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Monday
April 11, 1988

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WHO: The Office of the Federal Register.

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

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

WASHINGTON, DC

WHEN: April 15; at 9:00 a.m.
WHERE: Office of the Federal Register,
First Floor Conference Room,
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RESERVATIONS: Carolyn Payne, 202–523–3187

BOSTON, MA

WHEN: April 19; at 9 a.m.
WHERE: Thomas P. O'Neill, Jr. Federal Building,
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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1633

Standards of Conduct

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (the Board) is publishing in Part 1633 interim regulations governing employee responsibilities and conduct. These regulations are being issued pursuant to Executive Order 11222 of May 8, 1965, as amended, and the Ethics in Government Act of 1978, as amended.

DATES: Interim rules effective April 11, 1988; comments must be received on or before June 10, 1988.

ADDRESS: Comments may be sent to John J. O'Meara, Federal Retirement Thrift Investment Board, 805 Fifteenth St. NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 523–6367.

SUPPLEMENTARY INFORMATION:

The Federal Retirement Thrift Investment Board was established by Pub. L. 99–335 (June 6, 1986), the Federal Employees' Retirement System Act of 1986 (codified principally at 5 U.S.C. 8401–8479), as amended by Pub. L. 99–509, the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–556, the Federal Employees' Retirement System Technical Corrections Act of 1986, and the Federal Employees' Retirement System Technical Corrections Act of 1987, to administer the Thrift Savings Plan for federal employees. Regulations of the Board are contained in Title 5, CFR, Chapter VI, Parts 1600–1699. The Board's regulations published in this Part 1633 govern the standards of honesty, integrity, impartiality, and conduct of government employees and special government employees who are employed by the Board.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only persons who work for the Board as government employees and special government employees.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-day Delay of Effective Date

Under 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The Board, as a new agency, has begun operations and it is necessary for these standards of conduct to be in place for the direction and guidance of its employees.

List of Subjects in 5 CFR Part 1633

Conflicts of interest, Ethical conduct, Financial disclosure, Government employees, Political activities.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,

Executive Director.

Title 5 of the Code of Federal Regulations is amended to add Part 1633 to Chapter VI to read as follows:

PART 1633—STANDARDS OF CONDUCT

Subpart A—Regular Employees

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Apendix A to Part 1633—Financial Disclosure

Authority: 5 U.S.C. 8474; 5 U.S.C. App. 4.

Subpart A—Regular Employees

General Provisions

§ 1633.1 Purpose.

This part describes the standards of conduct required of all employees of the Federal Retirement Thrift Investment Board but not Board Members, who are governed by a separate set of regulations found at Part 1634. The regulations in this part implement Office of Personnel Management regulations at 5 CFR Parts 735 and 737. The standards of conduct in this part are not to be considered all-inclusive and may be supplemented to meet specific needs. The absence of a specific published standard of conduct covering an act tending to discredit an employee or the Board does not mean that such an act is condoned, is permissible, or would not call for and result in corrective or disciplinary action.

§ 1633.2 Scope.

This part covers two general types of employment situations as follows:

(a) Subpart A of this part sets the general policy and defines rules of conduct and procedures for all regular employees excluding Board Members.

(b) Subpart B of this part applies to special Government employees, primarily advisers and consultants, excluding Board Members.

§ 1633.3 Policy.

(a) Executive Order 11222 of May 8, 1965, 18 U.S.C. 201 note, states the basic philosophy of conduct for those who carry out the public business:

> Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or adviser of Government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

(b) Personnel of the Federal Retirement Thrift Investment Board are expected to adhere to the above stated principles and to standards of behavior that will reflect credit on the Government. The Board's position is that of having confidence in its employees and of taking a positive and reasonable approach to the matter of maintaining the high standards of conduct necessary in the transaction of Board activities. A violation of the laws or the rules or regulations on conduct in this part may subject the employee to discipline, or advice regarding other remedial action, in accordance with the gravity of the violation.

(c) Disciplinary action may be in addition to any penalty prescribed by law. Such action may be taken only after consideration of any explanation offered by the employee.

(d)(1) In addition to disciplinary action, remedial action may include, but is not limited to:

(i) Recusal,

(ii) Divestiture, resignation, or reassignment,

(iii) A Qualified Trust established in consultation with the Office of Government Ethics, pursuant to Subpart D of 5 CFR Part 734.

(2) An employee may avoid a violation of 18 U.S.C. 208(a) if he or she receives a waiver pursuant to 18 U.S.C. 208(b).

(e) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive Orders, and regulations.

§ 1633.4 Definitions.

In this part:

(a) "Board" means the Federal Retirement Thrift Investment Board.

(b) "Executive Director" means the Executive Director of the Federal Retirement Thrift Investment Board, as defined in 5 U.S.C. 8401(13) and as further described in 5 U.S.C. 8474.

(c) "Regular employee" or "employee" means an employee of the Board, but does not include a special Government employee.

(d) "Special Government employee" means an employee of the Board who is retained, designated, appointed, or employed to perform, with or without compensation, temporary duties either on a full-time or intermittent basis, for not more than 130 days during any period of 365 consecutive days.

(e) "Person" means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(f) "Ethics Officer" means the Assistant Counsel for Administration.

§ 1633.5 Assignment of responsibilities.

The assignment of responsibilities to carry out the provisions of this part is described below in §§ 1633.6 to 1633.10 of this part.

§ 1633.6 Executive Director.

The Executive Director's responsibilities are to (a) issue policy and basic standards of conduct applicable to all Board employees, (b) periodically review the basic standards issued and to review initially and periodically those additional standards issued by the Board, (c) set requirements to ensure that supervisors and employees are aware of the standards of conduct, of their responsibilities in maintaining and adhering to those standards, and of the fact that disciplinary action will be taken in cases of failure to maintain or adhere to them; and (d) establish procedures for furnishing advice to management and to employees on the application of standards of conduct.

§ 1633.7 The General Counsel.

The General Counsel has been designated by the Executive Director as the counselor for the Board on matters covered by the regulations in this part. The General Counsel is responsible for coordination of the counseling service within the Board and for interpretations on questions of conflicts of interest and other matters under this part.

§ 1633.8 Role of personnel officer.

The Board's personnel officer is responsible for providing general guidance and assistance to supervisors

and employees in implementing and adhering to the provisions of the regulations in this part. Where questions arise or where advice is sought by either supervisors or employees which involve either advice or interpretation which is legal in nature, the personnel officer will be responsible for seeing that the advice or interpretation is sought or obtained from the General Counsel or the Ethics Officer, as appropriate.

§ 1633.9 Supervisor.

It is the responsibility of each supervisor to:

(a) Know the standards of conduct,

(b) Advise the employees under his or her supervision or help them obtain advice on the application of the standards of conduct,

(c) Adhere to them,

(d) See that the employees under his or her supervision know and adhere to them also, and

(e) Take or recommend disciplinary action when appropriate in cases where the employees under his or her supervision violate the standards or the principles upon which they are based.

§ 1633.10 Employees.

Each employee of the Board is required to:

(a) Know the standards of conduct and their application in his or her case,

(b) Seek information from his or her supervisor in case of doubt or misunderstanding on the application of the standards of conduct,

(c) Adhere to the standards of conduct, and

(d) Be aware of the consequences of violation of the laws, rules and regulations regarding conduct.

Conflicts of Interest

§ 1633.20 General.

The elimination of conflicts of interest in the Federal service is one of the most important objectives in establishing general standards of conduct. A conflict of interest situation may be defined as one in which a Federal employee's private interest, usually of an economic nature, conflicts or raises a reasonable question of conflict with his public duties and responsibilities. The potential conflict is of concern whether it is actual or only apparent. The rules of the Board concerning conflicts of interest appear in §§ 1633.33–1633.38.

§ 1633.21 Summary of provisions of criminal code.

The following is a brief summary of the provisions of the criminal conflict of interest statutes at Title 18 of the United States Code that define the conflicts of interest subject to fines and imprisonment. It should be noted that in some situations, different restrictions may apply to special Government employees than to regular employees, as discussed in more detail in Subpart B of this part.

(a) *18 U.S.C. 203.* Section 203 prohibits an employee from receiving, agreeing to receive, or asking for (directly or indirectly) any compensation for services, otherwise than as provided by law for the proper discharge of official duties, rendered by the employee or another in relation to any matter in which the United States is a party or has a direct and substantial interest before any department or agency.

(b) *18 U.S.C. 205.* Section 205 prohibits an employee from acting as an agent or attorney in prosecuting any claim against the United States or receiving any share of interest in such claim for assistance in its prosecution, or acting as agent or attorney for anyone before any department or agency in connection with any particular matter in which the United States is a party or has a direct and substantial interest. Sections 203 and 205 do not prohibit a regular Government employee from acting with official approval and with or without compensation as agent or attorney for his parents, spouse, or child, or for any estate for which he is serving as guardian or other fiduciary, with certain exceptions set forth in that section. Section 205 does not prevent an employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceeding in connection with such proceeding.

(c) *18 U.S.C. 207(a).* Section 207(a) prohibits a former employee, after his employment has ceased, from knowingly acting as agent or attorney for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States has a direct and substantial interest and in which he participated personally and substantially as an employee for the lifetime of the matter.

(d) *18 U.S.C. 207(b).* Section 207(b)(i) prohibits any such former Government employee within two years after the termination of his employment or the termination of his responsibility in a particular area (if the two events do not occur simultaneously) from appearing personally before any court, department, or agency as agent or attorney for anyone other than the United States in connection with any particular matter involving a specific party or parties in which the United States is a party directly and substantially interested and which was under his official responsibility within 1 year prior to the termination of such responsibility.

(e) *18 U.S.C. 208.* Section 208 prohibits any employee from participating personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, including general rulemaking, in which, to his knowledge, he, his spouse, minor child, partner, or organization in which he is serving as officer, director, trustee, partner or employee or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment or has a financial interest. An employee may be exonerated from the provisions of this section if he makes full disclosure of the financial interest to the official responsible for his appointment and receives in advance a written determination by that official that the interest is not so substantial as to be likely to affect the integrity of his service.

(f) *18 U.S.C. 209.* Section 209 prohibits any employee from receiving any salary or any contribution to or supplementation of his salary as compensation for his services as an employee from any source other than the Government. This section does not apply to a special Government employee, and does not prevent participation in any bona fide pension, retirement, profit sharing, or other welfare or benefit plan maintained by a former employer. This section also does not prohibit payment or acceptance of certain contributions, awards, or expenses in connection with Government employee training programs or attendance at meetings authorized under 5 U.S.C. 4111.

Rules of Conduct

§ 1633.30 Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this part, which might result in, or create the appearance of:

(a) Using public office for private gain,

(b) Giving preferential treatment to any person,

(c) Impeding Government efficiency or economy,

(d) Losing complete independence or impartiality,

(e) Making a Government decision outside official channels, or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

§ 1633.31 Political activity.

Employees have the right to vote as they may choose and to express their opinions on all political subjects and candidates, but are forbidden to take active part in political management or campaigns (Hatch Act, 5 U.S.C. 7324). Political activity in some local elections is permissible; but before employees engage in such activity, they should familiarize themselves with statutory provisions and the Office of Personnel Management's regulations on this subject (5 U.S.C. 7324–4347 and 5 CFR Part 733). It is unlawful for employees to solicit, receive, or to be concerned with political assessments, subscriptions, or contributions for any political purpose whatever from other employees. (18 U.S.C. 602, 603, 606, 607.) Employees may make voluntary contributions to a regularly constituted political organization for its general expenditures subject to the limitations set forth in 18 U.S.C. 608.

§ 1633.32 Gifts or gratuities from Government employees.

Employees of the Federal Government are prohibited from soliciting contributions from other employees or from making a donation for gifts or presents to persons in superior official positions. Neither may such superiors receive any gift or present offered to them from employees in the Government receiving less salary than themselves (5 U.S.C. 7351). A voluntary gift of nominal value or a donation in a nominal amount may be made for nominal gifts upon retirement or resignation or for expressing condolences in cases of illness or death. Solicitations for such gifts should be limited to employees in the immediate office of the employee concerned and a few close associates with whom he or she has worked. Gifts to recipients should not be in cash, except that small amounts (e.g. under $10) remaining after the purchase of a gift may be included with the gift. Within the foregoing limitations, a cash gift may be made to an employee, with the approval of his/her supervisor, to assist in a catastrophic illness or disaster, provided that these collections are limited to co-workers of approximately equal status to the recipient employee, and to his immediate supervisors.

§ 1633.33 Gifts or gratuities from outside sources.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Board,

(2) Conducts operations or activities that are regulated by the Board, or

(3) Has interests that may be substantially affected by the performance or non-performance of the employee's official duty.

(b) General exceptions to the rule in paragraph (a) of this section are as follows unless otherwise precluded by the Board:

(1) Acceptance of gifts, entertainment, and food is acceptable when the circumstances make it clear that obvious family or personal relationships (such as those between the parents, children or spouse of the employee and the employee) rather than the business of the persons concerned are the motivating factors.

(2) Acceptance of food and refreshments of nominal value on infrequent occasions is permitted when such action occurs in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour when an employee may properly be in attendance.

(3) Acceptance of food and refreshments at widely-attended functions to the extent that:

(i) It is in the Board's interest that the employee attend the event;

(ii) Consideration is given to the timing of the event, the reason for the event, and the individual or entity sponsoring the event in order to ensure that attendance will not create an appearance of impropriety;

(iii) The event is a widely-attended gathering of mutual interest to the government and private sector such as a reception, seminar, conference or training session;

(iv) The food and refreshments offered in conjunction with this event are not excessive;

(v) Approval to attend the event is obtained from the Executive Director (or his designee) after consultation with the Board's Ethics Officer.

(4) Employees may accept loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans, except where prohibited by law.

(5) Employees may accept unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(c) The receipt of payment or reimbursement, by outside sources, for the expenses of travel and subsistence for activities related to Government employment is permitted only in accordance with § 1633.38(c) (2) and (3) of this part.

§ 1633.34 Gifts or gratuities from foreign governments.

The Constitution prohibits employees from accepting from foreign governments, except with the consent of the Congress, presents, emoluments, offices, or titles. The Congress has given its consent in 5 U.S.C. 7342 to the acceptance of certain specified gifts and decorations.

§ 1633.35 Outside financial interests.

An employee shall not participate on a private basis, directly or indirectly, in any financial transaction as a result of, or primarily relying on, confidential information obtained through his employment with the Board. An employee shall not have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities.

§ 1633.36 Using official designation.

Employees shall not permit their official position, status, or designation to be used in a manner that is intended to further, or gives the appearance of furthering, the private business interests of the user or any other private interest. See also § 1633.30(a) of this part.

§ 1633.37 Outside employment and other outside activities.

(a) No employee shall engage in any outside employment or other outside activity, with or without compensation, which would be incompatible with Government employment because it would impair the employee's mental or physical capacity and thereby interfere with his or her efficient performance of Government duties, might bring discredit on or cause unfavorable and justifiable criticism of the Government, or might otherwise result in a conflict of interest, or an appearance of conflict of interest, with official duties and responsibilities; nor may an employee accept a fee, compensation or a gift or any other thing of monetary value in circumstances in which acceptance might result in, or create the appearance of, a conflict of interest. Before engaging in outside employment or in an outside

activity, employees shall submit a written request for approval, through any intermediate supervisors, to the appropriate Office Director or, in the case of persons assigned to the General Counsel's Office, to the General Counsel. The written request shall identify the organization, duties, hours of work, and remuneration pertaining to the outside employment or activity. Other restrictions on misuse of Government property, Government title, and official information are found at §§ 1633.36, 1633.43, and 1633.46.

(b) Employees shall not solicit financial aid from or sell tickets to persons outside the Federal government for the benefit of any organization or association comprised of Board employees. No publication of any such organization shall contain any commercial advertising, and the costs of such publications must be wholly paid by the organization or association. Employee organizations and associations may, however, accept financial aid for convention purposes from Boards of Trade, Chambers of Commerce, Convention Bureaus, and other such organizations which hold conventions.

§ 1633.38 Teaching, writing, lecturing, and speechmaking.

(a) Employees may teach, write, lecture, or deliver speeches providing such action is not prohibited by law, E.O. 11222, 5 CFR Part 735, or the regulations in this part. The requirements prescribed in § 1633.37 of this part also apply to engagements to teach, write, lecture, or deliver speeches. However, an employee shall not, either with or without compensation, engage in teaching, writing, lecturing, or speechmaking (including teaching, writing, lecturing, or speechmaking, for the purpose of the special preparation of a person or class of persons for an examination of the Office of personnel Management or Board of Examiners for the Foreign Service) that depends on information obtained as a result of Government employment, except when the information has been made available on request, or when the Ethics Officer gives written authorization for use of nonpublic information on the basis that the use is in the public interest.

(b) A formal speech, a lecture, or an article relating to Board business shall, prior to its release to the public, be submitted to the Executive Director (or to the person designated by the Executive Director).

(c)(1) *Determinations by the Executive Director.* If the subject matter of any teaching, writing, lecturing, or speechmaking activity is devoted to the responsibilities, programs, or activities of the Board or draws upon official data or ideas which have not been made public, the Executive Director (or designee), after requestor consults with the Ethics Officer, will determine whether the activity may be undertaken, and if so, whether as official duty or in a private capacity. In determining whether the activity is an official duty or private undertaking, the Executive Director will consider, among other factors, whether the activity will be performed during official hours, whether Government time or facilities will be utilized, whether the official title of the employee will be used, and whether the activity would justify the expenditure of public funds.

(2) *Activities undertaken as an official duty.* If the activity is undertaken as an official duty, all expenses will be borne by the Board and the employee may not accept any honorarium or other compensation or permit payment of his or her expenses. However, under 5 U.S.C. 4111 and 5 CFR 410.701–410.706, an employee on official duty may accept reimbursement for actual travel and reasonable lodging and subsistence expenses from organizations determined by the Secretary of the Treasury to be tax exempt, as described in 26 U.S.C. 501(c)(3), if no Government payment or reimbursement is made for the expense, and the acceptance of the payment is consistent with the Board policy of eliminating any conflict of interest or appearance of a conflict of interest with his or her official duties and responsibilities.

(3) *Activities undertaken in a private capacity.* (i) The Board discourages employees from receiving honoraria or other compensation for teaching, writing, lecturing, or speechmaking on matters relating to Board business, even though the activity is not performed as an offical duty. An employee may not receive any such compensation unless, before engaging in the activity, a written request is submitted to and approved by the Executive Director (or designee), after the requestor consults with the Ethics Officer. The request should set forth the facts relating to the amount of compensation, its reasonableness (taking into account the amount of compensation paid to others under similar circumstances), and also indicate why its acceptance would be consistent with the Board's policy to eliminate any conflict of interest or appearance of a conflict of interest with the employee's official duties and responsibilities.

(ii) Pursuant to paragraph (c)(3)(i) of this section, employees may accept payment for travel, lodging, and subsistence expenses actually incurred from the person or group sponsoring an activity which was determined not to be an official duty, if the payment is reasonable in amount and is otherwise consistent with the Board's policy to eliminate any conflict of interest or appearance of a conflict of interest with the official duties and responsibilities of the employee.

(4) *Reporting requirements.* All employees receiving compensation or reimbursement for expenses for teaching, writing, lecturing, or speechmaking devoted to the responsibilities, programs of activities of the Board or drawing upon official data or ideas which have not been made public, shall immediately submit a written report to the Executive Director stating the amounts paid and by whom, unless this information was previously provided to that official. In addition, the employee may be required by the Executive Director to furnish other relevant information concerning these payments.

(5) *Other restrictions.* (i) Under 46 Comp. Gen. 689 (1967), no reimbursement or donation may be made to the Board to cover the expenses of travel and subsistence of an employee on official business, unless specifically authorized by law.

(ii) Under 2 U.S.C. 441i, appointed officials are prohibited from receiving honorariums of more than $2,000 for any appearance, speech, or article, and from receiving honorariums aggregating more than $25,000 in any calendar year.

(d) Board employees are prohibited from official attendance at segregated meetings. They should not participate in conferences or speak before audiences where any racial group has been segregated or excluded from the meeting, any of the facilities, the conferences, or from membership in the group.

§ 1633.39 Gambling, betting and lotteries.

While on Government-owned or leased property or while on duty for the Government, an employee shall not participate in any form of gambling, betting, lotteries, or the sending of chain letters, even if such activities are in support of a worthy cause.

§ 1633.40 Use of intoxicants.

Employees must refrain from using intoxicants habitually to excess or in any way which adversely affects their work performance (5 U.S.C. 7352).

§ 1633.41 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. A "just financial obligation," as used in this section, means one acknowledged by the employee; reduced to judgment by a court; or, in case of taxes, a final administrative determination confirmed by notice of a tax lien issued by a governmental agency, Federal, State, or local. "In a proper and timely manner," as used in this section, means in a manner which the Board determines does not, under the circumstances, reflect adversely on the Board as his employer. In the event of dispute between an employee and an alleged creditor, this section does not require the Board to determine the validity or amount of the disputed debt.

§ 1633.42 Lending or borrowing money.

Employees shall neither directly nor indirectly, lend to or borrow from other employees substantial sums of money. In negotiating loans from authorized sources, such as credit unions, welfare associations, commercial or private banking institutions, etc., if the transaction involves the signature of one or more endorsers or comakers, the borrower must not in any instance solicit, or permit to be affixed to any instrument as endorser or comaker, the signature of any Board employee who is under his or her supervision.

§ 1633.43 Use of Federal property.

Employees may not directly or indirectly use or allow the use of Federal property of any kind for other than officially approved activities. They also have a positive responsibility to protect and conserve all Federal property, including equipment and supplies, which is entrusted or issued to them.

§ 1633.44 Care of documents.

The care of Government documents is a Federal requirement which is regulated by legislation. All records and documents in the custody of employees are in their custody for official purposes only. It is unlawful to remove or conceal, alter, mutilate, obliterate, or destroy records or documents or to remove or attempt to remove them from official custody with the intent of performing any of the above actions (18 U.S.C. 2071). Employees must not remove records and documents from official files without approval from proper authority. Working papers, copies of reports and other official records and documents shall be promptly disposed of when no longer needed for official purposes. Disposal or destruction of records and documents is to be made in accordance with established requirements.

§ 1633.45 Use of Government cars.

Employees are prohibited from using Government cars for other than official purposes. Use of such cars for transportation of employees between their domiciles and places of employment can only be justified where affirmatively authorized by statute, as in 31 U.S.C. 1343 and 1344.

§ 1633.46 Disclosure of information to the public.

Employees may not disclose official information which has not been made available to the general public without either appropriate general or specific authority.

§ 1633.47 Personal communications.

Employees may not conduct personal business while on official duty. Personal use of telephones is restricted to reasonable need. See 41 CFR Part 201–38. Employees who receive personal mail at their office will advise addressors to stop sending such mail to the Board's address.

§ 1633.48 Soliciting, selling, and canvassing.

Except when authorized by the Board, and except as provided by § 1633.33 of this part, employees are prohibited from soliciting, from making collections, from canvassing for the sale of any article, or from distributing literature or advertising matter in any space occupied by the Board.

§ 1633.49 Influencing legislation or petitioning Congress.

Employees are prohibited from using Government time, money, or property (as, for example, through sending telegrams, or letters) to influence a Member of Congress to favor or oppose any legislation. This prohibition does not apply to the official handling through proper channels of matters relating to legislation affecting the Board (18 U.S.C. 1913), or to the rights of employees in their private capacities to petition Members of Congress either individually or collectively or to furnish information to any committee or member of either House of Congress (5 U.S.C. 7102).

§ 1633.50 Civil Service examination processes.

Appointment and future advancement in the Federal career service are based on the important principle of individual merit and qualifications. The selection and merit competitive processes are protected by the Civil Service statutory provisions, 5 U.S.C. Chapter 33 and the Office of Personnel Management (OPM) regulations. Employees shall not, either directly or indirectly:

(a) Intentionally make a false statement or practice any deception or fraud in examination or appointment,

(b) Induce persons to withdraw from competition for competitive service positions,

(c) Engage in any improper activity with respect to the taking of Civil Service examinations and examination ratings, or

(d) Obstruct the right of any person to take examinations according to OPM rules and regulations. See 18 U.S.C. 1917 and 5 CFR 735.210(j).

§ 1633.51 Falsification of official records.

Employees shall avoid making false, misleading, or ambiguous statements, deliberately or willfully, whether verbal or written, in connection with any matter of official interest. Some of these matters of official interest are: Transactions with the public, other Federal agencies or fellow employees; application forms and other forms which serve as a basis for appointment, reassignment, promotion or other personnel actions; vouchers; leave records; work reports of any nature or accounts of any kind; affidavits, entry or record of any matter relating to or connected with the employee's duties; and report of any moneys or securities received, held or paid to, for or on behalf of the United States. See 18 U.S.C. 1001 and 5 CFR 735.210(k).

§ 1633.52 Miscellaneous statutory provisions.

