee and the designated beneficiary (as described in section 401(a)(9)(A)(ii)) or (2) over a period not extending beyond the life expectancy of the designated beneficiary (as described in section 401(a)(9)(B)(iii)), the amount required to be distributed for each calendar year, beginning with the first calendar year for which distributions are required and then for each succeeding calendar year, must at least equal the quotient obtained by dividing the employee's benefit by the applicable life expectancy. The minimum amount which is required to be distributed on or before an employee's required beginning date is always determined under this F–1 and not section 401(a)(9)(A)(i). The amount described in section 401(a)(9)(A)(i) will always exceed the amount determined under this F–1. See paragraph (e) for purchases of annuity contracts. Also, see F–4A and Q&A–4 of § 1.401(a)(9)–2 for additional limits under the minimum distribution

incidental benefit requirement on the divisor which must be used to determine the minimum required distribution.

(b) *Distribution calendar year.* A calendar year for which a minimum distribution is required is a distribution calendar year. The first calendar year for which a distribution is required is an employee's first distribution calendar year. In the case of distributions required before death under section 401(a)(9)(A), if an employee's required beginning date is April 1 of the calendar year following the calendar year in which the employee attains age 70½, the employee's first distribution calendar year is the year the employee attains age 70½. However, if, pursuant to B–2(b), an employee's required beginning date is April 1 of the calendar year following the calendar year in which the employee retires or becomes a 5-percent owner, the calendar year in which the employee retires or becomes a 5-percent owner is the employee's first distribution calendar year. In the case of distributions to be made in accordance with the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv), the first distribution calendar year is the calendar year containing the date described in C–3(a) or C–3(b), whichever is applicable.

(c) *Time for distributions.* The distribution required to be made on or before the employee's required beginning date shall be treated as the distribution required for the employee's first distribution calendar year (as defined in paragraph (b)). The minimum distribution for other distribution calendar years, including the minimum distribution for the distribution calendar year in which the employee's required beginning date occurs, must be made on or before December 31 of that distribution calendar year.

(d) *Life expectancy.* The applicable life expectancy is the life expectancy (or joint life and last survivor expectancy) determined in accordance with E–1 through E–5, reduced by one for each calendar year which has elapsed since the date on which the life expectancy (or joint and last survivor expectancy) was calculated. However, pursuant to E–6 through E–8, life expectancy is recalculated, the applicable life expectancy will be the life expectancy as so recalculated.

(e) *Annuity contracts.* (1) Instead of satisfying F–1, the minimum distribution requirement may be satisfied by purchase with the employee's benefit of an annuity contract from an insurance company in accordance with F–4. Only a purchase of an annuity contract will insure that distribution can be made over the employee's or a beneficiary's life, or joint lives if applicable.

(2) If an annuity is purchased on or before the date when distributions are required to commence (the required beginning date, in the case of distributions before death, or the date determined under C–3, in the case of distributions after death), distribution under the annuity contract purchased will satisfy section 401(a)(9) if payments under the annuity contract are made in accordance with F–3.

(3) As explained in F–3A(b) with reference to distributions after death which must be made at least as rapidly as under the method used under section 401(a)(9)(A)(ii), unless life expectancy is being recalculated, if the annuity contract is purchased after the date on which distributions are required to commence, the annuity contract purchased may not be a life annuity and must be payable for a term certain not exceeding the remaining applicable life expectancy. The remaining applicable life expectancy is the applicable life expectancy described in paragraph (d) which would have been used, if the annuity contract had not been purchased, to determine the minimum distribution in accordance with paragraphs (a) through (c) for the first distribution calendar year in which the annuity contract is purchased.

(4) If the annuity contract is purchased after the date on which distributions are required to commence and life expectancy is being recalculated, distribution under the contract will satisfy section 401(a)(9) if the contract is a life annuity payable either (i) over the life (or lives) of the individual (or individuals) whose life expectancy is being recalculated (with or without a period certain that meets the requirements of subparagraph (3)) or (ii) for a term certain determined under subparagraph (3).

(5) If an annuity is purchased on or after the employee's required beginning date with a period certain feature, the period certain may not be lengthened after the date of the initial purchase by exchanging the annuity contract for an annuity contract with a longer period certain even if the original period certain was shorter than the maximum permitted.

F–2. Q. If an employee's benefit is in the form of an individual account and in any calendar year the amount distributed exceeds the minimum required, will credit be given in subsequent years for such excess distribution?

A. If, in any calendar year, the amount distributed exceeds the minimum required, no credit will be given in subsequent years for such excess distribution. However, in the case in which the employee's first distribution calendar year is the calendar year immediately preceding the employee's required beginning date, amounts distributed in the employee's first distribution calendar year will be credited toward the distribution required to be made on or before the employee's required beginning date for the employee's first distribution calendar year.

F–3. Q. How must annuity distributions under a defined benefit plan be paid in order to satisfy section 401(a)(9)?

A. (a) In order to satisfy section 401(a)(9), annuity distributions under a defined benefit plan must be paid in periodic payments made at intervals not longer than one year (payment intervals) for a life (or lives), or over a period certain not longer than a life expectancy (or joint life and last survivor expectancy) described in section 401(a)(9)(A)(ii) or section 401(a)(9)(B)(iii), whichever is applicable. The life expectancy (or joint life and last survivor expectancy) for purposes of determining the length of the period certain will be determined in accordance with E–1 through E–5, without recalculation of life expectancy. Once payments have commenced over a period certain, the period certain may not be lengthened even if the period certain is shorter than the maximum permitted. Payments must be either nonincreasing or increase only as follows:

(1) With any percentage increase in a specified and generally recognized cost-of-living index,

(2) To the extent of the reduction in the amount of the employee's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the period described in section 401(a)(9)(A)(ii) over which payments were being made dies and the payments continue otherwise in accordance with that section over the life of the employee,

(3) To provide cash refunds of employee contributions upon the employee's death, or

(4) Because of an increase in benefits under the plan. Also see F–4A for additional requirements for distributions in the form of an annuity which must be satisfied in order for the distribution to satisfy the minimum distribution incidental benefit. If distribution is permitted to be made over the lives of the employee and the designated

beneficiary, references to a life annuity herein include a joint and survivor annuity for purposes of section 401(a)(9).

(b) The annuity may be a life annuity with a period certain if the life (or lives, if applicable) and period certain each meet the requirements of paragraph (a).

(c) Distributions under a variable life annuity (or a life annuity with a period certain) will not be found to be increasing merely because the amount of the payments vary with the investment performance of the underlying assets. However, the Commissioner may prescribe additional requirements applicable to such variable life annuities.

(d)(1) If the annuity is a life annuity (or a life annuity with a period certain not exceeding 20 years), the following rule will apply. The first payment which must be made on or before the employee's required beginning date must be the payment which is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Similarly, in the case of distributions commencing after death in accordance with section 401(a)(9)(B) (iii) and (iv), the first payment that must be made on or before the date determined under C–3 (a) or (b) (whichever is applicable) must be the payment which is required for one payment interval. Payment intervals are the periods for which payments are received, e.g., bimonthly, monthly, semi-annually, or annually.

(2) If the annuity is a period certain annuity without a life contingency (or is a life annuity with a period certain exceeding 20 years), periodic payments for each distribution calendar year (as defined in F–1(b)) will be combined and treated as an annual amount. Such annual amount must meet the requirements of paragraph (a). The amount which is required to be distributed on or before the employee's required beginning date is the annual amount for the employee's first distribution calendar year (as defined in F–1(b)). The annual amount for other distribution calendar years, including the annual amount which is for the calendar year in which the employee's required beginning date occurs, must be distributed on or before December 31 of the calendar year for which the distribution is required. Similarly, in the case of such distributions commencing after death in accordance with section 401(a)(9)(B) (iii) and (iv), the amount which is required to be distributed on or before the date determined under C–3 (a) or (b), whichever is applicable, is the annual amount for the beneficiary's first distribution calendar year.

(3) This paragraph is illustrated by the following examples:

Example (1). A defined benefit plan (Plan X) provides monthly annuity payments of $500 for the life of unmarried participants with a 10 year period certain. An unmarried participant (A) in the plan (Z) attains age 70½ in 1990. In order to meet the requirements of this paragraph, the first payment which must be made on or before April 1, 1991 will be $500 and the payments must continue to be made in monthly payments of $500 thereafter for the life and 10 year certain period.

Example (2). The facts are the same as in *Example (1)*, except that the annuity is an optional form of payment elected by Z which provides for annuity payments of $700 a month for a 10 year period certain, without a life contingency. In such case, in order to meet the requirements of this paragraph, the monthly payments of $700 a month for each calendar year will be combined and treated as an annual amount of $8,400 a year. On or before April 1, 1987, Z must be paid $8,400, the annual amount for 1986. The annual amount for calendar year 1987 of $8,400 must be distributed on or before December 31, 1987.

(e) If distributions from a defined benefit plan are not in the form of an annuity, the employee's benefit will be treated as an individual account for purposes of determining the minimum distribution. See F–1 to determine the minimum distribution if distribution is being made over life expectancy.

F–3A. Q. How must distributions be made after the employee's death in order to be considered to satisfy the requirement that the employee's remaining interest be distributed at least as rapidly as under the distribution method being used under section 401(a)(9)(A)(ii) as of the date of the employee's death?

A: (a) *General rule.* After the employee's death, the requirement that the employee's remaining interest be distributed at least as rapidly as under the method of distribution being used under section 401(a)(9)(A)(ii) as of the date of the employee's death will be considered to be satisfied if the employee's remaining interest is distributed in accordance with either paragraph (b) or (c).

(b) Individual account—General rule. (1) Except as otherwise provided in subparagraph (2), if the employee's benefit is in the form of an individual account and, as of the date of the employee's death, distributions had commenced in accordance with F–1, the employee's remaining interest must continue to be distributed in accordance with F–1. If, before the employee's death, the divisor being used to determine the amount which was required to be distributed was the applicable divisor pursuant to Q&A–4 of § 1.401(a)(9)–2 rather than the applicable life expectancy determined under F–1, the required distributions after the employee's death may be determined without regard to § 1.401(a)(9)–2 using the applicable life expectancy determined under F–1 as the relevant divisor.

(2) *Purchased annuity contract.* (i) The employee's remaining interest will be treated as distributed in accordance with F–1 if it (A) is distributed under an immediate annuity contract that makes payments for a period certain that satisfy F–3 and (B) is purchased at any time with the employee's remaining benefits. The period over which the annuity contract makes payments may not exceed the applicable life expectancy that would have been used to determine the minimum distribution under F–1 for the distribution calendar year in which the annuity is purchased (purchase year). Further, in the purchase year, the amount distributed (when combined with amounts distributed in the purchase year before the immediate annuity contract is purchased) must equal (or exceed) the lesser of (C) the amount required to be distributed for such purchase year under F–1 or (D) the amount of the annual amount for the purchase year determined under F–3(d)(2). If the employee's life expectancy is being recalculated in the purchase year, the applicable life expectancy is the life expectancy (or joint life and last survivor expectancy) as recalculated, in accordance with E–8, after the employee's death.

(ii) If the designated beneficiary is the surviving spouse and the spouse's life expectancy is being recalculated, the annuity contract must satisfy (i) except that it may be a life annuity (with or without a period certain) payable over the remaining life of the surviving spouse.

(c) *Existing annuity.* If, as of the date of the employee's death, the employee's benefit was being distributed as an annuity in accordance with F–3 (and F–4, if applicable), annuity distribution of the employee's remaining benefit must continue to be made (except for acceleration) in accordance with F–3 (and F–4, if applicable) for the remainder of the period under the annuity as of the date of the employee's death.

(d) *Examples.* This F–3A is illustrated by the following examples:

Example (1). (a) An employee (X) was born February 1, 1919. His required beginning date is April 1, 1990. As permitted by the plan, he

elects not to recalculate life expectancy. Pursuant to E–1, life expectancy is determined using X's and X's designated beneficiary's attained ages as of their birthdays in calendar year 1989. The joint life and last survivor expectancy using such ages is 22 years under Table VI of § 1.72–9. X dies on January 1, 1991 after receiving his minimum distribution from X's account for calendar year 1989 on April 1, 1990, and his minimum distribution from X's account for calendar year 1990 on December 31, 1990. His remaining benefit, determined in accordance with F–5, for purposes of determining the minimum distribution for calendar year 1991 is $20,000. Distribution of his benefit, after his death, must continue to be distributed in accordance with F–1 over the remaining 20 years of the joint life and last survivor expectancy of X and X's designated beneficiary. The minimum distribution for calendar year 1989 is $1,000 ($20,000 divided by 20).

(b) Alternatively, in calendar year 1991, the plan may distribute to X's designated beneficiary an immediate annuity contract purchased with X's remaining benefit which makes payments for a term certain not exceeding 20 years provided that the payments satisfy F–3. Assuming no amount is distributed in 1991 prior to the distribution of the annuity contract, the amount paid under the annuity contract in 1991 must equal or exceed the lesser of (1) $1,000 or (2) the annual amount payable under the annuity contract. If instead of purchasing an annuity in 1991 the plan distributed the $1,000 minimum distribution for calendar year to X's designated beneficiary, the plan may still distribute an immediate annuity in calendar year 1992. However, in such case, any period certain under the annuity contract must be for no more than 19 years.

Example (2). The facts are the same as in *Example (1)* except that Plan B is a defined benefit plan. On April 1, 1990, annuity distributions commence to X under a life annuity for the life of X with a 10 year term certain. After X's death, the annuity distributions must continue to be made over the remaining years in the 10 year certain period even though the term certain originally could have been for 22 years and still have satisfied section 401(a)(9)(A)(ii).

F–4. Q. May distributions be made from an annuity contract which is purchased from an insurance company?

A. Yes. Distributions may be made from an annuity contract which is purchased by the plan from an insurance company with the employee's benefit and which makes payments that satisfy the provisions of F–3. However, if the payments actually made under the annuity contract do not meet the requirements of section 401(a)(9), the plan fails to satisfy section 401(a)(9).

F–4A. Q. Must distributions be made in accordance with the minimum distribution incidental benefit requirement under § 1.401(a)(9)–2 in order to satisfy section 401(a)(9)?

A. Yes. Section 401(a)(9)(G) provides that any distribution required under the incidental benefit requirements of section 401(a) shall be treated as a distribution required under section 401(a)(9). Consequently, in order to satisfy section 401(a)(9), distributions must be made in accordance with minimum distribution incidental benefit requirement (MDIB requirement) in § 1.401(a)(9)–2 in addition to the minimum distribution requirements in this § 1.401(a)(9)–1.

(b) This Question and Answer is illustrated by the following example.

Example

(a) Employee (X) is a participant in a qualified profitsharing plan (Plan A). Plan A provides that life expectancies are not recalculated. X, born December 1, 1918 is age 71 as of his birthday in the calendar year he attains age 70½. As of April 1, 1990, X's only beneficiary designated to the plan is his granddaughter (Y), born January 1, 1979. X's benefit under Plan A to be used to determine the minimum distribution for 1989 (determined under F–5) is $25,300.00.

(b) In order to satisfy the MDIB requirement in § 1.401(a)(9)–2 and the minimum distribution requirements in this § 1.401(a)(9)–1, distribution of X's entire interest must be distributed as follows. Distribution must commence not later than April 1, 1990 (X's required beginning date determined under B–2 and B–3). The distribution for 1989 (X's first distribution calendar year determined under F–1) must be calculated by dividing X's benefit of $25,300 by the lesser of (1) the applicable divisor from the table in Q&A–4 of § 1.401(a)(9)–2 and (2) the applicable life expectancy determined under F–1. The applicable divisor from the table in Q&A–4 of § 1.401(a)(9)–2 for an employee age 71 is 25.3. The applicable life expectancy is 71.8 (the joint life and last survivor expectancy from Table IV of § 1.72–9 of X and Y using their attained ages as of their birthdays in 1989 (the year X obtained age 70½) of 71 and 10). Thus, the minimum distribution for 1989 is $1,000 (25,300 divided by 25.3). $1,000 is distributed to X by Plan A on April 1, 1990.

(c) X's benefit to be used to determine the minimum distribution for 1990 (determined under F–5 including the adjustment for the distribution on April 1, 1990) is $26,803.00. The minimum distribution for 1990 must be made by December 31, 1990. The minimum distribution from 1990 is determined by dividing X's benefit of 26,803.00 by the lesser of (1) the applicable divisor from the table in Q&A–4 of § 1.401(a)(9)–2 for an employee age 72 and (2) the applicable life expectancy determined under F–1. The applicable divisor from the table in Q&A–4 of § 1.401(a)(9)–2 for an employee age 72 is 24.4. The applicable life is 70.8 (71.8 reduced by one, the number of years elapsed since the calendar year X attained age 70½). Thus the minimum distribution for 1990 is $1,098.48 (26,803.00 divided by 24.4).

F–5. Q. What benefit is used for determining the employee's minimum distribution in the case of an individual account?

A. (a) In the case of an individual account, the benefit used in determining the minimum distribution for a distribution calendar year is the account balance as of the last valuation date in the calendar year immediately preceding any distribution calendar year (valuation calendar year) adjusted as set forth below.

(b) The account balance is increased by the amount of any contributions or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date. Contributions include contributions made after the close of the valuation calendar year which are allocated as of dates in the valuation calendar year.

(c)(1) The account balance is decreased by distributions made in the valuation calendar year after the valuation date.

(2)(i) The following rule applies if any portion of the minimum distribution for the first distribution calendar year is made in the second distribution calendar year (i.e., generally, the distribution calendar year in which the required beginning date as defined in section 401(a)(9)(C) occurs). In such case, for purposes of determining the account balance to be used for determining the minimum distribution for the second distribution calendar year, distributions described in paragraph (c)(1) shall include an additional amount. This additional amount is equal to the amount of any distribution made in the second distribution calendar year on or before the required beginning date that is not in excess (when added to the amounts distributed in the first calendar year) of the amount required to meet the minimum distribution for the first distribution calendar year.

(ii) This paragraph (c)(2) is illustrated by the following example:

Example. (a) Employee (X), born October 1, 1918, is a participant in a qualified defined contribution plan (Plan Z). X attains age 70½ in calendar year 1989. X's required beginning date is April 1, 1990. As of the last valuation date under Plan Z in calendar year 1988, which was on December 31, 1988, the value of X's account balance was $24,000. No contributions are made or amounts forfeited after such date which are allocated in calendar year 1988. No rollover amounts are received after such date by Plan Z on X's behalf which were distributed by a qualified plan or IRA in calendar years 1988, 1989, or 1990. The joint life and last survivor expectancy of X and X's designated beneficiary is 24 years. The required minimum distribution for calendar year 1989 is $1,000 ($24,000 divided by 24). That amount is distributed to X on April 1, 1990. On the same date, X elects not to recalculate life expectancy, as permitted by the plan.

(b) The value of X's account balance as of December 31, 1989 (the last valuation date under Plan Z in calendar year 1989) is $26,400. No contributions are made or amounts forfeited after such date which are allocated in calendar year 1989. In order to determine the benefit to be used in calculating the minimum distribution for calendar year 1990, the account balance of $26,400 will be reduced by $1,000, the amount of the minimum distribution for calendar year 1989 made on April 1, 1990. Consequently, the benefit for purposes of determining the minimum distribution for calendar year 1990 is $25,400.

(c) If, instead of $1,000 being distributed to X, $20,000 is distributed, the account balance of $26,400 would still be reduced by $1,000 in order to determine the benefit to be used in calculating the minimum distribution for calendar year 1990. The amount of the distribution made on April 1, 1990, in order to meet the minimum distribution for 1989 would still be $1,000. The remaining $19,000 ($20,000−$1,000) of the distribution is not the minimum distribution for 1989. Instead, the remaining $19,000 of the distribution satisfies the minimum distribution requirement with respect to X for calendar year 1990. The amount which is required to be distributed for calendar year 1990 is $1,104.35 ($25,400 divided by 23). Consequently, no additional amount is required to be distributed to X in 1990 because $19,000 exceeds $1,105.26. However, pursuant to F–2, the remaining $17,895.65 ($19,000−$1,104.35) may not be used to satisfy the minimum distribution requirements for calendar year 1991 or any subsequent calendar years.

(d) If an amount is distributed by one plan and rolled over to another plan (receiving plan), G–2 provides additional rules for determining the benefit and minimum distribution under the receiving plan. If an amount is transferred from one plan (transferor plan) to another plan (transferee plan), G–3 and G–4 provide additional rules for determining the minimum distribution and the benefit under both the transferor and transferee plans.

F–6. Q. If a portion of an employee's benefit is not vested as of the employee's required beginning date, how is the determination of the minimum required distribution affected?

A. (a) If the employee's benefit is in the form of an individual account, the benefit used to determine the minimum distribution required for any distribution calendar year will be determined in accordance with F–5 without regard to whether or not any portion of the employee's benefit is not vested. If any portion of the employee's benefit is not vested, distributions will be treated as being paid from the vested portion of the benefit first. If, as of the end of a distribution calendar year (or as of the employee's required beginning date, in the case of the employee's first distribution calendar year), the total amount of the employee's vested benefit is less than the minimum distribution required for the calendar year, only the vested portion of the employee's benefit is required to be distributed by the end of the calendar year (or, if applicable, by the employee's required beginning date). Further, if no portion of the employee's benefit is vested as of that date, no distribution is required as of that date. However, in the calendar year when an amount becomes vested, the amount required to be distributed in such calendar year will include the additional amount. Such additional amount will equal the lesser of (1) the vested portion of the employee's benefit, and (2) the sum of amounts not distributed in prior calendar years because the employee's vested benefit was less than the minimum required distribution. In such case, an adjustment for the additional amount distributed which corresponds to the adjustment described in F–5(c)(2) will be made to the benefit used to determine the minimum distribution for that calendar year.

(b) In the case of annuity distributions from a defined benefit plan, if any portion of the employee's benefit is not vested as of December 31 of a distribution calendar year (or as of the employee's required beginning date in the case of the employee's first distribution calendar year), the portion which is not vested as of such date will be treated as not having accrued for purposes of determining the minimum distribution for that distribution calendar year. When an additional portion of the employee's benefit becomes vested, such portion will be treated as an additional accrual. See F–7 for the rules for distributing benefits which accrue under a defined benefit plan after the employee's required beginning date.

F–7. Q. In the case of annuity distributions under a defined benefit plan, how must additional benefits which accrue after the employee's required beginning date be distributed in order to satisfy section 401(a)(9)?

A. In the case of annuity distributions under a defined benefit plan, if any additional benefits accrue after the employee's required beginning date, distribution of such amount as a separate identifiable component must commence in accordance with F–3 beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

G. Rollovers and Transfers

G–1. Q. If an amount is distributed by one plan (distributing plan) and is rolled over to another plan, is the benefit or the minimum distribution under the distributing plan affected by the rollover?

A. No. If an amount is distributed by one plan and is rolled over to another plan, the amount distributed is still treated as a distribution by the distributing plan, notwithstanding the rollover.

G–1A. Q. If the amount is distributed by a plan in a distribution calendar year of that plan and rolled over to another plan, what amount will be treated as a minimum distribution required under section 401(a)(9) which may not be rolled over pursuant to section 402(a)(5)(G)?

A. (a) Except as otherwise provided in paragraphs (b) and (c), all amounts distributed in a distribution calendar year will be treated for purposes of section 402(a)(5)(G) as being required under section 401(a)(9) until the total amount distributed in such calendar year exceeds the total amount which is required to be distributed for such distribution calendar year in order to satisfy section 401(a)(9).

(b) In the case of any distribution in an employee's second distribution calendar year, the amounts distributed in such calendar year which will be treated for purposes of section 402(a)(5)(G) as being required under section 401(a)(9) will include the sum of (1) the amount required to be distributed for the second distribution calendar year and (2) the amount required to be distributed for the employee's first distribution calendar year (to the extent such amount is not distributed in the first distribution calendar year).

(c) If in any calendar year the minimum amount required to be distributed under section 401(a)(9) is not distributed, such amount will be treated as an amount which is required to be distributed in the next calendar year for purposes of section 402(a)(5)(G).

(d) If the employee's entire benefit is distributed in the employee's first and second distribution calendar year but before the employee's required beginning date, the amount distributed which will be treated as an amount which is required to be distributed under section 401(a)(9) for purposes of section 402(a)(5)(G) will be determined using the designated beneficiary of the employee, if any, under the plan (or individual retirement plan) receiving the rollover contribution.

G–1B. What are the tax consequences under section 402(a) and 408(d) to an employee who rolls over an amount which is required under section 401(a)(9)?

A. The tax consequences under section 402(a) and 408(d) to an employee who rolls over an amount which is required to be distributed under section 401(a)(9) are as follows:

(a) The amount which is required to be distributed under section 401(a)(9) is taxable under section 72 in the taxable year in which distributed without regard to the rollover.

(b) If the amount which is required to be distributed under section 401(a)(9) is contributed to an individual retirement plan as a rollover contribution, such amount will be treated as a contribution to an individual retirement plan which is not a rollover contribution and thus will be an excess contribution for purposes of section 4973 if the amount is not deductible under section 219 or may not be treated as a nondeductible contribution under section 408(o). Of course, if the amount is an excess contribution, it may be withdrawn with earnings from the account before the due date of the employee's return pursuant to section 408(d)(4) in order to avoid imposition of the excise tax under section 4973.

G–2. Q. If an amount is distributed by one plan (distributing plan) and is rolled over to another plan (receiving plan), how are the benefit and the minimum distribution under the receiving plan affected?

A. (a) Except as otherwise provided in paragraph (b), if an amount is distributed by one plan (distributing plan) and is rolled over to another plan (receiving plan), the benefit of the employee under the receiving plan is increased by the amount rolled over. However, the distribution has no impact on the minimum distribution required to be made by the receiving plan for the calendar year in which the rollover is received. But, if a minimum distribution is required to be made by the receiving plan for the following calendar year, the rollover amount must be considered to be part of the employee's benefit under the receiving plan. Consequently, for purposes of determining any minimum distribution for the calendar year immediately following the calendar year in which the amount rolled over is received by the receiving plan, in the case in which the amount rolled over is received after the last valuation date in the calendar year under the receiving plan, the benefit of the employee as of such valuation date, adjusted in accordance with F–5, will be increased by the rollover amount valued as of the date of receipt. For purposes of calculating the benefit under the receiving plan pursuant to the preceding sentence, if the amount rolled over is received by the receiving plan in a different calendar year from the calendar year in which it is distributed by the distributing plan, the amount rolled over is deemed to have been received by the receiving plan in the calendar year in which it was distributed by the distributing plan.

(b) If an amount is distributed by the distributing plan after the employee's required beginning date under both the distributing plan and the receiving plan, and the designated beneficiary of the employee under the receiving plan is a designated beneficiary with a life expectancy that is longer than the life expectancy of the designated beneficiary under the distributing plan, the following rule will apply. In such case, the receiving plan must separately account for the amount rolled over and treat it as a separate benefit. It must then begin distribution of such separate benefit in the calendar year following the calendar year in which the amount rolled over was distributed by the distributing plan. The separate benefit attributable to the rollover amount must be distributed over a period not exceeding the period (including any adjustments for recalculation under section 401(a)(9)(D), if applicable) used by the distributing plan to determine the employee's minimum distribution with respect to the benefit attributable to the amount rolled over. For purposes of determining the life expectancies or lives used to determine the minimum distribution under the receiving plan, the designated beneficiary under the distributing plan will be the designated beneficiary under the receiving plan (with respect to the benefit attributable to the amount rolled over). If such beneficiary is changed under the receiving plan to a different beneficiary from the designated beneficiary under the distributing plan, or a beneficiary is added who was not a beneficiary under the distributing plan, the rules in E–5 applicable to changes in beneficiaries will be used to determine the period over which distributions must be made by the receiving plan.

G–3. Q. In the case of a transfer of an amount of an employee's benefit from one plan (transferor plan) to another plan (transferee plan), are there any special rules for satisfying the minimum distribution requirement or determining the employee's benefit under the transferor plan?

A. (a) In the case of a transfer of an amount of an employee's benefit from one plan to another, the transfer is not treated as a distribution by the transferor plan for purposes of section 401(a)(9). Instead, the benefit of the employee under the transferor plan is decreased by the amount transferred. However, if any portion of an employee's benefit is transferred in a distribution calendar year with respect to that employee, in order to satisfy section 401(a)(9), the transferor plan must determine the amount of the minimum distribution with respect to that employee for the calendar year of the transfer using the employee's benefit under the transferor plan before the transfer. Additionally, if any portion of an employee's benefit is transferred in the employee's second distribution calendar year but on or before the employee's required beginning date, in order to satisfy section 401(a)(9), the transferor plan must determine the amount of the minimum distribution requirement for the employee's first distribution calendar year based on the employee's benefit under the transferor plan before the transfer. The transferor plan may satisfy the minimum distribution requirement for the calendar year of the transfer (and the prior year if applicable) by segregating the amount which must be distributed from the employee's benefit and not transferring that amount. Such amount may be retained by the transferor plan and distributed on or before the date required or paid to an escrow account which in turn distributes such amount on or before the date required.

(b) For purposes of determining any minimum distribution for the calendar year immediately following the calendar year in which the transfer occurs, in the case of a transfer after the last valuation date for the calendar year of the transfer under the transferor plan, the benefit of the employee as of such valuation date, adjusted in accordance with F–5, will be decreased by the amount transferred valued as of the date transferred.

G–3A. Q. What are the excise tax consequences for an employee (or other distributee) if, before transferring a portion of an employee's benefit in a distribution calendar year, the transferor plan does not satisfy the minimum distribution requirement for the calendar year of the transfer (and, if applicable, the prior calendar year)?

A. If the transferor plan does not satisfy the minimum distribution for the calendar year of transfer (and, if applicable, the prior calendar year) in accordance with G–3, the amount required to be distributed to satisfy the minimum distribution requirement for the calendar year of the transfer (and, if applicable, the prior calendar year) will be treated for purposes of section 4974 as a minimum distribution that was not distributed. Consequently, the payee with respect to such amount will be

subject to the excise tax imposed under section 4974.

G–4. Q. If an amount of an employee's benefit is transferred from one plan (transferor plan) to another plan (transferee plan), how are the benefit and the minimum distribution under the transferee plan affected?

A. (a) Except as otherwise provided in paragraph (b), in the case of a transfer from one plan (transferor plan) to another (transferee plan), the general rule is that the benefit of the employee under the transferee plan is increased by the amount transferred. The transfer has no impact on the minimum distribution required to be made by the transferee plan in the calendar year in which the transfer is received. However, if a minimum distribution is required from the transferee plan for the following calendar year, the transferred amount must be considered to be part of the employee's benefit under the transferee plan. Consequently, for purposes of determining any minimum distribution for the calendar year immediately following the calendar year in which the transfer occurs, in the case of a transfer after the last valuation date of the transferee plan in the transfer calendar year, the benefit of the employee under the receiving plan valued as of such valuation date, adjusted in accordance with F–5, will be increased by the amount transferred valued as of the date transferred.

(b) If an amount is transferred after the employee's required beginning date under both the transferor plan and the transferee plan, and the designated beneficiary of the employee under the transferee plan is a designated beneficiary with a life expectancy that is longer than the life expectancy of the designated beneficiary under the transferor plan, the following rule will apply. The transferee plan must separately account for the amount rolled over and treat it as a separate benefit. The transferee plan must then begin distribution of such separate benefit in the calendar year following the calendar year in which the amount was transferred. This benefit attributable to the transferred amount must be distributed over a period not exceeding the period (including any adjustments for recalculation under section 401(a)(9)(D), if applicable) used by the transferor plan to determine the employee's minimum distribution with respect to the benefit attributable to the amount transferred. For purposes of determining the life expectancies or lives used to determine the minimum distribution under the transferee plan, the designated beneficiary under the transferor plan will be the designated beneficiary under the transferee plan (with respect to the benefit attributable to the amount transferred). If such beneficiary is changed under the transferee plan to a different beneficiary from the designated beneficiary under the transferor plan or a beneficiary is added who was not a beneficiary under the transferor plan, the rules in E–5, applicable to changes in beneficiaries, will be used to determine the period over which distributions must be made by the transferee plan.

G–5 Q. How are a spinoff, merger or consolidation (as defined in § 1.414(l)–1) treated for purposes of determining an employee's benefit and minimum distribution under section 401(a)(9)?

A. For purposes of determining an employee's benefit and minimum distribution under section 401(a)(9), a spinoff, a merger, or a consolidation (as defined in § 1.414(l)) will be treated as a transfer of the benefits of the employees involved. Consequently, the benefit and minimum distribution of each employee involved under the transferor and transferee plans will be determined in accordance with G–3 and G–4.

H. Special Rules

H–1. Q. What distribution rules apply if an employee is a participant in more than one plan?

A. If an employee is a participant in more than one plan, the plans in which the employee participates may not be aggregated for purposes of testing whether or not the distribution requirements of section 401(a)(9) are met. The distribution of the benefit of the employee under each plan must separately meet the requirements of section 401(a)(9).

H–2. Q. If an employee's benefit under a plan is divided into separate accounts (or segregated shares in the case of a defined benefit plan), do the distribution rules in section 401(a)(9) and these regulations apply separately to each separate account (or segregated share)?

A. (a) Except as otherwise provided in paragraphs (b) and (c), if an employee's benefit under a plan is divided into separate accounts (or segregated shares in the case of a defined benefit plan), the separate accounts (or segregated shares) will be aggregated for purposes of satisfying the rules in section 401(a)(9). Thus, except as otherwise provided in paragraphs (b) and (c), all separate accounts, including a separate account for nondeductible employee contributions (under section 72(e)(9)) or for qualified voluntary employee contributions (as defined in section 219(e)(2)), will be aggregated for purposes of section 401(a)(9).

(b) If, as of an employee's required beginning date or, in the case of distributions under section 401(a)(9)(B)(ii) or (iii) and (iv), as of the employee's (or spouse's where applicable) date of death, the beneficiaries with respect to a separate account (or segregated share in the case of a defined benefit plan) differ from the beneficiaries with respect to the other separate accounts (or segregate shares) of the employee, such separate account (or segregated share) need not be aggregated with other separate accounts (or segregated shares) in order to determine whether the distributions from such separate account (or segregated share) satisfy section 401(a)(9). Instead, the rules in section 401(a)(9) may separately apply to such separate account (or segregated share). Thus, for example, if the employee designated a different beneficiary for each separate account (or segregated share), each separate account (or segregated share) may be distributed over the joint life (or joint life and last survivor expectancy) of the employee and the designated beneficiary (or the life or life expectancy of the designated beneficiary in the case of any distribution described in section 401(a)(9)(B)(iii) and (iv)) for that separate account (or segregated share). Further, for example, if, in the case of a distribution described in section 401(a)(9)(B)(iii) and (iv), the only designated beneficiary of a separate account (or segregated share) is the employee's surviving spouse, and beneficiaries other than the surviving spouse are designated with respect to the other separate accounts of the employee, distribution of the spouse's separate account (or segregated share) need not commence until the date determined under the first sentence in C–3(b) even if distribution of the other separate accounts (or segregated shares) must commence at an earlier date. Also, for example, in the case of a distribution after the death of an employee to which section 401(a)(9)(B)(i) does not apply, distribution from a separate account (or segregated share) of an employee may be made over a beneficiary's life expectancy in accordance with section 401(a)(9)(B)(iii) and (iv) even through distributions from other separate accounts (or segregated shares) with different beneficiaries are being made in accordance with the five-year rule in section 401(a)(9)(B)(ii).

(c) See G–2 through G–4 for special rules which apply to the distribution from separate accounts maintained because of a transfer or rollover.

H–2A. What is a separate account or segregated share for purposes of section 401(a)(9)?

A. (a) For purposes of section 401(a)(9) a separate account in an individual account is a portion of an employee's benefit determined by an acceptable separate accounting including allocating investment gains and losses, and contributions and forfeitures, on a pro rata basis in a reasonable and consistent matter between such portion and any other benefits. Further, the amounts of each such portion of the benefit will be separately determined for purposes of determining the amount of the minimum distribution in accordance with F–5.

(b) A benefit in a defined benefit plan is separated into segregated shares if it consists of separate identifiable components which may be separately distributed.

H–3. Q. Must a distribution that is required by section 401(a)(9) to be made by the required beginning date to the participant or that is required by section 401(a)(9)(B)(ii) to be made by the required time to a designated beneficiary who is a surviving spouse be made notwithstanding the failure of the participant, or spouse where applicable, to consent to a distribution while a benefit is immediately distributable?

A. Yes. Section 411(a)(11) and section 417(e) (see § 1.411(a)(11)–1T(c)(2) and § 1.417(e)–1T(c)) require participant and spousal consent to certain distributions of plan benefits while such benefits are immediately distributable. If a participant's normal retirement age is later than the required beginning date for the commencement of distributions under section 401(a)(9) and, therefore, benefits are still immediately distributable, the plan must, nevertheless, distribute plan benefits to the participant (or where applicable, to the spouse) in a manner that satisfies the requirements of section 401(a)(9). Section 401(a)(9) must be satisfied even though the participant (or spouse, where applicable) fails to consent to the distribution. In such a case, the plan may distribute in the form of a qualified joint and survivor annuity (QJSA) or in the form of a qualified preretirement survivor annuity (QPSA) and the consent requirements of sections 411(a)(11) and 417(e) are deemed to be satisfied if the plan has made reasonable efforts to obtain consent from the participant (or spouse if applicable) and if the distribution otherwise meets the requirements of section 417. If, because of section 401(a)(11)(B), the plan is not required to distribute in the form of a QJSA to a participant or a QPSA to a surviving spouse, the plan may distribute the minimum amount required at the time required to satisfy section 401(a)(9) and the consent requirements of sections 411(a)(11) and 417(e) are deemed to be satisfied if the plan has made reasonable efforts to obtain consent from the participant (or spouse if applicable) and if the distribution otherwise meets the requirements of section 417.

H–3A. Who is an employee's spouse or surviving spouse for purposes of section 401(a)(9)?

A. Except as otherwise provided in H–4(a) in the case of distributions of a portion of an employee's benefit payable to a former spouse of an employee pursuant to a qualified domestic relations order, for purposes of section 401(a)(9), an individual is a spouse or surviving spouse of an employee if such individual is treated as the employee's spouse under applicable state law as of the following dates, whichever is applicable. Sections 401(a)(11)(D) and 417(d) do not apply for purposes of determining who is an employee's spouse or surviving spouse under section 401(a)(9). In the case of distributions before the death of an employee under section 401(a)(9)(A)(ii), for purposes of determining whether the designated beneficiary's life expectancy may be recalculated, the spouse of the employee is determined as of the employee's required beginning date. In the case of distributions after the death of an employee, for purposes of determining whether, under the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv), the provisions of clause (iv) apply, the spouse of the employee is determined as of the date of death of the employee.

H–4. Q. In order to satisfy section 401(a)(9), are there any special rules which apply to the distribution of all or a portion of an employee's benefit payable to an alternate payee pursuant to a qualified domestic relations order as defined in section 414(p) (QDRO)?

A. (a) A former spouse to whom all or a portion of the employee's benefit is payable pursuant to a QDRO will be treated as a spouse (including a surviving spouse) of the employee for purposes of section 401(a)(9).

(b)(1) If a QDRO provides that an employee's benefit is to be divided and a portion is to be allocated to an alternate payee, such portion will be treated as a separate account (or segregated share) which separately must satisfy the requirements of section 401(a)(9) and may not be aggregated with other separate accounts (or segregated shares) of the employee for purposes of satisfying section 401(a)(9). Except as otherwise provided in subparagraph (2), distribution of such separate account allocated to an alternate payee pursuant to a QDRO must be made in accordance with section 401(a)(9). For example, in general, distribution of such account will satisfy section 401(a)(9)(A) if such account will be distributed, beginning not later than the employee's required beginning date over the life of the employee or over the lives of the employee and the alternate payee (or over a period not extending beyond the life expectancy of such employee or the joint life and last survivor expectancy of such employee and alternate payee). Distribution of the separate account will not satisfy section 401(a)(9)(A)(ii) if it is distributed over the joint lives of the alternate payee and a designated beneficiary (other than the employee). The determination of whether distribution from such account after the death of the employee to the alternate payee will be made in accordance with section 401(a)(9)(B)(i) or section 401(a)(9)(B) (ii) or (iii) and (iv) will depend on whether distributions have begun as determined under B–5 (which provides, in general, that distributions are not treated as having begun until the employee's required beginning date even though payments may actually have begun before that date). Further, for example, if the alternate payee dies before the date on which the designated beneficiary is determined under D–3 or D–4 and distribution of the separate account allocated to the alternate payee pursuant to the QDRO is to be made to the alternate payee's beneficiary, such beneficiary may be treated as a designated beneficiary for purposes of determining the minimum distribution required from such account if the beneficiary of the alternate payee is an individual and if such beneficiary is a beneficiary under the plan or specified to or in the plan. (Specification in the QDRO will also be treated as specification to the plan.)

(2) Distribution of the separate account allocated to an alternative payee pursuant to a QDRO will satisfy section 401(a)(9)(A) even though distributions are made to the alternate payee rather than the employee if the distribution otherwise meets the requirements of section 401(a)(9)(A). Distribution of the separate account allocated to an alternate payee pursuant to a QDRO will also meet the requirements of section 401(a)(9)(A)(ii) if such account is to be distributed, beginning not later than the employee's required beginning date, over the life of the alternate payee (or over a period not

extending beyond the life expectancy of the alternative payee). If the plan permits the employee to elect not to recalculate life expectancies (life expectancies of the employee and the employee's spouse) pursuant to E–7(c), such election is to be made only by the alternate payee for purposes of distributing the separate account allocated to such alternative payee pursuant to the QDRO. Also, if the plan permits the employee to elect whether distribution upon the death of the employee will be made in accordance with the five-year rule in section 401(a)(9)(B)(ii) or the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv) pursuant to C–4(c), such election is to be made only by the alternate payee for purposes of distributing the separate account allocated to the alternate payee pursuant to the QDRO. If the alternate payee dies after distribution of the separate account allocated to the alternate payee pursuant to a QDRO has begun (determined under B–5), distribution of the remaining portion of that portion of the benefit allocated to the alternate payee must be made at least as rapidly (determined under B–6) as under the method of distributions being used as of the date of the alternate payee's death. As provided in § 1.401(a)(9)–2, distribution of the separate account allocated to an alternate payee pursuant to a QDRO need not satisfy the minimum distribution incidental benefit rule as long as the distribution of such account otherwise satisfies section 401(a)(9).

(c) If a QDRO does not provide that an employee's benefit is to be divided but merely provides that a portion of an employee's benefit (otherwise payable to the employee) is to be paid to an alternate payee, such portion will not be treated as a separate account (or segregated share) of the employee. Instead, such portion will be aggregated with any amount distributed to the employee and will be treated as having been distributed to the employee for purposes of determining whether the minimum distribution requirement has been satisfied with respect to that employee.

H–5. Q. Will a plan fail to qualify as a pension plan within the meaning of section 401(a), solely because the plan permits distributions to commence to an employee on or after April 1 of the calendar year following the calendar year in which the employee attains age 70½ even though the employee has not retired or attained the normal retirement age under the plan as of the date on which such distributions commence?

A. No. A plan will not fail to qualify as a pension plan within the meaning of section 401(a), solely because the plan permits distributions to commence to an employee on or after April 1 of the calendar year following the calendar year in which the employee attains age 70½ even though the employee has not retired or attained the normal retirement age under the plan as of the date on which such distributions commence. This rule applies without regard to whether or not the employee is a 5-percent owner with respect to the plan year ending in the calendar year in which distributions commence.

H–6. Q. Is the distribution of an annuity contract a distribution for purposes of section 401(a)(9)?

A. No. The distribution of an annuity contract is not a distribution for purposes of section 401(a)(9).

H–7. Will a payment by a plan after the death of an employee fail to be treated as a distribution for purposes of section 401(a)(9) solely because it is made to an estate or a trust?

A. A payment by a plan after the death of an employee will not fail to be treated as a distribution for purposes of section 401(a)(9) solely because it is made to an estate or a trust. As a result, the estate or trust which receives a payment from a plan after the death of an employee need not distribute the amount of such payment to the beneficiaries of the estate or trust in accordance with section 401(a)(9)(B). However, pursuant to D–2A, distribution to the estate must satisfy the five-year rule in section 401(a)(9)(B)(iii) if the distribution to the employee had not begun (as defined in B–5) as of the employee's date of death, and pursuant to D–2A, an estate may not be a designated beneficiary. See D–5 and D–6 for provisions under which beneficiaries of a trust with respect to the trust's interest in an employee's benefit are treated as having been designated as beneficiaries of the employee under the plan.

H–8. Will a plan fail to satisfy section 411 if the plan is amended to eliminate benefit options that do not satisfy section 401(a)(9)?

A. Nothing in section 401(a)(9) permits a plan to eliminate for all participants a benefit option that could not otherwise be eliminated pursuant to section 411(d)(6). However, a plan must provide that, notwithstanding any other plan provisions, it will not distribute benefits under any option that does not satisfy section 401(a)(9). See A–3. Thus, the plan, notwithstanding section 411(d)(6), must prevent participants from electing benefit options that do not satisfy section 401(a)(9).

H–9. Does section 401(a)(4) prevent a plan from distributing benefits in any manner otherwise permitted under section 401(a)(9)?

A. A plan may not distribute benefits to any employee in any manner which results in discrimination prohibited under section 401(a)(4) even if the distribution otherwise satisfies section 401(a)(9).

I. Transition Rules

I–1. Q. Are there any special distribution rules for calendar years before 1988?

A. Yes. Minimum distributions required for calendar years 1985 and 1986 are not required to be made until December 31, 1987. Further, there are special rules for determining the amount that is required to be distributed for 1985 and 1986 (and with respect to certain employees for 1987). There are also special rules for determining the first distribution calendar year with respect to certain employees. In the case of an employee whose required beginning date is on or before April 1, 1987 and who is alive on December 31, 1987, see I–2 through I–5. In the case of an employee who dies before January 1, 1988, see I–6 through I–13. See I–14 through I–16 for other special transition rules.

I–2. Q. If an employee's required beginning date (see Q&A B–2 & 3) is on or before April 1, 1987 and such employee is alive on December 31, 1987, what is the first calendar year for which a distribution is required?

A. Except as provided in I–4 (special rule for certain life annuities), the following rules apply for purposes of determining the first distribution calendar year of an employee with a required beginning date on or before April 1, 1987 if such employee is alive on December 31, 1987:

(a) *Pre-1987 required beginning date.* If an employee's required beginning date was on or before April 1, 1986, the first distribution calendar year is 1985. However, under these transition rules, the minimum distribution for 1985 is not required to be made by April 1, 1986, and the minimum distribution for 1986 is not required to be made by December 31, 1986. Instead, the minimum distributions for calendar years 1985 and 1986 are required to be made by December 31, 1987. Thus, the minimum distributions for 1985, 1986, and 1987 must be made by December 31, 1987.

(b) *1987 required beginning date.* If an employee's required beginning date is April 1, 1987, the first distribution

calendar year is 1986. However, under these transition rules, the minimum distribution for 1986 is not required to be made by April 1, 1987. Instead, the minimum distribution for 1986 is required to be made by December 31, 1987. Thus, the minimum distribution for 1986 and 1987 must be made by December 31, 1987.

I–3. Q. If (1) the employee is alive on December 31, 1987 and (2) the employee's first distribution calendar year is 1985 or 1986 (as determined under I–2), how is the amount of the minimum required distribution determined for calendar years 1985, 1986, and 1987?

A. (a) *In general.* If (1) the employee is alive on December 31, 1987 and (2) the employee's first distribution calendar year is 1985 or 1986 (as determined under I–2), the amount of the minimum distribution for calendar years 1985, 1986, and 1987 is to be determined under one of the three methods described in paragraphs (b), (c), and (d). The plan administrator is to determine which method, including the credit rules under paragraphs (b)(4) and (c)(3), is to be used. The same method used under this I–3 and I–8 must be used with respect to all such employees covered by the plan. See I–4 for a special amount of distribution rule for certain life annuities.

(b) *Life expectancy method* Under the life expectancy method, the total amount of the minimum distribution required for calendar years 1985, 1986, and 1987 is determined as follows:

(1) Designated beneficiary and life expectancy. The designated beneficiary of the employee will be determined on any date in 1987. The applicable life expectancy (either the life expectancy of the employee or the joint life and last survivor expectancy of the employee and the employee's designated beneficiary, whichever is applicable) is determined using attained ages as of birthdays in 1987. In the case of a beneficiary who is not alive on his birthday in 1987, the beneficiary is treated as being alive on that date for purposes of determining life expectancy.

(2) Benefit determination. The benefit of the employee is determined using the account balance as of the last valuation date under the plan in 1986, adjusted in accordance with F–5 with the following further modifications. First, the benefit adjustment for distributions after the valuation date under F–5(c) is not made. Second, the benefit is increased by any distribution made in 1985 or 1986 before the valuation date for which credit is being taken under subparagraph (4).

(3) Required distribution. The total amount which must be distributed for calendar years 1985, 1986, and 1987 using the life expectancy method is determined by dividing the benefit determined under subparagraph (2) by the applicable life expectancy determined under subparagraph (1) and multiplying the quotient by:

(i) 2.8, in the case of an employee with respect to whom the first distribution calendar year is 1985, or

(ii) 1.9, in the case of an employee with respect to whom the first distribution calendar year is 1986.

(4) Credit for distributions. In determining whether the total amount which must be distributed for calendar years 1985, 1986, and 1987 has been distributed, credit may be taken (as determined by the plan administrator) for any amount distributed in a distribution calendar year of the employee. Consequently, to determine the amount which is required to be distributed in calendar year 1987, the plan administrator may reduce the total amount which must be distributed in 1987 for calendar years 1985, 1986, and 1987 (determined under (3)) by the amounts distributed in:

(i) 1985 and 1986, in the case of an employee with respect to whom the first distribution calendar year is 1985, or

(ii) 1986, in the case of an employee with respect to whom the first distribution calendar year is 1986.

However, in the case of distributions before the last valuation date in 1986, credit may only be taken for amounts which were used to increase the benefit pursuant to subparagraph (2).

(c) *Percentage method.* Under the percentage method, the total amount of the minimum distribution required for calendar years 1985, 1986, and 1987 is determined as follows:

(1) *Benefit determination.* The benefit of the employee is determined in the same manner as under paragraph (b)(2).

(2) *Required distribution.* The total amount required to be distributed for calendar years 1985, 1986, and 1987 is the following percentage of the benefit (determined in accordance with subparagraph (1)):

(i) 15%, in the case of an employee with respect to whom the first distribution calendar year is 1985, or

(ii) 10%, in the case of an employee with respect to whom the first distribution calendar year is 1986.

(3) *Credits.* Credits for distributions may be taken in the same manner as under paragraph (b)(4).

(d) *Regular method.* Under the regular method, the sum of the minimum distributions required for each calendar year 1985, 1986, and 1987, calculated separately, is determined under section 401(a)(9) and this section with appropriate adjustments. However, in determining the amount of the minimum distribution required for calendar years 1985, 1986, and 1987, the rule in F–2 does not apply. Also, credit (with an appropriate gross-up) may be taken toward the minimum distribution required for the 1986 or 1987 distribution calendar year for distributions in the 1985 or 1986 distribution calendar years that exceeded the minimum required distribution for such year. If distribution is being made in the form of an annuity and the annuity either is not a life annuity or is a life annuity with a period certain exceeding 20 years, the amount which must be distributed by December 31, 1987 is the aggregate of annual amounts (see F–3(d)(2)) for each calendar year for which a distribution is required before 1988, determined under I–2.