The attention of every employee is directed to the statutes relating to conduct listed below:

(a) The prohibitions against (1) embezzlement of Government money or property (18 U.S.C. 641); (2) failing to account for public money (18 U.S.C. 643) and (3) embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(b) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service" (5 U.S.C. 7301 note).

(c) Section 8477 of Title 5, U.S.C. which describes fiduciary responsibilities, liability, and penalties.

(d) Chapter 11 of Title 18, U.S.C. relating to bribery, graft, and conflicts of interest as appropriate to the employees concerned.

(e) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(f) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(g) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(h) The prohibitions against the employment of a member of a Communist organization (50 U.S.C. 784).

(i) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(j) The prohibition against Federal employment of any person convicted of a felony in furtherance of, or while participating in, a riot or civil disorder (5 U.S.C. 7313).

(k) The tax imposed on certain employees (e.g., Presidential appointees, employees excepted under Schedule C, employees whose compensation is equal to or greater than that for GS–16, or executive assistants or secretaries to any of the foregoing) who knowingly engage in self-dealing with a private foundation (26 U.S.C. 4941, 4946). "Self-dealing" is defined in the statute to include certain transactions involving an employee's receipt of compensation or other benefits such as a loan, or reimbursement for travel or other expenses from, or his sale to or purchase of property from a private foundation.

(l) The prohibition against a public official appointing or promoting a relative, or advocating such an appointment or promotion (5 U.S.C. 3110).

§ 1633.53 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the government.

§ 1633.54 Insurrection.

Employees may be disqualified for employment for knowingly supporting or advocating the violent overthrow of our constitutional form of government.

§ 1633.55 Strikes.

Employees shall not strike against the Government (5 U.S.C. 7311).

§ 1633.56 Purchase of Government property.

Employees are prohibited from either directly or indirectly, bidding or purchasing at any sale of Government property under the direction or incident to the functions of the Board. Government property under the control of the Board shall not be sold to a Government employee, either directly or indirectly, unless a properly authorized representative of the office disposing of the property has determined that the sale is in the best interest of the Government. Before purchasing any Government property from any agency of the Government, either directly or indirectly, employees of the Board shall make known to the disposing agency that they are such employees and shall be governed by the disposing agency's rules relating to sales to Government employees.

Statement of Employment and Financial Interests

§ 1633.70 Employees required to submit statements.

Except as provided in § 1633.72, statements of employment and financial interests will be filed by the following employees:

(a) Those paid at a level of the Executive Schedule in Subchapter II of Chapter 53 of Title 5, United States Code.

(b) Those classified at GS–13 or above under 5 U.S.C. 5332, or at a comparable pay level under another authority, who are in positions, specifically identified in Appendix A to this Part, the incumbents of which are responsible for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement;

(2) Regulating or auditing private or other non-Federal enterprise; or

(3) Other activities where the decision or action has an economic impact on the interests of any non-Federal enterprise.

(c) Those classified at GS–13 or above under 5 U.S.C. 5332, or at a comparable pay level under another authority, who are in positions, specifically identified in Appendix A to this part, which the Executive Director has determined to have duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflict of interest situation and carry out the purpose of law, executive order, 5 CFR Part 735, and this part.

(d) Those classified below GS–13 under 5 U.S.C. 5332, or at a comparable pay level under other authority, who are in positions which otherwise meet the criteria in paragraphs (b) and (c) of this section, but only when the inclusion of the positions in Appendix A to this part has been specifically justified by the Executive Director in writing to the Office of Personnel Management as an exception that is essential to protect the integrity of the Government and avoid employee involvement in a possible conflict of interest situation.

(e) Alterations to, deletions from, and other amendments of the list of positions in Appendix A to this part may be made under the criteria in paragraphs (b) through (d) of this section and are effective upon approval by the Executive Director and actual notification to the incumbents. Amendments to the list in Appendix A of this part shall be submitted annually for publication in the **Federal Register.**

§ 1633.71 Employee's complaint on filing requirement.

An employee shall have, in conformity with the grievance procedures prescribed by the Board, an opportunity for review of a complaint that his or her position has been improperly included in Appendix A of this part as one requiring the submission of a statement of employment and financial interests.

§ 1633.72 Exceptions.

(a) Employees in positions that meet the criteria in paragraph (b) of § 1633.70 may be excluded from the reporting requirement when the Executive Director determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict of interest situation is remote; or

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent, or the inconsequential effect on the integrity of the Government.

(b) A statement of employment and financial interests is not required by this part when the employee is required to file a report pursuant to 5 CFR Part 734.

§ 1633.73 Form and content of statements.

The statements of employment and financial interests required under this subpart for use by employees and special Government employees shall contain, as a minimum, the information required by the formats prescribed by the Office of Personnel Management (OPM). Such Board forms shall not include questions that go beyond, or are in greater detail than, those included in OPM formats without the approval of OPM.

§ 1633.74 Time and place for submission of employees' statements.

Each employee required to submit a statement of employment and financial interests shall submit that statement to the official designated by the Executive Director not later than:

(a) Thirty days after the effective date of the regulations in this part if employed on or before that effective date; or

(b) Thirty days after entrance on duty.

§ 1633.75 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of May 15 each year, except when OPM authorizes a different date. Complete updated statements will be filed annually; reporting a negative or "no change" statement is not allowed. Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict of interest provisions of 18 U.S.C. 208, or Subpart B of 5 CFR Part 735 or this part.

§ 1633.76 Interests of employees' relatives.

For purposes of completing the statements of employment and financial interests, the interests of a spouse and dependent children are to be considered interests of the employee.

§ 1633.77 Information not known by employees.

If any information required to be included in a statement of employment and financial interests or a supplementary statement including holdings placed in trust is not known to the employee but is known to another person, the employee shall request that other person to submit the information on his or her behalf, unless the trust is a Qualified Trust meeting the requirements of Subpart D of 5 CFR Part 734. If the trust is a Qualified Trust pursuant to Subpart D of 5 CFR Part 734, then those regulations control as to what information must be submitted by the trustee.

§ 1633.78 Information excluded.

The regulations in this part do not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purposes of the regulations in this part, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in an employee's statement of employment and financial interests.

§ 1633.79 Review of statements.

Board members and employees will file their statements with the Board's Ethics Officer for his review. The Ethics Officer will file with the Executive Director his statement, which will be reviewed by the Executive Director or his designee. The system of review shall be designed to disclose conflicts of interest or apparent conflicts of interest on the part of employees. If information from the statements submitted or from other sources indicates a conflict of interest or an apparent conflict of interest, the employee concerned shall be given an opportunity to explain the conflict or apparent conflict. The Ethics Officer shall report all cases to the Executive Director for decision.

§ 1633.80 Confidentiality of employees' statements.

(a) Statements of employment and financial interests, and supplementary statements coverd by §§ 1633.70 through 1633.79 are confidential except as to appropriate reviewing officials. Employees reviewing statements in connection with their official duties are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information from a statement may not be disclosed except as OPM or the Board may determine for good cause shown.

(b) Statements submitted under 5 U.S.C. App. 4 201 and 5 CFR Part 734 are, unlike those covered by §§ 1633.70 through 1633.79, not confidential.

§ 1633.81 Effect of employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees under the regulations in this part are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit the employee or any other person to participate in the matter in which the employee's or the other person's participation is prohibited by law, order, or regulation.

Listing of Employees Who Must File Statements

§ 1633.100 Listing of employees.

Appendix A to this part is a listing of specific positions whose incumbents must file statements. The Executive Director shall review the list of positions in Appendix A to this part annually and submit changes as appropriate. The effective date of any change is set by § 1633.70(e).

Subpart B—Preventing Conflicts of Interest on the Part of Special Government Employees of the Board

General Provisions

§ 1633.200 Purpose.

This subpart implements the provisions of Executive Order 11222 dated May 8, 1965, relating to special Government employees of the Board.

§ 1633.201 Scope.

This subpart relates basically to special Government employees who are consultants and advisers, including experts. Submission of financial statements by special Government employees other than advisers, consultants, and experts is waived except where statements would otherwise be required under § 1633.70; nevertheless, such special Government employees are subject to the substantive standards of conduct of this Subpart B. Employees who are employed for more than 130 days are treated as regular employees and are subject to the provisions of Subpart A of this part.

§ 1633.202 Policy.

It is the Board's policy in issuing the instructions in this part to adhere rigidly to the policy that every citizen is entitled to have complete confidence in the integrity of his Government and that each individual officer, employee, or adviser of the Government must help to earn and must honor that trust by the individual's own integrity and conduct in all official actions.

General Rules of Conduct Applicable to Special Government Employees

§ 1633.203 Applicability of Subpart A of this part.

In addition to complying with §§ 1633.204 through 1633.209, special Government employees shall familiarize themselves with the rules of conduct contained in Subpart A of this part so they can be guided by the principles contained in those rules insofar as their employment with the Board is concerned.

§ 1633.204 Use of Government employment.

A special Government employee shall not use his Government employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for himself or another person, particularly one with whom he has family, business, or financial ties.

§ 1633.205 Use of inside information.

A special Government employee shall not use inside information obtained as a result of his Government employment for private gain for himself or another person either by direct action on his part or by counsel, recommendation, or suggestion to another person, particularly one with whom he has family, business, or financial ties. "Inside information" as used in this section means information obtained under Government authority which has not become part of the body of public information.

§ 1633.206 Teaching, lecturing, and writing.

Special Government employees may teach, lecture, or write providing such action is not prohibited by law, E.O. 11222, or the regulations in this part. However, a special Government employee shall not, either with or without compensation, engage in teaching, lecturing, or writing that depends upon information obtained as a result of his employment with the Board, except when that information has been made available to the general public or will be made available on request, or when the official to whom he or she reports receives written authorization from the Executive Director for the use of non-public information on the basis that the use is in the public interest.

§ 1633.207 Coercion.

A special Government employee shall not use his or her Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to himself or another person, particularly one with whom he or she has family, business or financial ties.

§ 1633.208 Gifts, entertainment, and favors.

A special Government employee, while so employed or in connection with employment, shall not receive or solicit from a person having business with the Board anything of value as a gift, gratuity, loan, entertainment, or favor, personally or for another person, particularly one with whom the employee has family, business or financial ties. Exceptions to this are the same exceptions contained in Subpart A of this part for regular employees of the Board.

§ 1633.209 Miscellaneous statutory provisions.

The statutory provisions relating to Board employees referred to in §§ 1633.31, 1633.32, 1633.34, 1633.40, 1633.44, 1633.45, 1633.48, 1633.51, 1633.52, 1633.53, and 1633.55 apply to special Government employees when serving in their official capacities with the Board.

Conflict of Interest Statutes

§ 1633.210 Applicability of 18 U.S.C. 203 and 205.

(a) The prohibitions in 18 U.S.C. 203 and 205 applicable to special Government employees are less stringent than those which affect regular employees, i.e., those who are appointed for more than 130 days a year. These two sections in general operate to preclude a regular Government employee, except in the discharge of his or her official duties, from representing another person before a Department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the same two sections impose only the following major restrictions upon a special Government employee:

(1) The employee may not, except in the discharge of official duties, represent anyone else before a court or Government agency in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which the employee has at any time participated personally and substantially in the course of Government employment.

(2) The employee may not, except in the discharge of official duties, represent anyone else in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he or she serves. However, this restraint is not applicable if the employee has served the agency no more than 60 days during the past 365. The employee is bound by the restraint, if applicable, regardless of whether the matter is one in which he or she has ever participated personally and substantially.

(b) These restrictions prohibit both paid and unpaid representation and apply to a special Government employee on the days when the employee does not serve the Government as well as on the days when the employee does.

(c) The rules to be followed by the Board to determine the duration of employment of special Government employees and other temporary employees in order to ascertain the application of these statutes are set forth in the Federal Personnel Manual.

(d) An employee who undertakes service with the Board and another department or agency shall inform each of the arrangements with the other.

(e) There may be situations where a consultant or adviser has a responsible position with a regular employer which requires personal participation in contract negotiations with the Board. In this situation, the consultant or adviser should participate in the negotiations for the employer only with the knowledge of a responsible Board official, i.e., the full-time official to whom the consultant or adviser reports. Prior to permitting such participation, the responsible Board official shall obtain the approval in writing of the Executive Director. See also paragraph (f)(1) of this section.

(f) Section 205 of title 18 of the United States Code, contains two exemptive provisions, which apply under section 203 as well.

(1) The first of these deals with a similar situation which may arise after a Government grant or contract has been negotiated. This provision in certain cases permits both the Government and the private employer of a special Government employee to benefit from performance of work under a grant or contract for which the employee would otherwise be disqualified because of participation in the matter for the Government or it is pending in an agency the employee has served more than 60 days in the past year. More particularly, the provision gives the head of a department or agency the power, notwithstanding any prohibition in either section 203 or 205 of title 18 of the United States Code, to allow a special Government employee to represent before such department or agency the regular employer or another person or organization in the performance of work under a grant or contract, if the national interest so requires. A written certification by the head of a department or agency concerned with the grant or contract to exempt the employee must be submitted for publication in the **Federal Register**. Where the Board is the agency concerned with the grant or contract, such written certification will be forwarded, through the General Counsel, to the Executive Director for the latter's signature. The exemption will not take effect until the certification is published in the **Federal Register**.

(2) The other exemptive provision requiring action permits a special

Government employee to represent, with or without compensation, a parent, spouse, child, or person or estate for whom or which the employee serves as a fiduciary, but only with the approval of the official responsible for appointments to his or her position and only if the matter involved is neither one in which the employee has participated personally or substantially nor one under the employee's official responsibility. The term "official responsibility" is defined in 18 U.S.C. 202 to mean, in substance, the direct administrative or operating authority to control Government action. For the Board, the "official responsible for appointments" for these purposes will be the Executive Director.

§ 1633.211 Applicability of 18 U.S.C. 207.

(a) Section 207 of Title 18 of the United States Code applies to individuals who have left Government service, including former special Government employees. Section 207(a) prevents a former employee or special Government employee from representing another person in connection with certain matters in which the employee participated personally and substantially on behalf of the Government. The matters are those particular matters involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. In addition, section 207(b)(i) prevents a former employee or special Government employee, for a period of two years after employment has ceased, or responsibility in a particular area has ceased (if the two do not occur simultaneously) from appearing personally on behalf of another person in such matters before a court, department, or agency of the United States or the District of Columbia. If the matters were within the area of his official responsibility at any time during the last year of Government service. Section 207(b)(ii) prevents a former employee who occupied a position designated as a Senior Employee (a position which involves significant decision making or supervisory responsibility) for a period of two years after his or her employment has ceased from appearing personally on behalf of another person before a court, department or agency of the United States or the District of Columbia in any matter that was pending under his official responsibility within a one year period prior to the termination of such responsibility or as to which he or she participated personally and substantially as an officer or employee. Section 207(c) prevents a former employee, who served more than sixty days in a given calendar year, and who occupied a position designated as a Senior employee within one year after such employment has ceased, from acting as agent or attorney for anyone in any appearance or in any written communication before the agency in which he served as an officer or employee in connection with any proceeding pending before such agency. It should be noted that a consultant or adviser usually does not have "official responsibility."

(b) For the purposes of section 207 of title 18 of the United States Code, the employment of a special Government employee ceases on the day the employee's appointment expires or is otherwise terminated, as distinguished from the day on which he or she last performs service. Accordingly, the appointment of an adviser or consultant should be terminated promptly as soon as it is determined that the services are no longer required. (See Appendix C of Chapter 735 of the Federal Personnel Manual.)

§ 1633.212 Applicability of 18 U.S.C. 208.

(a) Section 208 of title 18 of the United States Code, bears on the activities of Government personnel, including special Government employees, in the course of their official duties. In general, it prevents an employee or special Government employee from participating as such in a particular matter in which, to his or her knowledge, the employee's spouse, minor child, partner, or a profit or nonprofit enterprise with which the employee is connected has a financial interest. However, section 208(b)(1) permits such an employee's agency to grant an ad hoc exemption if the interest is not so substantial as to affect the integrity of services. Insignificant interests may also be waived by a general rule or regulation (18 U.S.C. 208(b)(2)).

(b) The matters in which special Government employees are disqualified by section 208 of title 18 of the United States Code, are not limited to those involving a specific party or parties in which the United States is a party or has an interest, as in the case of sections 203, 205, and 207 of title 18, of the United States Code. Section 208, therefore, undoubtedly extends to matters in addition to contracts, grants, judicial and quasi-judicial proceedings, and other matters of an adversary nature. Accordingly, a special Government employee should in general be disqualified from particiating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by section 208. However, the power of exemption may be exercised in this situation if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization. The power of exemption may, of course, be exercised also where the financial interests involved are minimal in value.

(c) Exemptions under section 208 of title 18, of the United States Code may be made by general rule or regulation by the Executive Director.

Consultants and Advisers

§ 1633.220 Advice on rules of conduct and conflict of interest statutes.

If a special Government employee who is a consultant or adviser has doubt as to the ethics of any conduct falling within the standards of conduct and conflict of interest statutes, the employee should confer with the Ethics Officer of the Board.

§ 1633.221 Responsibility of the individual special Government employee.

Each person appointed as a special Government employee with the Board is responsible for:

(a) Becoming familiar with the contents of this part and the applicability of the conflict of interest statutes in the employee's particular case.

(b) Seeking advice and assistance in interpreting the laws and instructions in case of questions concerning them.

(c) Being alert to the possibility of conflicts of interest.

(d) Furnishing the Board with information concerning financial interests and keeping this information current.

Procedures To Be Followed Within the Board

§ 1633.230 Information and assistance to special Government employees and their supervisors.

Each special Government employee and each supervisor of a special Government employee will be given a copy of this part and will be required to become familiar with the conflict of interest laws and the provisions of the instructions applicable to him or her. If a

special Government employee or prospective special Government employee or a supervisor desires assistance in interpreting the instructions or laws, the employee will be referred to the General Counsel.

§ 1633.231 Disclosure of financial interests.

(a) In order to carry out its responsibility to avoid the use of the services of special Government employees in situations in which violations of the conflict of interest laws or of the regulations in this part may occur, prior to initial employment and each reappointment thereafter, each special Government employee who is a consultant or adviser will be required to supply a statement of all other employment and the financial interests of the special Government employee which the Executive Director determines are relevant in the light of the duties the employee is to perform, including, but not limited to, the name of companies in which he or she has a significant financial interest, and the nature of such financial interest. Each statement of financial interests will be forwarded to the Board's Ethics Officer along with a statement of the duties which the proposed special Government employee will be assigned.

(b) The Board's Ethics Officer will review the statement of employment and financial interests in relationship to the duties to be performed and initially determine whether a conflict of interest exists. Accordingly, such statements must be kept current during the period the special Government employee is on the Government rolls. In any event, special Government employees who are employed intermittently for more than one calendar year shall file the statement on May 15 of each year of such employment.

§ 1633.232 Service with other Federal agencies.

If a special Government employee is serving in other Federal agencies, he or she will be required to inform the Board and each of the agencies of his or her arrangements with the others so that appropriate administrative measures may be effected. Information of service with other Federal agencies will be submitted along with the statement of employment and financial interests and must be kept current while employed with the Board.

§ 1633.233 Resolution of cases involving a conflict or apparent conflict of interest.

When a situation arises which indicates a conflict of interest or apparent conflict of interest and the matter is not resolved, information about the situation will be reported by the Ethics Officer to the Executive Director. In any such situation, the special Government employee shall be provided an opportunity to explain the conflict or appearance of conflict.

§ 1633.234 Disciplinary and other remedial action.

A violation of the regulations in this part may be cause for appropriate disciplinary action, which may be in addition to any penalty prescribed by law, or other remedial action. In addition to disciplinary action, remedial action may include, but is not limited to:

(a) Recusal,

(b) Divestiture, resignation, or reassignment,

(c) A Qualified Trust established pursuant to Subpart D of 5 CFR Part 734. A special Government employee may avoid a violation of 18 U.S.C. 208(a) if he or she receives an advance written waiver pursuant to 18 U.S.C. 208(b).

§ 1633.235 Legal interpretation.

Whenever the Ethics Officer believes that a substantial legal question is raised by the employment of a particular special Government employee as a consultant or adviser, the Ethics Officer will consult with the Office of Government Ethics and the General Counsel, Office of Personnel Management, and will refer cases of potential criminal violations to the Department of Justice, Criminal Division, Office of Public Integrity, in order to ensure a consistent and authoritative interpretation of the law.

§ 1633.236 Safeguard of information.

Statements of employment and financial interests, and supplementary statements shall be held in confidence. Employees responsible for maintaining or reviewing the statements shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. Information from a statement may not be disclosed except as OPM or the Executive Director may determine for good cause shown.

Appendix A to Part 1633—Financial Disclosure

Identification of Positions the Incumbents of which Must File Confidential Financial Statements: All employees in grade GS–13 and above.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 87–140]

Varroa Mite

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the "Domestic Quarantine Notices" by adding a new subpart captioned "Varroa Mite." Discovery of the Varroa mite in Florida, Illinois, Maine, Michigan, Mississippi, Nebraska, New York, Ohio, Pennyslvania, South Carolina, South Dakota, Washington, and Wisconsin makes it necessary for us to quarantine these states, and to restrict the interstate movement of regulated articles from the quarantined areas. We must take this action on an emergency basis to contain the interstate spread of the Varroa mite.

DATES: Interim rule effective April 6, 1988. Consideration will be given only to comments postmarked or received on or before June 10, 1988.

ADDRESSES: Send an original and three copies of written comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090–6464. Specifically refer to Docket No. 87–140. The public may review comments received on this and other dockets in Room 1141 of the South Building, 14th Street at Independence Ave., SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie W. Elder, Chief Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, Room 660, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6365.

SUPPLEMENTARY INFORMATION: We are amending 7 CFR Part 301, by adding to "Domestic Quarantine Notices" a subpart with Varroa Mite regulations (§§ 301.92 through 301.92–10; referred to below as the regulations). These regulations quarantine the states of Florida, Illinois, Maine, Michigan, Mississippi, Nebraska, New York, Ohio, Pennsylvania, South Carolina, South Dakota, Washington, and Wisconsin because of the Varroa mite infestations found in those states. The regulations restrict the interstate movement of regulated articles from the quarantined

areas to prevent the interstate spread of the Varroa mite.

The Varroa mite *Varroa jacobsoni* (Oudemans), is a parasite of honeybees. Varroa mites invade hives, weakening the honey bees in the colonies they infest and reducing their ability to pollinate plants and produce honey. Varroa mites can multiply quickly without attracting a beekeeper's attention until serious damage has been done. The current Varroa mite infestations would, if not controlled, cause serious economic losses throughout the agricultural sector. If the honey bee population were devastated by Varroa mites, every U.S. crop dependent upon honey bees for pollination would be affected. Honey production, too, would drop substantially.

Until September 1987, the Varroa mite had not been found in the United States.

On September 25, 1987, the first Varroa mite infestation in the United States was reported in an apiary in Ozaukee County, Wisconsin. On September 29, 1987, after the Agricultural Research Service, United States Department of Agriculture, confirmed the preliminary identification of the Varroa mite, all colonies in the infested apiary were voluntarily destroyed by their owner.

On October 5, 1987, plant regulatory officials in Florida confirmed the presence of the Varroa mite in that state. Since then, infestations have been confirmed in another 11 states. As a result, the number of states with confirmed Varroa mite infestations now stands at 13.

Varroa mites can be spread by the movement of bee hives; live and dead honey bees; pollen for bee food; combs with brood cells; and the equipment, vehicles, storage and shipping containers used in apiaries. Officials of Plant Protection and Quarantine (PPQ), United States Department of Agriculture, have been working with state regulatory officials to determine whether the Varroa mite has spread into areas outside those known to be infested. We will add the "quarantined areas" listed in § 301.92-3 if federal and state surveys completed after publication of this document show this to be necessary.

Data collected in Germany, France, and Israel, countries where Varroa mite control programs have been operating for several years and where conditions are roughly comparable to those in the United States, make the current regulations possible. Experimental use of chemicals to treat mite-infested bees abroad enabled the United States Department of Agriculture to benefit from the experience of others, and to consider chemical treatment of honey bees as viable response to the U.S. Varroa mite emergency.

The decision to proceed with a program of chemical treatment of honey bees in infested areas—areas identified as "quarantined areas" in these regulations—required that tests be conducted in the United States before the Agricultural Research Service could recommend treatments suitable for honey bees. Treatments recommended by foreign experts would, we knew, require some degree of modification and adaptation: While Germany, France, and Israel all recommended treatment with fluvalinate strips on the basis of experience, and while conditions in each of those countries are roughly comparable to U.S. conditions, they are not identical. The Agricultural Research Service's preliminary tests confirmed the need for environmentally conditioned research before we could support regulatory treatments for U.S. honeybees. Available in November 1987, data from that first set of tests revealed and unacceptably high mortality rate for bees. Tests conducted during the late fall and early winter reduced that mortality rate to the point that Departmental scientists support the regulatory treatments contained in § 301-92-10. The goal of this interim rule is to contain the spread of the Varroa mite without needlessly preventing honeybees from being moved out of infested areas. For these reasons, we are establishing federal regulations, described below by section.