(e) This Q&A is illustrated by the following example:

Example.—

(a) An employee (X), born February 1, 1914, is a participant in a profit-sharing plan (Plan Z). X retired December 31, 1979. Consequently his required beginning date occurred on or before April 1, 1986. Thus X's first distribution calendar year is 1985. As of January 1, 1987, X's spouse (Y), born March 1, 1920 is X's only beneficiary under Plan Z. As of December 31, 1986, the last valuation date under Plan Z in 1986, X's benefit is $198,000. In 1985, X received distributions from Plan Z totaling $5,000. In 1986 (before December 31), X received distributions from Plan Z totaling $7,000.

(b) Under the life expectancy method, X's minimum distribution required for 1985, 1986, and 1987 which must be distributed in 1987 by December 31 is determined as follows:

(1) Benefit under Plan Z as of the last valuation date in 1986	$198,000
(2) Distributions in 1985	$5,000
(3) Distributions in 1986 before 12/31/86	$7,000
(4) Benefit to be used: (Sum of (1), (2), and (3))	$210,000
(5) X's attained age as of X's birthday in 1987	73
(6) Y's attained age as of Y's birthday in 1987	67
(7) Joint life and last survivor of X and Y (determined under Table VI of 1.72–9 using ages in (5) and (6))	21
(8) Benefit ((line 4) divided by the applicable life expectancy (line 7))	$10,000
(9) The total amount which must be distributed for 1985, 1986, and 1987. (2.8×10,000)	$28,000
(10) Distribution in 1985 and 1986 for which credit may be taken (Sum of lines (2) and (3))	$12,000

(11) Amount required to be distributed in 1987 (Line 9 minus line 10) $16,000

(c) Under the percentage method, X's minimum distribution required for 1985, 1986, and 1987 which must be distributed in 1987 by December 31 is determined as follows:

(1) Benefit under Plan Z as of the last valuation date in 1986	$198,000
(2) Distributions in 1985	$5,000
(3) Distributions in 1986 before 12/31/86	$7,000
(4) Benefit to be used (Sum of (1), (2), and (3))	$210,000
(5) Total amount which must be distributed for 1985, 1986, and 1987 (15% of line (4))	$31,500
(6) Distribution in 1985 and 1986 for which credit may be taken (Sum of lines (2) and (3))	$12,000
(7) Amount required to be distributed in 1987 (Line 5 minus line 6)	$19,500

I–4. Q. If (a) the employee's benefit is to be distributed in the form of a life annuity (or a life annuity with a period certain not exceeding 20 years), (b) the employee's required beginning date is on or before April 1, 1987, and (c) the employee is alive on December 31, 1987, then as of what date must distributions be made and how is the amount which must be distributed by that date determined?

A. (a) If the three conditions set forth in the question above are satisfied, and if the employee's required beginning date is on or before April 1, 1986, the first period for which a distribution is required is the last payment interval (as defined in F–3) ending on or before April 1, 1986. However, under these transition rules, no distribution is required to be made by April 1, 1986. Instead, distribution of an amount equal to the aggregate of the payments for all payment intervals from the last payment interval ending on or before April 1, 1986 through the last payment interval ending on or before December 31, 1987 must be made by December 31, 1987. Consequently, the total amount that must be distributed by December 31, 1987 will equal the total amount that would have been distributed by December 31, 1987, if annuity payments made in accordance with F–3 had begun on or before April 1, 1986.

(b) If the three conditions set forth above are satisfied and the employee's required beginning date is April 1, 1987, the first period for which a distribution is required is the last payment interval (as defined in F–3) ending on or before April 1, 1987. However, under these transition rules, no distribution is required to be made by April 1, 1987. Instead, distribution of an amount equal to the aggregate of the payments for all payment intervals from the last payment interval ending on or before April 1, 1987 through the last payment interval ending on or before December 31, 1987 must be made by December 31, 1987. Consequently, the total amount which must be distributed by December 31, 1987 will equal the total amount which would have been distributed by December 31, 1987, if annuity payments made in accordance with F–3 had begun on or before April 1, 1987.

(c) In the case of distributions in the form of a joint and survivor annuity, the designated beneficiary for purposes of determining the aggregate amount that is required to be distributed by December 31, 1987 may be determined as of any date during the 90 day period ending on the date on which annuity payments commence but not later then the earlier of (1) the date annuity distributions commence or (2) December 31, 1987.

(d) The provisions of this Question and Answer must be satisfied even if the employee and spouse do not consent to any catch-up distribution required by paragraph (a) or (b). The spouse's consent is not required even if as a result of making distributions required by paragraph (a) or (b), the amount payable after the death of the employee to the employee's surviving spouse is reduced. If (1) the plan has made reasonable efforts to obtain consent from the employee and the employee's spouse, (2) the requirement of section 417 that plan benefits be provided in the form of a qualified joint and survivor annuity is otherwise satisfied, and (3) the distribution otherwise meets the requirement of section 417, then the consent requirements of section 411(a)(11) and 417(e) are deemed to be satisfied with respect to the distribution.

(e) The amount of the catch-up distributions described in paragraphs (a) and (b) may be determined using either the normal form of qualified joint and survivor annuity under the terms of the plan or a benefit option, if any, selected by the employee as long as the distribution satisfies section 401(a)(9). Thus, if the employee has not elected a benefit option, the plan may determine the amount of the catch-up distribution using the qualified joint and survivor option under the plan (as long as such form of benefit provides for distributions that satisfy section 401(a)(9)).

(f) This Question and Answer is illustrated by the following example.

Example.—

Plan Y, a defined benefit pension plan, provides that monthly annuity payments are to be made to an unmarried employee (X) for life with a 10 year period certain. X's required beginning date is April 1, 1986 but X received no distributions before December 31, 1987. If annuity distributions had begun to X on April 1, 1986, he would have been entitled under the terms of Plan Y to receive a monthly benefit of $100. Thus if annuity distributions had begun on April 1, 1986, by December 31, 1987, the plan would have distributed $2100 to X, an amount equal to the aggregate of the payments for all payment intervals from the last payment interval ending on or before April 1, 1986 through the last payment interval ending on or before December 31, 1987. This is the amount that the plan must distribute to X by December 31, 1987. (Annuity payments made after December 31, 1987 will be adjusted for interest on $2100 due to the delay in commencing distributions.)

I–5. Q. If an employee's required beginning date is on or before April 1, 1987, are there any special rules for determining the minimum distribution for calendar years after 1987?

A. (a) Except as otherwise provided in paragraphs (b) and (c), if an employee's required beginning date is on or before April 1, 1987 and if the employee's benefit is in the form of an individual account, the amount of the minimum distribution required for calendar years after 1987 will be determined in a manner consistent with the use of December 31, 1987 as the employee's required beginning date. Consequently, for example, the employee must elect, if such election is permitted by the plan administrator, no later than December 31, 1987 whether or not life expectancy will be recalculated for purposes of determining the minimum distribution required for calendar years after 1987. Further, for example, the designated beneficiary of an employee will be determined as of December 31, 1987 for purposes of determining the minimum distribution required for calendar years after 1987.

(b) If an employee's required beginning date is on or before April 1, 1987 and if the employee's benefit is in the form of an individual account, the following rule applies for determining life expectancies for purposes of determining the minimum distribution for calendar years after 1987. If an employee's life expectancy is being recalculated, the joint life and last survivor expectancy of the employee and the designated beneficiary (other than the employee's spouse) will be determined using the attained age of the employee as of the employee's birthday in the calendar year for which the minimum distribution is being determined and the attained age of the designated beneficiary as of the beneficiary's birthday in 1987, adjusted in accordance with E–8, for purposes of determining the minimum distribution

required for calendar years after 1987. If an employee's life expectancy is not being recalculated, the joint life and last survivor expectancy of the employee and the designated beneficiary will be determined based on the attained ages of the employee and designated beneficiary as of their birthdays in 1987. Such joint life and last survivor expectancy is then reduced by one for each calendar year that has elapsed since 1987. In such case if the designated beneficiary is not alive on his birthday in 1987, such beneficiary will be treated as alive on that date for purposes of determining life expectancy. If the employee's designated beneficiary is the employee's spouse, and the life expectancy of the employee and spouse are being recalculated, the joint life and last survivor expectancy of the employee and spouse will be calculated using their attained ages as of their birthdays in the calendar year for which the minimum distribution is being determined.

(c) If an employee's required beginning date is on or before April 1, 1987 and if an employee's benefit is being distributed in the form of annuity payments, for determining the minimum distribution for calendar years after 1987, the following rules will apply. The designated beneficiary may be determined as of any date during the 90 day period ending on the date on which such annuity payments commence. Life expectancy will be determined using the attained ages of the employee and the employee's designated beneficiary as of their birthdays in the calendar year in which the annuity payments commence.

I–6. Q. If an employee dies before January 1, 1988, are distributions to be made in accordance with section 401(a)(9)(B)(i) or in accordance with section 401(a)(9)(B) (ii) or (iii) and (iv)?

A. (a) *General rule.* If an employee dies before January 1, 1988, distributions must be made in accordance with either the five-year rule in section 401(a)(9)(B)(ii) or the exception to the five year rule in section 401(a)(9)(B) (iii) and (iv), whichever is applicable. (See A–4 and C–4.) If an employee dies before January 1, 1986, and distribution is being made over the life or life expectancy of a designated beneficiary in accordance with section 401(a)(9)(B) (iii) and (iv), see I–7 through I–9 for the rules concerning (1) which calendar year is the first calendar year for which a distribution is required (or in the case of certain life annuities which period is the first payment interval for which a distribution is required), (2) as of what date distributions are required to commence, and (3) how the amount which is required to be distributed by such date is determined.

(b) *Certain distributions treated as having begun.* Except as otherwise provided in paragraph (c), if an employee's required beginning date is (or would have been) on or before April 1, 1987 and such employee dies in calendar year 1985, 1986 or 1987, but on or after the first day of the employee's first distribution calendar year, the plan administrator may, under these transition rules, treat distributions as having begun in accordance with section 401(a)(9)(A)(ii) before the employee died for purposes of section 401(a)(9)(B)(i). The plan administrator may make such determination on an individual by individual basis. Distributions may be treated as having begun for purposes of section 401(a)(9)(B)(i) even though payments were not actually made before the employee died. If, under this transition rule, distributions are treated as having begun before the employee died, distribution of the employee's benefit for calendar years 1985 (if applicable), 1986, 1987, and subsequent calendar years will be made to the employee's beneficiaries over a period described in section 401(a)(9)(A)(ii) pursuant to section 401(a)(9)(B)(i) rather than in accordance with section 401(a)(9)(B) (ii) or (iii) and (iv). (See C–4.) If distributions are thus treated as having begun, the amount of any minimum distribution required for calendar years 1985, 1986 or 1987 will be determined in accordance with I–2 through I–5 treating the employee as alive on December 31, 1987. If such amount was not paid to the employee before the employee's death, it must be paid to the beneficiaries of the employee on or before December 31, 1987. Further, in such case, the designated beneficiary of the employee will be determined as of any date in 1987. The applicable life expectancies are determined using birthdays in 1987, and by treating the employee and designated beneficiary as alive. Except as otherwise provided in these transition rules, the employee's life expectancy will not be recalculated. However, if the employee's spouse is a beneficiary, such spouse's life expectancy will be recalculated unless either (1) the plan administrator establishes a policy that spouses' life expectancies are not recalculated or (2) the spouse elects not to have life expectancy recalculated.

(c) *Distributions to the employee's spouse.* Except as otherwise provided in I–9(c) plan distributions must satisfy the survivor requirements of sections 401(a)(11) and 417 notwithstanding the rules in paragraph (b). These requirements may mandate a particular method of distribution to a surviving spouse or require spousal consent. Further, the rules in paragraph (b) allowing a plan administrator to treat distributions as having begun do not apply for purposes of determining under section 401(a)(11) and 417 whether distribution must be in the form of a qualified preretirement survivor annuity or a qualified joint and survivor annuity.

(d) *Example.* This I–6 is illustrated by the following example:

Example

(a) An employee (X), born May 2, 1915, is a participant in Plan Y (a profit-sharing plan). X retired December 31, 1985. X died March 1, 1986. As of X's date of death, X's sole beneficiary under Plan Y was X's spouse. The plan administrator of Plan Y has established no policy concerning recalculation of life expectancy or of permitting elections of such recalculation. (Thus, any default provisions in this section of the regulations apply.)

(b) If X had survived, X's required beginning date would have been April 1, 1986 and X's first distribution calendar year would have been 1985. Because X died on or after January 1, 1985 and before December 31, 1987, the plan may distribute either (1) to X's spouse in accordance with the exception to the five year rule in section 401(a)(9)(B) (iii) and (iv) or (2) treat distributions as having begun to X before death pursuant to paragraph (b) of this I–6.

(c) If Plan Y distributes to X's spouse in accordance with the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv), the first distribution calendar year is 1987 and distributions must commence by December 31, 1987. If instead Plan Y treats distributions as having begun, X's first distribution calendar year is 1985. Under these transition rules, minimum distributions for 1985, 1986, and 1987 would then be required to be made by December 31, 1987. In accordance with paragraph (b) of this I–6, X's life expectancy will not be recalculated but, in accordance with E–7(a), X's spouse's life expectancy will be recalculated.

I–7. Q. If an employee died prior to January 1, 1986 and distributions are being made over the life expectancy of a designated beneficiary in accordance with section 401(a)(9)(B) (iii) and (iv), which is the first calendar year for which a distribution is required and when must distribution commence?

A. Except as otherwise provided in I–9 (special rule for certain life annuities), if an employee died prior to January 1, 1986 and distributions are being made over the life expectancy of a designated beneficiary in accordance with section 401(a)(9)(B) (iii) and (iv), the first distribution calendar year for which a minimum distribution is required is the later of (1) the calendar year which contains the required commencement date determined under C–3 (a) or (b),

whichever is applicable, or (2) calendar year 1985. However, under these transitional rules, if the first distribution calendar year is 1985, the minimum distribution for 1985 is not required to be made by December 31, 1985. Similarly, under these transition rules, if the first (or second) distribution calendar year is 1986, the minimum distribution for 1986 is not required to be made by December 31, 1986. Instead, in such case, the minimum distribution required for 1985 (if applicable), 1986, and 1987 is required to be made by December 31, 1987.

I–8. Q. If (a) distributions after the death of an employee are being made over the life expectancy of a designated beneficiary in accordance with section 401(a)(9)(B) (iii) and (iv), and (b) the first distribution calendar year is 1985 or 1986 (determined under I–3), then how is the amount of the minimum distribution determined for calendar years 1985, 1986, and 1987?

A. (a) *In general.* (1) If the two conditions set forth in the Question are satisfied, the amount of the minimum distribution for calendar years 1985, 1986, and 1987 is to be determined under one of the three methods described in paragraphs (b), (c), and (d). The plan administrator is to determine which method, including the credit rules under paragraphs (b)(4) and (c)(3), is to be used. The same method used under this I–8 and I–2 must be used with respect to all such employees.

(2) See I–9 for a special rule for distributions in the form of a life annuity.

(b) *Life expectancy method.* Under the life expectancy method, the total amount of the minimum distribution required for calendar years 1985, 1986, and 1987 is determined as follows:

(1) *Designated beneficiary and life expectancy.* The designated beneficiary of the employee will be determined as of any date in 1987. The applicable life expectancy will be the designated beneficiary's life expectancy using attained age as of his birthday in 1987. In the case of a beneficiary who is not alive on his birthday in 1987, such beneficiary will be treated as being alive on his birthday in 1987 for purposes of determining life expectancy under this transitional rule.

(2) *Benefit determination.* The benefit of the employee is determined using the account balance as of the last valuation date under the plan in 1986, adjusted in accordance with F–5 with the following modifications. First, the benefit adjustment for distributions after the valuation date under F–5(c) is not made. Second, the benefit is increased by any distribution made in 1985 or 1986 before the valuation date described in subparagraph (2) for which credit is being taken under subparagraph (4).

(3) *Required distribution.* The total amount which must be distributed for calendar years 1985, 1986, and 1987 using the life expectancy method will be determined by dividing the benefit determined under subparagraph (2) by the applicable life expectancy determined under subparagraph (1) and multiplying the quotient by:

(i) 2.8, in the case of an employee with respect to whom the first distribution calendar year is 1985, or

(ii) 1.9, in the case of an employee with respect whom the first distribution calendar year is 1986.

(4) *Credit for distributions.* In determining whether the total amount which must be distributed for calendar years 1985, 1986, and 1987 has been distributed, credit may be taken (as determined by the plan administrator) for any amount distributed in a distribution calendar year of the employee (1985 through 1987). Consequently, to determine the amount which is required to be distributed in calendar year 1987, the plan administrator may reduce the total amount which must be distributed in 1987 for calendar years 1985, 1986, and 1987 (determined under subparagraph (3)) by the amounts distributed in:

(i) 1985 and 1986, in the case of an employee with respect to whom the first distribution calendar year is 1985, or

(ii) 1986, in the case of an employee with respect to whom the first distribution calendar year is 1986.

However, in the case of distributions before the last valuation date in 1986, credit may only be taken for amounts which were used to increase the benefit pursuant to subparagraph (2).

(c) *Percentage method.* Under the percentage method, the total amount of the minimum distribution required for calendar years 1985, 1986, and 1987 is determined as follows:

(1) *Benefit determination.* The benefit of the employee is determined in the same manner as under paragraph (b)(2).

(2) *Required distribution.* The total amount required to be distributed for calendar years 1985, 1986, and 1987 is the following percentage of the benefit (determined in accordance with subparagraph (1)):

(i) 15%, in the case of an employee with respect to whom the first distribution calendar year is 1985, or

(ii) 10%, in the case of an employee with respect to whom the first distribution calendar year is 1986.

(3) *Credits.* Credits for distributions may be taken in the same manner as under paragraph (b)(4).

(d) *Regular method.* Under the regular method, the sum of the minimum distributions required for each calendar year 1985, 1986, and 1987, calculated separately, is determined under section 401(a)(9) and this section with appropriate adjustments. However, the rule in F–2 does not apply. Also, credit (with an appropriate gross-up) may be taken toward the minimum required distribution for the 1986 or 1987 distribution calendar year for distributions in 1985 or 1986 distribution calendar years that exceeded the minimum required distribution for such year. If distribution is being made in the form of an annuity and the annuity is not a life annuity (or is a life annuity with a period certain exceeding 20 years), the amount which must be distributed by December 31, 1987 is the aggregate of annual amounts (see F–3(d)(2)) for each calendar year for which a distribution is required before 1988, determined under I–2.

I–9. Q. If (a) the employee died prior to January 1, 1986, (b) distribution is to be made in accordance with the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv), and (c) the employees benefit is to be distributed in the form of a life annuity (or a life annuity with a period certain not exceeding 20 years), then as of what date must distributions be made, and how is the amount which must be distributed by that date determined?

A. (a) If the three conditions set forth in the Question are satisfied, the first period for which a distribution is required is the last payment interval (as defined in F–5) ending on or before the later of (1) the required commencement date determined under C–3 (a) or (b), whichever is applicable, and (2) December 31, 1985. However, if such date is before December 31, 1987, under these transition rules, no distribution is required to be made on such date. Instead, distribution of an amount equal to the aggregate of the payments for all payment intervals from the last payment interval ending on or before that date through the last payment interval ending on or before December 31, 1987 must be made by December 31, 1987. Consequently, the total amount which must be distributed by December 31, 1987 will equal the total amount that which would have been distributed by December 31, 1987 if annuity payments made in accordance with C–3 had begun on or before the later of (1) the required commencement date determined under C–3 (a) or (b), whichever is applicable, and (2) December 31, 1985.

(b) The designated beneficiary may be determined as of any date during the 90

day period ending on the earlier of (1) the date annuity distributions commence or (2) December 31, 1987.

(c) The provisions of this Question and Answer must be satisfied even if the surviving spouse does not consent to the any catch-up distribution required under paragraph (a), and even if, as a result of such catch-up distribution, the amount payable after December 31, 1987 to the employee's surviving spouse under a qualified preretirement survivor annuity is reduced. In such case, if (1) the plan has made reasonable efforts to obtain consent from the employee's surviving spouse, (2) the requirement of section 417 that plan benefits be provided in the form of a qualified preretirement annuity is otherwise satisfied, and (3) the distribution otherwise meets the requirement of section 417, then the consent requirements of section 417 are deemed to be satisfied with respect to the distribution.

I–10. Q. If an employee died prior to January 1, 1986 and distributions are being made over the life expectancy of a designated beneficiary in accordance with section 401(a)(9)(B) (iii) and (iv), as of what date is the designated beneficiary determined, and what age is used to determine the designated beneficiary's life expectancy, for purposes of determining the minimum distribution for calendar years after 1987?

A. (a) If an employee died prior to January 1, 1986 and distributions are being made over the life expectancy of a designated beneficiary in accordance with section 401(a)(9)(B) (iii) and (iv), the designated beneficiary will be determined as of any date in 1987 for purposes of determining the minimum distribution for calendar years after 1987. The life expectancy of the designated beneficiary (other than the employee's surviving spouse whose life expectancy is being recalculated) will be determined using the attained age of the designated beneficiary as of such beneficiary's birthday in calendar year 1987, reduced by one for each calendar year which has elapsed after 1987. In such case if the designated beneficiary is not alive on his birthday in 1987, such beneficiary will be treated as being alive on that date for purposes of determining life expectancy. If the employee's surviving spouse is a designated beneficiary and such spouse's life expectancy is being recalculated, the life expectancy of spouse will be calculated using the attained age of the spouse as of such spouse's birthday in the calendar year for which the minimum distribution is being determined.

(b) If an employee died prior to January 1, 1986 and distributions are being made over the life expectancy of a designated beneficiary in accordance with section 401(a)(9)(B) (iii) and (iv) in the form of annuity payments, the designated beneficiary will be determined as of any date during the 90 day period ending on the date such annuity payments commence. The designated beneficiary's life expectancy will be determined using the attained age of the designated beneficiary as of such beneficiary's birthday in the calendar year in which the annuity payments commence.

I–11. Q. In the case of the surviving spouse of an employee for whom the first calendar year for which a distribution is required to be made is 1985 or 1986, when must the employee's spouse elect whether or not life expectancy will be recalculated?

A. If an employee for whom the first calendar year for which a distribution is required to be made is calendar year 1985 or 1986, any election, if permitted by the plan administrator, concerning recalculation of life expectancy must be made by December 31, 1987.

I–12. Q. When must the election described in C–4 (concerning whether distribution will be made in accordance with the five-year rule in section 401(a)(9)(B)(ii) or the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv)) be made by a beneficiary otherwise required to make such election on or before December 31, 1985 or December 31, 1986?

A. The election described in C–4 (concerning whether distribution will be made in accordance with the five-year rule in section 401(a)(9)(B)(ii) or the exception to the five year rule in section 401(a)(9)(B) (iii) and (iv)), if otherwise required to have been made on or before December 31, 1985 or December 31, 1986, must, if permitted by the plan administrator, be made by December 31, 1987.

I–13. Q. If an employee died prior to January 1, 1985 and distribution is to be made in accordance with the five-year rule contained in section 401(a)(9)(B)(ii), as of what date must the employee's entire interest be distributed?

A. If an employee died prior to January 1, 1985 and distribution is to be made in accordance with the five-year rule contained in section 401(a)(9)(B)(ii), the employee's entire interest must be distributed as of the later of: (a) December 31 of the calendar year which contains the fifth anniversary of the employee's death or (b) December 31, 1987.

I–14. Q. If any portion of the minimum distribution required for calendar years 1985, 1986, or 1987 (which is required to be distributed by December 31, 1987) is distributed by a plan and rolled over to another plan (receiving plan) before such date, how does receipt of such rollover amount affect the qualification under section 401(a) of the plan accepting it?

A. If any portion of the minimum distribution required for calendar years 1985, 1986, or 1987 which is required to be distributed by December 31, 1987 is distributed by a plan and rolled over to another plan (receiving plan) before such date, under these transitional rules, the qualification under section 401(a) of the receiving plan is not affected by the receipt of such amount. However, see G–1B for the tax consequences to the distributee who rolls over the amount (including, if the amount is rolled over to an individual retirement plan, the rule for avoiding certain tax consequences). Certain tax consequences may be avoided by the distributee who rolls over to another qualified plan in either of two ways: (a) the receiving plan may distribute by December 31, 1987 that portion of the amount rolled over which is the minimum distribution from the distributing plan for calendar years 1985, 1986 or 1987 or (b) the distributing plan may distribute by December 31, 1987 an additional amount equal to that portion of the amount rolled over which is the minimum distribution from such plan for calendar years 1985, 1986 or 1987.

I–15. Q. In the case of a transfer in 1985, 1986, or 1987 of all or a portion of an employee's benefit from one plan (transferor plan) to another plan (transferee plan), is the amount transferred treated as an amount distributed for purposes of section 401(a)(9)?

A. (a) Except as otherwise provided in paragraph (b), in the case of a transfer in 1985, 1986, or 1987 but before September 25, 1987, of all or a portion of an employee's benefit from one plan (transferor plan) to another plan (transferee plan) before the minimum amount required to be distributed by the transferor plan for such calendar year has been distributed, the transferor plan may treat the amount transferred as a distribution for purposes of section 401(a)(9).

(b) If all or a portion of an employee's benefit is transferred from one plan (transferor plan) to another plan (transferee plan) in 1985, 1986, or 1987 before [60 days after this notice is

published] and before the minimum amount required to be distributed by the transferor plan for such calendar year has been distributed and the employee is a 5-percent owner (as defined in B–2) with respect to the employer maintaining either the transferor plan or the transferee plan, the transferee plan must distribute by December 31, 1987 any portion of the minimum distribution required to be distributed with respect to the portion of the benefit transferred but not distributed by the transferor plan for calendar years 1985, 1986, or 1987.

(c) In the case of a transfer in 1987 on or after September 25, 1987, the rules in G–3 apply.

I–16. Q. What are the distribution requirements applicable to qualified plans that cover self-employed individuals described in section 401(c)(1) (HR 10 plans) for 1984?

A. For 1984, HR 10 plans are subject to the distribution requirements of section 401(a)(9) as in effect on September 2, 1982 (prior to such section's replacement by section 242(a) of TEFRA). (The after-death distribution rules in section 401(d)(7) applicable to owner-employees in HR 10 plans were repealed by section 237 of TEFRA and were not reinstated for 1984 by TRA of 1984.) An HR 10 plan that does not satisfy section 401(a)(9) (as in effect on September 2, 1982) in 1984 will not be considered to fail to qualify under section 401(a) or 403(a) solely for that reason if, in operation, the aggregate amount distributed by December 31, 1987 equals or exceeds the amount required to satisfy section 401(a)(9) prior to its amendment by TEFRA plus the amount required to satisfy section 401(a)(9) after its amendment by TRA of 1984 for calendar years 1985, 1986, and 1987. Thus, plan amendments to reflect the law for 1984 are not required in order to satisfy the old HR 10 requirement.

I–17. Q. In the case of a plan covering self-employed individua1s to which the minimum distribution rules in § 1.401–11(e) apply, if the aggregate amounts distributed with respect to an employee in calendar years prior to 1985 for which minimum distributions were required pursuant to § 1.401–11(e) exceeded the aggregate amount required for such calendar years, may credit be given for such amount for purposes of satisfying the minimum distribution requirement for calendar years 1985 through 1987?

A. Yes. In the case of a plan covering self-employed individuals to which the minimum distribution rules in § 1.401–11(e) apply, if the aggregate amounts distributed with respect to an employee in calendar years prior to 1985 for which minimum distributions were required pursuant to § 1.401–11(e) exceed the aggregate amount required, credit may be taken for the difference between the aggregate amount distributed in calendar years before 1985 and the aggregate amount required to be distributed for such calendar years. Such excess amount will be treated as an amount distributed in calendar year 1985 for purposes of determining the amount which is required to be distributed by December 31, 1987 under I–3.

J. Elections Under Section 242(b)(2) of TEFRA

J–1. Q. Is a plan disqualified merely because it pays benefits under a designation made before January 1, 1984, in accordance with section 242(b)(2) of TEFRA?

A. No. Even though the distribution requirements added by TEFRA were retroactively repealed by TRA of 1984, the transitional election rule in section 242(b) was preserved. Notice 83–23, 1983–2 CB 418, provides guidance for distributions permitted by this transitional rule. Satisfaction of the spousal consent requirements of section 417 (a) and (e) (added by the Retirement Equity Act of 1984) will not be considered a revocation of the pre-1984 designation under that Notice. However, sections 401(a)(11) and 417 must be satisfied with respect to any distribution subject to such section. The election provided in section 242(b) is hereafter referred to as a section 242(b)(2) election

J–2. Q. In the case in which an amount is transferred from one plan (transferor plan) to another plan (transferee plan), may the transferee plan distribute the amount transferred in accordance with a section 242(b)(2) election made under either the transferor plan or under the transferee plan?

A. (a) In the case in which an amount is transferred from one plan to another plan, the amount transferred may be distributed in accordance with a section 242(b)(2) election made under the transferor plan if the employee did not elect to have the amount transferred and if the amount transferred is separately accounted for by the transferee plan. However, only the benefit attributable to the amount transferred, plus earnings thereon, may be distributed in accordance with the section 242(b)(2) election made under the transferor plan. If the employee elected to have the amount transferred, the transfer will be treated as a distribution and rollover of the amount transferred for purposes of this J–2 and J–3.

(b) In the case in which an amount is transferred from one plan to another plan, the amount transferred may not be distributed in accordance with a section 242(b)(2) election made under the transferee plan. If a section 242(b)(2) election was made under the transferee plan, the amount transferred must be separately accounted for. If the amount transferred is not separately accounted for under the transferee plan, the section 242(b)(2) election under the transferee plan is revoked and section 401(a)(9) will apply to subsequent distributions by the transferee plan.

(c) A merger, spinoff, or consolidation, as defined in 1.414(e)–1(b), will be treated as a transfer for purposes of the section 242(b)(2) election.

J–3. Q. If an amount is distributed by one plan (distributing plan) and rolled over into another plan (receiving plan), may the receiving plan distribute the amount rolled over in accordance with a section 242(b)(2) election made under either the distributing plan or the receiving plan?

A. No. If an amount is distributed by one plan and rolled over into another plan, the receiving plan must distribute the amount rolled over in accordance with section 401(a)(9) whether or not the employee made a section 242(b)(2) election under the distributing plan. Further, if the amount rolled over was not distributed in accordance with the election, the election under the distributing plan is revoked and section 401(a)(9) will apply to all subsequent distributions by the distributing plan. Finally, if the employee made a section 242(b)(2) election under the receiving plan and such election is still in effect, the amount rolled over must be separately accounted for under the receiving plan and distributed in accordance with section 401(a)(9). If amounts rolled over are not separately accounted for, any section 242(b)(2) election under the receiving plan is revoked and section 401(a)(9) will apply to subsequent distributions by the receiving plan.

J–4. Q. May a section 242(b)(2) election be revoked after the date by which distributions are required to commence in order to satisfy section 401(a)(9) and this section of the regulations?

A. Yes. A section 242(b)(2) election may be revoked after the date by which distributions are required to commence in order to satisfy section 401(a)(9) and this section of the regulations. However, if the section 242(b)(2) election is revoked after the date by which distributions are required to commence in order to satisfy section 401(a)(9) and this section of the regulations and the total amount of the distributions which would have been required to be made

prior to the date of the revocation in order to satisfy section 401(a)(9), but for the section 242(b)(2) election, have not been made, the trust must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which was required to have been distributed to satisfy the requirements of section 401(a)(9) and continue distributions in accordance with such requirements. Further, an additional amount may be required to be distributed to satisfy the minimum distribution incidental death benefit requirement. See § 1.401(a)(9)–2.

J–5. Q. May the distribution of amounts otherwise required to be distributed in 1985, 1986, or 1987 before December 31, 1987, pursuant to a section 242(b)(2) election be deferred until December 31, 1987 under the transition rule in I–1 or through J–15?

A. The transition rules in I–1 through I–15 do not apply to distributions to be made pursuant to a section 242(b)(2) election. Failure to make any distribution of an amount specified at the time specified under the method of distribution provided in a section 242(b)(2) election will be treated as a change in the election and thus a revocation of the election. In the event of such a revocation before December 31, 1987, the transition rules in I–1 through I–15 will apply to any distributions otherwise required to be made before December 31, 1987. Accordingly, in the event of such a revocation before December 31, 1987, any distribution otherwise required under section 401(a)(9) and this section of the regulations to be made before December 31, 1987 may be delayed until that date.

§ 1.401(a)(9)–2 Minimum distribution incidental benefit requirement.

Q–1. What is the incidental benefit requirement?

A. The incidental benefit requirement has two components, the minimum distribution incidental benefit requirement (MDIB requirement) and the pre-retirement incidental benefit requirement. The pre-retirement incidental benefit requirement applies to limit pre-retirement distributions in the form of nonretirement benefits such as life, accident, or health insurance. Both the MDIB requirement and the pre-retirement incidental benefit requirement requires that death and other nonretirement benefits payable under a pension, stock bonus, or profit-sharing plan be incidental to the primary purpose of the plan which is to provide retirement benefits (in the case of a pension plan) or deferred compensation (in the case of a profit-sharing plan) to the employee. Thus, the relationship of an employee's total benefits under the plan to the retirement benefits or deferred compensation payable to the employee must be such that the primary purpose of the plan is to provide retirement benefits or deferred compensation to the employee. See § 1.401–1(b)(1). Also, see section 401(a)(9)(G), as added by section 1852(a)(6) of the Tax Reform Act of 1986 (TRA of 1986) which provides that any distribution required to satisfy the incidental benefit requirement is also a required distribution under section 401(a)(9). Further, see section 403(b)(10), added by section 1852(a)(3)(A) of TRA of 1986, which codified the application of the incidental benefit requirement to annuity contracts and custodial contracts described in section 403(b). See section 408(a)(6) and (b)(3), as amended by section 1852(a)(1) of TRA of 1986, which extends the incidental benefit requirement to distribution from IRAs. Finally, see section 457(d)(2)(A), added by section 1107(a) of TRA of 1986, which provides that an eligible deferred compensation plan must satisfy section 401(a)(9) and thus the incidental benefit requirement.

Q–1A. How is the MDIB requirement satisfied?

A. (a) *Operational requirements.* Distributions under a plan in each calendar year must satisfy the MDIB requirement in order for the plan to be qualified under section 401(a) in operation. If any distributions for a calendar year fail to satisfy the MDIB requirement, the plan will not satisfy section 401(a) for the plan year beginning with or within that calendar year.

(b) *Required plan provisions.* See A–3 of § 1.401(a)(9)–1, which provides that the plan must include certain written provisions reflecting section 401(a)(9). Section 401(a)(9) includes the MDIB requirement.

Q–2. For calendar years beginning before January 1, 1989, how must benefits be distributed in order to satisfy the MDIB requirement?

A. For calendar years beginning before January 1, 1989, distribution of benefits must satisfy either the rules in effect as of July 27, 1987, interpreting § 1.401–1(b)(1)(i) or the rules in Q&A–3 through Q&A–7 in order to satisfy the MDIB requirement.

Q–3. For calendar years beginning after December 31, 1988, how must an employee's benefits be distributed in order to satisfy the MDIB requirement?

A. For calendar years beginning after December 31, 1988, distributions of an employee's benefit must commence not later than the employee's required beginning date as defined in section 401(a)(9)(C) and be made in accordance with the rules in Q&A–4 through Q&A–7 in order to satisfy the MDIB requirement. The amount required to be distributed to satisfy the MDIB requirement for a calendar year may be greater than the amount required to satisfy the other minimum distribution requirements in section 401(a)(9). Distributions made before the employee's required beginning date for calendar years before the employee's first distribution calendar year, as defined in F–1 of § 1.401(a)(9)–1, need not be made in accordance with the MDIB requirement. However, if distributions commence under a particular distribution option, such as in the form of an annuity, before the beginning of the employee's first distribution calendar year, the distribution option will fail to satisfy the MDIB requirement at the time distributions commence if, under the particular distribution option, distributions to be made for the employee's first distribution calendar year or any subsequent distribution calendar year will not satisfy the MDIB requirement. The MDIB requirement does not apply to distributions after the employee's death although distributions to be made after the death of the employee must be taken into account in determining whether distributions before the employee's death satisfy the MDIB requirement. Q&A–4 provides rules which apply to nonannuity distributions from an individual account. Q&A–5 provides rules which apply to distributions in the form of an annuity for a period certain without a life contingency. Q&A–6 provides rules which apply to distributions in the form of a life annuity or a joint and survivor annuity. Q&A–7 provides special rules which apply if the employee's beneficiary is the employee's spouse. Q&A–8 provides a special rule for annuity distributions commencing before January 1, 1988.

Q–4. For calendar years after 1988, if an employee's benefit is in the form of an individual account, how must the employee's benefit be distributed in order to satisfy the MDIB requirement?

A. (a) *General rule*—(1) *Explanation of rule.* If an employee's benefit is in the form of an individual account, distribution must be made for each distribution calendar year (determined under F–1 of § 1.401(a)(9)–1) of the employee in accordance with the following rules in order to satisfy the MDIB requirement. The first year for which a distribution must be made to

satisfy the MDIB requirement is the employee's first distribution calendar year, determined under F-1 of § 1.401(a)(9)-1. The minimum amount that must be distributed for each distribution calendar year of the employee to satisfy the MDIB requirement is the amount determined by dividing the employee's benefit by the applicable divisor under the table below. The applicable divisor is determined using the attained age of the employee as of the employee's birthday in that distribution calendar year. The employee's benefit must be determined under F-5 of § 1.401(a)(9)-1. As under F-1 of § 1.401(a)(9)-1, the distribution required to be made by the employee's required beginning date is for the employee's first distribution calendar year, and in the case of distributions for other distribution calendar years, the distribution must be made by the end of such calendar year.

(2).—TABLE FOR DETERMINING APPLICABLE DIVISOR

Age of the employee	Applicable divisor
70	26.2
71	25.3
72	24.4
73	23.5
74	22.7
75	21.8
76	20.9
77	20.1
78	19.2
79	18.4
80	17.6
81	16.8
82	16.0
83	15.3
84	14.5
85	13.8
86	13.1
87	12.4
88	11.8
89	11.1
90	10.5
91	9.9
92	9.4
93	8.8
94	8.3
95	7.8
96	7.3
97	6.9
98	6.5
99	6.1
100	5.7
101	5.3
102	5.0
103	4.7
104	4.4
105	4.1
106	3.8
107	3.6
108	3.3
109	3.1
110	2.8
111	2.6
112	2.4
113	2.2
114	2.0
115 and older	1.8

(b) *Annuity contract.* If an employee's benefit is in the form of an individual account and the employee's benefit is used to purchase an annuity contract from an insurance company, the MDIB requirement is not satisfied unless the annuity distributions under the contract are made in accordance with Q&A-5 or Q&A-6.

Q-5. For calendar years after 1988, if an employee's benefit is being distributed in the form of a period certain annuity without a life contingency (e.g., installment payout), how must the benefit be distributed in order to satisfy the MDIB requirement?

A. (a) *General rule.* If an employee's benefit is being distributed in the form of a period certain annuity without a life contingency, the period certain may not exceed the applicable period determined using the table below. In general, the applicable period is determined using the attained age of the employee as of the employee's birthday in the calendar year in which the annuity payments commence. However, if distributions commence after the end of the employee's first distribution calendar year and on or before the employee's required beginning date, the applicable period is determined using the attained age of the employee as of the employee's birthday in the employee's first distribution calendar year. Further, if distributions commence before January 1 of the employee's first distribution calendar year under a benefit option which provides for distributions in the form of a period certain annuity without a life contingency, the MDIB requirement will not be satisfied as of the date distributions commence unless the benefit option provides that, as of the beginning of the employee's first distribution calendar year, the remaining period under the annuity (including such calendar year) will not exceed the period determined under the table below using the attained age of the employee as of the employee's birthday in the employee's first distribution calendar year. For example, if distributions commence to an employee (X), born May 5, 1930, on January 1, 1990, and the benefit option provides for distribution in the form of a period certain annuity for 37 years, the MDIB requirement is not satisfied when the distributions commence because the remaining period certain as the beginning of X's first distribution calendar year (year 2000) will be 27 years (37 minus 10) which exceeds 26.2. However, the benefit could provide for an automatic shortening of the period at age 70½ to conform to the MDIB requirement. Additionally, the amount of the annuity payments must satisfy F-3 of § 1.401(a)(9)-1 in order to satisfy the MDIB requirement. Of course, if the annuity payments commence after the employee's required beginning date, distributions before the annuity payments commence must satisfy Q&A-4.

(b) *Table.*

Age of employee	Maximum period certain
70	26.2
71	25.3
72	24.4
73	23.5
74	22.7
75	21.8
76	20.9
77	20.1
78	19.2
79	18.4
80	17.6
81	16.8
82	16.0
83	15.3
84	14.5
85	13.8
86	13.1
87	12.4
88	11.8
89	11.1
90	10.5
91	9.9
92	9.4
93	8.8
94	8.3
95	7.8
96	7.3
97	6.9
98	6.5
99	6.1
100	5.7
101	5.3
102	5.0
103	4.7
104	4.4
105	4.1
106	3.8
107	3.6
108	3.3
109	3.1
110	2.8
111	2.6
112	2.4
113	2.2
114	2.0
115 and older	1.8

Q-6. For calendar years after 1988, how must distributions in the form of a life (or joint and survivor) annuity be made in order to satisfy the MDIB requirement?

A. (a) *Annuity for employee.* If the employee's benefit is payable in the form of a life annuity for the life of the employee satisfying section 401(a)(9), the MDIB requirement will be satisfied.

(b) *Joint and survivor annuity, nonspouse beneficiary*—(1) *Explanation of rule.* If distributions commence under a distribution option that is in the form of a joint and survivor annuity for the joint lives of the employee and a beneficiary, other than the employee's spouse, the MDIB requirement will not be satisfied as of the date distributions commence unless the distribution option provides that annuity payments to be made to the employee on and after the employee's required beginning date will satisfy the conditions of this paragraph. The periodic annuity payment payable to the survivor must not at any time on

and after the employee's required beginning date exceed the applicable percentage of the annuity payment for such period payable to the employee using the table below. Thus, this requirement must be satisfied with respect to any benefit increase after such date, including increases to reflect increases in the cost of living. The applicable percentage is based on the excess of the age of the employee over the age of the beneficiary as of their attained ages as of their birthdays in the employee's first distribution calendar year. If the employee has more than one beneficiary, the applicable percentage will be the percentage using the age of the youngest beneficiary. Further, if a beneficiary replaces another beneficiary under the annuity or a beneficiary is added, and the new beneficiary is younger than the beneficiary being used to determine the applicable percentage, the employee's benefit must be adjusted in the calendar year following the calendar year of the change. The employee's benefit must be adjusted so that the periodic benefit payable to the survivor does not exceed the applicable percentage of the annuity payment for such period payable to the employee using the age of the employee and the new younger beneficiary. Additionally, the amount of the annuity payments must satisfy F–3 of § 1.401(a)(9)–1.

(2) *Table.*

Excess of age of employee over age of beneficiary	Applicable percentage
10 years or less	100
11	96
12	93
13	90
14	87
15	84
16	82
17	79
18	77
19	75
20	73
21	72
22	70
23	68
24	67
25	66
26	64
27	63
28	62
29	61
30	60
31	59
32	59
33	58
34	57
35	56
36	56
37	55
38	55
39	54
40	54
41	53
42	53
43	53
44 and greater	52

(3) *Example.* This paragraph is illustrated by the following example.

Example. Distributions commence on January 1, 1993 to an employee (Z), born March 1, 1927, after retirement at age 65. Z's granddaughter (Y), born February 5, 1967, is Z's beneficiary. The distributions are in the form of a joint and survivor annuity for the lives of Z and Y with payments of $500 a month to Z and upon Z's death of $500 a month to Y, *i.e.* the projected monthly payment to Y is 100 percent of the monthly amount payable to Z. There is no provision under the option for a change in the projected payments to Y as of April 1, 1998, Z's required beginning date. Consequently, as of January 1, 1993, the date annuity distributions commence, the plan does not satisfy the MDIB requirement in operation because, as of such date, the distribution option provides that, as of Z's required beginning date, the monthly payment to Y upon Z's death will exceed 54 percent of Z's monthly payment (the maximum percentage for a difference of ages of 40).

(c) *Period certain and annuity features.* If a distribution form includes a life annuity and a period certain, the amount of the annuity payments payable to the employee must satisfy either paragraph (a) or (b), whichever is applicable, and the period certain may not exceed the period determined under Q&A–4.

Q–7. For calendar years after 1988, if the employee's beneficiary is the employee's spouse, how must distributions be made in order to satisfy the MDIB requirement?

A. (a) *General rule.* If the employee's beneficiary, as of the employee's required beginning date, is the employee's spouse and the distributions satisfy section 401(a)(9) without regard to the MDIB requirement, the distributions to the employee will be deemed to satisfy the MDIB requirement. For example, if an employee's benefit is being distributed in the form of a joint and survivor annuity for the lives of the employee and the employee's spouse and the spouse is the employee's beneficiary, the amount of the periodic payment payable to the spouse may always be 100 percent of the annuity payment payable to the employee. However, under section 401(a)(9) the amount of the payments under the annuity must be nonincreasing unless specifically permitted under F–3 of § 1.401(a)(9)–1. A former spouse to whom all or a portion of an employee's benefit is payable pursuant to a qualified domestic relations order as defined in section 414(p) will be treated as a spouse of the employee for purposes of the MDIB requirement.

(b) *Multiple beneficiaries.* If the employee has more than one beneficiary, the special rule in paragraph (a) will only apply to the portion of the employee's benefit of which the spouse is the sole beneficiary. However, in order for the special requirement in paragraph (a) to apply to the distribution of the portion of the employee's benefit of which the spouse is the sole beneficiary, such portion must be a separate account (or segregated share, in the case of a defined benefit plan), as defined in H–2A of § 1.401(a)(9)–1.

(c) *Changes in beneficiaries.* (1) If, after the employee's required beginning date, the employee's spouse ceases to be the employee's sole beneficiary because the spouse dies before the employee, distributions after the death of the spouse to the employee will continue to satisfy the MDIB requirement if such distributions satisfy section 401(a)(9), without regard to the MDIB requirement. See paragraph (d)(2) if the employee's spouse dies before the employee's required beginning date.

(2) If, after the employee's required beginning date, the employee's spouse ceases to be the employee's sole beneficiary for a reason other than the death of the spouse, if the portion of the employee's benefit of which the employee's spouse is the beneficiary ceases to be maintained as a separate account or segregated share, or the spouse ceases to be the sole beneficiary of such separate account or segregated share for a reason other than the death of the spouse, the following rules apply. In the case of distributions from an individual account not in the form of an annuity, distributions in calendar years following the calendar year in which the spouse ceases to be the beneficiary must satisfy Q&A–4. If distribution is in the form of an annuity for a period certain, the remaining period of the period certain as of the calendar year following the calendar year of the change may not exceed the period which would have remained if annuity payments had commenced in accordance with Q&A–5 on the employee's required beginning date and the spouse was not the beneficiary. If the employee's benefit is being distributed in the form of a joint and survivor annuity, the amount of the periodic payment payable to the employee beginning in the calendar year following the calendar year of the change must be redetermined. The new amount may not exceed the applicable percentage under Q&A–6 using the excess of the age of the employee over the age of the new beneficiary using their attained ages as of their birthdays in the calendar year of the redetermination.

(d) *Change in status*—(1) *After the employee's required beginning date.* If a

beneficiary of the employee is the employee's spouse as of the employee's required beginning date, such beneficiary will continue to be treated as a spouse of the employee for purposes of the MDIB requirement for all distribution calendar years of the employee even if such beneficiary ceases to be the employee's spouse by reason of divorce, and such beneficiary remains the employee's sole beneficiary.

(2) *Before the employee's required beginning date.* Generally, the special rule in paragraph (a) only applies if a beneficiary is the employee's spouse as of the employee's required beginning date. However, if distributions commence irrevocably (except for acceleration) to the employee before the employee's required beginning date over a period described in section 401(a)(9)(A)(ii), if the distribution form is an annuity under which distributions are made in accordance with the provisions of F–3 (and F–4, if applicable) of § 1.401(a)(9)–1, and if the employee's beneficiary with respect to the annuity payments is the employee's spouse, the following rules will apply. If the employee's spouse dies before the employee's required beginning date, distributions may continue over any remaining period certain under the annuity even if, as of the beginning of the employee's first distribution calendar year, such period exceeds the period permitted under Q&A–4. If such beneficiary ceases to be the employee's spouse by reason of divorce, such beneficiary will continue to be treated as a spouse of the employee for purposes of the MDIB requirement if such beneficiary continues to be the employee's beneficiary with respect to the annuity payments after the employee's required beginning date.

Q–8. For calendar years after 1988, is there any special rule for distributions in the form of an annuity that commence prior to January 1, 1989?

A. Yes. If distributions in the form of an annuity (from a defined benefit plan or under an annuity contract purchased from an insurance company) commence in accordance with F–3 (and F–4 if applicable) of § 1.401(a)(9)–1 prior to January 1, 1989, the annuity distributions in each calendar year (including calendar years after 1988) will satisfy the MDIB requirement if distributions are made in accordance with Q&A–2. This rule applies whether the annuity is a life (or joint and survivor) annuity or an annuity for a period certain, or a combination thereof, and without regard to whether the annuity form of payment is irrevocable. This special rule applies to a deferred annuity contract distributed to or owned by the employee prior to January 1, 1989 unless additional contributions are made under the plan by the employer with respect to such contract.

Q–9. Is there a special rule which applies to distributions under a designation of a method of distribution made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA)?

A. Yes. Distributions (including distributions in calendar years after 1988) under a designation of a method of distribution made before January 1, 1984, in accordance with section 242(b)(2) of TEFRA will satisfy the MDIB requirement if such distributions are made in accordance with Q&A–2. However, if the designation is revoked, distributions in calendar years after 1988, except as otherwise provided in Q&A–8, must satisfy the rules in Q&A–3 through Q&A–7. Further, if the revocation occurs in a calendar year after 1988, the trust must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount which was required to be distributed under Q&A–3 through Q&A–7 for the calendar years that have elapsed since 1988.

Q–10. Will a plan fail to satisfy section 411 if the plan is amended to eliminate benefit options that do not satisfy the MDIB requirement?

A. Nothing in section 401(a)(9) permits a plan to eliminate for all participants a benefit option that could not otherwise be eliminated pursuant to section 411(d)(6). However, a plan must provide that, notwithstanding any other plan provisions, it will not distribute benefits under any option that does not satisfy section 401(a)(9), including the MDIB requirement. See A–3 of § 1.401(a)(9)–1. Thus, the plan, notwithstanding section 411(d)(6), must prevent participants from electing benefit options that do not satisfy the MDIB requirement.

Q–11. Does the MDIB requirement apply to distributions to an alternate payee pursuant to a qualified domestic relations order as defined in section 414(p) (QDRO)?

A. If a QDRO provides that an employee's benefit is to be divided and a portion allocated to an alternate payee, the MDIB requirement will not apply to the distribution of the portion of the employee's benefit allocated to the alternate payee. However, if the QDRO does not provide that an employee's benefit is to be divided but merely provides that a portion of an employee's benefit (otherwise payable to the employee) is to be paid to an alternate payee, the MDIB requirement will apply to the distribution of the employee's entire benefit (including the portion payable to the alternate payee). Also, see Q&A–7 with respect to distributions to a former spouse pursuant to the QDRO.

Par. 4. There is added the following new section after § 1.403(b)–1 to read as follows:

§ 1.403(b)–2 Required distributions from annuity contracts purchased, or custodial accounts or retirement income accounts established by, section 501(c)(3) organizations or public schools.

Q–1. Are annuity contracts described in section 403(b)(1), custodial accounts described in section 403(b)(7), and retirement income accounts described in section 403(b)(9) subject to the distribution rules provided in section 401(a)(9)?