Restrictions (Section 301.92)

Interstate movement of regulated articles from quarantined areas may occur only in accordance with the regulations.

Definitions (Section 301.92-1)

To present the regulations in terms precisley expressing their intended meaning, we include a list of definitions in § 301.92-1.

Regulated Articles (Section 301.92-2)

The regulations impose conditions on the interstate movement of those articles and means of conveyance that present a significant risk of spreading the Varroa mite if moved without restriction from quarantined areas. These articles and means of conveyance, designated "regulated articles," are prohibited from moving interstate from quarantined areas except in accordance with conditions specified in §§ 301.92-4 through 301.92-10.

Articles that, on the basis of research and experience, we consider likely to cause the spread of the Varroa mite comprise the list of regulated articles in § 301.92-2(a)-(e).

Quarantined Areas (Section 301.92-3)

To contain the spread of the Varroa mite, we are quarantining states in which a Varroa mite infestation exists.

Less than an entire state will be quarantined if we determine that: (1) The state-imposed restrictions on intrastate movement of regulated articles are equivalent to those that our regulations impose on the interstate movement of regulated articles; and (2) a limited quarantine, which, based on the foraging range of honey bees, is the 100 square miles surrounding each infested apiary, will suffice to prevent the interstate spread of the Varroa mite. The Administrator may establish boundaries encompassing more or less than a 100-square-mile area upon determining that this is necessary to establish readily identifiable boundaries.

Specific geographic boundaries of quarantined areas appear in § 301.92-3 of the regulations.

Further, § 301.92-3(b) provides for the temporary quarantining of an area without publication in the **Federal Register** when immediate, emergency action is warranted under § 301.92-3(a). Otherwise, the spread of the Varroa mite could occur before publication in the **Federal Register** of a document adding that area to the list of quarantined areas.

Conditions Governing the Interstate Movement of Regulated Articles From Quarantined Areas (Sections 301.92-4 Through 301.92-10)

Section 301.92-4(a) requires regulated articles moved interstate from quarantined areas to be accompanied by a certificate of limited permit, issued and attached in accordance with §§ 301.92-5 and 301.92-8. Section 301.92-4(b) prescribes conditions under which we will waive the requirement that regulated articles comply with § 301.92-4(a). That is, we will allow a regulated article to move interstate without a certificate or limited permit if the article originates outside a quarantined area; if it is moved through the quarantined area without stopping, except for refueling or traffic conditions, such as traffic lights, rest stops, emergency repairs, and stop signs; if it is shipped in an enclosed vehicle or is completely covered in a mesh impermeable to honey bees; and if the accompanying waybill indicates the regulated article's point of origin. We will also allow the United States Department of Agriculture to move

regulated articles interstate without a certificate or limited permit, under § 301.92–4(c), for experimental or scientific purposes; in those cases, they must be moved in accordance with a Department permit issued by the Administrator.

Section 301.92–5 prescribes the conditions under which certificates and limited permits will be issued. A certificate is issued when a regulated article, other than a hive, presents no pest risk before interstate movement. A limited permit is issued when a hive presents a risk of spread of Varroa mite but can be safely moved interstate under certain conditions which are set forth on the limited permit. Because research conducted by the Agricultural Research Service can confirm the 100 percent effectiveness of treatments for all regulated articles but hives, we will issue certificates for all regulated articles, except hives; because of the risk associated with hives, we will only issue a limited permit for hives.

Section 301.92–5(a) specifies the conditions under which we will issue certificates. The inspector will issue a certificate upon determining that a regulated article, other than a hive, has been treated in accordance with the regulations. Sections 301.92–5(b) specifies the conditions under which we will issue limited permits. The inspector will issue limited permits upon determining that a hive has been treated and will be moved to specified destinations in accordance with these regulations. The footnote in this section provides information on contacting inspectors.

Section 301.92–5(c) and (d) allows any person, known as a complier, who has entered into and is operating under a compliance agreement with us, to issue a certificate or limited permit for the interstate movement of a regulated article after the complier has determined its eligibility for movement in accordance with the same conditions as in § 301.92–5(a) or (b). By signing the compliance agreement, compliers acknowledge that they are both knowledgeable about the requirements of these regulations and are committed to complying with them. Compliers are authorized to issue certificates or limited permits (see § 301.92–6).

Section 301.92–5(e) provides for the withdrawal of a certificate or limited permit by an inspector who finds that the person to whom the document is issued has not complied with the regulations. It also contains provisions for notifying the person whose certificate or limited permit is withdrawn, of the reasons for the withdrawal, for appealing the inspector's decision, and for holding a hearing over any conflict about a material fact.

Section 301.92–6 provides for the issuance and cancellation of compliance agreements. We enter into compliance agreements, because of limited governmental resources, with persons who are able to treat regulated articles in accordance with the regulations, and who can be relied upon to consistently comply with the regulations.

An inspector supervising enforcement of a compliance agreement, finding that a complier has violated any provision of the regulations, may cancel the agreement. The inspector will, in that case, notify the complier of the reasons for the cancellation, and offer an opportunity for a hearing to resolve any conflicts of material fact.

Persons interested in entering into compliance agreements may contact a Plant Protection and Quarantine office.

Section 301.92–7 provides that any person, other than a complier, preparing to move regulated articles interstate should request the services of an inspector for issuance of a certificate of limited permit. The inspector's services should be requested as soon as possible before the planned movement, to allow for the required treatment. The treatment for queens and packaged honey bees requires the inspector's services at least 5 days before the planned movement; for colonies, at least 21 days. For all other regulated articles, the inspector's services are required for treatment at least 7 days before the planned movement. The regulated article must be assembled wherever and in whatever way the inspector designates as necessary to comply with the regulations.

Inspectors may be contacted at Plant Protection and Quarantine offices.

These provisions are necessary to ensure that persons desiring inspection services can obtain them before the intended movement date.

Section 301.92–8 requires that the certificate or limited permit issued for the movement of the regulated article be attached to the regulated article, to the container of the regulated article, or to the accompanying waybill. The certificate or limited permit must remain attached to the regulated article, container, or document from the time it is shipped until it reaches its specified destination; it cannot be removed at any point during the interstate movement. The carrier must give the certificate or limited permit to the consignee at the destination point; the consignee must keep the waybill and certificate or limited permit for one year. The requirement that the consignee keep the shipping documents available for inspection for one year is necessary for traceback and enforcement purposes.

Section 301.92–9 states that, as a matter of policy, we provide the services of an inspector without charge to the public during normal business hours, that is, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. However, we will not be responsible for any other costs or charges (such as overtime costs for inspections conducted outside normal business hours).

Section 301.92–10 sets forth the treatments required before regulated articles can be moved interstate. We have based these treatments on research conducted by the Agricultural Research Service, which has shown that, used as directed, fluvalinate is effective in destroying Varroa mites. We will allow regulated articles to move interestate from quarantined areas only after they have been treated in accordance with § 301.92–10, except as provided in § 301.92–5(a)(1).

The Acting Administrator of the Animal and Plant Health inspection Service has determined that an emergency situation exists, which warrants publication of this interim rule without prior notice and opportunity for public comment. Because the Varroa mite could spread to noninfested areas of the United States, it is necessary to act immediately to prevent a nationwide infestation.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 for making this interim rule effective upon signature. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register.** Any amendments we make to this interim rule as a result of these comments will be published in the **Federal Register** as soon as possible after the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

An emergency situation makes it impracticable for the Animal and Plant Health Inspection Service to follow the procedures of Executive Order 12291 for this interim rule. We need to take immediate action to prevent the spread of the Varroa mite from quarantined areas into areas of the United States not now infested.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the

Regulatory Flexibility Act (5 U.S.C. 603 and 604) impracticable. This rule may have a significant economic impact on a substantial number of small entities. If we determine this is so, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Impact Analysis.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.)*, we have submitted the information collection provisions in thin interim rule to the Office of Management and Budget (OMB) for approval. You may send written comments on these provisions to the Office of Management and Budget (OMB) for approval. You may send written comments on these provisions to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to APHIS, USDA, Room 1143, South Building, P.O. Box 96464, Washington, DC 20090-6464.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Honeybees, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Varroa mite.

Accordingly, 7 CFR Part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 is revised to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, 164-167, and 2260, 7 CFR 2.17, 2.51, and 371.2(c).

2. Part 301 is amended by adding a new "Subpart—Varroa Mite" to read as follows:

Subpart—Varroa Mite

Sec.

301.92 Restrictions on interstate movement of regulated articles.
301.92-1 Definitions.
301.92-2 Regulated articles.
301.92-3 Quarantined areas.
301.92-4 Conditions governing the interestate movement of regulated articles from quarantined areas.
301.92-5 Issuance and cancellation of certificates and limited permits.
301.92-6 Compliance agreement and cancellation.
301.92-7 Assembly and inspection of regulated articles.
301.92-8 Attachment and disposition of certificates and limited permits.
301.92-9 Costs and charges.
301.92-10 Treatments.

* * * * *

Subpart—Varroa Mite

§ 301.92 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.

§ 301.92-1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any employee of the United States Department of Agriculture to whom the Administrator has delegated authority to act in his/her stead.

Certificate. A document in which an inspector affirms that the regulated article identified on the document is eligible to move interstate in accordance with § 301.92-5(a) of this subpart or a complier affirms that the regulated article identified on the document is eligible to move interstate in accordance with § 301.92-5(c) of this subpart.

Compliance agreement. A written agreement between Plant Protection and Quarantine and a person who moves regulated articles interstate, in which that person agrees to comply with this subpart.

Complier. A person with whom Plant Protection and Quarantine has entered into a compliance agreement.

Departmental permit. A document issued by the Administrator, in which he/she affirms the interstate movement of the regulated article identified in the document is for scientific or experimental purposes, and that the regulated article is eligible for interstate movement in accordance with § 301.92-4(c) of this subpart.

Infestation. The presence of one or more Varroa mites.

Inspector. Any employee of Plant Protection and Quarantine or other person authorized by the Administrator to enforce this subpart.

Limited permit. A document in which an inspector or complier affirms that the regulated article identified on the document is eligible to move interstate to a specified destination, in accordance with § 301.92-5(b) of this subpart or a complier affirms that the regulated article identified on the document is eligible to be moved interstate to a specified destination, in accordance with § 301.92-5(d) of this subpart.

Movement. The act of shipping, transporting, delivering, or receiving for movement, or otherwise aiding, abetting, inducing or causing to be moved.

Person. Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

Plant Protection and Quarantine. Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

Quarantined area. Any state or portion of a state listed in § 301.92-3(c) of this subpart, or designated as a quarantined area in accordance with § 301.92-3(b) of this subpart.

Regulated article. Any article listed in § 301.92-2 (a) through (e) of this subpart or any article or means of conveyance designated as a regulated article in accordance with § 301.92-2(f) of this subpart.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any state, territory, or possession of the United States.

Varroa mite. A parasite of honeybees, the arachnid scientifically identified as *Varroa jacobsoni* (Oudemans), commonly called the "Varroa mite"; also known as the "Asian mite."

§ 301.92-2 Regulated articles.

The following are regulated articles:

(a) Varroa mites.

(b) All honeybees, live and dead.

(c) Hives and the hive equipment, shipping and storage containers (cages), and vehicles used at apiaries.

(d) Combs with brood cells.

(e) Pollen for bee food.

(f) Any article or means of conveyance not listed in paragraph (a), (b), (c), (d), or (e) of this section, that presents a risk of spreading the Varroa mite, when the person in possession of the article or means of conveyance is notified that it is subject to this subpart.

§ 301.92-3 Quarantined areas.

(a) Except as provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each state in which a Varroa mite infestation exists, or each Varroa mite-infested apiary and a specified area, approximately 100 square miles, surrounding it. The Administrator may establish boundaries encompassing more or less than a 100-

square-mile area upon determining that this is necessary to establish readily identifiable boundaries. The Administrator will list less than an entire state as a quarantined area only upon determining that:

(1) The state has adopted and is enforcing restrictions on intrastate movement of regulated articles that are equivalent to this subpart's restrictions on interstate movement of regulated articles; and

(2) The quarantining of less than an entire state will prevent the interstate spread of the Varroa mite.

(b) The Administrator may designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area. As soon as practicable, this area will be added to the list in paragraph (c) of this section, or the Administrator will terminate the designation.

(c) The following are quarantined areas:

Florida, Illinois, Maine, Michigan, Mississippi, Nebraska, New York, Ohio, Pennsylvania, South Carolina, South Dakota, Washington, and Wisconsin.

§ 301.92-4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.92-5 and 301.92-8 of this subpart.

(b) Without a certificate or limited permit if:

(1) The regulated article originated outside a quarantined area;

(2) The regulated article is moved through the quarantined area, either in an enclosed vehicle or completely screened in mesh impermeable to bees, with no stops except those necessary under normal driving conditions, such as traffic lights, rest stops, and stop signs. (If mechanical failure prolongs the stop by more than one day, the local office of Plant Protection and Quarantine must be contacted [1]); and

(3) The point of origin of the regulated article is indicated on the accompanying waybill.

(c) Without a certificate or limited permit, if moved:

(1) By the United States Department of Agriculture for scientific or experimental purposes;

(2) Under the conditions specified on the Departmental permit; and

(3) With a tag or label bearing the number of the Departmental permit issued for the regulated article, attached to the outside of the regulated article's container or to the regulated article itself, if not in a container.

§ 301.92-5 Issuance and cancellation of certificates and limited permits.

(a) An inspector [2] will issue a certificate for the interstate movement of a regulated article, other than a hive, upon determining that:

(1) The regulated article has been treated under the supervision of an inspector, who must be present during the treatment, in accordance with § 301.92-10(a), (b), or (d) of this subpart; and

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the spread of the Varroa mite [3]

(b) An inspector [2] will issue a limited permit for the interstate movement of any hive upon determining that:

(1) The hive has been treated under the supervision of an inspector, who must be present during the treatment, in accordance with § 301.92-10(c) of this subpart and is to be moved to a specified destination for specified handling, utilization, or processing (the limited permit will specify destination and conditions);

(2) The hive is to be moved in compliance with any additional emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the spread of the Varroa mite.[3]

(c) A complier may issue a certificate for the interstate movement of a regulated article, other than a hive, upon determining that:

(1) The regulated article has been treated in his/her presence, in accordance with § 301.92-10(a), (b), or (d) of this subpart; and

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the spread of Varroa mite.[3]

(d) A complier may issue a limited permit for the interstate movement of any hive upon determining that:

(1) The hive has been treated in his/her presence in accordance with § 301.92-10(c) of this subpart and is to be moved to a specified destination for specific handling, utilization, or processing (the limited permit will specify destination and conditions);

(2) The hive is to be moved in compliance with any additional emergency conditions the Administrator may impose under 7 U.S.C. 150dd to prevent the spread of Varroa mite.[3]

(e) An inspector may, orally or in writing, withdraw a certificate or limited permit if the person to whom the document is issued has not complied with this subpart. Written confirmation of an oral withdrawal, including both the decision and the reason for it, will follow within 20 days of the oral notification. Any person whose certificate or limited permit has been withdrawn may appeal the decision by writing to the Administrator within 10 days of receiving written notification of the withdrawal. In the appeal, the person must state all of the facts and reasons for challenging the inspector's action. A person who appeals the withdrawal will be given an opportunity for a hearing to resolve any conflict as to any material fact. Within 60 days of the appeal and any procedures adopted regarding the appeal, the Administrator will, in writing, uphold or deny the appeal, stating the reasons for his/her decision. The Administrator will adopt rules of practice for the proceeding.

§ 301.92-6 Compliance agreement and cancellation.

(a) Any person who moves regulated articles interstate may enter into a compliance agreement [4] if an inspector determines that this person is able to treat regulated articles in accordance with this subpart and that this person can be relied upon to comply with this subpart. This person, known as a complier, agrees in writing to comply with this subpart.

[1] Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices of Plant Protection and Quarantine may also be obtained from National Programs, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

[2] See footnote 1 to § 301.92-4(b)(2).

[3] Title 7 U.S.C. 150dd provides that the Secretary of Agriculture, or his/her delegates, may, under certain conditions, seize, quarantine, treat, destroy, or apply other remedial measures to articles that he/she has reason to believe are infested or infected by, or contain, plant pests.

[4] Compliance agreements may be arranged by contacting a local office of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices of Plant Protection and Quarantine may also be obtained from National Programs, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

(b) The inspector supervising enforcement of a compliance agreement may cancel it, orally or in writing, upon finding that the complier has failed to comply with this subpart. Written confirmation of an oral withdrawal, including both the decision and the reason for it, will follow within 20 days of the oral notification. Any complier whose compliance agreement has been canceled may appeal the decision by writing to the Administrator within 10 days of receiving written notification of the cancellation. In the appeal, the person must state all of the facts and reasons for challenging the inspector's action. A complier who appeals the cancellation will be given an opportunity for a hearing to resolve any conflict as to any material fact. Within 60 days of the appeal and any procedure adopted regarding the appeal the Administrator will, in writing, uphold or deny the appeal, stating the reasons for his/her decision. The Administrator will adopt rules of practice for the proceeding.

§ 301.92-7 Assembly and inspection of regulated articles.

(a) Any person, other than a complier, who desires to move a regulated article interstate, must arrange for an inspector's services [5] sufficiently in advance of the planned movement to allow for the treatment required before the regulated article can move. The nature of the regulated article will determine the date by which the inspector's services must be requested. The treatment for queens and packaged honey bees requires the inspector's services at least 5 days before the planned movement. The treatment for colonies of honey bees requires the inspector's services at least 21 days before the planned movement. Treatment for all other regulated articles requires the inspector's services at least 7 days before the planned movement.

(b) Assembly of the regulated article must occur in the place and manner the inspector designates as necessary to comply with this subpart.

§ 301.92-8 Attachment and disposition of certificates and limited permits.

(a) The certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be attached to the outside of the regulated article's container or to the regulated article itself, if not in a container. Alternatively, the certificate or limited permit may be attached to the consignee's copy of the accompanying waybill, provided that the description of the regulated article on the waybill is sufficient to identify the regulated article.

(b) The carrier must furnish to the consignee at the destination of the regulated article the certificate or limited permit authorizing its interstate movement.

(c) The consignee must keep the waybill and certificate or limited permit available for inspection by an inspector for at least one year.

§ 301.92-9 Costs and charges.

Between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, the services of an inspector will be furnished without charge to persons requiring them. The United States Department of Agriculture will not be responsible for any other costs or charges.

§ 301.92-10 Treatments.

Regulated articles must be treated as follows:

(a) Queen honey bee cages:

(1) Place a 1" x ½" tab of 1% fluvalinate strip in the bottom of the empty cage.

(2) Record the starting date of treatment on the back of the cage.

(3) Put the queen and her attendants into the cage.

(4) Three days (72 hours) after putting the queen and her attendants into the cage, remove the fluvalinate strip.

(5) Protect the queen cages from reinfestation through contact with untreated regulated articles and ship within 48 hours of the fluvalinate strip's removal.

(b) Packaged honey bees (2-3 pound packages):

(1) Using a wire or staple, suspend a 2½% fluvalinate strip, 5" x 1", in an empty shipping cage. Position the strip near the feeder. If the package is to include a queen cage, the queen cage must be treated in accordance with paragraph (a) of this section.

(2) Put the honey bees into the cage.

(3) Five days (120 hours) after putting the honey bees into the cage, remove the fluvalinate strip.

(4) Protect the packaged honey bees from reinfestation through contact with untreated regulated articles and ship within 48 hours of the fluvalinate strip's removal.

(c) Hives:

(1) Remove supers.

(2) Use two 10% fluvalinate strips, 10" each, per hive.

(3) Put a nail through the top of each strip so that the strip can hang between frames.

(4) Remove the cover of the hive.

(5) Place 2 strips into the hive.

(6) Close the hive.

(7) Twenty-one days (504 hours) after their insertion into the hive, remove the fluvalinate strips.

(8) Protect the hive from reinfestation through contact with untreated regulated articles and ship within 48 hours of the fluvalinate strip's removal.

(d) Other regulated articles:

(1) Hold and protect from reinfestation through contact with untreated regulated articles for 7 days; or

(2) Apply steam to all surface areas of the regulated article. The steam must remove all debris. Protect from reinfestation through contact with untreated regulated articles and ship within 48 hours of treatment.

Done in Washington, DC, this 6th day of April 1988.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88-7840 Filed 4-8-88; 8:45 am]

BILLING CODE 3410-34-M

[5] See footnote 1 to § 301.92-4(b)(2).

Agricultural Marketing Service

7 CFR Part 911

Limes Grown in Florida; Revision of Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule and opportunity to file comments.

SUMMARY: This action continues to relax container requirements for Florida limes by extending indefinitely a provision which by interim final rule published January 7, 1988 temporarily reduced the minimum net weight of limes which must be packed in a currently authorized master container from 38 to 35 pounds when that container is used for bagged limes and the container is marked "Master Container." The reduced minimum weight requirement permits the packing of bagged limes in the container without distorting it or damaging the fruit. This action was recommended by the Florida Lime Administrative Committee, which works with the Department in administering the Florida lime marketing order.

DATES: This interim final rule becomes effective April 1, 1988. Comments which are received by May 11, 1988, will be considered prior to issuance of the final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim rule. Comments

should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the date and page number of this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 475–3918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 911, as amended [7 CFR Part 911], regulating the handling of limes grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This 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 (AMS) has considered the economic impact of this action 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 Act 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 approximately 26 handlers of Florida limes subject to regulation under the Florida lime marketing order, and approximately 260 lime producers in Florida. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

Sections 911.329 and 911.311 were amended by an interim final rule issued December 31, 1987, and published in the **Federal Register** [53 FR 402, January 7, 1988]. Interested persons were invited to submit written comments on the rule until February 8, 1988. No comments were submitted during the specified time. However, the committee subsequently requested that the temporarily relaxed weight requirements specified in the rule for bagged limes packed in a master container be extended indefinitely, based on the unanimous recommendation of the committee at its meeting of March 9, 1988.

Container requirements for Florida limes are prescribed in § 911.329 in terms of inside dimensions and net weight capacity which handlers must meet when they ship limes grown within the production area outside that area. Paragraph (a)(2)(v) of that section prescribes the specifications of one of the containers handlers may use for such shipments. That container has inside dimensions of 12¾ x 15¼ x 10¾ inches and is required to contain not less than 38 pounds nor more than 42 pounds net weight of limes. The minimum net weight requirement for this container was reduced to 35 pounds for bagged limes for the period January 7–March 31, 1988, by the interim final rule issued December 31, 1987.

The interim final rule was issued based on the committee's report that handlers had been using this container as a master shipping container for bagged limes, but that the container was too small to comfortably hold the 38-pound minimum net weight. This resulted in container distortion and damage to the fruit. Reducing the minimum net weight of the contents of this container to 35 pounds when it was used for bagged limes was designed to alleviate this problem, and ensure that limes free from damage due to packing reach the consumer. The committee now indicates that reducing the minimum net weight requirement of the container for bagged limes has proved successful, and it requests that 35-pound minimum net weight be made a permanent part of the lime container requirements.

Such containers are required to be marked "Master Container" when they contain bagged limes. This is designed to differentiate such containers from containers containing loose limes for which the minimum weight will continue to be 38 pounds. A conforming change is also being made to § 911.311.

Therefore, the Department's view is that the impact of the relaxed container requirements upon producers and handlers will be beneficial and have a positive effect on industry operations. The application of a less restrictive minimum weight for the specified container will help continue to ensure that limes free from packing damage reach the consumer.

The container specified in paragraph (a)(2)(ix) of § 911.329 authorized by the interim final rule published on January 7, 1988 remains in effect unchanged.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the committee, and other available information, it is found that the rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this amended rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action continues relaxed requirements which expired March 31, 1988; (2) shipment of the Florida lime crop is in progress; (3) this action is based upon the unanimous recommendation of the committee considered at a public meeting; (4) handlers are prepared to continue conducting their operations in accordance with the relaxed requirement specified in the interim rule; and (5) the amended rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 911

Marketing agreements and orders, Limes, Florida.

For the reasons set forth in the preamble, 7 CFR Part 911 is amended to read as follows:

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 911 continues to read as follows:

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

2. Section 911.329 [7 CFR Part 911; 53 FR 402] is amended by republishing the introductory text of paragraph (a)(2) and revising paragraph (a)(2)(v) to read as follows (This section will appear in the Code of Federal Regulations):

§ 911.329 Lime Regulation 27.

(a) * * *

(2) No handler shall handle between the production area and any point

outside thereof any variety of limes, grown in the production area, in containers having a capacity of more than 4 pounds of limes unless such limes are handled in containers meeting the following specifications and conform to all other applicable requirements of this section:

* * * * *

(v) Containers with inside dimensions of 12¾ x 15¼ x 10¾ inches: *Provided,* That any such container shall contain not less than 38 pounds nor more than 42 pounds net weight of limes; *Provided further,* That when this container is used as a master container for bagged limes, the minimum net weight of limes shall be 35 pounds, provided the container is marked "Master Container."

* * * * *

3. Section 911.311 is amended by revising paragraph (a)(4) to read as follows (This section will appear in the Code of Federal Regulations):

§ 911.311 Lime Pack Regulation 9.

(a) * * *

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section shall not apply to individual packages of limes not exceeding 4 pounds, net weight, that are within master containers except that if such packages are individual bags either such bags or the master containers thereof shall be marked or labeled in accordance with the requirements of paragraph (a)(2) of this section and master containers shall be marked or labeled in accordance with the requirements of paragraph (a)(3) of this section, and § 911.329 (a)(2)(v).

* * * * *

Dated: April 1, 1988.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 88-7839 Filed 4-8-88; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 917

Pears, Plums, and Peaches Grown in California; Increase in Expenses for 1987-88 Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes an increase in expenditures for the Pear Commodity Committee established under Marketing Order 917 for the 1987-88 fiscal year. The expenses are increased from $899,551 to $910,111. The designated increase reflects higher than estimated costs for market development and promotion activities undertaken by the pear committee in marketing the 1987 crop.

EFFECTIVE DATES: March 1, 1987, through February 29, 1988 (§ 917.249).

FOR FURTHER INFORMATION CONTACT: Jerry Brown, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone 202-475-5464.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 917 (7 CFR Part 917) regulating the handling of fresh pears, plums, and peaches grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act.".

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 (AMS) has considered the economic impact of this final rule on small entities.

A final rule establishing expenses in the amount of $899,551 for the Pear Commodity Committee for the fiscal period ending February 29, 1988, was published in the **Federal Register** on August 20, 1987 (52 FR 31375). That action also fixed the assessment rate to be levied on pear handlers during the 1987-88 fiscal period. At a meeting held on January 27, 1988, the Pear Commodity Committee voted unanimously to increase its budget of expenses from $899,551 to $910,111.

A proposed rule inviting comments on this $10,560 increase was issued on March 10, 1988, and published in the **Federal Register** on March 15, 1988 (53 FR 8460). The comment period ended March 25, 1988. No comments were received.

The committee incurred higher than expected market development and promotion costs in marketing the 1987 pear crop. The increase is needed to cover these expenses.

Adequate funds are available to cover the increased expenses. Hence, no change in the assessment rate is necessary because of this increase.

Therefore, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the increased expenses are reasonable, and that such expenses will tend to effectuate the declared policy of the Act.

Approval of the increased expenses must be expedited because the committee needs to have authority to pay its expenses which were incurred during the 1987-88 fiscal period. That period ended February 29, 1988. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

List of Subjects in 7 CFR Part 917

Marketing agreement and order, Pears, Plums, Peaches, California.

For the reasons set forth in the preamble, § 917.249 is amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

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

2. Section 917.249 is amended as follows: (This section will not be published in the Code of Federal Regulations).

§ 917.249 [Amended]

Section 917.249 is amended by changing "$899,551" to "$910,111."

Dated: April 6, 1988.

Robert C. Keeney,

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

[FR Doc. 88-7874 Filed 4-8-88; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0620]

12 CFR Part 229

Availability of Funds and Collection of Checks (Regulation CC)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted a standard form of endorsement for use by banks (defined in the proposed regulation to include all depository institutions as well as branches of foreign banks in the United States) when endorsing checks during the collection and return process. The new standard is designed to provide for clear and uniform endorsements for all collecting and returning banks, plus a unique standard for depositary bank endorsements. The standard will

facilitate the identification of the depositary bank and the prompt return of unpaid checks. This standard will be part of Regulation CC—Availability of Funds and Collection of Checks (12 CFR Part 229) which the Board proposed for comment in December 1987. The Board expects to act on the remainder of Regulation CC in May 1988; it has adopted the endorsement standard now to give banks and equipment vendors additional time to comply with the standard.

EFFECTIVE DATE: September 1, 1988.

FOR FURTHER INFORMATION CONTACT: Louise L. Roseman, Assistant Director (202/452–2789) or Gayle Thompson, Program Leader (202/452–2934), Division of Federal Reserve Bank Operations; or Joseph R. Alexander, Senior Attorney (202/452–2489), Legal Division; for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452–3254).

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1987, the Board issued for comment a proposed new regulation to carry out provisions of the Expedited Funds Availability Act, Title VI of Pub. L. 100–86 (the Act). 52 FR 47112 (Dec. 11, 1987). The proposed Regulation CC (12 CFR Part 229) includes rules to improve the check collection system, particularly the slow and labor intensive check return process. One of the obstacles to efficient processing of checks being returned is the lack of uniformity in depositary banks' [1] endorsements. Today, bank clerks processing checks being returned often have difficulty determining the bank to which a check should be returned. The endorsements on the back of the check are often faint, blurred, incomplete, and overlapping. Most importantly, many endorsements do not contain the nine-digit routing number often required for identification of the depositary bank. Under the proposed new rules to expedite the processing of checks being returned, this difficulty would increase because many checks will not be returned through the same banks that handled the checks during forward collection process. See proposed Subpart C of 12 CFR Part 229, 52 FR at 47156 *et seq.* The identification of a remote depositary bank would often be difficult if the depositary bank's endorsement were not readily distinguishable from the other endorsements on the check. Accordingly, the proposal included a mandatory endorsement standard based on work done by the American National Standards Institute (ANSI).

After reviewing the comments received on the proposed standard, the Board is adopting a final endorsement standard that requires the depositary bank or its agent to provide specific information in its endorsement, including its nine-digit routing number. In addition, the depositary bank's endorsement must be readily identifiable by placing the endorsement in a specified area on the back of the check and by using only purple or black ink to apply the endorsement. Subsequent endorsements may not be in purple ink or be placed in the same location as the endorsement of the depositary bank.

Discussion

The comment period for the proposed Regulation CC expired on February 8, 1988. Over 950 comments were received. Many of the commenters stated that the Board should provide as much lead time as possible before implementation of the endorsement standard as required by § 229.35 of the proposed Regulation CC and described in Appendix D of the proposed regulation. In order to accommodate these concerns, the Board has determined to adopt the endorsement standard now, with final action on the remaining portion of Regulation CC expected to take place in May 1988.

Most commenters agreed that an endorsement standard is necessary to expedite the return process; however, commenters expressed concern that the standard as proposed was too rigid. Commenters indicated that it would be difficult to implement the proposed standard by September 1, 1988, due to the extensive equipment changes required to comply with the technical requirements of the proposed standard. In addition, commenters indicated that the technical modifications required by the proposed endorsement standard were unnecessarily burdensome and would be expensive for the banking industry to implement.

In response to these comments, the Board has adopted modifications to the proposed endorsement standard to make the standard more flexible and to minimize both the operational and cost effects of the technical requirements of the standard. In making these modifications, Board staff consulted with banks, equipment manufacturers, and check printers to ensure that the modifications adequately address the specific concerns raised by the commenters.

Location

One of the primary concerns raised by the commenters was the requirement to place the depositary bank's endorsement in a specific location on the back of the check. The proposed standard indicated that the depositary bank endorsement should be wholly contained in an area on the back of the check from 3.0 inches to 4.5 inches from the leading edge of the check.[2] Commenters indicated that certain types of check encoding equipment used to apply endorsements do not measure from the leading edge of the check, but from the opposite or trailing edge. Because checks are of different lengths, it would be impossible to use such equipment to meet the proposed standard. Therefore, the Board has modified the standard with regard to location for the depositary bank endorsement to allow measurement from either the leading edge or the trailing edge. Thus, under the endorsement standard as adopted, the depositary bank endorsement area is 3.0 inches from the leading edge to 1.5 inches from the trailing edge.

In addition, commenters indicated that plates or stamps used to apply impact endorsements are often wider than the one and one-half inch area specified in the proposal for depositary bank endorsements. Thus, the Board has eliminated the requirement that the entire endorsement be wholly contained within the area specified for the depositary bank endorsements. The standard does require, however, that the nine-digit routing number be wholly contained within the depositary bank endorsement area. Other information may extend outside the depositary bank endorsement area; nonetheless, depositary banks should place as much information as possible within the designated area in order to ensure that the information is protected from being overstamped by subsequent bank endorsements.

The change in location requirements for the depositary bank endorsement affects the available locations for endorsements by banks that handle a check for collection after it has been handled by the depositary bank ("subsequent collecting banks").[3] The

[1] A "depositary bank" is defined in the proposed regulation as the first bank to which a check is transferred even though it is also the paying bank or the payee. See proposed 12 CFR 229.2, 52 FR at 47150.

[2] The leading edge is defined as the right side of the check looking at it from the front. See American National Standards Committee on Financial Services, *Specification for the Placement and Location of MICR Printing*, X 9.13.

[3] The proposal only referred to subsequent bank endorsements. This reference included

Continued

proposed standard only prohibited placing the subsequent collecting bank endorsement in the area specified for the depositary bank endorsement, thus allowing subsequent collecting banks to place endorsements on either side of the area reserved for the depositary bank. The change to the depositary bank endorsement area makes it difficult for subsequent collecting banks to endorse checks in the area closest to the trailing edge of the check on business checks. This area is commonly used for the payee's endorsement. In general practice, however, the payee endorsement area is not used by banks. Current convention places subsequent collecting bank endorsements in the area closest to the leading edge of the check. The major equipment vendors are able to place subsequent collecting bank endorsements in this area. Therefore, the Board has modified the location requirement for subsequent collecting bank endorsements in order to limit such endorsements to the area on the back of the check from the leading edge to 3.0 inches from the leading edge of the check.

Color

Commenters expressed significant concern about the color requirements of the proposed standard. The proposed standard specified purple ink for the depositary bank endorsement and a dark color other than purple for subsequent collecting bank endorsements. Comments focused on the difficulty of complying with this requirement when a bank uses the same equipment to endorse checks both as depositary bank and subsequent collecting bank. In many cases, banks use the same equipment for applying both endorsements, and this equipment typically has only one source of ink. Vendors have indicated that modifying equipment to accept two sources of ink would be costly. Accordingly, the Board has adopted a standard which allows depositary banks to use either purple or black ink. The Board encourages depositary banks to endorse checks in purple ink where possible, because use of a unique color ink will facilitate the speedy identification of the depositary bank. Black ink, however, may be used when use of purple ink is not feasible.

Content

Commenters raised a number of issues concerning the content requirements of the proposed standard endorsement. The proposed standard required the depositary bank's endorsement to include its nine-digit routing number set off by arrows, the bank's name/location, and the endorsement date, and permitted the endorsement to include other identifying information. Commenters indicated that the inclusion of arrows in the depositary bank endorsement that point to the nine-digit routing number may be unnecessary. Some commenters stated that color and location requirements were sufficient to identify the endorsement of the depositary bank. As the Board has eliminated the requirement that the depositary bank's endorsement be in a unique color, it is retaining the requirement for arrows in the depositary bank's endorsement. Because most banks will be required to obtain new endorsement plates or stamps or re-program endorsements applied by ink-jet printers to comply with the other content requirements of the standard, the cost of including arrows should not be significant.

Commenters also pointed out several pieces of information that are currently used by banks in their indorsements, but are not part of the standard. These include "P.E.G." ("prior endorsements guaranteed") and "pay any bank." Under present law, a specific guarantee of prior indorsements is not necessary, see U.C.C. sections 3–417(1)(a) and 4–207(1), and the Board sees no reason to require this guarantee in the standard indorsement. The use of the guarantee language in indorsements is discouraged for depositary banks and prohibited for subsequent collecting banks.

The "pay any bank" language is intended to limit the transfer of a check to banking channels unless it is returned to the original depositor or a bank takes specific action to transfer the check to a nonbank. This restriction is thought desirable to protect the interests of the depositor or any collecting bank that has a security interest in the check in case the check is lost or stolen and transferred to an innocent party who becomes a holder in due course. In these cases, the restrictive indorsement "pay any bank" gives notice to third parties of potential adverse claims against the check. While the limitation on transfer to banking channels may be desirable, there does not appear to be any need to rely on specific words to accomplish this result. Since banks routinely place restrictive indorsements on the checks they handle, the Board intends that the final Regulation CC will provide that any bank indorsement would be considered restrictive unless a bank takes specific action otherwise. Thus, third parties would be placed on notice of potential adverse claims by the bank indorsement itself without additional language. Accordingly, "pay any bank" has not been made part of the standard, and the use of this language in indorsements will be discouraged for depositary banks and prohibited for subsequent collecting banks.

In addition, commenters suggested that the information requirements be modified to include the fractional routing number currently used by many banks in their indorsements. The Board has determined not to include the fractional routing number in the standard; however, a bank may include its fractional routing number or repeat its nine-digit routing number in its indorsement. The Board encourages despositary banks to include their routing numbers in their indorsement more than once to aid paying banks in the identification of depositary banks.

Commenters also suggested that a depositary bank should include the telephone number where it would receive notifications of large-dollar returns in its indorsement. Because telephone numbers frequently change, the Board has not required their inclusion, although it is not prohibited.

Commenters also questioned the requirement to place information about the location of the depositary bank in the indorsement. Specifically, commenters were unsure whether the requirement to include the bank's "location" in the indorsement referred only to the city and state in which the bank was located or whether a street address was required. A depositary bank is not required to place a street address in its indorsement; however, a bank may want to do so in order to limit the number of locations at which it must accept returned checks under § 229.32 of the proposed Regulation CC. Banks should note, however, that § 229.32 of proposed Regulation CC also requires depositary banks to accept returned checks at the location(s) it accepts forward collection items, and the Board expects that a similar requirement will be included in the final rule.

Returning Bank Indorsements

The proposed indorsement standard included specifications for each subsequent collecting bank indorsement. Commenters pointed out, however, that the proposed indorsement standard did not specify a separate standard for returning banks. It appears that, at least initially, returning bank indorsements may differ from collecting bank indorsements. The development of various methods to process returns using a variety of equipment may also

endorsements by subsequent collecting banks and by returning banks. Returning banks endorsements are discussed in another section *infra*.

cause returning bank indorsements to vary substantially in form, content, and placement on the check. To impose a rigid standard at this time would be unduly burdensome to the banking industry. Therefore, the Board has determined to require a returning bank to apply an indorsement that avoids the area on the back of the check from 3.0 inches from the leading edge of the check to the trailing edge—the area reserved for the payee and depositary bank indorsements. Thus a returning bank indorsement may be on the face of the check as well as the back of the check. This indorsement may not be in purple ink. No content requirements have been adopted for the returning bank indorsement at this time. The Board will continue to review the issue of the returning bank indorsement with the industry and the ANSI working group on indorsement standards, and will propose such a standard if it is found that a further standardization of indorsements for returning banks is necessary for the efficient operation of the payment system.

Necessary Indorsements

Commenters raised a variety of issues with regard to who must indorse the checks. Several commenters questioned whether small banks (particularly credit unions) must indorse checks at the depositary bank. They suggested that a small bank be permitted to act as a corporate depositor and agree with its correspondent to have the correspondent place the correspondent's indorsement on the back of the check as the depositary bank indorsement. This approach could be beneficial to both the depositary bank and returning banks, particularly if the depositary bank wants its returned checks to be delivered to the correspondent. Similar comments were raised with regard to bank holding companies that want the returns destined to their subsidiary banks to go to one location rather than to each subsidiary. This issue also arises in the context of nonproprietary ATMs or lockbox arrangements whose operators process checks for which they are not the bank of account. [4]

Because the endorsement standard is being proposed to expedite the return process, the Board believes that the endorsement placed on the check as the depositary bank endorsement should reflect the location where the returned checks and notices of nonpayment under § 229.33 should be directed. If the bank of account agrees with another bank (a correspondent, ATM operator, or lockbox operator) to have the other bank accept returns and notices of nonpayment for the bank of account, the endorsement placed on the check as the depositary bank endorsement may be the endorsement of the bank that acts as correspondent, ATM operator, or lockbox operator. Thus, the paying or returning bank delivering returns or notices of nonpayment to the correspondent, ATM operator, or lockbox operator within the time frames specified in the regulation will have complied with its expeditious return and notification responsibilities. The bank of account that handles the check but agrees to the placement of another bank's endorsement as the depositary bank may physically endorse the check in an ink color other than purple outside of the area designated for the depositary bank. Otherwise, the bank of account and the bank endorsing as the depositary bank may agree that the bank of account makes a contract of an endorser without requiring the bank of account to place an endorsement on the check itself. [5]

Carbon Band Checks

The proposed standard was modeled after the standard currently under review by ANSI, which provides that the depositary bank endorsements must avoid the carbon band area. [6] The Board had specifically requested comment on restricting endorsement in the carbon band area, including the possibility of requiring paying banks not to issue carbon band checks. Generally, banks and equipment vendors were opposed to any requirement to avoid the carbon band area. Avoidance of the carbon band area has the effect of limiting the vertical space of the endorsement to a maximum of .875 inches, smaller than many endorsement stamps. These commenters viewed carbon band checks as a small proportion of all checks, and indicated that to design a standard to accommodate a small number of checks was inappropriate.

A number of commenters recommended that the Board prohibit the use of carbon band checks. On the other hand, manufacturers of carbon band checks and small businesses that use such checks indicated that these checks are an efficient method of keeping accurate payment records and that their efficiency should be taken into account when designing a standard so as not to make such checks more difficult to use.

The Board believes the issues raised concerning carbon band checks extend beyond carbon bands, and cover all markings placed on the backs of checks by parties other than banks, including both check issuers and check depositors. The backs of many checks bear pre-printed information or blacked out areas for various reasons. For example, contract or loan agreements are printed on certain checks. Other checks that are mailed to recipients may contain areas on the back that are blacked out so that they may not be read through the mailer. Users of these checks believe that blacking out the back of a check reduces the chance that a check may be stolen while being mailed. On the deposit side, the payee of the check may place its endorsement or information identifying the drawer of the check in the area specified for the depositary bank endorsement, thus making the depositary bank endorsement unreadable.

The Board has decide not to prohibit the use of carbon band checks, and to change the endorsement standard to delete any reference to restricting endorsements from the carbon band area. The removal of this restriction should ease the burden imposed on banks and equipment manufacturers in complying with the endorsement standard. Nevertheless, depositary banks are encouraged to design endorsement stamps so that the nine-digit routing number avoids the carbon band area. Endorsing parties other than banks, e.g., corporations, are also encouraged to protect the identifiability and legibility of the depositary bank endorsement by staying clear of the area reserved for the depositary bank endorsement. The Board encourages all depositary banks to work with corporate endorsers to arrange that the corporate payee endorsements include the name and nine-digit routing number of the bank in which they are depositing the check and the corporation's account number at that bank.

Liabilities

The proposed regulation excused a paying or returning bank's delay in return if the delay was due to the failure of the depositary bank to use the required endorsement standard. Some commenters indicated that the Board should place the liability for unreadable endorsements on the party that obliterated the depositary bank's endorsement or interfered with the area

[4] I.e., the bank that has the account into which the account holder is depositing the check.

[5] See U.C.C. sections 4–206 and 4–207(3).

[6] Some checks are printed with a carbon strip across the back that allows the transfer of information from the check to a ledger with one writing. This strip is typically located in the area (the "carbon band area") extending the length of the check, in a line between 1.4 inches and 1.9 inches above the bottom of the check (behind the payee line).

reserved for the depositary bank's endorsement. The Board expects that the final regulation and commentary will be expanded to clarify the liabilities associated with losses for returned checks that are delayed due to endorsements that are unreadable because of material on the back of the check. Liabilities may be allocated so that the depositary bank is liable for a loss on a returned check due to a delay in return caused by actions of its customer that made the depositary bank's endorsement illegible. The paying bank may be liable for a loss on a returned check due to delay in return caused by endorsements that are not readable because of other material on the back of the check at the time that it was issued. Those banks could then shift the risk to their customers by agreement.

Paying Bank Endorsement

The proposed regulation indicated that paying banks were not required to endorse the check. Some commenters expressed confusion on this point. The Board does not believe it is necessary to require the paying bank to endorse the check. Currently most paying banks endorse their checks when posting to the customers' accounts and cancel this endorsement when deciding to return a check. In the event that the paying bank does not endorse the check and the depositary bank wants to file a claim for a late return, it should be able to determine the presentment date from the surrounding endorsements or by tracing the check through the collection process. Consequently, the Board has made no modification to the standard regarding the paying bank endorsement.

Variation by Agreement

Section 229.35 of proposed Regulation CC requires that all banks, other than a paying bank, that handle a check during forward collection or a returned check, shall endorse the check in accordance with the endorsement standard. The Board expects that the final rule will provide flexibility by allowing the need for, or form of, endorsements to be varied by agreement of the affected parties.

Final Regulatory Flexibility Analysis

Of the items required to be contained in the final regulatory flexibility analysis by 5 U.S.C. 604(a), the first (a statement of the need for and objectives of the rule) and second (a summary of the issues raised by the commenters, the Board's assessment of the issues, and the changes made to the proposed rule in response to the comments) are contained elsewhere in this preamble.

When the proposed rule was published in December, the Board noted in the initial regulatory flexibility analysis that it had considered exempting very small banks from the rule's requirements, but that an exception for small banks from the requirements for expeditious return found in Subpart C of the proposed rule would mean that a significant number of checks payable by small banks would continue to be returned by the current, inefficient manual processing of returns, thereby leading to increased losses for banks that accept for deposit checks drawn on small banks. Hence, the availability schedules and expeditious returns could work only in an environment where all banks were subjected to the same rules.

Although the Board did not specifically mention the endorsement standard in the initial regulatory flexibility analysis, the discussion in that analysis and elsewhere in the **Federal Register** notice clearly implied that there would be no special alternatives for small banks—the rule was clear that all collecting banks would be required to follow the endorsement standards established in § 229.35 and Appendix D. If small banks were not subject to the endorsement standard, the likelihood that their returns would be untimely would increase, thus increasing risk to these small banks from the requirement of making funds available more promptly.

In response to the comments, the Board has made a number of changes to the endorsement standard, outlined previously in this preamble, that will lessen the burden on banks, especially small banks. Depositary banks (small banks are more likely to be depositary banks and less likely to be subsequent collecting banks) have been given greater flexibility in the choice of ink color and in the location of their endorsements. In addition, small banks have been given the option of arranging with a correspondent to have the correspondent place its endorsement on checks as that of the depositary bank, thus relieving small banks of making special endorsements at all. The Board believes that these modifications provide greater flexibility for all banks, and that these provide substantial relief for small banks.

As noted earlier in the preamble, the endorsement standard proposed in December provided that the depositary bank endorsement was not to be placed in the carbon band location. The Board also requested comment on an alternative that would shift the responsibility for an illegible depositary bank endorsement if the paying bank's customer used checks with a carbon band. Under this approach, the paying bank might find it advantageous to restrict its customers' use of carbon band checks or require them to select a carbon band technique that would interfere with reading the depositary bank's endorsement. A large number of commenters responding to this question favored explicitly banning the use of carbon checks. On the other hand, a number of important issues were raised by other commenters regarding the manufacture and use of carbon band checks.

Reliable estimates of the number of users of carbon band checks, what percentage of these users are small businesses (e.g., less than 20 employees), what percentage of small businesses use carbon band checks, and the volume (both in terms of dollars and number of checks issued) of carbon band checks, are not readily available. It is clear, however, that carbon band checks enjoy significant use among certain segments of small businesses. It has been suggested, for example, that businesses that write more than 15 but fewer than 40 checks per day and those that must issue checks outside of their offices are the most likely users of carbon band checks. Commenters also pointed out that many small businesses find that carbon band checks are a convenient manner of keeping accounts. Prohibiting carbon band checks, without a usable alternative, could force businesses using carbon band checks to change accounting systems, at significant inconvenience and some expense. Commenters have not provided the Board with information on completely satisfactory alternatives to the use of carbon band checks, and manufacturers of these check systems assert that at present no satisfactory substitute exists, although it appears that alternatives are being developed that could replace the carbon band in the future.

Given these circumstances, the Board, as noted earlier, has determined not to ban carbon band checks or to take any action to mandate that users of carbon band checks undergo costly changes of accounting systems. Nevertheless, the Board is concerned that carbon bands and other markings could interfere with the expeditious return of unpaid checks to depositary banks, increasing the risk that unpaid checks would be returned after the depositary bank would have been required to make the funds available to its depositor. The Board believes, however, that the solution it has adopted represents a market-based

solution that provides the most flexibility to all affected parties. While the Board anticipates that losses due to markings on backs of checks will not be large, it believes that the solution adopted will result in the fairest and most efficient allocation of those losses that do occur.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System.