A. (a) Yes. Annuity contracts described in section 403(b)(1), custodial accounts described in section 403(b)(7), and retirement income accounts described in section 403(b)(9) are subject to the distribution rules provided in section 401(a)(9) for calendar years after 1986. Hereinafter, annuity contracts described in section 403(b)(1), custodial accounts described in section 403(b)(7), and retirement income accounts described in section 403(b)(9) will be referred to as section 403(b) contracts.

(b) For purposes of applying the distribution rules in section 401(a)(9), section 403(b) contracts will be treated as individual retirement annuities described in section 408(b) and individual retirement accounts described in section 408(a), respectively (IRAs). Consequently, except as otherwise provided in paragraph (c), the distribution rules in section 401(a)(9) will be applied to section 403(b) contracts in accordance with the provisions in § 1.408–8.

(c) The transitional rule in § 1.401(a)(9)–1 B–2(b) will apply to distributions from section 403(b) contracts even though such transitional rule does not apply to distributions from IRAs. Thus, for an employee who attained 70½ before January 1, 1988, the required beginning date is April 1, of the calendar year following the later of (1) the calendar year in which the employee attains 70½ or (2) the calendar year in which the employee retires. The concept of 5-percent owner has no application in the case of employees of employers described in section 403(b)(1)(A).

Q–2. To what benefits under section 403(b) contracts, do the distribution

rules provided in section 401(a)(9) and § 1.401(a)(9)–1 apply?

A. (a) The distribution rules provided in section 401(a)(9) and § 1.401(a)(9)–1 apply to all benefits under section 403(b) contracts accruing after December 31, 1986 (post-'86 account balance). The distribution rules provided in section 401(a)(9) and § 1.401(a)(9)–1 do not apply to the value of the account balance under the section 403(b) contract valued as of December 31, 1986, exclusive of subsequent earnings (pre-'87 account balance). Consequently, the post-'86 account balance includes earnings after December 31, 1986, on contributions made before January 1, 1987, in addition to contributions made after December 31, 1986 and earnings thereon. The issuer or custodian of the section 403(b) contract must keep records that enable it to identify the pre-'87 account balance and subsequent changes as set forth in paragraph (b) and provide such information upon request to the relevant employee or beneficiaries with respect to the contract. If the issuer does not keep such records, the entire account balance will be treated as subject to section 401(a)(9).

(b) In applying the distribution rules in section 401(a)(9), only the post-'86 account balance is used to calculate the minimum distribution required for a calendar year. The amount of any distribution required to satisfy the minimum distribution requirement for a calendar year will be treated as being paid from the post-'86 account balance. Any amount distributed in a calendar year in excess of the minimum distribution requirement for a calendar year will be treated as paid from the pre-'87 account balance. The pre-'87 account balance for the next calendar year will be permanently reduced by the deemed distributions from the account.

(c) The pre-'86 account balance and the post-'87 account balance have no relevance for purposes of determining the amount includible in income under section 72.

Q–3. Must the value of the account balance under a section 403(b) contract as of December 31, 1986 be distributed in accordance with the incidental benefit requirement?

A. Distributions of the entire account balance of a section 403(b) contract, including the value of the account balance under the contract or account as of December 31, 1986, must satisfy the minimum distribution incidental benefit requirement (MDIB requirement) in Q&A–2 of § 1.401(a)(9)–2. Distributions required to satisfy the MDIB requirement in Q&A–2 of § 1.401(a)(9)–2 reduce the pre-'87 account balance as set forth in Q&A–2 of this section of the regulations. The MDIB requirement in Q&A–3 through Q&A–7 of § 1.401(a)(9)–2, applicable to calendar years after 1988, need only be satisfied for distributions from the post-'86 account.

Par. 5. There is added the following new section after § 1.408–7 to read as follows:

§ 1.408–8 Distribution requirements for individual retirement plans.

The following questions and answers relate to the distribution rules for IRAs provided in section 408(a)(6) and section 408(b)(3), as added by section 521(b) of the Tax Reform Act of 1984 (Pub. L. 98–369) (TRA of 1984) and amended by section 1852(a) of the Tax Reform Act of 1986 (Pub. L. 99–514) (TRA of 1986).

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A. General rules
B. Effective dates and transitional rules

A. General Rules

A–1. Q. Are individual retirement plans (IRAs) subject to the distribution rules provided in section 401(a)(9) and § 1.401(a)(9)–1 for qualified plans?

A. Yes. Except as otherwise provided in this section, IRAs are subject to the distribution rules provided in section 401(a)(9) and § 1.401(a)(9)–1 for qualified plans. The distribution rules in § 1.408–2(b) (6) and (7) (as in effect on December 31, 1983) no longer apply to IRAs. For example, (a) the amount of the minimum distribution for each calendar year will be determined in accordance with § 1.401(a)(9)–1 F–1 through F–4A, (b) in the event that the individual for whom an IRA is maintained (individual) changes or adds beneficiaries after the distributions are required to commence, the maximum distribution period will be determined in accordance with § 1.401(a)(9)–1 E–5, (c) pursuant to § 1.401(a)(9)–1 H–1, the rules in section 401(a)(9) apply separately to each IRA maintained for an individual's benefit, and (d) the rules in § 1.401(a)(9)–1 E–6 through E–8 concerning recalculation of life expectancy apply to IRAs. However, the effective date and transitional rules for the distribution rules applicable to IRAs are determined under this § 1.408–8 and not § 1.401(a)(9)–1.

A–2. Q. Are employer contributions under a simplified employee pension (defined in section 408(k)) treated as contributions to an IRA?

A. Yes. IRAs that receive employer contributions under a simplified employee pension (defined in section 408(k)) are treated as IRAs and are, therefore, subject to the distribution rules in this section.

A–3. Q. In the case of distributions from an IRA, what does the term "required beginning date" mean?

A. In the case of distributions from an IRA, the term "required beginning date" means April 1, of the calendar year following the calendar year in which the individual attains age 70½. The transition rule in § 1.401(a)(9)–1 B–2(b) does not apply to distributions from IRAs.

A–3A. Q. Will an IRA lose its tax-exempt status for failing in operation to make minimum distributions in accordance with section 408(a)(6) and (b)(3).

A. An IRA will not lose its tax-exempt status for isolated instances of failing in operation to make minimum distributions in accordance with section 408(a)(8) and (b)(3). A pattern or regular practice of failing to meet the minimum distribution requirements of section 408(a)(6) and (b)(3) with respect to the individual (or of the individual's beneficiaries) will not be treated as an isolated instance even if each instance is de minimis.

A–4. Q. May an individual's beneficiary elect to treat such beneficiary's entire interest in the trust upon the death of the individual (or the remaining part of such interest if distribution to the beneficiary has commenced) as the beneficiary's own account?

A. (a) In the case of an individual who died before January 1, 1984, the provisions of § 1.408–2(b)(7)(ii)(as in effect on December 31, 1983) continue to apply to the distribution of such individual's account. Thus, any beneficiary (whether or not the beneficiary is the individual's surviving spouse) may treat his interest in such individual's account as the beneficiary's own account in accordance with § 1.408–2(b)(7)(ii), regardless of whether or not distribution to the beneficiary has commenced.

(b) In the case of an individual dying after December 31, 1983, the only beneficiary of the individual who may elect to treat the beneficiary's entire interest in the trust (or the remaining part of such interest if distribution thereof has commenced to the beneficiary) as the beneficiary's own account is the individual's surviving spouse. If the surviving spouse makes such an election, the spouse's interest in the account would then be subject to the distribution requirements of section 401(a)(9)(A), rather than those of section 401(a)(9)(B). An election will be considered to have been made by the surviving spouse if either of the following occurs: (1) any required

amounts in the account (including any amounts that have been rolled over or transferred, in accordance with the requirements of section 408(d)(3)(A)(i), into an individual retirement account or individual retirement annuity for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the decedent under section 401(a)(9)(B), or (2) any additional amounts are contributed to the account (or to the account or annuity to which the surviving spouse has rolled such amounts over, as described in (1) above) which are subject, or deemed to be subject, to the distribution requirements of section 401(a)(9)(A). The result of such an election is that the surviving spouse shall then be considered the individual for whose benefit the trust is maintained.

A–5. Q. How is the benefit determined for purposes of calculating the minimum distribution from an IRA?

A. For purposes of determining the minimum distribution required to be made from an IRA in any calendar year, the account balance of the IRA as of the December 31 of the calendar year immediately preceding the calendar year for which distributions are being made will be substituted in § 1.401(a)(9)–1 F–1 for the benefit of the employee. The account balance as of December 31 of such calendar year is the value of the IRA upon close of business on such December 31. However, for purposes of determining the minimum distribution for the second distribution calendar year for an individual, the account balance as of December 31 of such calendar year must be reduced by any distribution (as described in § 1.401(a)(9)–1 F–5(c)(2)) made to satisfy the minimum distribution requirements for the individual's first distribution calendar year after such date.

A–6. Q. What rules apply in the case of a rollover to an IRA of an amount distributed by a qualified plan or another IRA?

A. If the surviving spouse of an employee rolls over a distribution from a qualified plan, such surviving spouse may elect to treat the IRA as the spouse's own IRA in accordance with the provisions in A–4. In the event of any other rollover to an IRA of an amount distributed by a qualified plan or another IRA, the rules in § 1.401(a)(9)–1 will apply for purposes of determining the account balance for the receiving IRA and the minimum distribution from the receiving IRA. Thus, for example, certain amounts rolled over to a plan must be separately accounted for and the minimum distribution with respect to such amounts must be separately determined, as described in G–2. However, because the value of the account balance is determined as of December 31 of the year preceding the year for which the minimum distribution is being determined and not as of a valuation date in the preceding year, the account balance of the receiving IRA need not be adjusted for the amount received as provided in § 1.401(a)(9)–1G–2(a) in order to determine the minimum distribution for the calendar year following the calendar year in which the amount rolled over is received, unless the amount received is deemed to have been received in the immediately preceding year, pursuant to § 1.401(a)(9)–1 G–2(a) or (b)(7). In that case, for purposes of determining the minimum distribution for the calendar year in which such amount is actually received, either the account balance of the receiving IRA as of December 31 of the preceding year must be adjusted by the amount received in accordance with § 1.401(a)(9)–1 G–2(a) or the amount received will be treated as a separate account balance, in accordance with § 1.401(a)(9)–1 G–2(b).

A–7. Q. What rules apply in the case of a transfer from one IRA to another?

A. In the case of a transfer from one IRA to another IRA, the rules in § 1.401(a)(9)–1 G–3 and G–4 will apply for purposes of determining the account balance of, and the minimum distribution from, the IRAs involved. Thus, the transferor IRA must distribute in the year of the transfer any amount required with respect to the portion of the account transferred; certain amounts transferred must be separately accounted for by the transferee IRA; and the minimum distribution with respect to such amounts must be separately determined by the transferee IRA. However, for purposes of determining the account balance of the transferee IRA and the transferor IRA, the account balance need not be adjusted for the amount transferred as provided in § 1.401(a)(9)–1 G–4 (a) in order to calculate the minimum distribution for the calendar year following the calendar year of the transfer, because the account balance is determined as of December 31 of the calendar year immediately preceding the calendar year for which the minimum distribution is being determined.

A–8. Q. Can a qualified trust or plan described in section 401(a) or an annuity described in section 403(a) or 403(b) make a transfer to an IRA that is not a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4) or 403(b)(8)?

A. (a) No. A qualified trust or plan described in section 401(a) or an annuity described in section 403(a) or 403(b) can not make a transfer to an IRA. However, an IRA may accept a rollover contribution that satisfies the requirements of section 402(a)(5), 402(a)(7), 403(a)(4) or 403(b)(8) even if such contribution is distributed by a qualified trust, plan, or annuity directly to the IRA at the direction of the employee (or the employee's surviving spouse). Such contribution will not be treated as a transfer to an IRA. Instead, such contribution will be treated as though it was distributed by the qualified trust, plan, or annuity to the employee (or the employee's surviving spouse) and subsequently rolled over to an IRA within the requisite 60 day period.

(b) Transfers directly from such a qualified trust or plan described in section 401(a) or annuity described in section 403(a) or 403(b) to an IRA may adversely affect both the qualified status of the trust, plan or annuity from which the transfer is made and the qualified status of the IRA which receives the transfer.

B. Effective Date and Transition Rules

B–1. Q. When are the distribution rules for IRAs in A–1 through A–8 effective?

A. The new distribution rules in A–1 through A–8 are effective for calendar years after calendar year 1984. However, distributions for calendar years 1985 and 1986 are not required to be made until December 31, 1987. If an individual attained age 70½ in calendar year 1986 or a prior calendar year and is alive on December 31, 1987, B–2 and B–3 provide special rules for determining the minimum distribution required for calendar years 1985 through 1987, and B–4 provides special rules for determining the minimum distribution required for calendar years after 1987. In the case of an individual who dies before January 1, 1988, B–4 through B–11 provide special rules for determining the minimum distribution required for calendar years 1985 through 1987 and for subsequent calendar years. See B–12 to determine when the IRA trust instrument must be amended. See B–13 to determine when the incidental death benefit rule applies to IRAs.

B–2. Q. If an individual attained age 70½ in calendar year 1986 or a prior calendar year and is alive on December 31, 1987, as of what date must the required distributions for calendar years 1985 through 1987 be made?

A. (a) *In general.* This B–2 determines when distributions must be made if an

individual attained age 70½ in calendar year 1986 or a prior calendar year and is alive on December 31, 1987. Paragraph (d) provides a special rule which applies if distributions under certain annuity contracts which commenced not later than August 26, 1987.

(b) *70½ in a calendar year before 1985.* If an individual attained age 70½ in a calendar year prior to 1985, under these transition rules, the minimum distribution for 1985 is not required to be made by December 31, 1985 and the minimum distribution for calendar year 1986 is not required to be made by December 31, 1986. Instead, the minimum distribution for calendar years 1985 and 1986 are required to be made by December 31, 1987. Thus, the minimum distributions for calendar years 1985, 1986, and 1987 must be made by December 31, 1987.

(c) *70½ in 1985.* If an individual attained age 70½ in calendar year 1985, under these transition rules, the minimum distribution for calendar year 1985 is not required to be made by April 1, 1986, and the minimum distribution for calendar year 1986 is not required to be made by December 31, 1986. Instead, the minimum distributions for calendar years 1985 and 1986 are required to be made by December 31, 1987. Thus, the minimum distributions for calendar years 1985, 1986, and 1987 must be made by December 31, 1987.

(d) *70½ in 1986.* If an individual attained age 70½ in 1986, the minimum distribution required for calendar year 1986 is not required to be made by April 1, 1987. Instead, the minimum distribution for 1986 is required to be made by December 31, 1987. Thus, the minimum distributions for calendar years 1986 and 1987 must be made by December 31, 1987.

(e) *Certain annuity payments.* In the case of an individual described in paragraph (a) to whom nonincreasing annuity payments from one or more annuity contracts purchased from an insurance company commence not later than August 26, 1987 and to whom such annuity payments continue through December 31, 1987, no additional amount is required under these transition rules to be distributed for 1985, 1986, and 1987 from such annuity contracts. However, this rule only applies if such payments comply with § 1.401(a)(9)–1 F–3 and F–4. If such payments commenced after the individual's required beginning date and if the individual has other IRAs (from which annuity payments as described above are not being made), any additional amount required to be distributed from such annuity contracts, under these transition rules, for 1985, 1986, and 1987 must be distributed to the extent available from such other IRAs. In determining whether an additional amount is required to be distributed from another IRA, the cash surrender value of the annuity contract as of the close of business on December 31, 1986 will be treated as the account balance of the annuity contract as of December 31, 1986.

B–3. Q. If (a) the individual attained age 70½ in calendar year 1986 or a prior calendar year and (b) the individual is alive on December 31, 1987, then how is the amount of the minimum required distribution from the individual's IRAs determined for calendar years 1985, 1986, and 1987?

A. (a) *In general.* If (1) the individual attained age 70½ in calendar year 1986 or a prior calendar year and (2) the individual is alive on December 31, 1987, for calendar years 1985, 1986, and 1987, the amount of the minimum distribution from the individual's IRAs is to be determined under one of the three methods: the life expectancy method, the percentage method, or the regular method. The individual will select which method is to be used. Under the life expectancy method and the percentage method, the total amount of the minimum distribution required for calendar years 1985, 1986, and 1987 is determined by aggregating the account balances under all of an individual's IRAs.

(b) *Life expectancy method.* Under the life expectancy method, the minimum distribution for 1985, 1986, and 1987 is determined as follows:

(1) *Designated beneficiary and life expectancy.* The designated beneficiary with respect to the individual under all IRAs will be determined as of any date in 1987. The beneficiary under all of the individual's IRAs as of such date with the longest life expectancy is the designated beneficiary that must be used to determine the aggregate minimum distribution. The applicable life expectancy (either the life expectancy of the individual or joint life and last survivor expectancy of the individual and the individual's designated beneficiary, whichever is applicable) is determined using ages as of birthdays in 1987. In the case of any beneficiary who is not alive on his birthday in 1987, such beneficiary is treated as being alive on that birthday for purposes of determining life expectancy.

(2) *Account balance.* The account balance is the aggregate of the account balances of all IRAs of the individual as of close of business December 31, 1986 with the following modifications. First, the aggregated account balance is increased by any amounts not reflected in an IRA as of such date due to withdrawal to make a rollover contribution to another IRA. Second, the aggregate account balance is then increased by any amount distributed in 1985 or 1986 for which credit is being taken under subparagraph (4).

(3) *Required distribution.* The total amount which must be distributed for calendar years 1985, 1986, and 1987 is determined by dividing the aggregate account balance determined under subparagraph (2) by the applicable life expectancy and multiplying the quotient by:

(i) 2.8, in the case of an individual with respect to whom the first distribution calendar year is 1985 (or a prior calendar year), or

(ii) 1.9, in the case of an individual with respect to whom the first distribution calendar year is 1986.

(4) *Credit for distributions.* In determining whether the total amount which must be distributed for calendar years 1985, 1986, and 1987 has been distributed, credit may be taken for any amount distributed in a distribution calendar year of the individual after 1984. However, in the case of any distribution in 1985 or 1986, credit may only be taken for amounts which were used to increase the aggregate account balance pursuant to subparagraph (2). See paragraph (e) for a special rule if an individual received excess distributions in a calendar year before 1985.

(c) *Percentage method.* Under the percentage method, the total amount of the minimum distribution required for calendar years 1985, 1986, and 1987 is determined as follows:

(1) *Account balance.* The account balance is determined in the same manner as under paragraph (b)(2).

(2) *Required distribution.* The total aggregate amount required to be distributed from all IRAs of the individual (which may be aggregated pursuant to this paragraph) is the following percentage of the aggregate account balance determined under subparagraph (1):

(i) 15%, in the case of an individual with respect to whom the first distribution calendar year under section 401(a)(9) is 1985, or

(ii) 10%, in the case of an individual with respect to whom the first distribution calendar year is 1986.

(3) *Credit for distributions.* Credits for distributions may be taken in the same manner as under paragraph (b)(4).

(d) *Regular method.* Under the regular method, the sum of the minimum distributions required for calendar years 1985, 1986, and 1987, calculated

separately, is determined under section 408 (a)(6) and (b)(3) and this section with appropriate adjustments. However, in determining the minimum distribution required for calendar years 1985, 1986, and 1987, the rule in § 1.401(a)(9)–1 F–2 does not apply. Also, credit (with an appropriate gross up) may be taken toward the minimum distribution required for the 1986 or 1987 distribution calendar year for distributions in the 1985 or 1986 distribution calendar years that exceeded the minimum required distribution for such year.

(e) *Credits.* Credit may be taken under the life expectancy method, the percentage method, and the regular method for excess distributions from IRAs in calendar years before 1985 to the extent that the aggregate amount distributed by the end of 1984 by all IRAs of the individual exceeded the aggregate of the minimum amounts required by § 1.408–2(b)(6)(v) to have been distributed by the end of 1984. Such excess distributions will be treated as amounts distributed in 1985 for purposes of determining the amount which is required to be distributed by determining the amount which is required to be distributed by December 31, 1987 under each of those methods.

(f) *Example.* This Q&A is illustrated by the following example:

Example

(a) An individual (X), born March 1, 1915, has three IRAs (IRA 1, IRA 2, and IRA 3) as of January 1, 1987. Each IRA has a different designated beneficiary. X's spouse, born January 15, 1920 is the sole designated beneficiary of IRA 1. X's daughter, born May 5, 1939, is the sole designated beneficiary of IRA 2. X's son, born April 2, 1941, is the sole designated beneficiary of IRA 3. X's account balance in IRA 1 as of December 31, 1986 is $53,000. X's account balance in IRA 2 as of December 31, 1986 is $25,000. X's account balance in IRA 3 as of December 31, 1986 is $24,000. Distributions in 1985 and 1986 from X's IRAs are as follows: $3,000 from IRA 1 in 1985, $1,500 from IRA 2 in 1986, and $2,500 from IRA 3 in 1986.

(b) Under the life expectancy method, X's required minimum distribution in 1987 (required to be made by December 31, 1987) is determined as follows:

(1) Account balances as of December 31, 1986:	
(a) IRA 1	$53,000
(b) IRA 2	$25,000
(c) IRA 3	$24,000
(2) Aggregate account balances of X as of December 31, 1986	$102,000
(3) Distribution in 1985	$3,000
(4) Distribution in 1986 ($1,500 plus $2,500)	$4,000
(5) Account balance to be used to determine minimum distribution (sum of lines 2, 3, and 4)	$109,000
(6) Attained age of beneficiary with longest life expectancy (youngest—X's son) as of birthday in 1987	46
(7) X's attained age as of X's birthday in 1987	72
(8) Joint life and last survivor expectancy of X and X's son (using Table VI of § 1.72–9) using ages on lines 6 and 7	37.3
(9) Account balance (line 5) divided by the applicable life expectancy (line 8)	$2922.25
(10) Total amount which must be distributed for 1985, 1986, and 1987. (line 9 multiplied by 2.8)	$8182.30
(11) Distributions in 1985 and 1986 for which credit may be taken (sum of lines (3) and (4))	$7,000
(12) Amount required to be distributed in 1987. (line 10 minus line 11)	$1182.30

(c) Under the percentage method, X's required minimum distribution in 1987 (required to be made by December 31, 1987) is determined as follows:

(1) Account balances as of December 31, 1986:	
(a) IRA 1	$53,000
(b) IRA 2	25,000
(c) IRA 3	24,000
(2) Aggregate account balances of X as of December 31, 1986	102,000
(3) Distribution in 1985	3,000
(4) Distribution in 1986 ($1,500 plus $2,500)	4,000
(5) Account balance to be used to determine minimum distribution (sum of lines 2, 3, and 4)	109,000
(6) Total amount which must be distributed for 1985, 1986, and 1987 (15% of line 5)	16,350
(7) Distributions in 1985 and 1986 for which credit may be taken (sum of lines 3 and 4)	7,000
(8) Amount required to be distributed in 1987 (line 6 minus line 7)	9,350

B–4. Q. If an individual attained age 70½ in 1986 or in a prior calendar year, are there any special rules for determining the minimum distribution for calendar years after 1987?

A. (a) *Required beginning date.* If an individual attained age 70½ in 1986 or in a prior calendar year, the amount of the minimum distribution required for calendar years after 1987 will be determined in a manner consistent with the use of December 31, 1987 as the individual's required beginning date. Consequently, for example, if any election is permitted by the IRA trustee, the individual must elect no later than December 31, 1987 whether or not life expectancy will be recalculated for purposes of determining the minimum distribution required for calendar years after 1987. Further, for example, the designated beneficiary of the individual under each IRA will be determined as of December 31, 1987 for purposes of determining the minimum distribution required for calendar years after 1987.

(b) *Life expectancies.* If an individual attained age 70½ in 1986 or in a prior calendar year, for purposes of determining the minimum distribution for calendar years after 1987, life expectancies shall be determined for each IRA as follows. If the individual's designated beneficiary is the individual's spouse, and the life expectancy of the individual and spouse are being recalculated, the joint life and last survivor expectancy of the individual and spouse is calculated using their attained ages as of their birthdays in the calendar year for which the minimum distribution is being determined. If the individual's designated beneficiary is not the individual's spouse and life expectancy is being recalculated, the joint life and last survivor expectancy of the individual and the designated beneficiary (other than the individual's spouse) is determined using the attained age of the individual as of the individual's birthday in the calendar year for which the minimum distribution is being determined and the attained age of the designated beneficiary as of the beneficiary's birthday in 1987, adjusted in accordance with E–8. If an individual's life expectancy is not being recalculated, the joint life and last survivor expectancy of the individual and the designated beneficiary will be determined based on the attained ages of the individual and designated beneficiary as of their birthdays in 1987, reduced by one for each calendar year that has elapsed since 1987. For purposes of this paragraph (b), if the designated beneficiary is not alive on his birthday in 1987, such beneficiary will be deemed to be alive on that date for purposes of determining life expectancy.

(c) *Normal rules.* For years after 1987, the requirement that each IRA separately satisfy the minimum distribution requirement applies. Thus, except as noted in this section, the rules in H–1 through H–2A of § 1.401(a)(9)–1 apply.

B–5. Q. If an individual dies before January 1, 1988, are distributions to be made in accordance with section 401(a)(9)(B)(i) or in accordance with section 401(a)(9)(B) (ii) or (iii) and (iv)?

A. If an individual dies prior to January 1, 1988 (including deaths before January 1, 1985), the IRA must be distributed in accordance with section 401(a)(9)(B) (ii) or (iii) and (iv), whichever is applicable (see B–12 and § 1.401(a)(9)–1 C–4). If an individual dies prior to January 1, 1986, see B–6 and B–7 for rules concerning which calendar year is the first calendar year for which distributions must be made in accordance with section 401(a)(9), when such distributions are required to commence, and how the amount which is required to be distributed by such date is determined.

B–6. Q. If an individual died prior to January 1, 1986 and distributions are being made over the life expectancy of a designated beneficiary in accordance with section 401(a)(9)(B) (iii) and (iv), what is the first calendar year for which a distribution is required and when must distributions commence?

A. (a) *General rule.* If an individual died prior to January 1, 1986 and distributions are being made over the life expectancy of a designated beneficiary in accordance with section 401(a)(9)(B) (iii) and (iv), the first calendar year for which a minimum distribution under section 401(a)(9) is required is the later of: (1) the calendar year which contains the required commencement date determined under § 1.401(a)(9)–1 C–3 (a) or (b), whichever is applicable, or (2) calendar year 1985. However, under these transition rules, if the first distribution calendar year for which minimum distributions must be determined in accordance with section 401(a)(9) is 1985, such minimum distribution is not required to be made by December 31, 1985. Similarly, under these transition rules, if the first (or second) distribution calendar year (for which minimum distributions must be determined in accordance with section 401(a)(9)) is 1986, the minimum distribution for 1986 is not required to be made by December 31, 1986. Instead, in such case, the minimum distributions for 1985 (if applicable), 1986, and 1987, must be made by December 31, 1987. Paragraph (b) provides a special rule made by December 31, 1987. Paragraph (b) provides a special rule for certain annuity payments.

(b) *Certain annuity payments.* In the case of a beneficiary described in paragraph (a) to whom nonincreasing annuity payments from one or more annuity contracts purchased from an insurance company commenced not later than August 26, 1987, and to whom such annuity payments continue through December 31, 1987, no additional amount is required under these transition rules to be distributed for 1985, 1986, and 1987 from such annuity contracts. However, this rule only applies if such annuity payments comply with § 1.401(a)(9)–1 F–3 and F–4. If such payments commenced after the last day of the distribution calendar year determined under paragraph (a), and if such beneficiary is also the sole beneficiary of other IRAs (from which annuity payments as described above are not being made) that were inherited from the same individual from whom such annuity contracts were inherited, any additional amount required to be distributed from such annuity contract, under these transition rules, for 1985, 1986, and 1987 must be distributed to the extent available from such other IRAs. In determining whether an additional amount is required to be distributed from another IRA, the cash surrender value of the annuity contract as of the close of business December 31, 1986 will be treated as the account balance of the annuity contract as of December 31, 1986.

B–7. If (a) distributions are being made over the life expectancy of a designated beneficiary in accordance with section 401(a)(9)(B) (iii) and (iv) and (b) the first distribution calendar year is 1985 or 1986 (determined under B–6(a)), then how is the amount of the minimum distribution determined for calendar years 1985, 1986, and 1987?

A. (a) *In general.* If the two conditions set forth in the question are met, the amount of the minimum distribution for calendar years 1985, 1986, and 1987 is to be determined under one of three methods, the life expectancy method, the percentage method, and the regular method. Under the life expectancy method and the percentage method, IRAs which were inherited from the same individual and which have the same beneficiaries will be aggregated. The beneficiary (or beneficiaries) of the aggregated IRAs will select which of the three methods is to be used.

(b) *Life expectancy method.* Under the life expectancy method, the minimum distribution for 1985, 1986, and 1987 will then be determined as follows:

(1) *Designated beneficiary and life expectancy.* The designated beneficiary with respect to an individual for IRAs being aggregated will be determined as of any date in 1987. The applicable life expectancy will be the life expectancy of the designated beneficiary using the designated beneficiary's age as of his birthday in 1987. In the case of a beneficiary who is not alive on his birthday in 1987, the beneficiary will be treated as being alive on that date for purposes of determining life expectancy under this transition rule.

(2) *Account balance.* The account balance is the aggregate of the account balances of all the IRAs to be aggregated (determined under paragraph (a)) as of close of business December 31, 1986 with the following modifications. First, the aggregated account balance is increased by any amounts not reflected in an IRA as of such date due to withdrawal to make a rollover contribution to another IRA. Second, the aggregate account balance is then increased by any amount distributed in 1985 or 1986 for which credit is being taken under subparagraph (4).

(3) *Required distribution.* The total amount which must be distributed for calendar years 1985, 1986, and 1987 will be determined by dividing the account balance determined under subparagraph (2) by the applicable life expectancy determined under subparagraph (1) and multiplying the quotient by:

(i) 2.8, in the case of a individual with respect to whom the first distribution calendar year is 1985, or

(ii) 1.9, in the case of an individual with respect to whom the first distribution calendar year is 1986.

(4) *Credit for distributions.* In determining whether the total amount which must be distributed for calendar years 1985, 1986, and 1987 has been distributed, credit may be taken for any amount distributed in a distribution calendar year of the individual after 1984. However, in the case of any distribution in 1985 or 1986, credit may only be taken for amounts which were used to increase the aggregate account balance pursuant to subparagraph (2).

(c) *Percentage method.* Under the percentage method, the total amount of the minimum distribution required for calendar years 1985, 1986, and 1987 is determined as follows:

(1) *Account balance.* The account balance is determined in the same manner as under paragraph (b)(2).

(2) *Required distribution.* The total aggregate amount required to be distributed from all the IRAs to be aggregated determined under paragraph (a) is the following percentage of the aggregate account balance determined under subparagraph (1):

(i) 15%, in the case of an individual with respect to whom the first distribution calendar year is 1985, or

(ii) 10%, in the case of an individual with respect to whom the first distribution calendar year is 1986.

(3) *Credit for distributions.* Credits for distributions may be taken in the same manner as under paragraph (b)(3)

(d) *Regular method.* Under the regular method, the sum of the minimum distributions required for calendar years 1985, 1986, and 1987, calculated separately, is determined under section 408 (a)(6) and (b)(3) and this section with the appropriate adjustments. However, the rule in § 1.401(a)(9)–1 F–2 does not apply. Also credit (with an appropriate gross-up) may be taken toward the minimum distributions required for the 1986 or 1987 distribution calendar year for distributions in the 1985 or 1986 distribution calendar years which exceeded the minimum required distribution for such year.

B–8. Q. If distributions are being made with respect to an individual over the life expectancy of a designated beneficiary in accordance with section 401(a)(9)(B) (iii) and (iv), as of what date is the designated beneficiary determined, and as of what date is the life expectancy of the designated beneficiary determined, for purposes of determining the minimum distribution for calendar years after 1987?

A. If distributions are being made over the life expectancy of a designated beneficiary in accordance with section 401(a)(9)(B) (iii) and (iv), the designated beneficiary will be determined as of any date in 1987. The life expectancy of the designated beneficiary (other than an individual's surviving spouse whose life expectancy is being recalculated) will be determined using the attained age of the designated beneficiary as of such beneficiary's birthday in calendar year 1987, reduced by one for each calendar year which has elapsed after 1987. If the designated beneficiary is not alive on his birthday in 1987, such beneficiary will be treated as alive on that date for purposes of determining life expectancy. If the individual's surviving spouse is a designated beneficiary and such spouse's life expectancy is being recalculated, the life expectancy of such spouse will be calculated using the attained age of the spouse as of such spouse's birthday in the calendar year for which the minimum distribution is being determined.

B–9. Q. In the case of an individual's surviving spouse for whom a distribution is required to be made for 1985 or 1986, when must any election concerning recalculation of life expectancy be made by the spouse?

A. In the case of an individual's surviving spouse for whom a distribution is required to be made for 1985 or 1986, any election concerning recalculation of life expectancy must be made by December 31, 1987.

B–10. Q. When must the election described in § 1.401(a)(9)–1 C–4 (concerning whether distribution will be made in accordance with the five-year rule in section 401(a)(9)(B)(ii) or the exception to the five-year rule in section 401(a)(9)(B)(iii)) be made by a beneficiary otherwise required to make such election on or before December 31, 1986?

A. The election described in § 1.401(a)(9)–1 C–4 (concerning whether distribution will be made in accordance with the five-year rule in section 401(a)(9)(B)(ii) or the exception to the five-year rule in section 401(a)(9)(B)(iii)) if otherwise required to make such election on or before December 31, 1986 must be made by December 31, 1987.

B–11. Q. If an individual died prior to January 1, 1985, and distribution is to be made in accordance with the five-year rule contained in section 401(a)(9)(B)(ii), as of what date must the individual's entire interest be distributed?

A. If an individual died prior to January 1, 1985 and distribution is to be made in accordance with the five-year rule contained in section 401(a)(9)(b)(ii), the individual's entire interest must be distributed as of the later of: (a) December 31 of the calendar year which contains the fifth anniversary of the employee's death or (b) December 31, 1987.

B–12. Q. When must the trust instrument for an IRA be amended to provide the distribution rules in section 408 (a)(6) or (b)(3)?

A. (a) The trust instrument for an IRA with a favorable opinion letter need not be amended until the later of December 31, 1988 or such time as the Commissioner prescribes (after publication of sample language for IRAs, including IRAs used for funding simplified employee pensions (SEPs)). In the case of an existing IRA or a newly established IRA which is established by executing Form 5305 or Form 5305A, the current (Rev. 11–83) editions of those forms may be used until such time as the Commissioner prescribes. Prior to the date when the trust instrument must be amended, an IRA with a favorable opinion letter or an IRA established by executing Form 5305 or Form 5305A will not be considered to fail to be described in section 408 (a) or (b) merely because it fails in form to satisfy section 408 (a)(6) or (b)(3) and this section of the regulations. However, distributions must satisfy section 408(a)(6) or 408(b)(3) and the regulations thereunder in operation, notwithstanding the absence of provisions in the trust instrument beginning with calendar year 1985.

(b) An IRA which does not have a favorable opinion letter and which is not established by executing Form 5305 or Form 5305A will satisfy sections 408(a)(6) and 408(b)(3) until the date prescribed in paragraph (a) as of which IRAs with a favorable opinion letter must be amended if such IRA contains the statutory provisions in section 401(a)(9) applicable to IRAs. Not all provisions in section 401(a)(9) apply to IRAs. For example, pursuant to A–3, the transitional rule in § 1.401(a)(9)–1 B–2(b) does not apply to distributions from IRAs.

(c) For calendar years before the calendar year in which IRAs must be amended pursuant to this B–5, an IRA will not be subject to the default provisions of § 1.401(a)(9)–1 if distributions under each IRA are otherwise made in accordance with these regulations in a reasonable and consistent manner. For example, for purposes of determining, pursuant to § 1.401(a)(9)–1 C–4, whether the exception to the five-year rule in section 401(a)(9)(B) (iii) and (iv) applies, an IRA will be found to comply with section 408 (a)(6) or (b)(3) in operation even though distributions are not made in accordance with the default provisions in § 1.401(a)(9)–1 C–4(a) if the IRA trustee decides with respect to an IRA to either distribute benefits under one method or the other or distribute benefits pursuant to the election by an individual or the individual's beneficiary (or in the absence of an election, under one or the other of such methods). Similarly, for calendar years before the calendar year in which IRAs must be amended pursuant to B–5, for purposes of determining whether or not the life expectancies of the individual and the individual's spouse will be recalculated pursuant to section 401(a)(9)(D) and § 1.401(a)(9)–1 E–7, an IRA will be found to comply with section 408 (a)(6) or (b)(3) and this section of the regulations in operation even though the life expectancies of the individual and the individual's spouse are not recalculated if the trustee decides not to recalculate such life expectancies, if the IRA trustee allows elections by the individual or spouse and the individual or spouse elects not to recalculate life expectancy, or if the IRA trustee decides not to recalculate life expectancy in the absence of an election to recalculate life expectancy.

B–13. Must distributions from IRAs for calendar years before 1989 satisfy the incidental benefit rule in § 1.401(a)(9)–2?

A. No. Distributions from IRAs for calendar years before 1989 are not required to satisfy the incidental benefit rule in § 1.401(a)(9)–2. However, for calendar years after 1988, distributions must satisfy the incidental benefit rule in § 1.401(a)(9)–2 which applies to calendar years after 1988.

B-14. Q. What are the distribution rules applicable to individual retirement plans (IRAs) in 1984?

A. For calendar year 1984, IRAs are subject to the distribution requirements of section 408(a) (6) and (7) and section 408(b) (3) and (4), as in effect immediately prior to the enactment of the Tax Reform Act of 1984 (TRA of 1984). With respect to individuals who died prior to January 1, 1984, the law in effect immediately prior to the enactment of TRA of 1984 is the law in effect immediately prior to the enactment of the Tax Equity and Fiscal Responsibility Act (TEFRA). Section 243(b) of (TEFRA) (as amended by section 713(g) of TRA of 1984) denies deductions for contributions to, and rollover treatment for distributions to or from, inherited IRA (as defined in section 408(d)(3)(c)(ii)) with respect to individuals dying after December 31, 1983.

Pension Excise Tax Regulations

PART 54—[AMENDED]

Par. 6. The authority citation for Part 54 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 54.4974-2 is also issued under 26 U.S.C. 4974.

Par. 7. There is added the following new section after § 54.4974-1 to read as follows:

§ 54.4974-2 Excise tax on accumulations in qualified retirement plans.

Q-1. Is any tax imposed on a payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) to whom an amount is required to be distributed for a taxable year if the amount distributed during the taxable year is less than the minimum required distribution?

A. Yes. If the amount distributed to a payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) for a calendar year is less than the minimum required distribution for such year, an excise tax is imposed on such payee under section 4974 for the taxable year beginning with or within the calendar year during which the amount is required to be distributed. The tax is equal to 50 percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the calendar year. Section 4974 provides that this tax shall be paid by the payee. For purposes of section 4974, the term "minimum required distribution" means the minimum amount required to be distributed pursuant to section 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2), as the case may be, and the regulations thereunder. Except as otherwise provided in Q&A-6, the minimum required distribution for a calendar year is the minimum amount required to be distributed during the calendar year. Q&A-6 provides a special rule for amounts required to be distributed by an employee's (or individual's) required beginning date.

Q-2. For purposes of section 4974, what is a qualified retirement plan?

A. For purposes of section 4974, each of the following is a qualified retirement plan:

(a) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(b) An annuity plan described in section 403(a)

(c) An annuity contract, custodial account, or retirement income account described in 403(b),

(d) An individual retirement account described in section 408(a),

(e) An individual retirement annuity described in section 408(b), or

(f) Any other plan, contract, account, or annuity that, at any time, has been treated as a plan, account, or annuity described in (a) through (e), whether or not such plan, contract, account, or annuity currently satisfies the applicable qualification requirements.

Q-3. If a payee's interest under a qualified retirement plan is in the form of an individual account, how is the minimum required distribution for a given calendar year determined for purposes of section 4974?

A. (a) *General rule.* If a payee's interest under a qualified retirement plan is in the form of an individual account and distribution of such account is not being made under an annuity contract purchased in accordance with § 1.401(a)(9)-1 F-4, the amount of the minimum required distribution for any calendar year for purposes of section 4974 is the minimum amount required to be distributed for such calendar year in order to satisfy the minimum distribution requirements in §§ 1.401(a)(9)-1 and 1.401(a)(9)-2 as provided in the following (whichever is applicable):

(1) Section 401(a)(9) and §§ 1.401(a)(9)-1 and 1.401(a)(9)-2 (in the case of a plan described in section 401(a) which includes a trust exempt under section 501(a) or an annuity plan described in section 403(a)),

(2) Section 403(b)(10) and § 1.403(b)-2 (in the case of an annuity contract or custodial account described in section 403(b)), or

(3) Section 408 (a)(6) or (b)(3) and § 1.408-8 (in the case of an individual retirement account or annuity described in section 408 (a) or (b)).

(b) *Default provisions.* Unless otherwise provided under the qualified retirement plan (or, if applicable, the governing instrument of the qualified retirement plan), the default provisions in § 1.401(a)(9)-1 apply in determining the minimum required distribution for purposes of section 4974. For example, if the amount of the minimum required distribution for purposes of section 4974 is to be determined using the life expectancies of the employee (or IRA owner), the employee's spouse (or IRA owner's spouse), or both, the life expectancy of such individuals must be recalculated in order to determine the minimum required distribution unless the exceptions in § 1.401(a)(9)-1 E-7 apply. Similarly, if the rules in § 1.401(a)(9)-1 C-1 through C-6 (after death distribution rules) apply to a payee, the minimum required distribution for any given calendar year to satisfy the applicable section enumerated in paragraph (a) will be determined using the default provisions in § 1.401(a)(9)-1 C-4 unless an exception stated therein applies.

(c) *Five year rule.* If the five-year rule in section 401(a)(9)(B)(ii) applies to the distribution to a payee, no amount is required to be distributed for any calendar year to satisfy the applicable enumerated section in paragraph (a) until the calendar year which contains the date five years after the date of the employee's death. For the calendar year which contains the date five years after the employee's death, the minimum amount required to be distributed to satisfy the applicable enumerated section is the payee's entire remaining interest in the qualified retirement plan.

Q-4. If a payee's interest in a qualified retirement plan is being distributed in the form of an annuity, how is the amount of the minimum required distribution determined for purposes of section 4974?

A. If a payee's interest in a qualified retirement plan is being distributed in the form of an annuity (either directly from the plan, in the case of a defined benefit plan, or under an annuity contract purchased from an insurance company), the amount of the minimum required distribution for purposes of section 4974 will be determined as follows:

(a) *Permissible annuity distribution option.* A permissible annuity distribution option is an annuity contract (or, in the case of annuity distributions from a defined benefit

plan, a distribution option) which specifically provides for distributions which, if made as provided, would for every calendar year equal or exceed the minimum amount required to be distributed to satisfy the applicable section enumerated in paragraph (a) of Q–4 for every calendar year. If the annuity contract (or, in the case of annuity distributions from a defined benefit plan, a distribution option) under which distributions to the payee are being made is a permissible annuity distribution option, the minimum required distribution for a given calendar year will equal the amount which the annuity contract (or distribution option) provides is to be distributed for that calendar year.

(b) *Impermissible annuity distribution option.* An impermissible annuity distribution option is an annuity contract (or, in the case of annuity distributions from a defined benefit plan, a distribution option) under which distributions to the payee are being made specifically provides for distributions which, if made as provided, would for any calendar year be less than the minimum amount required to be distributed to satisfy the applicable section enumerated in paragraph (a) of Q–4. If the annuity contract (or, in the case of annuity distributions from a defined benefit plan, the distribution option) under which distributions to the payee are being made is an impermissible annuity distribution option, the minimum required distribution for each calendar year will be determined as follows:

(1) If the qualified retirement plan under which distributions are being made is a defined benefit plan, the minimum amount required to be distributed each year will be the amount which would have been distributed under the plan if the distribution option under which distributions to the payee were being made was the following permissible annuity distribution option:

(i) In the case of distributions commencing before the death of the employee, if there is a designated beneficiary under the impermissible annuity distribution option for purposes of section 401(a)(9), the permissible annuity distribution option is the joint and survivor annuity option under the plan for the lives of the employee and the designated beneficiary which provides for the greatest level amount payable to the employee determined on an annual basis. If the plan does not provide such an option or there is no designated beneficiary under the impermissible distribution option for purposes of section 401(a)(9), the permissible annuity distribution option is the life annuity option under the plan payable for the life of the employee in level amounts with no survivor benefit.

(ii) In the case of distributions commencing after the death of the employee, if there is a designated beneficiary under the impermissible annuity distribution option for purposes of section 401(a)(9), the permissible annuity distribution option is the life annuity option under the plan payable for the life of the designated beneficiary in level amounts. If there is no designated beneficiary, the five year rule in section 401(a)(9)(B)(ii) applies. See subparagraph (3).

The determination of whether or not there is a designated beneficiary and the determination of which designated beneficiary's life is to be used in the case of multiple beneficiaries will be made in accordance with § 1.401(a)(9)–1. See D–1 through D–3, D–5, E–1, and E–5 of § 1.401(a)(9)–1. If the defined benefit plan does not provide for distribution in the form of the applicable permissible distribution option, the minimum required distribution for each calendar year will be an amount as determined by the Commissioner.

(2) If the qualified retirement plan under which distributions are being made is a defined contribution plan and the impermissible annuity distribution option is an annuity contract purchased from an insurance company, the minimum amount required to be distributed each year will be the amount which would have been distributed in the form of an annuity contract under the permissible annuity distribution option under the plan determined in accordance with subparagraph (1) for defined benefit plans. If the defined contribution plan does not provide the applicable permissible annuity distribution option, the minimum required distribution for each calendar year will be the amount which would have been distributed under an annuity described below purchased with the employee's or individual's account used to purchase the annuity contract which is the impermissible annuity distribution option.

(i) In the case of distributions commencing before the death of the employee, if there is a designated beneficiary under the impermissible annuity distribution option for purposes of section 401(a)(9), the annuity is a joint and survivor annuity for the lives of the employee and the designated beneficiary which provides level annual payments and which would have been a permissible annuity distribution option. However, the amount of the periodic payment which would have been payable to the survivor will be the applicable percentage under the table in Q&A–6 of § 1.401(a)(9)–2 of the amount of the periodic payment which would have been payable to the employee or individual. If there is no designated beneficiary under the impermissible distribution option for purposes of section 401(a)(9), the annuity is a life annuity for the life of the employee with no survivor benefit which provides level annual payments and which would have been a permissible annuity distribution option.

(ii) In the case of a distribution commencing after the death of the employee, if there is a designated beneficiary under the impermissible annuity distribution option for purposes of section 401(a)(9), the annuity option is a life annuity for the life of the designated beneficiary which provides level annual payments and which would have been permissible annuity distribution option. If there is no designated beneficiary, the five year rule in section 401(a)(9)(B)(ii) applies. See subparagraph (3).

The amount of the payments under the annuity contract will be determined using the interest and mortality tables specified in § 20.2031–7 of the Estate Tax Regulations. The determination of whether or not there is a designated beneficiary and the determination of which designated beneficiary's life is to be used in the case of multiple beneficiaries will be made in accordance with § 1.401(a)(9)–1. See D–1 through D–3, D–5, and E–5 of § 1.401(a)(9)–1.

(3) If the five-year rule in section 401(a)(9)(B)(ii) applies to the distribution to the payee under the contract (or distribution option), no amount is required to be distributed to satisfy the applicable enumerated section in paragraph (a) until the calendar year which contains the date five years after the date of the employee's death. For the calendar year which contains the date five years after the employee's death, the minimum amount required to be distributed to satisfy the applicable enumerated section is the payee's entire remaining interest in the annuity contract (or under the plan in the case of distributions from a defined benefit plan).

Q–4A. If there is any remaining benefit with respect to an employee (or IRA owner) after any calendar year in which the entire remaining benefit is required to be distributed under section, what is the amount of the minimum required distribution for each calendar year subsequent to such calendar year?

A. If there is any remaining benefit with respect to an employee (or IRA owner) after the calendar year in which the entire remaining benefit is required to be distributed, the minimum required distribution for each calendar year subsequent to such calendar year is the entire remaining benefit. For example, if there is any remaining benefit with respect to an employee (or IRA owner), for which the minimum required distribution is being determined under paragraph (b) of Q&A–4, after the calendar year in which the life (or lives) described therein expire, the minimum required distribution for each subsequent calendar year is the entire remaining benefit.

Q–5. If a payee has an interest under an eligible deferred compensation plan (as defined in section 457(b)), how is the minimum required distribution for a given taxable year of the payee determined for purposes of section 4974?

A. If a payee has an interest under an eligible deferred compensation plan (as defined in section 457(b)), the minimum required distribution for a given taxable year of the payee determined for purposes of section 4974 is determined under section 457(d).

Q–6. With respect to which calendar year is the excise tax under section 4974 imposed in the case in which the amount not distributed is an amount required to be distributed by April 1 of a calendar year (by the employee's or individual's required beginning date)?

A. In the case in which the amount not paid is an amount required to be paid by April 1 of a calendar year, such amount is a minimum required distribution for the previous calendar year, *i.e.*, for the employee's or the individual's first distribution calendar year. However, the excise tax under section 4974 is imposed for the calendar year containing the last day by which the amount is required to be distributed, *i.e.*, the calendar year containing the employee's or individual's required beginning date, even though the preceding calendar year is the calendar year for which the amount is required to be distributed. Pursuant to F–2 of § 1.401(a)(9)–1, amounts distributed in the employee's or individual's first distribution calendar year will reduce the amount required to be distributed in the next calendar year by the employee's or individual's required beginning date. There is also a minimum required distribution for the calendar year which contains the employee's required beginning date. Such distribution is also required to be made during the calendar year which contains the employee's required beginning date.

Q–7. For what taxable years is the excise tax imposed under section 4974 effective?

A. The excise tax imposed under section 4974 as amended by 1121 of the Tax Reform Act of 1986 (TRA '86) is effective for payees' taxable years beginning after December 31, 1988. Consequently, with respect to qualified plans described in section 401(a), annuity contracts and custodial accounts described in section 403(b), and an eligible deferred compensation plans (as defined in section 457(b)), the excise tax imposed under section 4974 only applies for taxable years beginning after December 31, 1988. However, with respect to individual retirement plans described in section 408, an excise tax is also imposed under section 4974 for taxable years beginning before January 1, 1989.

Q–8. Are there any circumstances when the excise tax under section 4974 for a taxable year may be waived?

A. The tax under section 4974(a) may be waived if the payee described in section 4974(a) establishes to the satisfaction of the Commissioner the following:

(a) The shortfall described in section 4974(a) in the amount distributed in any taxable year was due to reasonable error, and

(b) Reasonable steps are being taken to remedy the shortfall.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

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Monday
July 27, 1987

Part III

Environmental Protection Agency

40 CFR Parts 35, 124, 141, 142, 143, 144, 145, and 146

Indian Lands; National Primary Drinking Water and Underground Injection Control Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 35, 124, 141, 142, 143, 144, and 146

[FRL 3210-6]

Indian Lands; National Primary Drinking Water and Underground Injection Control Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Safe Drinking Water Act (SDWA) Amendments of 1986 (Pub. L. 99-339) require EPA to promulgate regulations by December 19, 1987, to allow Indian tribes to administer their own Public Water System, Underground Injection Control, Wellhead Protection and Sole Source Aquifer Demonstration programs. This proposed rule would establish procedures for: (a) Determining eligibility of Indian tribes to apply for treatment as States, (b) if found eligible, application for primary enforcement responsibility (primacy) on Indian lands, and (c) to receive grants to support EPA approved Public Water System and Underground Injection Control programs. EPA will, at a later date, propose rules for administration of the Wellhead Protection and Sole Source Aquifer Demonstration programs by Indian tribes.