For the reasons set out in the preamble, Title 12, Chapter II of the Code of Federal Regulations is amended by adding Part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS

Subparts A—C [Reserved]

Appendixes A—C [Reserved]

Appendix D—Indorsement Standards

Authority: Title VI of Pub. L. 100–86, 101 Stat. 552, 635, 12 U.S.C. 4001 *et seq.*

Subarts A—C [Reserved]

Appendixes A—C [Reserved]

Appendix D—Indorsement Standards

1. The depositary bank shall indorse a check according to the following specifications:

• The indorsement shall contain—

—The bank's nine-digit routing number, set off by arrows at each end of the number and pointing toward the number;

—The bank's name/location; the indorsement date.

• The indorsement may also contain—

—An optional branch identification;

—An optional trace/sequence number;

—An optional telephone number for receipt of notification of large-dollar returned checks; and

—Other optional information provided that the inclusion of such information does not interfere with the readability of the indorsement.

• The indorsement shall be written in dark purple or black ink.

• The indorsement shall be placed on the back of the check in the following location:

—The indorsement shall be placed so that the routing number is wholly contained in the area 3.0 inches from the leading edge of the check to 1.5 inches from the trailing edge of the check.[1]

—The indorsement shall not be placed in the MICR clear band, extending along the bottom edge of the check to a height of 0.625 inches.

2. Each subsequent collecting bank indorser shall protect the identifiability and legibility of the depositary bank indorsement by:

• Including *only* its nine-digit routing number (without arrows), the indorsement date, and an optional trace/sequence number;

• Using an ink color other than purple;

• Indorsing in the area on the back of the check from 0.0 inches to 3.0 inches from the leading edge of the check.

3. Each returning bank indorser shall protect the identifiability and legibility of the depositary bank indorsement by:

• Using an ink color other than purple;

• Staying clear of the area on the back of the check from 3.0 inches from the leading edge of the check to the trailing edge of the check.

By order of the Board of Governors of the Federal Reserve System, April 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–7792 Filed 4–8–88; 8:45 am]

BILLING CODE 6210–01–M

[1] The leading edge is defined as the right side of the check looking at it from the front. The trailing edge is defined as the left side of the check looking at it from the front. See American National Standards Committee on Financial Services *Specification for the Placement and Location of MICR Printing.* X 9.13.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88–CE–09–AD; Amdt. 39–5892]

Airworthiness Directives; Beach Models 65, A65, A65–8200, 70, 65–80, 65–A80, 65–A80–8300, 65–B80, 65–88, 65–90, 65–A90, B90, C90, E90, 99, 99A, A99A, B99, 100, A100, B100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), AD 88–04–07, applicable to certain Beach Models 65, A65, A65–8200, 70, 65–80, 65–A80, 65–A80–8800, 65–B80, 65–88, 65–90, 65–A90, B90, C90, C90A, E90, 99, 99A, A99A, B99, 100, A100, B100 airplanes, and codifies the corresponding emergency AD letter dated February 24, 1988, into the **Federal Register**. This AD requires inspection and replacement, if necessary, of Inconel nuts in the wing spar lower forward attachments. This AD is necessary because of the discovery of four Inconel nuts that were cracked. These nuts are critical to flight safety.

DATES:

Effective Date: April 18, 1988, to all persons except those to whom it has already been made effective by priority letter from the FAA dated February 24, 1988.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Service Bulletin No. 2248, dated February, 1988, applicable to this AD, may be obtained from Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Rules Docket, FAA Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, FAA Wichita Aircraft Certification Office, ACE–120W, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: The FAA has received reports of cracked Inconel nuts in the lower forward wing spar attachments of separate Beech 65, 70, 90, 99 and 100 Series airplanes. This defect is believed to be a result of the manufacturing process of the nuts. These nuts, located at the attachment of the lower forward wing spar, are critical to flight safety. Failure of such a nut may cause separation of the outboard wing from the center section, and consequently, the loss of the airplane.

The FAA determined that this was an unsafe condition that may exist in other airplanes of the same type design, thereby necessitating an AD. It was also determined that an emergency condition existed, that immediate corresponding action was required, and that notice and public procedure thereon were impracticable and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by this AD by priority mail letter dated February 24, 1988. The AD became effective immediately as to these individuals upon receipt of that letter, and is identified as AD 88–04–07. This AD requires inspection and replacement, if necessary, of each Inconel nut in the lower forward spar attachments.

Since the unsafe condition described therein may still exist on other Beech 65, 70, 90, 99 and 100 Series airplanes, the AD is being published in the **Federal Register** as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the letter notification. Because a situation still exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency

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

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Beech: Applies to the following Models and serial numbered airplanes, certificated in any category, equipped with Inconel bolts and nuts in the wing lower forward spar attachments, and which have not installed Integral Fitting Spar Kit No. 90-4077-1S or 99-4023-1S or 100-4007-1S.

Models	Serial Nos.
65, A65, A65-8200	L-1, L-2, L-6, LF-7, LF-8 and LC-1 through LC-335.
70	LB-1 through LB-35.
65-80, 65-A80, 65-A80-8800, and 65-B80.	LD-1 through LD-511.
65-88	LP-1 through LP-47.
65-90, 65-A90, B90, and C90	LJ-1 through LJ-1087 (except LJ-1085).
E90	LW-1 through LW-347.
99, 99A, A99A, and B99	U-1 through U-164 (except U-50).
100, A100	B-1 through B-247.
B100	BE-2 through BE-137.

Note: Queen Air Model 65, 70, 80, and 88 airplanes were not factory approved for field installation of Inconel wing attachment hardware, however, some of these airplanes may have had Inconel hardware installed by field approval.

Compliance: Required prior to further flight after receipt of this AD unless already accomplished.

To prevent possible failure of the wing lower forward spar attachment, accomplish the following:

(a) Visually inspect each Inconel nut in the lower forward wing spar attachments in accordance with the instructions in Beech Service Bulletin No. 2248, dated February 1988. If no cracks are found, return the airplane to service.

(b) If a crack in any nut is found, prior to further flight replace the nut with a specially marked Part No. 81790-1414 nut per Figure 2 of the above referenced Service Bulletin.

(c) This AD does not apply if each affected nut has been replaced by a specially marked Part No. 81790-1414 nut per Figure 2 of the above referenced Service Bulletin.

(d) Return cracked nuts to Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085.

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

(f) An equivalent method of compliance with this AD, if used, must be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone (316) 946-4400.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Beech Aircraft Corporation, Commercial Service, Department 52, Wichita, Kansas 67201-0085, or these documents may be examined at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on April 18, 1988, to all persons except those to whom it has already been made effective by priority letter from the FAA dated February 24, 1988, and is identified as AD 88-04-07.

Issued in Kansas City, Missouri, on April 1, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88-7888 Filed 4-8-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ANE-16; Amdt. 39-5893]

Airworthiness Directives; Textron Lycoming Model O-320-H Series, O-360-E Series, LO-360-E Series, TO-360-E Series, and LTO-360-E Series Engines [All Serial Numbers and Hydraulic Lifter (Tappet) Configurations]

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment amends an existing airworthiness directive (AD) 80-04-03 Amendment 39-3692, as amended by Amendment 39-3977, which became effective on November 24, 1980. This amendment provides an administrative change to the reporting requirements of paragraph (b)(3) and the approving office of the FAA in paragraphs (c) and (d). The change in reporting requirements will limit the need to report contaminants found only in the affected model engines that incorporate the larger diameter hydraulic lifters (tappets), also known as the "T mod" modification.

DATES: *Effective:* April 25, 1988.

Compliance: Required after the effective date of this AD amendment.

Comments for inclusion in the docket must be received on or before June 25, 1988.

ADDRESSES: Comments on the amendment may be mailed in duplicate to: Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 88-ANE-16, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Rules Docket Number 88-ANE-16".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Textron Lycoming Service Instruction (SI) No. 1406B may be obtained from Textron Lycoming, Williamsport Plant, 652 Oliver Street, Williamsport, Pennsylvania 17701.

A copy of the SI is contained in Rules Docket Number 88-ANE-16, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and

may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Roy Hettenbach, Propulsion Branch, ANE-174, New York Aircraft Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: The FAA has determined that the reporting requirement, which has been in effect since 1980, has produced sufficient data base on the affected Textron Lycoming engine models with the original cam and hydraulic lifter design. However, the data base for the affected engine models that incorporate the improved cam and hydraulic lifter design, known as the "T mod" and described in Textron Lycoming Service Instruction No. 1406B, must still be established. The "T mod" is identified by the letter "T" stamped as a suffix to the engine serial number which appears on the engine name plate (e.g., L-6005-767). Therefore, by this amendment, an administrative change has been made to the reporting requirements of paragraph (b)(3) of AD 80-04-03 R1, reducing the need to report on all affected engine models, to reporting only on the affected engine models that incorporate the "T mod".

Paragraphs (c) and (d) have been revised to indicate the new FAA office location and name, resulting from the geographical change from the Eastern Region to the New England Region.

Since this amendment is only administrative in nature, it is found that notice and public procedure hereon are not necessary and good cause exists for making this amendment effective within 30 days.

Although this action is in the form of a final rule which involves administrative changes only, and thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited on the overall regulatory and economic aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Rules Docket Number 88-ANE-16". The postcard will be date/time stamped and returned to the commenter.

Conclusion

The FAA has determined that this amendment is administrative in nature, and that the change in reporting requirements is minor, therefore, the amendment is not considered to be (1) A major rule under Executive Order 12291; (2) a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal. It is certified that this AD amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Aircraft, Aviation safety, Air transportation.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By amending § 39.13, Amendment 39-3977, (45 FR 77413; November 24, 1980) Airworthiness Directive (AD) 80-04-03 R1 as follows:

(a) By revising paragraph (b)(3) to read as follows: "If contaminants are detected, engine maintenance entries shall be made. If the engine is one of the affected Textron Lycoming engine models with the 'T mod' modification (larger diameter hydraulic lifters), notification in writing must be sent to the Manager, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, specifying the following information:

1. Engine Model and Serial Number.
2. Total time and time since overhaul.
3. Total time on cam and hydraulic lifters.
4. Total time since oil additive first used.
5. Visual condition of cam lobe and lifter contact surfaces.

(Information collection requirements contained in this regulation (§ 39.13) 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 control number 2120-0056)

Note: The 'T mod' is the latest design crankcase that incorporates large diameter hydraulic lifters and wide lobe camshafts and is described in Textron Lycoming Service Instruction No. 1406B. Engines incorporating this configuration are identified by the letter 'T' stamped as a suffix to the engine serial number which appears on the engine nameplate for overhaul modified, remanufactured, and new production engines (e.g., L-6005-767)."

(b) By revising paragraph (c) to read as follows: "Equivalent methods of compliance may be approved by the Manager, New York Aircraft Certification Office, FAA, New England Region."

(c) By revising paragraph (d) to read as follows: "Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Manager, New York Aircraft Certification Office, FAA, may adjust the compliance time specified in this AD."

Amendment 39-3692 was effective February 8, 1980.

Amendment 39-3977 was effective November 24, 1980.

This amendment becomes effective on April 25, 1988.

Issued in Burlington, Massachusetts, on April 1, 1988.

Timothy P. Forte',

Acting Director, New England Region.

[FR Doc. 88-7887 Filed 4-8-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-ASO-20]

Designation of Control Zone, Ft. Pierce, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a control zone to encompass the airspace

surrounding the Ft. Pierce/St. Lucie County International Airport with an extension to contain an instrument approach procedure. Airspace affected by designation of the control zone extends upward from the surface within a 5-mile radius of the airport with an extension to contain IFR arrival operations. This control zone will be effective on a part-time basis corresponding to the hours the Airport Traffic Control is in operation.

EFFECTIVE DATE: 0901 UTC, May 15, 1988.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On December 28, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by designating the Ft. Pierce, Florida, control zone (53 FR 1375). This action will lower the base of controlled airspace from 700' above the surface down to the surface. The additional controlled airspace will provide an increased level of safety to aircraft executing instrument operations at the airport. The airport averages approximately 500 commercial IFR operations per month. Additionally, the airport serves as a principle customs and immigration Port of Entry for general aviation aircraft entering the U.S. from the Bahamas and the Caribbean. Ft. Pierce/St. Lucie County International Airport is served by non-federal control tower which, in addition to providing ATC Communications, will provide weather observation and reporting service during the hours the control zone is effective. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates the Ft. Pierce Control Zone and lowers the base of controlled airspace in the vicinity of the Ft. Pierce/St. Lucie County International Airport from 700' above the surface down to the surface.

The Rule

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

Adoption of The Amendment

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

PART 71—[AMENDED]

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

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

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Ft. Pierce, Florida [New]

Within a 5-mile radius of Ft. Pierce/St. Lucie County International Airport (Lat. 27°29'37"N., Long. 80°22'01"W.); within 2 miles each side of the Vero Beach VORTAC (Lat. 27°40'41"N., Long. 80°29'23"W.) 151° radial extending from the 5-mile radius area to 8 miles southeast of the Vero Beach VORTAC, excluding that portion within the Vero Beach, Florida, control zone. This control zone is effective during the specific dates and times established in advance by Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in East Point, Georgia, on March 29, 1988.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 88-7886 Filed 4-8-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ANM-11]

Alteration of Transition Area, Missoula, MT; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects **Federal Register** Document 88-835. The transition area description for Missoula, Montana, as published in the final rule, contained two incorrect sets of coordinates. This action corrects the description.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 87-ANM-11, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 88-835, was published on January 19, 1988, Volume 53, Page 1336, established additional controlled airspace in the vicinity of Missoula, Montana. The description of the new controlled airspace, contained two sets of incorrect coordinates.

This revision to the 1,200 foot transition area provided users with the benefit of radar vectors at altitudes compatible with the instrument approach procedures in the Missoula area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 88–835, as published in the **Federal Register** on January 19, 1988, (53 FR 1336) is corrected as follows:

PART 71—[AMENDED]

§ 71.181 [Amended]

Missoula, Montana (Revised)

That airspace extending upward 700 feet above the surface within a 23.5 mile radius of the Missoula VORTAC (lat. 46°54'29" N, long. 114°04'58" W) extending from the Missoula VORTAC 190° radial clockwise to the 209° radial; within 9.5 miles southwest and 5.5 miles northwest of the Missoula VORTAC 312° redial extending from the VORTAC to 38 miles northwest of the VORTAC; within 3 miles each side of the Missoula VORTAC 172° radial extending from the VORTAC to 19.5 miles southwest; and the airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 47°30'00" N, long. 115°15'00" W to lat. 47°30'00" N, long. 112°40'00" W to lat. 46°53'00" N, long. 112°19'00" W to lat. 46°44'00" N, long. 112°19'00" W to lat. 46°44'00" N, long. 112°54'00" W to lat. 46°33'00" N, long. 113°05'00" W to lat. 46°00'00" N, long. 113°05'00" W to lat. 46°00'00" N, long. 115°15'00" W to point of beginning and excluding the portion within the Great Falls, Montana; Helena, Montana; and Coppertown, Montana, 1,200 foot transition areas.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on March 29, 1988.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88–7885 Filed 4–8–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 87–ANM–7]

Alteration of Transition Area, Rock Springs, WY; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects **Federal Register** Document 87–19991 due to several incorrect VORTAC radials which were published in the final rule description of the Rock Springs transition area effective November 19, 1987.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 87–ANM–7, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168, Telephone: (206) 431–2535.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 87–19993, published on September 1, 1987, Volume 52, Page 32915 altered the Rock Springs 1200-foot transition area to provide additional controlled airspace east of Rock Springs, Wyoming. The description of the transition area contained several incorrect VORTAC radials.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 87–19991, as published in the **Federal Register** on September 1, 1987 (52 FR 32915) is corrected as follows:

PART 71—[AMENDED]

§ 71.181 [Amended]

Rock Springs, Wyoming, Transition Area (Amended)

Change 1200-foot transition area to read as follows: * * * to 19 miles east of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within a 23-mile radius of the Rock Springs VORTAC, including that airspace bounded by 4.5 miles south of the Rock Springs 129° radial between 23 miles and 43.5 miles, and 4.5 miles east of the Cherokee VORTAC 228° radial between the VORTAC and 56.5 miles, and 4.5 miles northwest of the Rock Springs 061° radial between 23 miles and the Cherokee VORTAC, excluding that airspace included in the Rawlins, Wyoming, transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)) (49 U.S.C. 106(g) (Revised, Pub. L. 97–499, January 12, 1983)); and 14 CFR 11.69)

Issued in Seattle, Washington, on March 28, 1988.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 88–7884 Filed 4–8–88; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release No. 33–6763, 34–25546; File No. S7–31–86]

Prospectus Delivery for Aftermarket Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") has adopted an amendment to Rule 174 governing a dealer's obligation to deliver prospectuses after a registered offering during the 40 or 90 day period specified in section 4(3) of the Securities Act of 1933. This amendment reduces the aftermarket prospectus delivery period with respect to offerings by issuers that were not reporting companies before filing their registration statements to 25 calendar days after the offering of securities that are either listed on a national securities exchange or authorized for inclusion in an electronic inter-dealer quotation system of a registered securities association (e.g., NASDAQ, the quotation system sponsored and governed by the National Association of Securities Dealers, Inc.). In addition, the Commission has adopted a corresponding amendment to Rule 15c2–8 under the Securities Exchange Act of 1934.

EFFECTIVE DATE: These amendments are effective for public offerings commencing after April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Prior to the effective date, Larisa E. Dobriansky (202) 272–2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. After the effective date, contact Anne Krauskopf, (202) 272–2573, Office of the Chief Counsel, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: The Commission today announced the adoption of revisions to Rule 174[1] under the Securities Act of 1933 ("Securities Act")[2] and a corresponding amendment to Rule 15c2–8[3] under the Securities Exchange Act of 1934 ("Exchange Act").[4]

The Commission reminds all securities professionals that the prospectus delivery requirement of section 4(3),[5] as modified by Rule 174, applies to all dealers effecting transactions in the registered securities, whether or not they participate in the distribution of the securities, and that failure to comply with those requirements, as amended today, may result in appropriate Commission enforcement action.

I. Discussion

A. Alternative Proposals to Reduce Prospectus Delivery Period

In December, 1986, the Commission proposed alternative amendments to Rule 174[6] to reduce or, in some cases, eliminate the 40 or 90 day prospectus delivery period specified in section 4(3) of the Securities Act ("prospectus delivery period"). During the applicable period,[7] dealers[8] must deliver a Section 10(a)[9] prospectus (final prospectus) in connection with most secondary market transactions[10] in securities that are the subject of a registration statement filed under the Securities Act. The aftermarket prospectus delivery requirement applies to all dealers effecting transactions in the registered securities, whether or not they participate in the distribution of the securities. That requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

The prospectus delivery period and associated "quiet period"[11] run from the later of the effective date of the registration statement or the first date on which the securities were bona fide offered to the public. Rule 174 provides, with respect to either the 40 or 90 day period, that a prospectus need not be delivered for aftermarket transactions in the securities of an issuer that was a reporting company under the Exchange Act prior to filing the Securities Act registration statement covering such securities.

Two approaches to amending Rule 174 were proposed. Both would have provided relief, under certain circumstances, for transactions in the securities of issuers not subject to the reporting requirements of section 13 or 15(d)[12] of the Exchange Act immediately prior to filing their registration statements ("non-reporting companies"). In this regard, comment was solicited on whether developments that have occurred in the trading markets justify a reduction in the prospectus delivery period for offerings by non-reporting companies ("initial public offerings") of securities meeting the conditions of either proposal. In particular, comment was requested on whether current trading requirements, market processes, and issuer standards assure the availability and timely dissemination of material information and minimize the potential for market manipulation and other hot issue abuses. The Commission asked commentators to furnish empirical data supporting their views.

Proposal I would have reduced the prospectus delivery period to 25 days following a public offering for transactions in listed equity[13] or NASDAQ[14] securities for which real-time transaction reporting[15] is required by an effective transaction reporting plan[16] ("transaction-reported securities"). Exchange Act Rule 11Aa2–1 designates for trading in the National Market System ("NMS") any transaction-reported security.[17]

In addition to reducing the prospectus delivery period for transaction-reported securities, Proposal I would have eliminated the prospectus delivery requirement for aftermarket transactions in transaction-reported common stock sold in a firm commitment underwriting if the registrant satisfied criteria relating to the company's size, public float and operating history. Those transactions would have been afforded the same relief currently provided under Rule 174 to transactions in securities of reporting companies.

The alternative rule proposed for comment, Proposal II, was based on the recommendations contained in a rulemaking petition filed by the Securities Industry Association ("SIA").[18] It would have reduced the prospectus delivery period to 25 days for dealers trading in securities listed on a national securities exchange or authorized for inclusion in the NASDAQ system, whether or not subject to transaction reporting.

B. Comments on Proposed Amendments

Of the seven commentators on the rule proposals, six endorsed the Commission's objective of further reducing the regulatory burdens imposed upon dealers under section 4(3) of the Securities Act without compromising investor protection.[19] However, none of the commentators supported the elimination of the delivery period under Proposal I. Doubts were expressed about whether, immediately after completion of an initial public offering, information concerning the issuer will have been disseminated as

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[1] 17 CFR 230.174.

[2] 15 U.S.C. 77a–77aa (1982).

[3] 17 CFR 240.15c2–8.

[4] 15 U.S.C. 78a–78kk (1982).

[5] 15 U.S.C. 77d(3).

[6] Release No. 33–6662 (December 18, 1986) [51 FR 46874] ("Proposing Release").

[7] If securities of the issuer have not been sold previously pursuant to an earlier effective registration statement, the applicable period specified in section 4(3)(B) [15 U.S.C. 77d(3)(B)] is 90 days; otherwise, the designated period is 40 days. In both cases, the Securities Act authorizes the Commission to specify a shorter period.

[8] Under section 2(12) of the Securities Act [15 U.S.C. 77b(12)], and as used throughout this Release, the term "dealer" includes a "broker."

[9] 15 U.S.C. 77j(a).

[10] Section 4(4) of the Securities Act (15 U.S.C. 77d(4)) exempts transactions executed by brokers on exchanges or in the over-the-counter markets pursuant to unsolicited customers' orders.

[11] Sections 5(b)(1) [15 U.S.C. 77e(b)(1)] and 2(10) [15 U.S.C. 77b(10)] of the Securities Act, taken together, require that, during the prospectus delivery period, a prospectus meeting the requirements of section 10(a) of the Act accompany or precede any communication that would be deemed to be a prospectus and does not itself meet the section 10(a) requirements. As a result of such restrictions, the prospectus delivery period frequently is referred to as a "quiet period."

[12] 15 U.S.C. 78m 78*o*(d).

[13] The term "listed equity security" means any equity security which is listed on a national securities exchange.

[14] The term "NASDAQ security" means an equity security for which quotation information is disseminated in the National Association of Securities Dealers Automated Quotations ("NASDAQ") system.

[15] Real-time transaction reporting is the disseminating, within 90 seconds of a transaction, of the price and volume data associated with the transaction.

[16] Rule 11Aa3–1 under the Exchange Act ("transaction reporting rule") [17 CFR 240.11Aa3–1] defines an "effective transaction reporting plan" as a plan for collecting, processing and disseminating transaction reports with respect to transactions in reported securities that has been approved by the Commission.

[17] Rule 11Aa2–1 [17 CFR 240.11Aa2–1] ("NMS securities rule"). *See* Release No. 34–24635 (June 23, 1987) [52 FR 24149].

[18] The SIA is a trade association representing over 500 securities firms in the United States and Canada, which collectively account for approximately 90% of the securities business transacted in North America. The SIA petition was submitted on April 1, 1985 pursuant to Rule 4(a) of the Commission's Rules of Practice [17 CFR 201.4(a)]. This petition is available for public inspection and copying in the Commission's Public Reference Room (*see* File No. S7–31–86).

[19] The comment letters are available for public inspection and copying at the Commission's Public Reference Room (*see* File No. S7–31–86).

broadly as information relating to comparable companies having a reporting history under the Exchange Act.

Of the commentators favoring a reduction in the prospectus delivery period, four commentators specifically addressed the appropriate time period,[20] but only one commentator provided empirical data to support its position.[21] Those commentators believed that 25 calendar days should provide adequate time for the establishment of an orderly trading market for securities covered by either Proposal I or II.

Five of the commentators supporting changes to Rule 174 preferred the approach of Proposal II. They believed that it would be sufficient to rely upon listing standards, filing and disclosure requirements, and available market information about exchange-traded or NASDAQ securities to curb the potential for abuse associated with hot issues. Four of those commentators stated their belief that the distinctions between NASDAQ/NMS and NASDAQ-only securities do not justify limiting relief to NASDAQ/NMS securities. Only one commentator supported transaction reporting as a condition for relief under Rule 174. In that commentator's view, the qualification criteria for transaction reporting minimize the risk of abuse.

C. Analysis of Trading Volume and Price Data by the Directorate of Economic and Policy Analysis

The Commission's Directorate of Economic and Policy Analysis ("DEPA") [22] analyzed aftermarket trading behavior of transaction-reported common stocks and non-NMS/NASDAQ common stocks issued in initial offerings between March 1985 and February 1986 ("DEPA Analysis").[23] The analysis focused on daily volume and relative price changes occurring with respect to aftermarket transactions in 96 such securities during the first 90 and 150 trading days, respectively, following registration effectiveness. The total sample consisted of 33 transaction-reported stocks and 63 non-NMS/NASDAQ stocks.

The volume data indicated that abnormal volume subsided well before 90 calendar days for both transaction-reported and non-NMS/NASDAQ securities.[24] The volume and price data did not support the zero-day exemption contained in Proposal I. The data indicated that abnormal volume and price behavior subsidied no more quickly for those securities that would have qualified for the zero-day exemption than for the other securities in the total sample.[25]

II. Amendment of Rule 174

The Commission has determined to reduce the prospectus delivery period based on Proposal II. The amendment to Rule 174 is intended to reduce unnecessary regulatory burdens and compliance costs imposed upon dealers in the aftermarket by section 4(3), consistent with investor protection.

The revised rule preserves an aftermarket prospectus delivery period and associated "quiet period" [26] to ensure that investors obtain full and fair disclosure concerning non-reporting issuers. Because of the importance of the aftermarket prospectus delivery period and the "quiet period" to investor protection, the Commission intends to institute appropriate action for failure to comply with the requirements of section 4(3) as modified by Rule 174 as amended.

The amendment to Rule 174 [27] reduces the 40 or 90 day prospectus delivery period after a registered offering of securities by a non-reporting company, if, as of the "offering date," the securities are either listed on a national securities exchange or authorized for inclusion in an electronic inter-dealer quotation system sponsored and governed by the rules of a registered securities association.[28] For purposes of this provision, the term "offering date" refers to the later of the effective date of the registration statement or the first date on which the security was bona fide offered to the public. Under the Rule as revised, a dealer's prospectus delivery obligation with respect to the offerings described above will cease 25 calendar days after the offering date.

Under Proposal II, the prospectus delivery period would have run solely from the date of effectiveness. As adopted, Rule 174(d) establishes a trigger date that conforms to the provisions of section 4(3)(B) of the Securities Act. The statutory trigger date has been retained because the need for prospectus delivery does not arise until the bona fide commencement of a public offering, which may be later than the date on which a registration statement becomes effective.[29]

In response to the Commission's question in the Proposing Release, commentators stated their belief that a reduced prospectus delivery period of 25 calendar days should provide a reasonable time for the secondary market to assimilate available information and to stabilize.[30] The DEPA analysis indicated that abnormal trading volume for the transaction-reported and NASDAQ-only securities tested was 80% dissipated by the 16th trading day (23rd calendar day).[31]

The delivery period is expressed in terms of calendar rather than trading days in order to simplify compliance and to make the calculation under Item 502(e) of Regulation S-K [32] easier. Under item 502(e), the registrant is required to insert into the prospectus legend the expiration date of the section 4(3) delivery period. That legend indicates that all dealers, whether or not participating in the distribution of securities that are the subject of a Securities Act registration statement, may be required to deliver a prospectus for the applicable delivery period. As is currently the case, the registrant, through its managing underwriter, will be in a position to know when the offering will commence and therefore able to calculate the corre ct date for the prospectus legend.

The Rule 174 amendment covers registered offerings of all exchange listed and NASDAQ securities by previously non-reporting companies. It does not apply to offerings of over-the-counter securities for which transaction quotations are solely listed by the

[20] The SIA addressed this issue in its rulemaking petition.

[21] That commentator presented aftermarket price and volume data for the first 10, 25, 40 and 90 days of trading in securities that were issued in various initial public offerings it underwrote. The data indicated that the heaviest trading volume generally occurred within the first 10 trading days and, after 25 trading days, the average volume leveled off substantially. The commentator supplying the data favored the adoption of Proposal II.

[22] DEPA was merged with the Office of the Chief Economist in January 1988, to create the Office of Economic Analysis.

[23] DEPA's analysis is available for public inspection and copying at the Commission's Public Reference Room (*see* File No. S7-31-86).

[24] The analysis notes that, while choosing the point when the level of trading volume becomes normal is judgmental, abnormal trading volume for both groups of stocks was 80% dissipated by the 16th day of trading (23rd calendar day) and virtually non-existent by about the 38th trading day (56th calendar day). DEPA Analysis at 6.

[25] DEPA Analysis at 6, 14.

[26] *See* n. 11, *supra*.

[27] *See* new paragraph (d) of Rule 174. Subsequent paragraphs of Rule 174 have been redesignated.

[28] Currently, NASDAQ is the only such quotation system.

[29] For example, this could occur where a registrant relies upon Securities Act Rule 430A [17 CFR 230.430A] or Rule 415 [17 CFR 230.415].

[30] *See* n. 21, *supra*.

[31] *See* n. 24, *supra*.

[32] 17 CFR 229.502(e).

National Quotation Bureau in the "pink sheets."[33]

The existence of regulatory requirements applicable to exchange-listed and NASDAQ securities and market processes provide adequate investor protection to permit relaxation of the prospectus delivery requirements. Listing standards, filing and disclosue requirements, and market information requirements assure the availability and timely dissemination of material information.

In admitting securities for trading, the exchanges and the National Association of Securities Dealers ("NASD") impose qualification criteria on issuers.[34] These criteria specify minimum standards for an issuer's financial characteristics, public distribution of a security and market activity of a security.[35] They also require issuers to comply with continuing filing and disclosure obligations.[36] These requirements are intended to assure that information about qualifying issuers is available to the marketplace and is updated on a timely basis.[37]

To quality for the 25-day prospectus delivery period, the applicable Exchange or NASDAQ standards must be satisfied as of the offering date under new Rule 174(d). For the shortened delivery period to apply where an issuer undertakes a unit offering, or more than one class of securities is covered by a prospectus, each security comprising a unit or offered by means of the prospectus must be so qualified.

Trade and quotation reporting requirements applicable to exchange-listed and NASDAQ securities help investors, self-regulatory organizations, and the Commission to monitor and surveil aftermarket transactions. Securities that have been designated for trading in the National Market System are subject to both continuous firm quotation [38] and real-time last sale repoting requirements.[39] NASDAQ-only securities and regional exchange-listed securities that are not transaction-reported also are subject to continuous firm quotation requirements.[40]

Consistent with Proposal II, Rule 174, as amended, retains the section 4(3) delivery periods for secondary market transactions in the securities of non-reporting companies where the securities (or any of the securities comprising a unit) are neither exchange-listed nor NASDAQ securities. The amendment to Rule 174 also preserves the prospectus delivery requirement for a dealer acting as an underwriter or effecting transactions in an unsold allotment or subscription of securities.[41] Finally, this amendment does not alter a dealer's prospectus delivery obligations under Exchange Act Rule 15c2–8.[42]

In the Proposing Release, the Commission requested comment on whether to exclude from relief under the proposed Rule 174 amendment "blank check" offerings by companies with minimal operating assets. These offerings involve "shell" companies going public by means of registration statements that do not specify business or investment plans at the time of effectiveness. Instead of creating an exclusion from the amendment to Rule 174 for such "blank check" offerings, the Commission has determined to rely upon the issuer financial and trading criteria for exchange listing or NASDAQ authorization to screen out offerings that are most susceptible to abuse.

III. Cost-Benefit Analysis

To evaluate fully the benefits and costs associated with the proposed amendment to Rule 174, the Commission requested commentators to provide views and data as to the costs and benefits associated with the amendment to reduce the 40 or 90 day aftermarket prospectus delivery periods specified in section 4(3) of the Securities Act. In this regard, the Commission noted that the amendment would reduce unnecessary costs and regulatory burdens imposed by section 4(3) and Rule 174 thereunder. The commentators on the rule proposals did not quantify the costs of the section 4(3) prospectus delivery requirements nor the cost savings under the respective proposals. Commentators that addressed the issue of benefits pointed out that the relief provided by Proposal II would apply to a broader class of securities offerings.

IV. Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis concerns amendments to Securities Act Rule 174 and Exchange Act Rule 15c2–8, and has been prepared in accordance with 5 U.S.C. 604. A summary of the Initial Regulatory Flexibility Analysis was included in the Proposing Release.

Reasons For and Objectives of Amendments

The objective of the amendment to Rule 174 is to reduce the aftermarket prospectus delivery periods specified in section 4(3) of the Securities Act where current trading requirements, issuer standards and market processes assure the availability and timely dissemination of material information and minimize the potential for abuse. By relaxing the aftermarket prospectus delivery obligation through a reduction of the time period, this amendment reduces unnecessary costs imposed by the prospectus delivery requirements of section 4(3) and Rule 174 thereunder. The change achieves these purposes while preserving adequate disclosure of information to investors and investor protection under the Federal securities laws.

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[33] The NASD has submitted to the Commission a rule filing that would establish a Non-NASDAQ Reporting System: An electronic price and volume reporting system for non-NASDAQ securities. *See* SR–NASD–87–55. Approval by the Commission of the rule filing would not cause "pink sheet" securities to be subject to the reduced prospectus delivery period now set out in Rule 174.

[34] *See, e.g.*, New York Stock Exchange ("NYSE") Listed Company Manual, reprinted in NYSE Guide (CCH) ¶ 2501 at 4225–28; American Stock Exchange ("Amex") Guide (CCH) ¶ 10,001–10,005; Philadelphia Stock Exchange Guide (CCH) ¶ 2803 at 2301, Rule 803(a); Pacific Stock Exchange Guide (CCH) ¶ 3025 at 3053–54, Rule I Section 3(b); Midwest Stock Exchange Guide (CCH) ¶ 1897, Article XXVIII, Rule 7; Boston Stock Exchange Guide (CCH) ¶ 2260, Chapter XXVII, Section 1; NASD Manual (CCH) ¶ 1754 at 1571, Schedule D to the By-Laws, Part VI, Sections 2 (a) and (b).

[35] For example, these standards may specify: (1) That there be a minimum number of shares of the issuer's security in the hands of a minimum number of public shareholders; (2) that the issuer meet minimum asset, capital and surplus, or income requirements; (3) that the issuer have a certain operating history; (4) that the public float have a certain market value. *See* standards for listing and quotation cited in n. 34, *supra*. For initial inclusion in NASDAQ, a security must have two registered and active market makers, and each market maker must be willing to buy and sell the security for its own account on a continuous basis and must enter and maintain firm two-sided quotations in the NASDAQ system. NASD Manual (CCH) ¶ 1754 at 1565, 1571, Schedule D to the By-Laws, Part II, Section 1(c)(1) and Part VI, Sections 2 (a) and (b).

[36] *See* n. 34 *supra*. *E.g.*, NYSE Guide ¶ 2507; Amex Guide ¶ 10,030; NASD Manual ¶ 1754; Philadelphia Stock Exchange Guide ¶ 2805; Midwest Stock Exchange Guide ¶ 1898; Boston Stock Exchange Guide ¶ 2267.

[37] Issuers seeking to have their securities listed on an exchange or reported under the NASD's Transaction Reporting Plan must register their securities immediately under section 12(b) or 12(g) of the Echange Act [15 U.S.C. 781 (b), (g)]. A NASDAQ-only issuer need not register its securities under section 12(g) of the Exchange act until 120 days after the last day of the issuer's fiscal year during which the registration statement became effective. NASD Manual (CCH) ¶ 1754 at 1565, Schedule D to the By-Laws, Part II, sections 1(b) (1) and (2). However, upon effectiveness of the registration statement, the registrant will be subject to the reporting requirements of Exchange Act section 15(d).

[38] Exchange Act Rule 11Ac1-1 [17 CFR 240.11Ac1-1] ("the firm quotation rule").

[39] *See* n. 15 *supra*.

[40] The firm quotation rule: NASD Manual, (CCH) ¶ 1754 at 1561, Schedule D to the By-Laws, Part VI, sections 2(a) and (b).

[41] *See* current Rule 174(e) [17 CFR 230.174(e)], redesignated as Rule 174(f).

[42] The Commission is adopting a technical amendment to Rule 15c2-8(d) [17 CFR 240.15c2-8(d)] to reflect the fact that the obligation to deliver prospectuses under that rule is unaffected by this amendment to Rule 174.

The technical amendment to Rule 15c2–8 reflects the fact that the prospectus delivery requirements under that rule are not affected by the Rule 174 amendment.

Public Comment

No commentators responded to the Commission's request for comments on the Initial Regulatory Flexibility Analysis.

Significant Alternatives

Pursuant to section 604 of the Regulatory Flexibility Act, the following types of alternatives were considered:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; and

(2) The clarification, consolidation or simplification of compliance and reporting requirements under the rules for such small entities.

The scope of the relief provided under Rule 174, as amended herein, is based on investor protection concerns. Hot issue abuses and investor protection concerns arise with respect to the securities offerings of small entities as well as those of larger companies. The relief provided herein reduces unnecessary regulatory burdens and compliance costs imposed by section 4(3) to the extent consistent with investor protection.

(3) The use of performance rather than design standards. With respect to Rule 174, as amended herein, performance standards are not consistent with this agency's statutory mandate to provide adequate disclosure to investors.

(4) An exemption from coverage of the rules, or any part thereof, for small entities. Rule 174, as amended herein, provides relief from the prospectus delivery requirements of section 4(3) to the extent consistent with investor protection. Extending an exemption to or providing different prospectus delivery requirements for small entities for transactions subject to the Securities Act would not be warranted in light of the Commission's statutory mandate.

As more fully discussed in the text of the release, the Commission evaluated the alternative rule proposals and determined to provide relief under Rule 174 based on Proposal II for transactions in exchange-listed and NASDAQ securities.

V. Statutory Basis

Rule 174 is being amended by the Commission pursuant to sections 4 and 19 of the Securities Act. Rule 15c2–8 is being amended pursuant to sections 2, 15(c) and 23(a) of the Exchange Act. Because these rule changes are intended to relieve existing regulatory restrictions within the meaning of section 553(d)(1) of the Administrative Procedure Act (5 U.S.C. 553(d)(1)), the Commission has determined to make them effective immediately upon publication in the **Federal Register**.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

VI. Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows: (Citations before * * * indicate general rulemaking authority).

Authority: Sec. 19, 48 Stat. 85, as amended: 15 U.S.C. 77s * * * § 230.174 also issued under sec. 4, 48 Stat. 77; 15 U.S.C. 77d.

2. § 230.174 is amended by redesignating paragraphs (d) and (e) as (e) and (f), respectively, and adding new paragraph (d) to § 230.174 to read as follows:

§ 230.174 Delivery of prospectus by dealers; exemptions under Section 4(3) of the Act.

* * * * *

(d) If (1) the registration statement relates to the security of an issuer that is not subject, immediately prior to the time of filing the registration statement, to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934, and (2) as of the offering date, the security is listed on a registered national securities exchange or authorized for inclusion in an electronic inter-dealer quotation system sponsored and governed by the rules of a registered securities association, no prospectus need be delivered after the expiration of twenty-five calendar days after the offering date. For purposes of this provision, the term "offering date" refers to the later of the effective date of the registration statement or the first date on which the security was bona fide offered to the public.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows: (Citations before * * * indicate general rulemaking authority).

Authority: Sec. 23, 48 Stat. 901, as amended: 15 U.S.C. 78w * * * § 240.15c2–8 also issued under sec. 2, 52 Stat. 1075, 15 U.S.C. 78b; 15, 48 Stat. 895, as amended, 15 U.S.C. 78o.

2. The last sentence of paragraph (d) of § 240.15c2–8 is revised to read as follows:

§ 240.15c2–8 Delivery of prospectus.

* * * * *

(d) * * * (The 40-day and 90-day periods referred to above shall be deemed to apply for purposes of this rule irrespective of the provisions of paragraphs (b) and (d) of § 230.174 of this Chapter).

* * * * *

By the Commission.

Jonathan G. Katz,

Secretary.

April 4, 1988.

[FR Doc. 88–7775 Filed 4–8–88; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM87–16–001]

Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated, or Modified Contracts

Issued April 4, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order granting rehearing solely for the purpose of further consideration and denying motion for stay of Order No. 490.

SUMMARY: The Federal Energy Regulatory Commission is granting rehearing solely for the purpose of further consideration of Order No. 490 (published February 12, 1988, 53 FR 4121) in order to review more fully the argument raised in the requests for rehearing of the final rule in Order No. 490. The final rule, which is effective April 12, 1988, permits abandonment of certain sales and purchases under the Natural Gas Act. The Commission is also denying a motion to stay the effective date of Order No. 490.

EFFECTIVE DATE: April 4, 1988.

FOR FURTHER INFORMATION CONTACT: Jacob Silverman, Federal Energy Regulatory Commission, 825 North

Capitol Street NE., Washington, DC 20426, (202) 357–8315.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing Solely for the Purpose of Further Consideration and Denying Motion for Stay of Order No. 490

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, and Charles A. Trabandt.

On February 5, 1988, the Commission issued Order No. 490, Abandonment of Sales and Purchases of Natural Gas Under Expired, Terminated or Modified Contracts, Final Rule.

The Commission has received thirty-six timely requests for rehearing in this proceeding,[1] and one party, American Public Gas Association (APGA) included in its request a motion for stay of Order No. 490 pending judicial review if the Commission did not grant the rehearing.

APGA asserts that its members, as well as others, would suffer irreparable injury during the pendency of judicial review because once the rule became effective producers would commence to exercise their right to unilaterally abandon gas under expired or terminated contracts. It alleges that producers will commence selling such gas to others and that such gas cannot be replaced.

In reviewing a request for a stay, the Commission applies the standard set forth in the Administrative Procedure Act, 5 U.S.C. 705 (1982), i.e., if the Commission finds that "justice so requires," which entails evaluating the movants' claim of imminent, irreparable injury. If this standard is not met, this Commission follows a general policy of denying motions for stays of its orders, based on the need for definitiveness and finality in administrative proceedings.[2]

In this case movant merely asserts that producers may immediately exercise their rights under Order No. 490 and abandon gas that qualifies. Movant has failed to show any irreparable injury. First, the party to whom the gas is now dedicated can purchase it as well as any other party, although possibly at a higher price. Thus at most there may be an economic injury which can be readily remedied. If the current purchaser decides it does want to purchase the gas, it is clearly not subject to any immediate harm. To the extent that the "dedicated" reserves are sold to others and thus is no longer available to the current purchaser, the only harm to the current purchaser would be the need to replace that gas sometime in the future. Movant has not shown that that gas could not be replaced by purchases in the market if needed. If the purchases were made at a higher price, the harm would be economic injury as to which the party can be made whole.

Accordingly, we find that movant has not shown that implementation of the Order No. 490 regulations will cause imminent, irreparable harm to it or will not otherwise be in the public interest in its impact on consumers or the natural gas industry in general.

In light of the foregoing, the Commission finds that justice does not require further postponing the effective date of Order No. 490 and the motion for a stay is denied. However, this denial is without prejudice to the Commission's consideration of the merits of movants' request for rehearing.

In order to review more fully the arguments raised in the requests for rehearing, the Commission grants rehearing of the order solely for the purpose of further consideration. This order is effective on the date of issuance. This action does not constitute a grant or denial of the requests on their merits in whole or in part.

Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure (18 CFR 713(d) (1987), no answers to the requests for rehearing will be entertained by the Commission.

By the Commission. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,

Acting Secretary.

Concurring Opinion of Commissioner Charles A. Trabandt

I do not object to tolling rehearing of the Final Rule in Order No. 490 for the purpose of further consideration of arguments raised in the many requests for rehearing. I am aware of the numerous issues raised by the parties. Also, I invite your attention to my concurring opinion to Order No. 490 issued separately in the same docket for a detailed discussion of the serious legal and policy problems I find in Order No. 490. I do object, however, to the majority's argumentation in denying the motion for stay included in the rehearing request of the American Public Gas Association.

The majority reviews the applicable legal standard for reviewing a request for a stay. The legal standard, "if justice so requires," turns on an analysis of the claimed imminent, irreparable injury. The majority then addresses the facts in this situation and concludes, "if the purchases were made at a higher price, the harm would be economic injury as to which the party can be made whole." I am not persuaded by the discussion to date that parties suffering the loss of dedicated, low-cost old gas reserves under expired or modified contracts can, in fact, be made whole once the dedicated reserves are unilaterally abandoned under Order No. 490, beginning potentially on April 12, 1988. The average price of natural gas under the expired old gas contracts nationwide is $0.90 and the total amount of old gas covered by expired contracts approximately exceeds one-fifth of the nationwide old gas supply. The analysis of economic injury in this order simply does not support the asserted conclusion that "part(ies) can be made whole." In the absence of persuasive support for that conclusion, the Commission should consider a stay until rehearing is complete.

Charles A. Trabandt,

Commissioner.

[FR Doc. 88–7794 Filed 4–8–88; 8:45 am]

BILLING CODE 6717–01–M

[1] Petitions were filed by the following parties: American Public Gas Association; Associated Gas Distributors; American Gas Association; Amoco Production Co.; Anadarko Petroleum Corporation; ANR Pipeline Co. & Colorado Interstate Gas Company; Arkla, Inc.; Columbia Gas Transmission Corp.; El Paso Natural Gas Co.; Enron Interstate Pipeline Group; Indicated Producers; Interstate Natural Gas Assoc. of America; Michcon Michigan Consolidated Gas Company; Minnesota Department of Public Services; State of Michigan and Michigan Public Service Commission; Mountain Fuel Resources; Maryland People's Counsel; National Fuel Gas Supply Corporation; Northern Illinois Gas Company; Peoples Gas Light and Coke Company and North Shore Gas Company; Pacific Gas and Electric Company; Panhandle Eastern Pipe Line Company and Trunkline Gas Company; Process Gas Consumers Group; The Georgia Industrial Group; Am. Iron and Steel Institute; Peoples Natural Gas Company; Public Service Commission of New York; Producer Associations; Southern California Gas Company; Tennessee Gas Pipe Line Company; Texas Gas Transmission Corp.; Transcontinental Gas Pipe Line Corp.; UGI Corporation; United Distribution Companies; United Gas Pipeline Co.; Valero Interstate Transmission Co.; Williams Natural Gas Company; and Williston Basin Interstate Pipeline Company.

[2] *See, e.g.*, Arkansas Louisiana Gas Co., 23 FERC ¶ 61,324 (1983).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3359-2]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology For Raymark Industries, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compounds (VOC) emissions by Raymark Industries, Incorporated, a Division of Raymark Corporation in Stratford, Connecticut. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan which was approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective May 11, 1988.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106 and the Environmental Protection Agency, Public Reference Unit, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On November 4, 1987 (52 42323), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed approval of State Order No. 8013 as a revision to the Connecticut SIP. The final State Order was submitted by Connecticut as a formal SIP revision on October 27, 1987. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT on Raymark Industries, Inc. (Raymark) as required by subsection 22a-174-20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a-174-20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

EPA has reviewed State Order No. 8013 and has determined that the level of control required by this Order represents RACT for Raymark. RACT for Raymark consists of specified capture and destruction efficiencies for the control equipment it is operating, and daily, monthly or quarterly limitations on the emissions of VOC for other uncontrolled processes. The controls that Raymark has already installed and is operating are achieving a reduction of approximately 874 tons per year of VOC. VOC emissions from Raymark after control are approximately 68 tons per year. The specific requirements of the State Order and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving Connecticut State Order No. 8013 as a revision to the Connecticut SIP. The provisions of State Order No. 8013 define and impose RACT on Raymark Industries, Incorporated to control VOC emissions as required by subsection 22a-174-20(ee) of Connecticut's regulations.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Date: March 28, 1988.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Subpart H, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart H—Connecticut

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.370 is amended by adding paragraph (c)(42) to read as follows:

§ 52.370 Identification of plan

* * * * *

(c) * * *

(42) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on October 27, 1987.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated October 27, 1987 submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8013 and attached Compliance Timetable for Raymark Industries, Incorporated in Stratford, Connecticut effective on September 24, 1987.

(ii) Additional materials.

(A) Technical Support Document prepared by the Connecticut Department of Environmental Protection providing a complete description of the reasonably available control technology determination imposed on the facility.

[FR Doc. 88-7169 Filed 4-8-88; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-25

[FPMR Amdt. E-263]

Miscellaneous Changes

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation deletes text that is no longer applicable and updates

other text to reflect current policies, procedures, and GSA organizational structure. The changes provided in this regulation are necessary to ensure that Part 101–25 is current.

EFFECTIVE DATE: April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Boughton, Regulations and Policy Division, Washington, DC 20406 (703–557–7525).

SUPPLEMENTARY INFORMATION: GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–25

Government property management.

PART 101–25—GENERAL

1. The authority citation for Part 101–25 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

2. The table of contents for Part 101–25 is amended by deleting §§101– 25.4800, 101–25.4801, 101–25.4900, 101–25.4901, 101–25.4902, 101–25.4902–1473, and 101–25.4902–1473–1 and reserving the following entries: 101–25.113 [Reserved].