DATE: Comments must be submitted on or before September 25, 1987. Public hearings will be held in Washington, DC, on Monday, August 17, beginning at 9:00 a.m.; in Spokane, Washington, on August 25, from 1:30 p.m., until 5:00 p.m.; and in Denver, Colorado on September 3, from 9:00 a.m. until 12:00 p.m.

ADDRESSES: Send written comments to Murlene Lash, State Programs Division, Office of Drinking Water (WH -550E), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A copy of the comments and supporting documents is available for review during normal business hours at the EPA, Room 1003 East Tower, 401 M Street, SW., Washington, DC 20460. It is requested that anyone planning to attend the public hearings (especially those who plan to make statements) register in advance by calling or writing Murlene Lash at (202) 382-5522, EPA, WH-550E, 401 M Street, SW., Washington, DC 20460; Dan Steinborn at (206/442-1225), U.S. EPA, Region X, 1200 Sixth Ave., Seattle Washington 98101; or Tom Pike at (303) 293-1410, EPA, Region VIII, 999 18th. Street, Denver, Colorado 80202-2405. The public hearing in Washington, DC will be held in the auditorium of the Education Center, EPA 401 M Street SW., Washington, DC 20460. The public hearing in Spokane, Washington, will be held at the Sheraton Hotel, North 322 Spokane Falls Court, Spokane, Washington, 99201. The public hearing in Denver Colorado, will be held in the Rocky Mountain Room, EPA, Region VIII (5th. floor), 999 18th. Street, Denver, Colorado 80202-2405.

Persons planning to make statements at the hearing are encouraged to submit written copies of their remarks at the time of the hearing.

FOR FURTHER INFORMATION CONTACT: John Trax, State Programs Division, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (202) 382-5526; or Rich Freeman, Indian Programs Coordinator, Water Division (5WD-TUB 8), Environmental Protection Agency, Region V, 230 S. Dearborn St., Chicago, Illinois 60604, telephone (312) 886-6206.

SUPPLEMENTARY INFORMATION:

Public Water System and Underground Injection Control Programs on Indian Lands

I. Statutory Authority

The June 19, 1986, amendments to the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*) added a new section 1451 entitled "Indian Tribes." The amendments authorize EPA to treat Indian tribes as States, delegate primary enforcement responsibility for the Public Water System (PWS) and Underground Injection Control (UIC) program, and provide grant and contract assistance to Indian tribes where appropriate. The amendments require EPA to promulgate regulations by December 19, 1987, specifying those provisions of the Act where it is appropriate to treat an Indian tribe as a State.

Section 1451 establishes four broad tests an Indian tribe must meet before treatment as a State is authorized: (1) The Indian tribe must be recognized by the Secretary of the Interior; (2) the Indian tribe must have a governing body carrying out substantial governmental duties and powers over a defined area; (3) the functions to be exercised by the Indian tribe must be within the area of its jurisdiction; and (4) in the EPA Administrator's judgment, the Indian tribe must be reasonably capable of carrying out the functions necessary to administer effectively a PWS and/or a UIC program. The amendments state that Indian tribes may not assume or maintain primary enforcement responsibility in a manner less protective of the public health than such responsibility may be assumed or maintained by a State. However, criminal enforcement jurisdiction cannot be a requirement for granting primary enforcement responsibility to an Indian tribe.

Many Indian tribes may decide it is not cost-effective or otherwise beneficial to apply for primary enforcement authority. For these tribes, and tribes otherwise deemed as not eligible for treatment as a State, the Regional EPA offices will continue to regulate public water systems and underground injection wells on their reservations.

II. Background

This proposal is consistent with Federal Policy statements regarding Indian tribes. On January 24, 1983, President Reagan signed a Federal Indian Policy Statement providing for treatment of tribal governments on a government-to-government basis and supporting the principle of self-determination and local decision-making by Indian tribes. EPA responded to the President's statement by developing a discussion paper entitled "Administration of Environmental Programs on Indian Lands" in July 1983 and subsequently developing the EPA Indian Policy Statement and Implementation Guidance in November 1984.

EPA's policy is "to give special consideration to tribal interests in making Agency policy and to ensure the close involvement of tribal governments in making decisions and managing the environmental programs affecting reservation lands." In practice, EPA's policy is to work directly with tribal governments as independent authorities for reservation affairs, and not as political subdivisions of States.

EPA formed a workgroup in August 1986 to draft regulations that would implement the Safe Drinking Water Act Amendments pertaining to Indian tribes. In October 1986, the workgroup circulated draft material to all States and Indian tribes for comment. The following proposal reflects the comments on that draft.

The Safe Drinking Water Act was adopted on December 17, 1974 (Pub. L. 93-523) and amended in 1977 (Pub. L. 95-190), 1979 (Pub. L. 96-63), 1980 (Pub. L. 96-502), and 1986 (Pub. L. 99-339). The statute was enacted to protect the quality of drinking water supplies throughout the United States by establishing four major programs: Public Water System, Underground Injection Control, Wellhead Protection, and Sole Source Aquifer Demonstration programs. The Public Water System

program establishes drinking water quality standards; the Underground Injection Control program protects groundwater by regulating the injection of fluids into the ground; the Wellhead Protection program protects aquifers by regulating the area around public water supply wells from contamination; and the Sole Source Aquifer Demonstration program protects "critical aquifer protection areas" within aquifers designated as "sole source aquifers."

The SDWA, as enacted in 1974, authorized EPA to delegate primary enforcement responsibility (primacy) to States to administer Public Water System and Underground Injection Control programs. The SDWA also authorizes EPA to support Public Water System and Underground Injection Control programs by providing financial and technical assistance for program administration. Currently, EPA administers the Public Water System and Underground Injection Control programs on Indian lands. However, the 1986 Safe Drinking Water Act amendments change the relative roles and responsibilities of Indian tribes and the EPA by enabling eligible Indian tribes to apply to EPA for primary enforcement responsibility for the Public Water System, Underground Injection Control, Sole Source Aquifer Demonstration, and Wellhead Protection programs.

III. Discussion of This Proposed Rule

A. Treatment of Indian Tribes as States

Indian tribes are presently treated as "municipalities." This proposal implements section 1451 of the SDWA which authorizes EPA to treat Indian tribes as States under certain criteria. Tribes which do not meet the proposed criteria will still be treated as municipalities.

Currently, States may apply for primary enforcement authority for a Public Water System program under section 1413 of the Safe Drinking Water Act, a Class II Underground Injection Control program under section 1425 of the Act, and/or an Underground Injection Control program for all other classes of injection wells under section 1422 of the Act. A State may also apply to administer a Sole Source Aquifer Demonstration Program under section 1427 of the Act and/or a Wellhead Protection Program under section 1428 of the Act. Finally, States may apply to receive grants under sections 1442, 1443, and 1444 of the Act. It is EPA's intention in this proposal, which addresses the Public Water System and Underground Injection Control programs (and in a proposal to follow this one relating to the Sole Source Aquifer and Wellhead Protection programs), that generally, Indian tribes which meet the requirements for treatment as a State may apply for the corresponding programs and grants under the Safe Drinking Water Act as previously listed.

As discussed below, one of the requirements for treatment as a State is that the tribe show jurisdiction over the activities covered by a particular program or grant. It is possible to demonstrate the necessary jurisdiction for one program or grant while not showing the appropriate jurisdiction for the other programs and grants under the Act. Accordingly, under this proposal, EPA would accept applications from tribes for treatment as a State on a program-by-program basis. However, designation for treatment as a State, relating to a program development grant, would operate as State designation for the whole program, since EPA would analyze tribal jurisdiction over the regulated activities of the whole program.

For example, a tribe may show the appropriate jurisdiction and otherwise qualify for treatment as a State in order to apply for Public Water System grants and primacy. If the tribe subsequently obtains primacy under section 1413 of the Act, the tribe would then be treated as a State for all provisions of the Act and EPA regulations relating only to the Public Water System program (*e.g.*, SDWA sections 1412, 1413, 1414, 1415, and 1416). The tribe would not be treated as a State for other programs or grants in the Act until EPA approved the corresponding separate applications.

As is the case for States, the Indian tribe must have its own legal authorities to administer a program under the Safe Drinking Water Act; EPA does not delegate its own authority. Nothing in this proposal is intended to alter any pre-existing authority or immunity any Indian tribe may have by way of third parties.

This proposal would establish procedures for Indian tribes to apply to EPA for treatment as a State in order to receive development grants and to be eligible to apply for primacy for the Public Water System (PWS) and Underground Injection Control (UIC) programs and associated funding for these programs. These procedures are set forth in a new Subpart H under Part 142—*National Primary Drinking Water Regulations*, and a new Subpart E under Part 145—*State UIC Program Requirements*, each titled: *Treatment of Indian Tribes as States*. Subparts H and E would establish criteria Indian tribes must meet for treatment as a State, list the information the tribe must provide in its application to EPA, and provide a procedure for EPA to formally review applications for treatment as a State. The requirements a tribe must meet under Subparts H and E are identical.

EPA proposes that a tribe be eligible for treatment as a State if it meets the four criteria listed in proposed §§ 142.72 and 145.52. The four eligibility criteria are: (1) The Indian tribe must be recognized by the Secretary of the Interior; (2) the Indian tribe must have a governing body "carrying out substantial governmental duties and powers" over a defined area; (3) the tribe must demonstrate that the public water systems and/or underground injection wells it will regulate are within the area of its jurisdiction; and (4) the tribe must demonstrate reasonable capability to administer (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Public Water System and/or Underground Injection Control program.

With respect to Federal recognition as an Indian tribe, the Secretary of the Interior periodically publishes a list of Federally recognized tribes. The applicant could use this list to establish the fact that it has Federal recognition, or provide to EPA other documentation that it is recognized by the Secretary of the Interior.

EPA considered what the phrase "carrying out substantial governmental duties and powers" means. Many Indian tribal governments perform essential governmental functions traditionally performed by sovereign governments. Examples of such functions could include, but are not limited to, the power to tax, the power of eminent domain, and the police power (*i.e.*, the power to provide for the public health, safety, and general welfare of the affected population). This interpretation of "carrying out substantial governmental duties and powers" is consistent with the Internal Revenue Service's interpretation of similar language (*i.e.*, "substantial governmental functions") found in the Indian Governmental Tax Status Act of 1982 (Pub. L. 97–473).

Each applicant must provide a narrative statement describing how its tribal governing body is carrying out substantial governmental duties and powers over a defined area. The statement must include copies of a currently effective tribal constitution, as well as currently effective tribal codes, ordinances, and resolutions (or other types of documents specified in the proposed Subpart H for Part 142 and proposed Subpart E for Part 145)

establishing that the tribe is, in fact, presently performing the types of functions set forth in its narrative statement.

This proposed rule would require a tribe, applying for treatment as a State, to submit a map and/or legal description of the area over which the Indian tribe asserts jurisdiction; copies of currently effective provisions of tribal codes and ordinances and currently effective tribal resolutions (or other types of documents as specified in the proposed rule) which establish the basis for the jurisdictional assertions; and a description of the nature or subject matter of the asserted jurisdiction, as well as a description of the locations of the public water systems and/or injection wells the tribe proposes to regulate. This information will assist EPA in verifying that the tribe has the necessary jurisdiction to implement the program.

In evaluating a tribe's demonstration that it is reasonably capable of administering an effective Public Water System or Underground Injection Control program, the Administrator will consider six factors: (1) The tribe's previous managerial experience; (2) existing environmental or public health programs administered by the tribe; (3) its accounting and procurement systems; (4) the mechanisms in place for carrying out the executive, legislative, and judicial functions of the tribal government; (5) the relationship between the owner/operator of the public water systems and/or underground injection wells and the administrative agency of the tribal government which is, or will be, designated as the primacy agent; and (6) a description of the technical and administrative capabilities of the staff to administer and manage either program.

The description of the tribe's previous management experience should include information which indicates that the tribe has the managerial expertise to administer an effective Public Water System and/or Underground Injection Control program. One source of information that EPA will use to evaluate managerial experience is contracts authorized under the Indian Self-Determination Act (Pub. L. 93–638), the Indian Mineral Development Act (Pub. L. 97–382), and the Indian Sanitation Facility Construction Activity Act (Pub. L. 86–121). EPA is requiring information on the tribe's executive, legislative, and judicial functions to assure that the tribe has the capability to: enact enforceable public water system and/or underground injection regulations, administer and enforce effectively those regulations, and adjudicate alleged violations of those regulations.

EPA's evaluation of the tribe's capability will also consider the relationship between the existing or proposed tribal agency which will assume primary enforcement authority and the owner/operator of the public water systems and/or the underground injection wells the agency would regulate. A common situation among Indian tribes is that the tribe is the owner/operator of the public water system and/or the injection wells. This is in contrast to the States where the owner/operator of public water systems and/or injection wells is a municipality or a private enterprise. Tribal ownership of the public water systems or underground injection wells could result in a conflict of interest if EPA delegated primary enforcement responsibility to the tribe, since the tribe would be regulating itself. This circumstance will not preclude a tribe from receiving designation to be treated as a State; however, EPA will require the tribe to resolve the conflict (*e.g.*, by the establishment of an independent tribal utility authority) before it will be delegated primary enforcement responsibility.

EPA considered whether the eligibility and primary enforcement requirements would tend to exclude the smaller tribes. To address the concern of small tribes, EPA will consider applications by a group or consortium of tribes within the same geographical area. However, the applicant must still meet all the eligibility requirements to be treated as a State, particularly the jurisdictional requirement.

Within thirty days after receipt of a tribe's complete application for treatment as a State (which has all the information required in proposed § 142.76 and/or § 145.56), EPA will notify all appropriate governmental entities of the receipt of the application and the substance of the tribe's jurisdictional assertions. Each of the governmental entities will have thirty days after receipt of the notice to submit comments to EPA. Comments will be limited solely to the issue of the tribe's assertion of jurisdiction. EPA will not consider comments directed to whether the tribe meets EPA's other requirements for treatment as a State.

If an Indian tribe's asserted jurisdiction is subjected to a competing or conflicting claim, the Administrator, after consultation with the Secretary of the Department of the Interior, or his designee, and in consideration of other comments received, may determine the validity of any challenge to the tribe's jurisdictional claim for purposes of the SDWA.

If the Administrator determines that a tribe meets all the requirements of Subpart H and/or Subpart E, a tribe is then eligible to apply for development grants and primary enforcement responsibility for the Public Water System and/or Underground Injection Control programs and associated funding to administer effective programs.

B. Requirements for Primary Enforcement Responsibility

As stated above, tribes which meet the requirements for treatment as States are eligible to apply for primary enforcement responsibility for these programs. EPA has promulgated regulations specifying requirements for primary enforcement responsibility for the Public Water System Program (40 CFR Part 142) and the Underground Injection Control Program (40 CFR Part 145). States must meet the minimum program requirements specified in these parts for EPA to grant primary enforcement responsibility.

EPA considered which requirements currently applicable to States seeking primacy should apply to Indian tribes. Section 1451(b)(2) of the Act is instructive. It states that "[n]othing in this section shall be construed to allow Indian tribes to assume or maintain primary enforcement responsibility for public water systems or for underground injection control in a manner less protective of the health of persons than such responsibility may be assumed or maintained by a State." Therefore, EPA is proposing that, except as described below, the primary enforcement responsibility requirements for Public Water System and/or Underground Injection Control programs applicable to States also apply to Indian tribes, including public participation by the affected population in the regulatory decision-making process. Specifically, the tribe must afford public participation in regulatory decisions pertaining to, but not limited to, rulemaking, permit hearings, and aquifer exemptions.

EPA proposes that it is inappropriate to treat tribes as States for purposes of meeting two of the present primacy requirements in 40 CFR Parts 142 and 145: Development of a laboratory certification program (§ 142.10(b)(3)) and having criminal enforcement jurisdiction (§ 145.13).

Section 142.10(b)(3) requires States seeking primacy for their Public Water System Program to establish and maintain a State program for the certification of laboratories conducting

analytical measurements of drinking water contaminants. EPA proposes to amend § 142.10(b)(3) so that Indian tribes would not have to establish a separate or independent laboratory certification program in order to receive primary enforcement responsibility. EPA is proposing this change because most Indian tribes are small, and have relatively few public water systems; therefore, it would be costly for each tribe to establish an independent laboratory certification program. However, EPA proposes to require that each tribe demonstrate that it has access, through a formal agreement or other arrangement, to a State or EPA certified laboratory to conduct all required analyses.

Section 145.13 of the UIC regulations requires that a State have criminal enforcement authority to obtain primacy. Section 1451 of the SDWA states that criminal enforcement jurisdiction shall not be a requirement for granting primacy to Indian tribes. Therefore, this notice proposes to amend § 145.13 to state that tribes will not be required to exercise criminal enforcement jurisdiction as a condition of obtaining primary enforcement responsibility. As proposed, § 145.13 would instead require tribes to develop a Memorandum of Agreement to refer criminal enforcement matters to the Administrator in an appropriate and timely manner.

C. Program Grants

Under the 1986 amendments, tribes that qualify for treatment as States are eligible for grants under sections 1443 (a) and (b) of the SDWA for Public Water System and/or Underground Injection Control programs. Such grants are part of a general regulatory scheme and the denial of a grant application by an Indian tribe qualified for treatment as a State is not a denial of a right. Both the PWS and UIC programs allocate grants that are awarded based on the total amount of appropriated available funds. Once the level of funding is determined through the budgetary process, it becomes "fixed" for that fiscal year. Because of the limited amount of funds available in a given fiscal year, the Agency may not have adequate funding to award all tribes, designated as eligible for treatment as a State, the total amount requested by each tribe. These grants are currently allocated on the basis of each State's workload and consider such factors as land area, population, number of community water systems, number of non-community water systems, and the number of Class I, II, III, IV, and V injection wells.

For Fiscal Year 1987, Congress appropriated $33,450,000 for Public Water System and $9,500,000 for Underground Injection Control Programs. In Fiscal Year 1987, the Public Water System grant formula (which approximates each jurisdiction's workload) resulted in allocations of approximately one percent ($318,000) of the available funds for implementation on Indian lands. Within the Underground Injection Control Program, the 1987 grant formula resulted in about three percent ($265,000) of the Underground Injection Control grant funds for program implementation on Indian lands.

The requirements for program grants to States are found at 40 CFR Part 35, Subpart A. This proposed rule addresses grant eligibility, reserve or set-aside funds for Indian tribes, grant-match requirements, and grants to develop Indian Public Water System and/or Underground Injection Control program(s).

This proposed rule expands the list of jurisdictions eligible to receive Public Water System and/or Underground Injection Control grants to include Indian tribes meeting the requirements of Subparts H and/or E (Treatment of Indian Tribes as States). Up to three percent of the Public Water System grant funds and up to five percent of the Underground Injection Control grant funds will be reserved for Indian tribes. These reserved funds will be used for grants to Indian tribes developing Public Water System and/or Underground Injection Control programs, and to tribes with primary enforcement responsibility, as well as for direct implementation by EPA on Indian lands.

Under this proposed rule, tribes that qualify for treatment as States should apply for financial assistance prior to February 1 of any given fiscal year. Funds not specifically allocated to Indian tribes by February 1 of each fiscal year (four months after the fiscal year begins) could then be reallocated to tribes or States currently receiving a program grant or retained by EPA for use on those Indian reservations that opt not to apply for primacy or are not found eligible for primacy. The EPA is proposing to establish these funds beginning in Fiscal Year 1988 (October 1, 1987 through September 30, 1988) for both the Public Water System and the Underground Injection Control Programs. In Fiscal Year 1988, the Agency proposes to withhold the reallocation until June 1, to allow applicants additional time to apply.

EPA estimates that 10–12 Indian tribes may initially meet the requirements for primary enforcement responsibility. The proposed three percent and five percent amounts represent an increase over the amounts that would be allocated if EPA only considered the formula-derived allocation for Indian tribes. EPA believes this increase is justified because of the additional resource requirements of Indian tribes to develop and administer programs when compared to States. EPA also believes the caps of three percent and five percent are appropriate to keep sufficient funds available for State implementation.

Currently, the maximum amount of Federal funds which may be used for implementation of Public Water System and Underground Injection Control programs is limited to 75 percent of program costs. Because Indian tribes will be able to use in-kind contributions such as rent and vehicle mileage, EPA anticipates that most Indian tribes will be able to meet the 25 percent matching requirement. In cases where the tribe has met the other grant eligibility requirements and demonstrates that it does not have adequate funds (including Federal funds authorized by statute to be used for matching purposes), tribal funds or in-kind contributions to meet the 25 percent match requirement, EPA may consider reducing the tribal match to ten percent. However, in no case will the Federal share exceed 90 percent.

The last issue this proposed rule addresses is development grants for tribes that qualify for treatment as States. To receive an initial development grant, this rule requires that an Indian tribe must demonstrate that it has capability to develop an effective program within two years for Public Water System primacy and three years for Underground Injection Control primacy. EPA will evaluate the Indian tribe's capability to achieve primacy within the two- or three-year limitation by reviewing the development plan that the tribe submits. In making this determination, the Regional Administrator will consider such information as the current number of public water systems, the amount of underground injection control activity, current compliance by both public water suppliers and underground injection

well operators, whether the program personnel have the technical and administrative skills necessary to administer an effective program, and the Indian tribe's plans for developing the corresponding programs. At the time of final rule promulgation, EPA will issue guidance to ensure determinations of capability are made comparably across EPA Regions. Where the development plan shows that the tribe cannot develop an effective program within the two- or three-year period, EPA may provide technical assistance and training, as resources permit, until such time as the tribe is able to develop an effective program within the two- or three-year period.

Under section 1443(a), a State may not receive an initial grant unless it will establish a PWS program and assume primary enforcement responsibility for that program within one year of the grant award. Under section 1443(b), a State may not receive a UIC grant unless it assumes primary enforcement responsibility within two years after the promulgation by EPA of final UIC program regulations. However, the 1986 amendments stipulate that the one-year and two-year requirements applicable to States do not apply to Indian tribes. Therefore, this rule proposes to allow Indian tribes two years to develop a Public Water System program and three years to develop an Underground Injection Control program. EPA recognizes that currently many Indian tribal water system and underground injection control programs are less well developed than corresponding programs the States had when they began to develop their programs. Consequently, the Agency believes that additional time to develop tribal public water system and underground injection control programs is warranted.

After being found eligible for treatment as a State, a tribe may apply for a development grant. With the application, EPA will require that the tribe submit a development plan specifying how it will develop its Public Water System and/or Underground Injection Control Program(s). After the initial development grant, an Indian tribe would not be eligible to receive additional grants unless reasonable progress is shown in developing its program. The development plan submitted with the Indian tribe's initial application will form the basis for EPA to determine whether subsequent development grants should be awarded. Indian tribes which fail to obtain primary enforcement responsibility before the two- or three-year development period expires would not be eligible to receive further grants until primacy is obtained.

D. Other Issues—Alaska Native Villages

The SDWA definition of "Indian Tribe" does not mention Alaska Native Villages. EPA believes the legislative history of the Act indicates Congress intended to exclude Alaska Native Villages from coverage under the "Indian Tribes" amendment (section 1451). The Senate definition of "Indian tribal organization" in S. 124 (*i.e.*, the bill containing the Safe Drinking Water Act amendments that the Senate passed) specifically included Alaska Native Villages. However, EPA has concluded Congress' decision to adopt the House definition of "Indian tribe" (which did not include Alaska Native Villages) is indicative that Congressional intent was to exclude Alaska Native Villages from the definition of "Indian tribe."

The Agency also notes that, in section 101 of the Superfund Amendments and Reauthorization Act of 1986 (SARA) Congress defined "Indian Tribe" to include Alaska Native Villages. The SDWA amendments and SARA were both enacted by the same session of Congress. This contrast in definitions constitutes additional evidence of Congressional intent to exclude Alaska Native Villages from the scope of the SDWA amendments.

In summary, based on the legislative history of the Act, and comparisons with SARA, the Agency has concluded that the SDWA definition of "Indian Tribe" does not include Alaska Native Villages. Consequently, under this proposal, Alaska Native Villages would not be eligible to apply for treatment as a State, to apply for primary enforcement responsibility for the Public Water System or Underground Injection Control programs, or to receive grant assistance.

IV. Request for Public Comment

EPA requests public comment and information on all aspects of this proposal, including the issues identified in the preamble.

V. Other Regulatory Requirements

A. Compliance With Executive Order 12291

Executive Order 12291 [46 FR 13193, February 9, 1981] requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that a regulatory impact analysis be conducted. A major rule is defined as a regulation which is 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, and local government agencies; or geographic regions; or

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

Since the proposed rule does not meet the definition of a major regulation, the Agency is not conducting a regulatory impact analysis. The proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB to EPA and any response to these comments will be available for viewing at the EPA, Room 1003 East Tower, 401 M Street, SW., Washington, DC 20460.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0090. Submit comments on these requirements to EPA and the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW.; Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act requires that Federal agencies prepare regulatory flexibility analyses assessing the impacts of proposed rules on entities such as small businesses, small organizations, and small governmental jurisdictions. Such analysis is not required, however, when the head of the agency certifies that a proposed rule will not have a signficant economic impact on a substantial number of small entities.

EPA considers the information required by this rule to be the minimum necessary to administer effectively the Indian provisions of the 1986 SDWA amendments. Any additional economic impact on the public resulting from reporting and recordkeeping requirements that tribes adopt as part of a Public Water System and/or Underground Injection Control program(s) is expected to be negligible since owners/operators of public water systems and/or underground injections

wells are already reporting to EPA. Awarding or primacy to an Indian tribe will not change the reporting or regulatory requirements, but only the government to whom the owner/operator reports. Accordingly, I certify that these proposed rules, if promulgated, would not have a substantial impact on a number of small entities.