Subpart 101–25.48 [Reserved]

Subpart 101–25.49 [Reserved]

Subpart 101–25.1—General Policies

3. Section 101–25.110 is revised to read as follows:

§ 101–25.110 Tire identification/registration program.

The regulations issued by the Department of Transportation in 49 CFR Part 574, Tire Identification and Recordkeeping, require that tire manufacturers maintain or have maintained for them the name and address of tire purchasers, the identification number of each tire sold, and the name and address of the tire seller (or other means by which the manufacturer can identify the tire seller). In addition, distributors and dealers are required to furnish such data to manufacturers in connection with purchases made directly from them. GSA provides support to the Federal Government for tires, and therefore has prescribed the following procedures for tires purchased from or through GSA supply sources.

4. Section 101–25.110–2 is revised to read as follows:

§ 101–25.110–2 Tires obtained through Federal Supply Schedules of regional term contracts.

When tire manufacturers ship tires direct against orders placed under Federal Supply Schedules, the tire manufacturer will record the name and address of the purchaser and the identification numbers of the tires involved.

5. Section 101–25.110–4 is revised to read as follows:

§ 101–25.110–4 Recordkeeping responsibilities.

The effectiveness of the tire identification and recordkeeping regulations depends on the active support and cooperation of all agencies to ensure that tires subject to a recall program are not to continue in service thereby endangering the lives of the occupants of the vehicle. Therefore, agencies should establish procedures for promptly identifying and locating all tires whether in storage or on vehicles so that advice from GSA, the tire manufacturer, or the vehicle manufacturer may be acted upon expeditiously.

§ 101–25.113 [Reserved]

6. Section 101–25.113 is removed and reserved.

Subpart 101–25.3—Use Standards

7. Section 101–25.301 is amended by revising paragraph (a) to read as follows:

§ 101–25.301 General.

(a) This subpart prescribes minimum use standards for certain Government-owned personal property which shall be applied by all executive agencies. Additional criteria above these minimum standards should be established by each executive agency, limiting its property to the minimum requirements necessary for the efficient functioning of the particular office concerned. This subpart does not apply to automatic data processing equipment (ADPE) which is covered in the Federal Information Resources Management Regulation (FIRMR) (41 CFR Chapter 201).

* * * * *

8. Section 101–25.302–2 is amended by revising paragraph (a) to read as follows:

§ 101–25.302–2 Filing cabinets.

* * * * *

(a) Disposing of all records that have been authorized for disposition by the Congress or, where such authorization has not been obtained, through the preparation and obtaining of authorized disposal schedules with the assistance of the National Archives and Records Administration.

* * * * *

§ 101–25.302–3 [Amended]

9. Section 101–25.302–3 is amended to remove paragraph (b)(6).

§ 101–25.302–6 [Amended]

10. Section 101–25.302–6 is amended by deleting the note at the end of paragraph (c).

Subpart 101–25.4—Replacement Standards

11. Section 101–25.402 is revised to read as follows:

§ 101–25.402 Motor vehicles.

Replacement of motor vehicles shall be in accordance with the standards prescribed in § 101–38.402.

Subpart 101–25.5—Guidelines For Making Purchase or Lease Determinations

12. Section 101–25.500 is revised to read as follows:

§ 101–25.500 Scope of subpart.

This subpart prescribes guidelines to be used by executive agencies in determining whether acquisition of equipment of the types specified in this subpart should be by purchase or lease. If appropriate, executive agencies should use these guidelines in the determination, allowance, or evaluation of costs under the Federal Acquisition Regulation (FAR) (48 CFR Part 31) to the extent that the guidelines are consistent therewith.

13. Section 101–25.502 is amended by revising paragraph (b) to read as follows:

§ 101–25.502 Methods of acquisition.

* * * * *

(b) Upon request, GSA will assist agencies in making appropriate determinations to lease or purchase equipment by providing the latest information on pending price adjustments to Federal Supply Schedule contracts and other factors such as recent or imminent technological

developments, new techniques, and industry or market trends. Inquiries should be addressed to the General Services Administration (FC), Washington, DC 20406.

14. Section 101–25.503 is amended by revising the introductory paragraph to read as follows:

§ 101–25.503 Telecommunications equipment.

Before any telecommunications equipment is selected, including facsimile equipment, Federal agencies shall forward the information required by FIRMR 201–39 to the General Services Administration (KMA), Washington, DC 20405, or to the appropriate GSA regional office.

* * * * *

§§ 101–25.4800—101–25.4801 (Subpart 101–25.48) [Removed]

15. The text of Subpart 101–25.48 is deleted and the subpart reserved as follows:

Subpart 101–25.48 [Reserved]

§§ 101–25.4900—101–25.4902–1473–1 (Subpart 101–25.49) [Removed]

16. The text of Subpart 101–25.49 is deleted and the subpart reserved as follows:

Subpart 101–25.49 [Reserved]

Dated: March 17, 1988.

Paul Trause,

Acting Administrator of General Services.

[FR Doc. 88–7797 Filed 4–8–88; 8:45 am]

BILLING CODE 6820–24–M

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41 CFR Part 101–40

[FPMR Temp. Reg. A–23, Supp. 5]

Use of Carrier Contractors For Express Small Package Transportation

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement updates FPMR Temp. Reg. A–23 and supplement 3 thereto, by eliminating the requirement for the GSA transportation zone offices to notify civil agencies of delinquent DHL accounts.

DATES:

Effective date: April 11, 1988.

Expiration date: September 30, 1988.

FOR FURTHER INFORMATION CONTACT: Charles T. Angelo, Director, Travel and Transportation Management Division (FBT), Washington, DC 20406, telephone FTS 557–1261 or commercial 703–557–1261.

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more, a major increase in costs to consumers or others, or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–40

Freight, Government property, Moving of household goods, Office relocations, Transportation.

PART 101–40—[AMENDED]

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

General Services Administration

Federal Property Management Regulations Temporary Regulation A–23, Supplement 5

March 17, 1988.

To: Heads of Federal agencies.

Subject: Use of carrier contractors for express small package transportation.

1. *Purpose.* This supplement updates FPMR Temp. Reg. A–23 and supplement 3 thereto, by deleting the provision which requires the GSA zone offices to notify delinquent agency accounts in support of the express small package courier collection effort.

2. *Effective date.* This supplement is effective upon publication in the **Federal Register.**

3. *Expiration date.* This supplement expires September 30, 1988.

4. *Explanation of change.* Subparagraph 9–2a of FPMR Temp. Reg. A–23 and supplement 3 is revised to eliminate the requirement for the GSA zone offices to notify civilian agencies of delinquent DHL accounts and reads as follows:

a. Service to any delinquent agency account may be suspended if undisputed amounts are overdue more than 90 calendar days provided the contractor has simultaneously notified the account holder and the appropriate GSA zone office 60 calendar days after the invoice date that amounts are overdue and need to be paid within 30 calendar days of the date of the delinquency notice.

T.C. Golden,

Administrator of General Services.

[FR Doc. 88–7798 Filed 4–8–88; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 90

[General Docket 87–112; FCC 88–132]

Development and Implementation of a Public Safety National Plan

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Memorandum Opinion and Order granting a request by the National Public Safety Planning Advisory Committee (NPSPAC) that the Commission realign the geographic boundaries of certain public safety planning regions. This action is taken in response to NPSPAC's Petition for Reconsideration of the Commission's Report and Order in Gen. Docket 87–112 establishing service rules and technical standards for use of the 821–824/866–869 MHz bands by the public safety services, 53 FR 1022 (January 15, 1988).

EFFECTIVE DATE: April 11, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marty Liebman, Private Radio Bureau, Land Mobile and Microwave Division, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

Adopted: March 30, 1988.
Released: April 11, 1988.
By the Commission

I. Introduction

1. On December 18, 1987, the Commission released a *Report and Order* [1] in the above-captioned proceeding adopting policies, service rules, and technical standards to govern usage of the 821–824/866–869 MHz public safety spectrum. J. Y. Nasser, past chairman of the National Public Safety Planning Advisory Committee (NPSPAC),[2] has requested

[1] Report and Order, Gen. Docket No. 87–112, 3 FCC Rcd 905 (1988).

[2] Mr. Nasser noted in the petition that the Commission's charter for NPSPAC officially expired

Continued

reconsideration of that *Order* to realign the public safety regions to conform more closely with the regional boundaries intended by NPSPAC in its *Final Report* [3] to the Commission.[4]

II. Background

2. The *Report and Order* set forth a plan to ensure that present and future spectrum requirements of the public safety community will be met. The plan provides direction on broad spectrum allocation issues at the national level and focuses on the great diversity of needs that exist at the state and local levels. It offers technical and procedural guidance on the use of the new spectrum by the public safety services and also creates a framework for development of regional plans. As discussed in the *Report and Order*, regional planning will be accomplished through the preparation of written plans by Regional Planning Committees (RPCs) composed of representatives of the state and local public safety and special emergency community.

3. The Commission, in its *Notice of Proposed Rule Making* [5] in this proceeding, asked that NPSPAC recommend boundaries for the public safety planning regions. In their *Final Report*, the Committee proposed the establishment of 54 regions. The Committee did not, however, delineate specific boundaries for proposed regions that included parts of one or more states. In order to define regional boundaries unambiguously and to assure that all of the land area of the 50 states, Puerto Rico, and the Virgin Islands was included, the Commission defined precise boundaries for 48 regions in a manner that we believed closely aligned boundaries in accordance with the NPSPAC recommendations. *Report and Order* at para. 43.

4. While most of the regions established by the Commission were identical to those recommended by NPSPAC, several did not conform exactly to those recommendations. For example, for the State of Texas, the Commission created a single public safety region, while the Committee recommended separate regions centered in six of the state's largest metropolitan areas (Austin, Dallas-Ft. Worth, Houston, Lubbock, El Paso, and San Antonio). Similarly, in the Chicago area, the Committee recommended a four-state region that included parts of Indiana, Illinois, Michigan and Wisconsin, but the Commission chose not to create such an interstate region, stating that "the public safety requirements in border areas of these states [could] best be satisfied through cooperative efforts of the regional planning committees in these states." *Report and Order* at para. 43.

III. Petition for Reconsideration

5. In its petition, NPSPAC requests that the Commission reconfigure the boundaries of several of the public safety planning regions to conform to those intended by NPSPAC in its *Final Report*. It states that the exact delineation of regions in terms of recognized political subdivisions (*e.g.*, counties) was not provided in the *Final Report*. As a result, NPSPAC states, the "Commission, while generally adopting the NPSPAC *Final Report* recommendations, made substantial changes in the configuration of some regions." Petition at 4.

6. NPSPAC is petitioning the Commission to create new Chicago and Buffalo area regions, six new Texas regions, and expanded Philadelphia and New York City area planning regions. *See* Appendix A. In support of its request, NPSPAC asserts that they developed these suggested boundaries based on "historical frequency of interference problems, existing interoperability requirements, existing disaster management support plans, and existing or projected population densities." Petition at 3. NPSPAC states that use of these criteria should promote "a cohesive planning effort within each area, with the added benefit of minimizing necessary inter-region coordination." Petition at 3. NPSPAC also indicates that any delay in resolving disparities in regional boundaries will have a "debilitating effect" on spectrum planning efforts in many areas of the country. NPSPAC, therefore, requests expedited consideration of this matter. Petition at 5. It notes that in certain parts of the country (*e.g.*, New York and Dallas-Fort Worth) planning groups have been in existence for years and have already begun the planning process.

7. We received comments from 22 individuals and organizations, *all* expressing support for the NPSPAC petition. For example, the Port Authority of New York and New Jersey noted that "the Commission should expeditiously grant NPSPAC's petition so that the regional planning process can move forward." Port Authority comments at 3. The Associated Public Safety Communications Officers, Inc. (APCO) further stated that, "For all the reasons set forth in the [NPSPAC] petition, APCO totally supports the requested action." APCO comments at 2.

IV. Decision

8. We have examined the reconfigured regional boundaries as proposed in the petition, and concur with this alignment. The petition has given consideration to local and regional issues and characteristics in making its recommendations. Its use of this approach is in conformance with the regional planning concept outlined in the *Report and Order*, which emphasized that responsiveness to local needs and concerns is critical to the success of the program. *Report and Order* at para. 4. We find, further, that the granting of the petition will serve the public interest by enabling previously established planning groups to continue development of their regional plans. With the unanimous support of the 22 commenters, we, therefore, revise the public safety planning regions as requested and as shown in Appendix A.[6]

V. Conclusion

9. *It is therefore ordered* that the Petition for Reconsideration filed by the National Public Safety Planning Advisory Committee is *granted*.

10. *It is further ordered* that effective immediately upon publication in the **Federal Register**,[7] the boundaries for the public safety planning regions will be as delineated in Appendix A of this *Memorandum Opinion and Order*.

December 31, 1987, but asked that the Commission treat the petition as a NPSPAC document, *nunc pro tunc*. For purposes of determining standing, we have decided to treat this petition as a filing from Mr. Nasser on behalf of interested individuals. For convenience, we refer to the petition throughout this document as the NPSPAC petition.

[3] Final Report of the National Public Safety Planning Advisory Committee to the Federal Communications Commission, Gen. Docket No. 87-112 (September 9, 1987) (*Final Report*).

[4] Petitions for reconsideration were also filed by General Electric Mobile Communications Business; Cellular Telecommunications Industry Association; International Municipal Signal Association and International Association of Fire Chiefs; and New Jersey Division of State Police. We will issue a separate Order dealing with the issues raised in these petitions.

[5] Notice of Proposed Rule Making, Gen. Docket No. 87-112, 2 FCC Rcd 2869 (1987).

[6] In the petition, "Burleson" county was inadvertantly left off the list of counties in the Texas-Austin region. In Appendix A, we have included this county in its proper location.

[7] We find that good cause exists for dispensing with the Administrative Procedure Act's (APA) requirement that publication or service of a substantive rule must take place at least 30 days before its effective date, because the decision is designed to expedite the public safety planning process and causes no adverse impact to any groups or individuals. *See* 5 U.S.C. 553(d).

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 90

Radio.

Appendix A—Revised Public Safety Regions

1. Alabama
2. Alaska
3. Arizona
4. Arkansas
5. California—South (to the northernmost borders of San Luis Obispo, Kern, and San Bernardino Counties)
6. California—North (that part of California not included in California—South)
7. Colorado
8. New York—Metropolitan (Fairfield, Litchfield, New Haven, and Middlesex, Counties, Connecticut; Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Dutchess, and Westchester Counties, New York; Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union, Warren, Middlesex, Somerset, Hunterdon, Mercer, and Monmouth Counties, New Jersey)
9. Florida
10. Georgia
11. Hawaii
12. Idaho
13. Illinois (all except area in Region 54)
14. Indiana (all except area in Region 54)
15. Iowa
16. Kansas
17. Kentucky
18. Louisiana
19. Maine; New Hampshire; Vermont; Massachusetts; Rhode Island; Connecticut (except Fairfield, Litchfield, New Haven, and Middlesex Counties)
20. Maryland; Washington, DC; Virginia—Northern (Arlington, Fairfax, Fauquier, Loudoun, Prince William and Stafford Counties; and Alexandria, Fairfax, Falls Church, Manassas and Manassas Park Cities)
21. Michigan (all except area in Region 54)
22. Minnesota
23. Mississippi
24. Missouri
25. Montana
26. Nebraska
27. Nevada
28. New Jersey (except for counties included in the New York—Metropolitan, Region 8, above); Pennsylvania (Bucks, Chester, Montgomery, Philadelphia, Berks, Delaware, Lehigh, Northampton, Bradford, Carbon, Columbia, Dauphin, Lackawanna, Lancaster, Lebanon, Luzerne, Lycoming, Monroe, Montour, Northumberland, Pike, Schuylkill, Sullivan, Susquehanna, Tioga, Wayne, Wyoming and York Counties); Delaware
29. New Mexico
30. New York—Albany (all except area in New York—Metropolitan, Region 8, and New York—Buffalo, Region 55)
31. North Carolina
32. North Dakota
33. Ohio
34. Oklahoma
35. Oregon
36. Pennsylvania (all except area in Region 28, above)
37. South Carolina
38. South Dakota
39. Tennessee
40. Texas—Dallas (including the counties of Cooke, Grayson, Fannin, Lamar, Red River, Bowie, Wise, Denton, Collin, Hunt, Delta, Hopkins, Franklin, Titus, Morris, Cass, Tarrant, Dallas, Palo Pinto, Parker, Rockwall, Kaufman, Rains, VanZandt, Wood, Smith, Camp, Upshur, Gregg, Marion, Harrison, Panola, Rusk, Cherokee, Anderson, Henderson, Navarro, Ellis, Johnson, Hood, Somervell and Erath)
41. Utah
42. Virginia (all except area in Region 20, above)
43. Washington
44. West Virginia
45. Wisconsin (all except area in Region 54)
46. Wyoming
47. Puerto Rico
48. U.S. Virgin Islands
49. Texas—Austin (including the counties of Bosque, Hill, Hamilton, McLennan, Limestone, Freestone, Mills, Coryell, Falls, Robertson, Leon, San Saba, Lampasas, Bell, Milam, Brazos, Madison, Grimes, Llano, Burnet, Williamson, Burleson, Lee, Washington, Blanco, Hays, Travis, Caldwell, Bastrop, and Fayette)
50. Texas—El Paso (including the counties of Knox, Kent, Stonewall, Haskell, Throckmorton, Gaines, Dawson, Borden, Scurry, Fisher, Jones, Shackelford, Stephens, Andrews, Martin, Howard, Mitchell, Nolan, Taylor, Callahan, Eastland, Loving, Winkler, Ector, Midland, Glasscock, Sterling, Coke, Runnels, Coleman, Brown, Comanche, Culberson, Reeves, Ward, Crane, Upton, Reagan, Irion, Tom Green, Concho, McCulloch, Jeff Davis, Hudspeth, El Paso, Pecos, Crockett, Schleicher, Menard, Mason, Presidio, Brewster, Terrell, Sutton, and Kimble)
51. Texas—Houston (including the counties of Shelby, Nacogdoches, San Augustine, Sabine, Houston, Trinity, Angelina, Walker, San Jacinto, Polk, Tyler, Jasper, Newton, Montgomery, Liberty, Hardin, Orange, Waller, Harris, Chambers, Jefferson, Galveston, Brazoria, Fort Bend, Austin, Colorado, Wharton, and Matagorda)
52. Texas—Lubbock (including the counties of Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Grey, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Hardeman, Foard, Wilbarger, Witchita, Clay, Montague, Jack, Young, Archer, Baylor, King, Dickens, Crosby, Lubbock, Kockley, Cochran, Yoakum, Terry, Lynn, and Garza)
53. Texas—San Antonio (including the counties of Val Verde, Edwards, Kerr, Gillespie, Real, Bandera, Kendall, Kinney, Uvalde, Medina, Bexar, Comal, Guadalupe, Gonzales, Lavaca, Dewitt, Karnes, Wilson, Atascosa, Frio, Zavala, Maverick, Dimmit, LaSalle, McMullen, Live Oak, Bee, Goliad, Victoria, Jackson, Calhoun, Refugio, Aransas, San Patricio, Nueces, Jim Wells, Duval, Webb, Kleberg, Kenedy, Brooks, Jim Hogg, Zapata, Starr, Hidalgo, Willacy, and Cameron)
54. Chicago—Metropolitan (Winnebago, McHenry, Cook, Kane, Kendall, Grundy, Boone, Lake, DuPage, DeKalb, Will, and Kankakee Counties, Illinois; Kenosha, Milwaukee, Washington, Dodge, Walworth, Jefferson, Racine, Ozaukee, Waukesha, Dane, and Rock Counties, Wisconsin; Lake, La Porte, Jasper, Starke, St. Joseph, Porter, Newton, Pulaski, Marshall and Elkart Counties, Indiana; Ottawa, Kent, Van Buren, Kalamazoo, Barry, Muskegon, Allegan, Berrien, Cass, and St. Joseph Counties, Michigan)
55. New York—Buffalo (including the counties of Niagara, Chemung, Schuyler, Seneca, Erie, Chautauqua, Cattaraugus, Allegany, Wyoming, Genesee, Orleans, Monroe, Livingston, Steuben, Ontario, Wayne, and Yates)

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-7847 Filed 4-8-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 1

[CC Docket No. 86-498; FCC 88-91]

Amendment of Procedures To Be Followed Where Formal Complaints Are Filed Against Common Carriers

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This action disposes of a Notice of Proposed Rulemaking which was issued to revise the formal complaint rules to promote a more complete record for disposition of complaints, to improve the speed of resolving such complaints, and to clarify and simplify the rules.

EFFECTIVE DATE: May 13, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Zahrt or Gregory A. Weiss, Enforcement Division, Formal Complaints Branch, (202) 632-4887.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in CC Docket No. 86-498, Adopted March 1, 1988, and Released March 30, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Report and Order

1. The Commission has adopted revisions to its formal complaint rules substantially as proposed in the earlier Notice of Proposed Rulemaking in this proceeding, 52 FR 1939 (January 16, 1987), but including some modifications suggested by the commenting parties. The major changes in the rules include provisions for limited forms of discovery, including self-executing discovery in the form of interrogatories, filing of briefs, submission of legal and factual support by the parties, status conferences, and a section detailing general pleading requirements. The revision also includes a reorganization and simplification of the major pleadings in such cases.

Paperwork Reduction Act—Final Analysis

2. As discussed in [the section regarding the Regulatory Flexibility Act], the rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record-keeping, labeling, disclosure, or record-retention requirements, nor to increase or decrease burden hours imposed on the public. No comments were filed regarding this analysis. However, because the initial complaint rules were adopted prior to the Act's passage and were, thus, not submitted for approval to the Office of Management and Budget, we will submit these revised rules for approval.

Regulatory Flexibility Act—Final Analysis

3. *Need for Rules and Objective.* We have revised the formal complaint rules to improve efficiency, to facilitate a prompt resolution of such cases, to clarify and improve the rules and present them in a more orderly and understandable fashion, and to promote a well-developed and complete record for disposition of complaints. Our objective is to adopt amendments to the rules which will facilitate the prompt resolution of complaints, improve processing, and promote a fuller and better record in such cases.

4. *Issues Raised by the Public in Response to the Initial Analysis.* We received one comment, by USTA, which disagrees with the Initial Analysis which found that the proposed rules would not have a significant economic impact on small entities because the proposed changes would not alter existing burdens of proof. [Footnote omitted.] While USTA supports our proposal to limit discovery to written interrogatories, USTA asserts that the addition of proposals to permit self-executing discovery procedures will affect the administrative burdens imposed on small carriers, because these carriers will potentially suffer the greatest hardship in complying with extensive discovery requests. It asks the Commission to allow small carriers greater latitude in meeting the requirements imposed by the discovery rules. Regarding USTA's concerns, we noted in the NPRM that, although the earlier formal complaint rules did not expressly provide for discovery, the parties have always been ultimately responsible for proving and supporting their positions and have often been required to provide additional information beyond the initial set of pleadings to prove a point or defend a position. The adoption of a limited vehicle for discovery through interrogatories merely formalizes this tool as a means for achieving an adequate record for disposition. However, we have taken into account USTA's concerns in our deliberations over the rules which we are adopting herein. As a result of its comment, and those of other parties, we have modified our discovery proposal to ensure that it is not burdensome by limiting the number of interrogatories which can be propounded without our approval and by enlarging the time to respond to such questions. We have also reemphasized our commitment to closely monitor this discovery process to prevent abuse or hardship.

5. *Alternatives that would lessen impact.* We initially concluded in the NPRM that there were no satisfactory alternatives which would lessen the impact on small entities, since the alternative would be to take no steps to improve the complaint process. We have reduced these burdens whenever possible, but have retained the rules substantially as proposed in order to provide the least intrusive means for parties to develop an accurate and adequate record for disposition of formal complaints. We will continue to examine alternatives or revisions in the future with the objective of creating the most efficient and least intrusive means for developing a record in formal complaint cases.

Ordering Clauses

6. Authority for this rulemaking is contained in sections 1, 4(i), 208, and 403 of the Communications Act, 47 U.S.C. 151, 154(i), 208, and 403, and section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

7. Accordingly, it is ordered that the Rules and Regulations of the Federal Communications Commission are amended in the manner indicated below, effective May 13, 1988.

8. It is further ordered that this proceeding is terminated.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

Rules Changes

Part 1 (Practice and Procedure) of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

§ 1.47 [Amended]

2. Section 1.47(b) is amended to remove the phrase "including supplemental, cross, and amended complaints,".

§ 1.713 [Removed]

3. Section 1.713 is removed.

4. The Table of Contents for Formal Complaints, §§ 1.720–1.734, is revised to read as follows:

Formal Complaints

Sec.