List of Subjects in 40 CFR Parts 35, 124, 141, 142, 145, and 146

Administrative practices and procedures, Air pollution control, Chemicals, Confidential business information, Grant programs—environmental protection, Hazardous materials, Indians, Intergovernmental relations, Penalties, Pesticides and pests, Radiation protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply.

Dated: July 13, 1987.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

PART 35—STATE AND LOCAL ASSISTANCE

1. In Part 35:

a. The authority citation for Part 35 continues to read follows:

Authority: 42 U.S.C. 300f *et seq.*

b. Section 35.105 is amended to add, in alphabetical order, new definitions for "Indian tribe" and "State" to read as follows:

§ 35.105 Definitions.

* * * * *

"Indian tribe" means, within the context of the Public Water System Supervision and Underground Water Source Protection grants, any Indian tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

"State" means, within the context of the Public Water System Supervision and Underground Water Source Protection grants, one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth Northern Mariana Islands, or an Indian tribe treated as a State.

c. Section 35.115 (e) and (f) are revised to read as follows:

§ 35.115 State allotments and reserves.

* * * * *

(e) Public Water System Supervision allotment (Safe Drinking Water Act, section 1443(a)): Population geographic area, numbers of community and noncommunity water systems and other relevant factors. All jurisdictions except American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands or an individual Indian tribe treated as a State shall be allotted at least one percent. Up to three percent of the Public Water System Supervision funds shall be reserved for Indian tribes.

(f) Underground Water Source Protection allotment (Safe Drinking Water Act, section 1443(b)): Population, geographic area, extent of underground injection practices, and other relevant factors. Up to five percent of the Underground Water Source Protection funds shall be reserved for use on Indian lands.

d. Section 35.155 is amended by adding a new paragraph (c) to read as follows:

§ 35.155 Reallocation.

* * * * *

(c) Public Water System Supervision and Underground Water Source Protection funds reserved for Indian tribes which are not awarded to specific Indian tribes by February 1, may be reallocated by the Administrator for supplementary awards to States, Indian tribes, or EPA Regions for purposes of direct implementation on Indian Lands.

e. Section 35.400 is revised to read as follows:

§ 35.400 Purpose.

Sections 1443(a) and 1451(a)(3) of the Safe Drinking Water Act authorize assistance to States and Indian tribes treated as States for public water system supervision programs. Associated program regulations are found in 40 CFR Parts 141, 142, and 143.

f. Section 35.405 is amended by designating existing language as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 35.405 Maximum Federal share.

* * * * *

(b) The Regional Administrator may increase the 75 percent maximum Federal share for an Indian tribe based upon application and demonstration by the tribe that it does not have adequate funds (including Federal funds authorized by statute to be used for matching purposes), tribal funds, or in-kind contributions to meet the required 25 percent tribal match. In no case shall the Federal share be greater than 90 percent.

g. Section 35.410 is amended by adding a new paragraph (c) to read as follows:

§ 35.410 Limitations.

* * * * *

(c) The limitations in paragraphs (a) and (b) above do not apply to funds allotted to Indian tribes.

h. Part 35 is amended by adding a new § 35.415 to read as follows:

§ 35.415 Indian tribes.

(a) The Regional Administrator will not award section 1443(a) funds to an Indian tribe unless:

(1) EPA has determined that the Indian tribe meets the requirements of 40 CFR Part 142, Subpart H—*Treatment of Indian Tribes as States.*

(2) The Indian tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of developing and administering an effective Public Water System Supervision Program.

(b) The Regional Administrator will not make an initial award of section 1443(a) funds to an Indian tribe unless the applicant has a Public Water System Supervision Program or agrees to establish one within two years of the initial award and agrees to assume primary enforcement responsibility within this period.

(c) The Regional Administrator will not give a continuation award to any Indian tribe unless the tribe can demonstrate reasonable progress towards assuming primary enforcement responsibility within the two-year period.

(d) After the two-year period expires, the Regional Administrator will not award section 1443(a) funds to an Indian tribe unless the tribe has assumed primary enforcement responsibility.

1. Section 35.450 is revised to read as follows:

§ 35.450 Purpose.

Section 1443(b) of the Safe Drinking Water Act authorizes assistance to States and Indian tribes treated as States for Underground Water Source Protection Programs. Associated program regulations are found in 40 CFR Parts 124, 144, 145, 146, and 147.

i. Section 35.455 is amended by designating existing language as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 35.455 Maximum Federal share.

* * * * *

(b) The Regional Administrator may increase the 75 percent maximum Federal share for an Indian tribe based upon application and demonstration by the tribe that it does not have adequate

funds (including Federal funds authorized by statute to be used for matching purposes), tribal funds, or in-kind contributions to meet the required 25 percent match requirement. In no case shall the Federal share be greater than 90 percent.

k. Section 35.460 is revised to read as follows:

§ 35.460 Limitations.

After September 30, 1983, the Regional Administrator will not award section 1443(b) funds unless the applicant has primary enforcement responsibility for the Underground Water Source Protection Program. The above limitation shall not apply to funds alloted to Indian tribes.

1. Part 35 is amended to add a new § 35.465 to read as follows:

§ 35.465 Indian tribes.

(a) The Regional Administrator will not award section 1443(b) funds to an Indian tribe unless:

(1) EPA has determined that the Indian tribe meets the requirements of 40 CFR Part 145 Subpart E—*Treatment of Indian Tribes as States.*

(2) The Indian tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of developing and administering an effective Underground Water Source Protection Program.

(b) The Regional Administrator will not make an initial award of section 1443(b) funds to an Indian tribe unless the applicant has an Underground Water Source Protection Program or agrees to establish one within three years of the initial award and agrees to assume primary enforcement responsibility within this period.

(c) The Regional Administrator will not give a continuation award to any Indian tribe unless the tribe can demonstrate reasonable progress towards assuming primary enforcement responsibility within the three-year period.

(d) After the three-year period expires, the Regional Administrator will not award section 1443(b) funds to an Indian tribe unless the tribe has assumed primary enforcement responsibility.

PART 124—PROCEDURES FOR DECISION MAKING

2. In Part 124:

a. The authority citation for Part 124 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

b. Section 124.2 is amended by adding the definition "Indian tribe" in alphabetical order and by revising the following definitions to read:

§ 124.2 Definitions.

* * * * *

"Director" means the Regional Administrator, the State director or the tribal director as the context requires, or an authorized representative. When there is no approved State or tribal program, and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State or tribal program, "Director" normally means the State or tribal director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State or tribal program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval; see § 123.1). In such cases, the term "Director" means the Regional Administrator and not the State or tribal director.

* * * * *

"Indian tribe" means (except in the case of RCRA) any Indian tribe having a Federally recognized governing body carrying out substnatial governmental duties and powers over a defined area.

* * * * *

"Person" means an individual, association, partnership, corporation, municipality, State, Federal, or tribal agency, or an agency or employee thereof.

* * * * *

"State" means one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (except in the case of RCRA), the Commonwealth Northern Mariana Islands (except in the case of CWA), or an Indian tribe treated as a State (except in the case of RCRA). "State Director" means the chief administrative officer of any State, interstate, or tribal agency operating an approved program, or the delegated representative of the State director. If the responsibility is divided among two or more State, interstate, or tribal agencies, "State Director" means the chief administrative officer of the State, interstate, or tribal agency authorized to perform the particular procedure or function to which reference is made.

* * * * *

c. Section 124.10(c)(1)(iii) is revised to read as follows:

§ 124.10 Public notice of permit actions and public comment period.

* * * * *

(c) * * *

(1) * * *

(iii) Federal and State agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, including any affected States (Indian Tribes). (For purposes of this paragraph, and in the context of the Underground Injection Control Program only, the term State includes Indian tribes treated as States.)

* * * * *

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

3. In Part 141:

a. The authority citation for Part 141 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

b. Section 141.2 (d) and (h) are amended to read as follows:

§ 141.2 Definitions.

* * * * *

(d) "Person" means an individual; corporation; company; association; partnership; municipality; or State, Federal, or tribal agency.

* * * * *

(h) "State" means the agency of the State or tribal government which has jurisdiction over public water systems. During any period when a State or tribal government does not have primary enforcement responsibility pursuant to section 1413 of the Act, the term "State" means the Regional Administrator, U.S. Environmental Protection Agency.

* * * * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

4. In Part 142:

a. The authority citation for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

b. Section 142.2 is amended by redesignating paragraphs (f) through (p) as paragraphs (g) through (q) and by adding a new paragraph (f); and the redesignated paragraphs (h), (j), and (n) are revised to read as follows:

§ 142.2 Definitions.

* * * * *

(f) "Indian tribe" means any Indian tribe having a Federally recognized governing body carrying out substantial

governmental duties and powers over a defined area.

* * * * *

(h) "Municipality" means a city, town, or other public body created by or pursuant to State law, or an Indian tribe which does not meet the requirements of Subpart H of this part.

* * * * *

(j) "Person" means an individual; corporation; company; association; partnership; municipality; or State, federal, or tribal agency.

* * * * *

(n) "State" means one of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or an Indian tribe treated as a State.

c. Section 142.3 is amended to add a new paragraph (c) to read as follows:

§ 142.3 Scope.

* * * * *

(c) Section 1451 of the SDWA authorizes the Administrator to delegate primary enforcement responsibility for public water systems to Indian tribes. An Indian tribe must be designated by the Administrator for treatment as a State before it is eligible to apply for Public Water System Supervision grants and primary enforcement responsibility. All primary enforcement responsibility requirements of Parts 141 and 142 apply to Indian tribes except where specifically noted.

d. Section 142.10(b)(3) is amended by designating existing text as paragraph (b)(3)(i) and by adding a new paragraph (b)(3)(ii) to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility.

* * * * *

(b) * * *

(3)(i) * * *

(ii) Upon a showing by an Indian tribe of an intergovernmental or other agreement to have all analytical tests performed by a certified laboratory, the Administrator may waive this requirement.

* * * * *

e. Section 142.10 is amended by adding a new paragraph (f) to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility

* * * * *

(f) An Indian tribe shall not be required to excercise criminal enforcement jurisdiction to meet the requirements for primary enforcement responsibility.

f. Part 142 is amended to add a new Subpart H to read as follows:

Subpart H—Treatment of Indian Tribes as States

Sec.

142.72 Requirements for treatment as a State.
142.76 Request by an Indian tribe for a determination of treatment as a State.
142.78 Procedure for processing an Indian tribe's application for treatment as a State.

§ 142.72 Requirements for Treatment as a State.

Section 1451 of the Act authorizes the Administrator to treat an Indian tribe as a State (for purposes of making the tribe eligible to apply for a PWS program) if it meets the following criteria:

(a) The Indian tribe is recognized by the Secretary of the Interior.

(b) The Indian tribe has a tribal governing body which is currently exercising "substantial governmental duties and powers" over a defined area. (*i.e.*, is currently performing governmental functions to promote the health, safety, and welfare of the affected population within a defined geographic area).

(c) The Indian tribe demonstrates that the functions to be performed in regulating the public water systems that the applicant intends to regulate are within the scope of its jurisdiction.

(d) The Indian tribe demonstrates reasonable capability to administer (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Public Water System program by the existence of management and technical skills necessary to administer an effective Public Water System program; by the existence of institutions to exercise executive, legislative, and judicial functions; by a history of successful managerial performance of public health or environmental programs; and by acceptable accounting and procurement procedures.

§ 142.76 Request by an Indian tribe for a determination of treatment as a State.

An Indian tribe may apply to the Administrator for a determination that it qualifies for treatment as a State pursuant to section 1451 of the Act. The application shall be concise and describe how the Indian tribe will meet each of the requirements of § 142.72. The application shall include the following information:

(a) A showing that the tribe is recognized by the Secretary of the Interior.

(b) A descriptive statement demonstrating that the tribal governing body is currently "carrying out substantial governmental duties and powers" over a defined area, which shall include:

(1) A description of the types of governmental functions currently performed by the tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain.

(2) Copies of currently effective tribal laws such as, but not limited to, tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions establishing that the applicant is performing the types of functions set forth in its descriptive statement. If governance is based on tribal custom, this fact should be described in detail.

(c) A map or legal description of the area over which the Indian tribe asserts regulatory jurisdiction, a list of all documents submitted pursuant to paragraph (b)(2) of this section which supports the tribe's asserted jurisdiction, and a description of the locations of the public water systems the tribe proposes to regulate.

(d) A narrative statement describing the capability of the Indian tribe to administer an effective Public Water System program which shall include:

(1) A description of the Indian tribe's previous management experience including, but not limited to, the management of contracts authorized under the Indian Self-Determination Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004 a).

(2) A list of existing environmental or public health programs administered by the tribal governing body and a copy of related tribal laws, regulations and policies.

(3) A description of the Indian tribe's accounting and procurement systems.

(4) A description of the entities which exercise the executive, legislative, and judicial functions of the tribal government.

(5) A description of the existing, or proposed, agency of the Indian tribe which will assume primary enforcement responsibility, including a description of the relationship between owners/operators of the public water systems and the agency.

(6) A description of the technical and administrative capabilities of the staff to administer and manage an effective Public Water System Program.

§ 142.78 Procedure for processing an Indian Tribe's application for treatment as a State.

(a) The Administrator shall process an application of an Indian tribe for treatment as a State submitted pursuant to § 142.76 in a timely manner. He shall promptly notify the Indian tribe of receipt of the application.

(b) Within 30 days after receipt of the Indian tribe's application for treatment as a State, the Administrator shall notify all appropriate governmental entities. Notice shall include information on the substance and bases of the tribe's jurisdictional assertions.

(c) Each governmental entity so notified by the Administrator shall have 30 days to comment upon the tribe's assertion of jurisdiction. Comments by governmental entities shall be limited to the tribe's assertion of jurisdiction.

(d) If a tribe's asserted jurisdiction is subject to a competing or conflicting claim, the Administrator, after consultation with the Secretary of the Department of the Interior, or his designee, and in consideration of other comments received, may determine the validity of any challenge to the tribe's jurisdictional claim.

(e) If the Administrator determines that a tribe meets the requirements of § 142.72, the Indian tribe is then eligible to apply for development grants and primary enforcement responsibility for a Public Water System Program and associated funding under section 1443(a) of the Act and for primary enforcement responsibility of public water systems under section 1414 of the Act.

PART 143—NATIONAL SECONDARY DRINKING WATER REGULATIONS

5. In Part 143:

a. The authority citation for Part 143 is amended to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

b. Section 143.2(d) is amended to read as follows:

§ 143.2 Definitions.

* * * * *

(d) "State" means the agency of the State or tribal government which has jurisdiction over public water systems. During any period when a State does not have responsibility pursuant to section 1443 of the Act, the term "State" means the Regional Administrator, U.S. Environmental Protection Agency.

* * * * *

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

6. In Part 144:

a. The authority citation for Part 144 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

b. Section § 144.3 is amended by adding the definition "Indian tribe" in alphabetical order and by revising the following definitions to read:

§ 144.3 Definitions.

* * * * *

"Approved State Program" means a UIC program administered by the State or Indian tribe that has been approved by EPA according to SDWA sections 1422 and 1425.

* * * * *

"Director" means the Regional Administrator, the State director or the tribal director as the context requires, or an authorized representative. When there is no approved State or tribal program, and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State or tribal program, "Director" normally means the State or tribal director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State or tribal program. In such cases, the term "Director" means the Regional Administrator and not the State or tribal director.

* * * * *

"Indian tribe" means any Indian tribe having a Federally recognized governing body carrying our substantial governmental duties and powers over a defined area.

* * * * *

"Interstate Agency" means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States or Indian tribes having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the "appropriate Act and regulation."

* * * * *

"Person" means an individual, association, partnership, corporation, municipality, State, Federal, or tribal agency, or an agency or employee thereof.

* * * * *

"State" means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth Northern Mariana Islands, or an Indian tribe treated as a State.

"State Director" means the chief administrative officer of any State, interstate, or tribal agency operating an "approved program," or the delegated representative of the State director. If the responsibility is divided among two or more State, interstate, or tribal agencies, "State Director" means the chief administrative officer of the State, interstate, or tribal agency authorized to perform the particular procedure or function to which reference is made.

* * * * *

PART 145—STATE UIC PROGRAM REQUIREMENTS

7. In part 145:

a. The authority citation for Part 145 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

b. Section 145.1 is amended to add a new paragraph (h) to read as follows:

§ 145.1 Purposes and scope.

* * * * *

(h) Section 1451 of the SDWA authorizes the Administrator to delegate primary enforcement responsibility for the UIC program to Indian tribes. An Indian tribe must establish its eligibility to be treated as a State before it is eligible to apply for Underground Injection Control grants and primary enforcement responsibility. All requirements of Parts 124, 144, 145, and 147 that apply to States with UIC primary enforcement responsibility, also apply to Indian tribes except where specifically noted.

c. Section 145.13 is amended to add a new paragraph (e) to read as follows:

§ 145.13 Requirements for enforcement authority.

* * * * *

(e) To the extent that an Indian tribe does not assert or is precluded from asserting criminal enforcement authority the Administrator will assume primary enforcement responsibility for criminal violations. The Memorandum of Agreement in § 145.25 shall reflect a system where the tribal agency will refer such violations to the Administrator in an appropriate and timely manner.

d. Section 145.21, existing paragraphs (c) through (f) are redesignated as paragraphs (d) through (g) and a new paragraph (c) is added to read as follows:

§ 145.21 General requirements for program approvals.

* * * * *

(c) The requirements of § 145.21(a) and (b) shall not apply to Indian tribes.

* * * * *

e. Part 145 is amended to add a new Subpart E to read as follows:

Subpart E—Treatment of Indian Tribes as States

Sec.

145.52 Requirements for treatment as a State.

145.56 Request by an Indian tribe for a determination of treatment as a State.

145.58 Procedure for processing an Indian tribe's application for treatment as a State.

§ 145.52 Requirements for treatment as a State.

Section 1451 of the Act authorizes the Administrator to treat an Indian tribe as a State (for purposes of making the tribe eligible to apply for a UIC program) if it meets the following criteria:

(a) The Indian tribe is recognized by the Secretary of the Interior.

(b) The Indian tribe has a tribal governing body which is currently "carrying out governmental duties and powers" over a defined area, (i.e., is currently performing governmental functions to promote the health, safety, and welfare of the affected population within a defined geographic area).

(c) The Indian tribe demonstrates that the functions to be performed in regulating the underground injection wells that the applicant intends to regulate are within the area of its jurisdiction.

(d) The Indian tribe demonstrates reasonable capability to administer (in a manner consistent with the terms and purposes of the Act and all applicable regulations) an effective Underground Injection Control Program by the existence of management and technical skills necessary to administer an effective Underground Injection Control Program; by the existence of institutions to exercise executive, legislative, and judicial functions; by a history of successful managerial performance of public health or environmental programs; and by acceptable accounting and procurement procedures.

§ 145.56 Request by an Indian tribe for a determination of treatment as a State.

An Indian tribe may apply to the Administrator for a determination that it qualifies for treatment as a State pursuant to section 1451 of the Act. The application shall be concise and describe how the Indian tribe will meet each of the requirements of § 145.52. The application shall include the following information:

(a) A showing that the tribe is recognized by the Secretary of the Interior.

(b) A descriptive statement demonstrating that the tribal governing body is currently "carrying out substantial governmental duties and powers" over a defined area, which shall include:

(1) A description of the types of governmental functions currently performed by the tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain.

(2) Copies of currently affective tribal laws such as, but not limited to, tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions establishing that the applicant is performing the types of functions set forth in its descriptive statement. If governance is based tribal custom, this fact should be described in detail.

(c) A map or legal description of the area over which the Indian tribe asserts regulatory jurisdiction, a list of all documents submitted pursuant to paragraph (b)(2) of this section which supports the tribe's asserted jurisdiction, and a description of the locations of the underground injection wells it proposes to regulate.

(d) A narrative statement describing the capability of the Indian tribe to administer an affective Underground Injection Control program which shall include:

(1) A description of the Indian tribe's previous management experience including, but not limited to, the management of contracts authorized under the Indian Self Determination Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004 a).

(2) A list of existing environmental or public health programs administered by the tribal governing body and a copy of related tribal laws, regulations and policies.

(3) A description of the Indian tribe's accounting and procurement systems.

(4) A description of the entities which exercise the executive, legislative, and judicial functions of the tribal government.

(5) A description of the existing, or proposed, agency of the Indian tribe which will assume primary enforcement responsibility, including a description of the relationship between owners/operators of the underground injection wells and the agency.

(6) A description of the technical and administrative capabilities of the staff to administer and manage an effective Underground Injection Control program.

§ 145.58 Procedure for processing an Indian Tribe's application for treatment as a State.

(a) The Administrator shall process an application of an Indian tribe for treatment as a State submitted pursuant to § 145.56 in a timely manner. He shall promptly notify the Indian tribe of receipt of the application.

(b) Within 30 days after receipt of the Indian tribe's application for treatment as a State, the Administrator shall notify all appropriate governmental entities. Notice shall include information on the substance and basis for the tribe's jurisdictional assertions.

(c) Each governmental entity so notified by the Administrator shall have 30 days to comment upon the tribe's assertion of jurisdiction. Comments by governmental entities shall be limited to the tribe's assertion of jurisdiction.

(d) If a tribe's asserted jurisdiction is subject to a competing or conflicting claim, the Administrator, after consultation with the Secretary of the Interior, or his designee, and in consideration of other comments received, may determine the validity of any challenge to the tribe's jurisdictional claim.

(e) If the Administrator determines that a tribe meets the requirements of § 145.52, the Indian tribe is then eligible to apply for development grants and primary enforcement responsibility for an Underground Injection Control program and the associated funding under section 1443(b) of the Act and primary enforcement responsibility of the Underground Injection Control Program under sections 1422 and 1425 of the Act.

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

8. In part 146:

a. The authority citation for Part 146 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

b. Section 146.3 is amended by adding the definition "Indian tribe" in alphabetical order and by revising the following definitions to read:

§ 146.3 Definitions.

* * * * *

"Director" means the Regional Administrator, the State director or the

tribal director as the context requires, or an authorized representative. When there is no approved State or tribal program, and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State or tribal program, "Director" normally means the State or tribal director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State or tribal program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval; see § 123.69). In such cases, the term "Director" means the Regional Administrator and not the State or tribal director.

* * * * *

"Indian tribe" means any Indian tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

* * * * *

"State Director" means the chief administrative officer of any State, interstate, or tribal agency operating an "approved program," or the delegated representative of the State director. If the responsibility is divided among two or more State, interstate, or tribal agencies, "State Director" means the chief administrative officer of the State, interstate, or tribal agency authorized to perform the particular procedure or function to which reference is made.

* * * * *

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LIST OF PUBLIC LAWS

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H.R. 558/Pub. L. 100-77

Stewart B. McKinney Homeless Assistance Act. (July 22, 1987; 101 Stat. 482; 57 pages) Price: $1.75

CFR CHECKLIST

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1987. The CFR volume issued as of Apr. 1, 1980, should be retained.

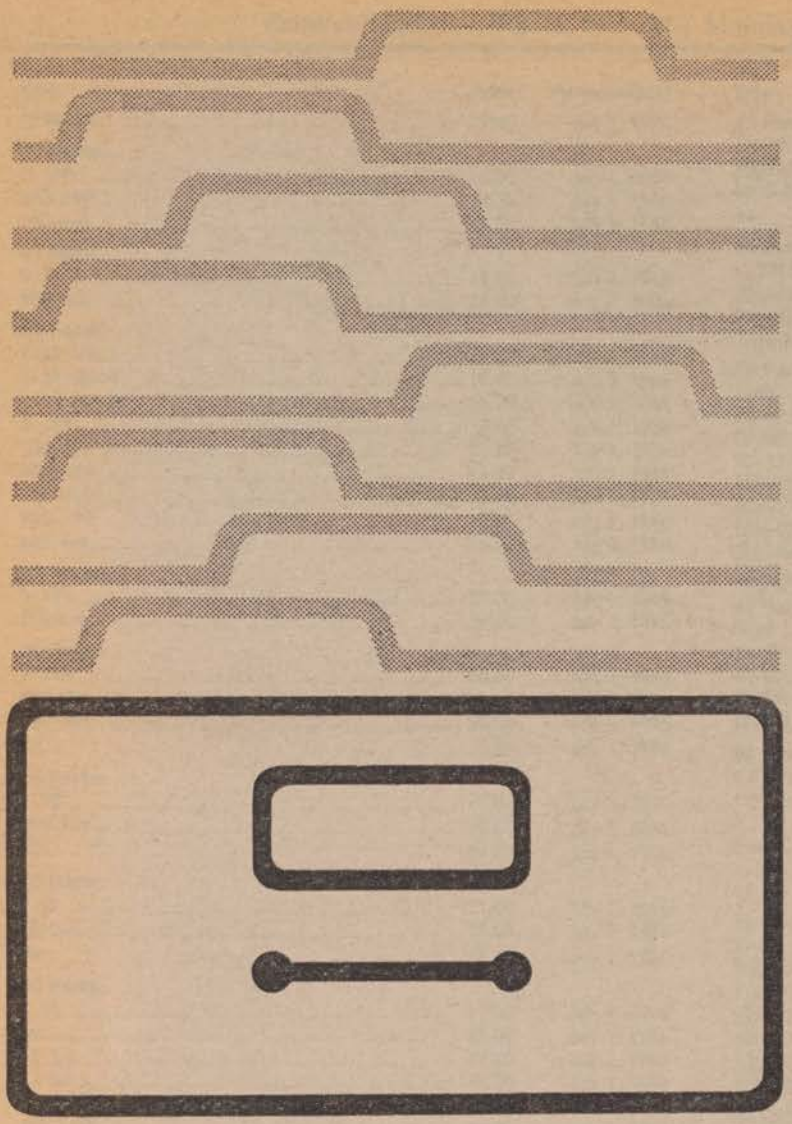
[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.



Guide to Record Retention Requirements

in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1986
SUPPLEMENT: Revised January 1, 1987

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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