1.720 General pleading requirements.
1.721 Form and content.
1.722 Damages.
1.723 Joinder of complainants and causes of action.
1.724 Answers.
1.725 Cross complaints.
1.726 Replies.
1.727 Motions.
1.728 Formal complaints not stating a cause of action; defective pleadings.
1.729 Interrogatories to parties.
1.730 Other forms of discovery.
1.731 Other required written submissions.
1.732 Status conference.
1.733 Specifications as to pleadings, briefs, and other documents; subscription.
1.734 Copies; service; separate filings against multiple defendants.

5. Section 1.720 is added to read as follows:

§ 1.720 General pleading requirements.

Formal complaint proceedings are generally resolved on a written record consisting of a complaint, answer and reply but may also include other written submissions such as briefs and written

interrogatories. All written submissions, both substantive and procedural, must conform to the following standards:

(a) Pleadings must be clear, concise, and explicit. All matters concerning a claim, defense or requested remedy, including damages, should be pleaded fully and with specificity.

(b) Pleadings must contain facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation, or a defense to such alleged violation.

(c) Facts must be supported by relevant documentation or affidavit.

(d) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority.

(e) Opposing authorities must be distinguished.

(f) Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.

(g) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(h) Specific reference must be made to any tariff provision relied on in support of a claim or defense. Parties are encouraged to provide copies of the tariff or relevant portions thereof.

6. Section 1.721 is revised to read as follows:

§ 1.721 Format and content.

(a) A formal complaint shall contain:

(1) The name of each complainant and defendant;

(2) The occupation, address and telephone number of each complainant and, to the extent known, each defendant;

(3) The name, address, and telephone number of complainant's attorney, if represented by counsel;

(4) Citation to the section of the Communications Act and/or order and/or regulation of the Commission alleged to have been violated.

(5) A complete statement of facts which, if proven true, would constitute such a violation;

(6) Complete identification or description, including relevant time period, of the communications, transmissions, services, or other carrier conduct complained of and nature of the injury sustained;

(7) The relief sought, including recovery of damages and the amount of damages claimed, if known; and

(8) Whether suit has been filed in any court or other government agency on the basis of the same cause of action.

(b) The following format may be used in cases to which it is applicable, with such modifications as the circumstances may render necessary:

Before the Federal Communications Commission, Washington, DC 20554

In the matter of

Complainant,

v.

Defendant.

File No. (To be inserted by the Common Carrier Bureau)

Complaint

To: The Commission.

The complainant (here insert full name of each complainant and, if a corporation, the corporate title of such complainant) shows that:

1. (Here state occupation, post office address, and telephone number of each complainant).

2. (Here insert the name, occupation and, to the extent known, address and telephone number of defendants).

3. (Here insert fully and clearly the specific act or thing complained of, together with such facts as are necessary to give a full understanding of the matter, including relevant legal and documentary support).

Wherefore, complainant asks (here state specifically the relief desired).

(Date)

(Name of each complainant)

(Name, address, and telephone number of attorney, if any)

7. Section 1.722 is revised to read as follows:

§ 1.722 Damages.

(a) In case recovery of damages is sought, the complaint shall contain appropriate allegations showing such evidence that will identify, with reasonable certainty, the amount of damages for which recovery is sought.

(b) Damages will not be awarded upon a complaint unless specifically requested. Damages may be awarded, however, upon a supplemental complaint based upon a finding of the Commission in the original proceeding. *Provided that:*

(1) If recovery of damages or overcharges is first sought by supplemental complaint, such supplemental complaint must be filed within, and recovery is limited to, the statutory periods of limitations contained in section 415 of the Communications Act;

(2) A claim for recovery of damages contained in a supplemental complaint based on a finding of the Commission in the original proceeding which meets the requirements of paragraph (a) of this section shall relate back to the filing date of the original formal complaint if:

(i) The original complaint clearly and unequivocally requests the recovery of damages (even if the precise amount and other specific details are unknown), and

(ii) Such supplemental complaint is filed no later than 60 days after public notice (as defiend in § 1.4(b) of the Rules) of a decision on the merits of the original complaint.

8. Section 1.723 is revised to read as follows:

§ 1.723 Joinder of complainants and causes of action.

(a) Two or more complainants may join in one complaint if their respective causes of action are against the same defendant and concern substantially the same facts and alleged violation of the Communications Act.

(b) Two or more grounds of complaint involving the same principle, subject, or statement of facts may be included in one complaint, but should be separately stated and numbered.

9. Section 1.724 is revised to read as follows:

§ 1.724 Answers.

(a) Any carrier upon which a copy of a formal complaint, supplemental complaint, amended complaint, or cross complaint is served under this subpart shall answer within 30 days of service of the pleading to which the answer is made, unless otherwise directed by the Commission.

(b) The answer shall advise the parties and the Commission fully and completely of the nature of any defense and shall respond specifically to all material allegations of the complaint. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Any party failing to file and serve an answer within the time and in the manner prescribed by these rules may be deemed in default and an order may be entered against defendant in accordance with the allegations contained in the complaint.

(c) A party shall state concisely its defenses to each claim asserted and shall admit or deny the averments on which the adverse party relies. If the party is without knowledge or information sufficient to form a belief as

to the truth of an averment, the party shall so state and this has the effect of a denial. When a pleader intends in good faith to deny only part of an averment, the pleader shall specify so much of it as is true and shall deny only the remainder. The pleader may make its denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits. When the pleader intends to controvert all averments, the pleader may do so by general denial.

(d) Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are deemed to be admitted when not denied in this responsive pleading.

10. Section 1.725 is revised to read as follows:

§ 1.725 Cross complaints.

A cross complaint, seeking any relief within the jurisdiction of the Commission against any carrier which is a party (complainant or defendant) to the proceeding, may be filed by a defendant with its answer. For the purpose of this subpart, the term "cross complaint" shall include counterclaim.

11. Section 1.726 is revised to read as follows:

§ 1.726 Replies.

Within 10 days after service of an answer, a complainant may file and serve a reply which shall be responsive to matters contained in the answer or amended answer and shall not contain new matters. Failure to reply will not be deemed an admission of any allegations contained in the answer, except with respect to any affirmative defenses set forth therein.

12. Section 1.727 is revised to read as follows:

§ 1.727 Motions.

(a) A request to the Commission for an order shall be by written motion, stating with particularly the grounds and authority therefor, and setting forth the relief or order sought.

(b) A motion that the allegations in the complaint be made more definite and certain shall be filed within 15 days after service of a complaint by the Commission.

(c) Where the matter involved in the motion is one of procedure or discovery, the moving party shall provide a proposed order for adoption, which appropriately incorporates the basis therefor.

(d) A party opposing any motion concerning procedure or discovery shall also provide a proposed order for adoption, which appropriately incorporates the basis therefor.

(e) Oppositions and replies to oppositions shall be filed in accordance with the pleading and filing period requirements of § 1.45 (a) and (b).

13. Section 1.728 is revised to read as follows:

§ 1.728 Formal complaints not stating a cause of action; defective pleadings.

(a) Any document purporting to be a formal complaint which does not state a cause of action under the Communications Act will be dismissed. In such case, any amendment or supplement to such document will be considered a new filing which must be made within the statutory periods of limitations of actions contained in section 415 of the Communications Act.

(b) Any other pleading filed in a formal complaint proceeding not in conformity with the requirements of the applicable rules in this part may be deemed defective. In such case the Commission may strike the pleading or request that specified defects be corrected and that proper pleadings be filed with the Commission and served on all parties within a prescribed time as a condition to being made a part of the record in the proceeding.

14. Section 1.729 is revised to read as follows:

§ 1.729 Interrogatories to parties.

(a) During the time period beginning with service of the complaint and ending 30 days after the date a reply is due to be filed, any party may serve any other party written interrogatories, to be answered in writing by the party served or, if the party served is a public or private corporation or partnership or association, by any officer or agent who shall furnish such information as is available to the party. Parties shall propound no more than 30 single interrogatories without prior Commission approval. Subparts of an interrogatory will be counted as separate interrogatories for purposes of compliance with this limit. This procedure may be used for the discovery of any nonprivileged matter which is relevant to the pleadings. Interrogatories may not be employed for the purpose of delay, harassment or to obtain information which is beyond the scope of permissible inquiry relating to the subject matter of the pleadings.

(b) Parties on whom interrogatories are served shall respond without waiting to be ordered to do so by the Commission. Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them. The party on whom the interrogatories were served shall serve a copy of the answers and objections, if any, within 30 days after service of the interrogatories, except that a defendant may serve answers or objections within 15 days after filing its answer to the complaint, whichever period is longer. On proper motion being made, the Commission may allow a shorter or longer time for the filing of answers or objections.

(c) Where the responding party has failed to respond, or has objected, to any interrogatory, the party propounding the interrogatories may, within 15 days of the date the response was due if no response is filed or the date of service of the objection, move to compel a response thereto. The motion should state with specificity the relevance of and necessity for the requested information and must also comply with the requirements of § 1.727 hereof, pertaining to motions generally. Alternatively, the party may request that answers to interrogatories be discussed during a status conference, pursuant to § 1.732 hereof.

(d) Interrogatories and responses or objections thereto must be filed with the Commission in accordance with § 1.734.

15. Section 1.730 is revised to read as follows:

§ 1.730 Other forms of discovery.

(a) If a party believes it needs to engage in some form of discovery other than by written interrogatories under § 1.729, including but not limited to the production of documents, the taking of depositions, or the propounding of additional interrogatories, the party may file a motion with the Commission requesting that such discovery be permitted. The motion should state with specificity the type of discovery requested, the information which is expected to be elicited, the relevance of such information to the resolution of the proceeding, and must also comply with the requirements of § 1.727 of this part pertaining to motions generally. Such motions will not be routinely granted except for good cause shown.

(b) The party from whom the discovery is sought may file an opposition to a motion seeking discovery within 10 days after the motion is filed. No reply is permitted.

(c) Motions seeking discovery may be filed only during the period beginning with the filing of the complaint and ending 30 days after the date a reply is due to be filed or 30 days after responses to interrogatories under

§ 1.729 are filed, whichever period is longer, except where the movant demonstrates that the need for such discovery could not, even with due diligence, have been ascertained within this period.

16. Section 1.731 is revised to read as follows:

§ 1.731 Other required written submissions.

(a) The Commission may, in its discretion, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence. These briefs shall contain the findings of fact and conclusions of law which that party is urging the Commission to adopt, with specific citation to the record, and supported by relevant authority and analysis.

(b) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including affidavits and exhibits.

17. Section 1.732 is revised to read as follows:

§ 1.732 Status conference.

(a) In any complaint proceeding, the Commission may in its discretion direct the attorneys and/or the parties to appear before it for a conference to consider:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of amendments to the pleadings, or of additional pleadings or evidentiary submissions;

(3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(4) Settlement of the matters in controversy by agreement of the parties;

(5) The necessity for and extent of discovery;

(6) The need and schedule for filing briefs, and the date for further conferences; and

(7) Such other matters that may aid in the disposition of the complaint.

(b) While a conference normally will be scheduled after the reply has been filed, or after the filing date for replies if no reply has been filed, any party may request that a conference be held at any time after the complaint has been filed.

(c) Conferences will be scheduled by the Commission at such time and place as it may designate, to be conducted in person or by telephone conference call.

(d) The failure of any attorney or party, following reasonable notice, to appear at a scheduled conference will be deemed a waiver and will not preclude the Commission from conferring with those parties or counsel present.

18. Section 1.733 is revised to read as follows:

§ 1.733 Specifications as to pleadings, briefs, and other documents; subscription.

(a) All papers filed in any formal complaint proceeding must be drawn in conformity with the requirements of §§ 1.49 and 1.50.

(b) All averments of claims or defenses in complaints and answers shall be made in numbered paragraphs. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded on a separate transaction or occurrence and each affirmative defense shall be separately stated to facilitate the clear presentation of the matters set forth.

(c) The original of all pleadings and other submissions filed by any party shall be signed by that party, or by the party's attorney. The signing party shall state his or her address and telephone number and the date on which the document was signed. Copies should be conformed to the original. Except when otherwise specifically provided by rule or statute, pleadings need not be verified. The signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose.

19. Section 1.734 is revised to read as follows:

§ 1.734 Copies; service; separate filings against multiple defendants.

(a) Complaints may generally be brought against only one named carrier; such actions may not be brought against multiple defendants unless the defendant carriers are commonly owned or controlled, are alleged to have acted in concert, are alleged to be jointly liable to complainant, or the complaint concerns common questions of law or fact. Complaints may, however, be consolidated by the Commission for disposition.

(b) The complainant must file an original plus three copies of the complaint with the Commission. However, if the complaint is addressed against multiple defendants, complainant shall supply three additional copies of the complaint for each additional defendant.

(c) Generally, a separate file is set up for each defendant. An original plus two copies shall be filed of all pleadings and documents, other than the complaint, for each file number assigned.

(d) The Commission will serve a copy of any formal complaint filed with it on the named defendant, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy the complaint or to answer the complaint in writing within the time specified in the notice.

(e) All subsequent pleadings and briefs filed in any formal complaint proceeding, including any supplemental, amended, or cross complaint, as well as all letters, documents or other written submissions, shall be served by the filing party on all other parties to the proceeding, together with a proof of such service in accordance with the requirements of § 1.47.

(f) The parties to any complaint proceeding may be required to file additional copies of any or all papers filed in the proceeding.

§ 1.735 [Removed]

20. Section 1.735 is removed.

[FR Doc. 88-7843 Filed 4-8-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 2, 22, and 94

[PR Docket No. 87-5; FCC 88-68]

Amendment of Use of the 928-960 MHz Band for Point-to-Multipoint Operations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the Commission's Rules and Regulations governing point-to-multipoint operations in the 928-960 MHz band. The action is taken to promote spectrum efficiency, increase flexibility, and aid in the development of new technologies.

EFFECTIVE DATE: May 11, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC, 20554.

FOR FURTHER INFORMATION CONTACT: Herb Zeiler, Private Radio Bureau (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order PR Docket No. 87-5, adopted February 25, 1988, and released March 14, 1988. The full text of this Commission decision is available for inspection and

copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC, 20037, telephone (202) 857–3800.

Summary of Report and Order

1. On January 25, 1987, the Commission adopted a Notice of Proposed Rule Making (Notice), PR Docket 87–5, 52 FR 4161, initiating a comprehensive review of the regulations and policies governing 900 MHz multiple address system (MAS) operations. The Notice contained specific proposals to (1) reduce the standard bandwidth to 12.5 kHz; (2) make frequencies allocated to the power pool available to all part 94 eligibles; (3) allow mobile meter reading on unpaired MAS frequencies on a primary basis; (4) allow MAS master stations to communicate with one another; (5) establish a standard co-channel mileage separation for licensing 900 MHz MAS stations; and (6) continue to license one-way systems only on the unpaired frequencies.

2. Based on the record of this proceeding the Commission has adopted the rules as proposed in the Notice with certain modifications. The Commission also made several additional rule modifications and clarifications.

3. By this Report and Order the Commission reduced the standard MAS bandwidth to 12.5 kHz but still provided for up to 50 kHz bandwidths, if needed. In reducing the bandwidth, the Commission also tightened the frequency tolerance requirement for remote stations operating at 12.5 kHz to 1.5 parts per million. The Commission also adopted its proposals to allow remote meter reading on unpaired frequencies on a primary basis and to allow master to master communications. The Commission concluded that such changes would promote spectrum efficiency and aid in the development of new technologies.

4. The Commission modified slightly its proposals regarding spectrum allotment, standard co-channel mileage separation, and mixed operation (one-way and two-way) on the frequency pairs. In regard to spectrum allotment, the Commission decided to maintain the two frequency pool concept. To ensure that frequencies assigned in one pool, however, do not remain unused while the needs of users in the other pool go unmet, the new rules provide for interpool sharing beginning January 1, 1992. The Commission also decided to adopt a co-channel mileage separation of 75 miles rather than the 110-mile separation proposed. As for mixed operation, the Commission decided that paired frequencies should be used primarily for two-way requirements, but that ancillary one-way communications on a frequency pair would be permitted since it furthers the objective of increasing spectrum efficiency. Requests for one-way use on the paired frequencies will be addressed by the Commission on a case-by-case basis. Again, these actions were taken to alleviate frequency congestion and promote greater flexibility.

5. In addition to these changes, the Commission modified the emission standards and clarified the definition of a multiple address system, master station, and a remote station.

Final Regulatory Flexibility Analysis

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, the Commission's final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

Paperwork Reduction

7. The action herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

8. Accordingly, *it is ordered*, that pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Parts 2, 22, and 94 of the Commission's Rule are *amended* effective May 11, 1988, as shown at the end of this document.

9. *It is further ordered* that this proceeding is *terminated.*

List of Subjects in 47 CFR Parts 2, 22, and 94

Private microwave systems, Multiple address systems, Radio, Frequency allocations.

47 CFR Parts 2, 22, and 94 of the Commission's Rules are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for Part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 2.106 is amended by revising footnote NG120 to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

Non-Government (NG) Footnotes

* * * * *

NG120 Frequencies in the 928–960 MHz band may be assigned for multiple address systems and mobile operations on a primary basis as specified in Part 94 of this chapter.

* * * * *

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.501 is amended by revising paragraph (g)(2) to read as follows:

§ 22.501 Frequencies.

* * * * *

(g) * * *

(2) Upon an affirmative showing that frequencies shown in § 22.501(g)(1) of this part are not available, frequencies listed in Tables 1 and 2 of § 94.65(a)(1) of this chapter (Private Operational-Fixed Microwave Service) may be authorized for common carrier point-to-multipoint operations. After January 1, 1992, frequencies available in Tables 3 and 4 of § 94.65(a)(1) of this chapter also may be used for such operations. Operations on any of these frequencies shall be subject to the requirements of Part 94 of this chapter.

* * * * *

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation for Part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082, 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.3 is amended by revising the definitions of Master station, Multiple address, and Remote station.

§ 94.3 Definitions.

* * * * *

Master station. A station in a multiple address radio system that controls, activates, or interrogates four or more remote stations. Master stations performing such functions may also

receive transmissions from remote stations.

* * * * *

Multiple address system (MAS). A multiple address radio system is a point-to-multipoint communications system, either two-way or one-way, utilizing frequencies listed in § 94.65(a)(1) of this part and serving a minimum of four remote stations. If a master station is part of the multiple address system, the remote stations must be scattered over the service area in such a way that more than two separate point-to-point systems would be needed to serve those remotes.

* * * * *

Remote station. A fixed station in a multiple address radio system that transmits one-way to one or more receive central sites, controls a master station, or is controlled, activated, or interrogated by, and may respond to, a master station.

* * * * *

3. Section 94.15 is amended by revising paragraph (g) to read as follows:

§ 94.15 Policy governing the assignment of frequencies.

* * * * *

(g) Except as provided in paragraph (h) of this section, applicants requiring multiple transmit frequencies employed on separate paths from a single station location will not normally be authorized more than four of the transmit frequencies available in the band. Further, master and remote stations using frequencies listed in § 94.65(a)(1) of this part will not normally be authorized more than four (12.5 KHz) frequencies or frequency pairs.

* * * * *

4. Section 94.25 is amended by revising paragraph (j) to read as follows:

§ 94.25 Filing of applications.

* * * * *

(j) For stations operating on frequencies listed in § 94.65(a)(1) of this part, applications may include any number of remote stations in a single application, but must specify the geographic service area of the applicant in which these remote stations will be located. A separate application must be filed for each fixed master station. Applications for mobile operations or for systems employing only remote stations must designate a reference point (set of coordinates) at or near the center of the area being served.

5. Section 94.31 is amended by adding a new paragraph (k) to read as follows:

§ 94.31 Supplemental information to be submitted with application.

* * * * *

(k) For applications involving fixed multiple address system master stations, the antenna height above average terrain (HAAT). See § 90.309 for determining HAAT.

6. Section 94.63 is amended by revising paragraphs (d)(4)(i) and (d)(5) to read as follows:

§ 94.63 Interference protection criteria for operational fixed stations.

* * * * *

(d) * * *

(4) * * *

(i) For multiple address stations in the 928–960 MHz band a statement that the proposed system complies with the following co-channel separations from all existing stations and pending applications.

Fixed-to-fixed, 120.7 Km (75 miles)
Fixed-to-mobile, 104.6 Km (65 miles)
Mobile-to-mobile, 80.5 Km (50 miles)

Multiple address systems employing only remote stations will be treated as mobile for the purposes of determining the appropriate separation. For mobile operation, the mileage is measured from the reference point specified on the license application.

* * * * *

(5) Multiple address frequencies in the 956 MHz band may be assigned for use by mobile master stations on a primary basis. Multiple address frequencies in the 952 MHz band may be assigned for use by mobile master stations on a case-by-case basis. Mobile operation in the 952 MHz band shall be on a secondary basis to fixed operations.

* * * * *

7. Section 94.65 is amended by revising the heading for paragraph (a) and paragraph (a)(1); redesignating paragraphs (a)(2), (a)(3) and (a)(4) to read (a)(2)(i), (a)(2)(ii), and (a)(2)(iii), respectively and revising the heading for each paragraph and adding a new heading for paragraph (a)(2) to read as follows:

§ 94.65 Frequencies.

* * * * *

(a) *928–960 MHz*—(1) *Multiple Address System frequencies.* Multiple address system (MAS) frequencies are available for the point-to-multipoint transmission of a licensee's products or services, excluding video entertainment material, to a licensee's customer or for its own internal communications. The paired frequencies listed in this section shall be used for two-way interrogate/response communications between a

master station and remote stations. Each master station operating on one of the paired channels is required to serve a minimum of four separate active remote stations. Ancillary one-way communications on paired frequencies are permitted on a case-by-case basis. Ancillary communications between interrelated master stations are permitted on a secondary basis. The normal bandwidth assigned will be 12.5 kHz. Upon adequate justification, however, additional contiguous channels may be authorized to provide up to a 50 kHz bandwidth. Tables 2, 4, and 6 list frequencies with 25 kHz bandwidth. When licensed for a larger bandwidth, the system still is required to use equipment which meets the ±0.00015 percent tolerance requirement. (See § 94.67(a) of this part). Systems licensed as of May 1, 1988, operating on the 25 kHz channels listed in these tables will be grandfathered indefinitely.

(i) *General Access Pool:* Frequencies listed in this paragraph are available to all persons eligible under Part 94 for use in multiple address radio systems. Except as noted, however, the frequencies may be used by eligibles in the Power Radio Service only if the frequencies in § 94.65(a)(1)(ii) of this part are exhausted in the particular geographic area. The frequencies are also available for shared use by Part 22 Public Land Mobile Service users if frequencies listed in § 22.501(g) of this chapter are exhausted in the particular geographic area. Applications for use of these frequencies under Part 22 shall be subject to Part 94 requirements.

TABLE 1.—PAIRED FREQUENCIES (MHz)

(12.5 kHz bandwidth)

Remote transmit	Master transmit
928.00625	952.00625
928.01875	952.01875
928.03125	952.03125
928.04375	952.04375
928.05625	952.05625
928.06875	952.06875
928.08125	952.08125
928.09375	952.09375
928.10625	952.10625
928.11875	952.11875
928.13125	952.13125
928.14375	952.14375
928.15625	952.15625
928.16875	952.16875
928.18125	952.18125
928.19375	952.19375
928.20625	952.20625
928.21875	952.21875
928.23125	952.23125
928.24375	952.24375
928.25625	952.25625
928.26875	952.26875
928.28125	952.28125
928.29375	952.29375
928.30625	952.30625
928.31875	952.31875
928.33125	952.33125
928.34375	952.34375

UNPAIRED FREQUENCIES (MHz)[1]

(12.5 kHz bandwidth)

956.25625	956.33125	956.39375
956.26875	956.34375	956.40625
956.28125	956.35625	956.41875
956.29375	956.36875	956.43125
956.30625	956.38125	956.44375
956.31875		

[1] Available to power eligibles regardless of whether frequencies in the power pool are exhausted.

TABLE 2.—PAIRED FREQUENCIES (MHz)

(25 kHz bandwidth)

Remote transmit	Master transmit
928.0125	952.0125
928.0375	952.0375
928.0625	952.0625
928.0875	952.0875
928.1125	952.1125
928.1375	952.1375
928.1625	952.1625
928.1875	952.1875
928.2125	952.2125
928.2375	952.2375
928.2625	952.2625
928.2875	952.2875
928.3125	952.3125
928.3375	952.3375

UNPAIRED FREQUENCIES (MHz)[1]

(25 kHz bandwidth)

956.2625	956.3375	956.4125
956.2875	956.3625	956.4375
956.3125	956.3875	

[1] Available to power eligibles regardless of whether frequencies in the power pool are exhausted.

(ii) *Power Pool:* Frequencies listed in this paragraph are available to persons eligible under § 90.63 of this chapter for licensing in the Power Radio Service for use in multiple address radio systems. After January 1, 1992, the frequencies are also available for use by general access pool users and Part 22 Public Land Mobile Service users (§ 22.501(g) of this chapter) provided frequencies listed in their respective pools are exhausted in the particular geographic area. Applications for use of these frequencies under Part 22 of this chapter shall be subject to Part 94 of this chapter requirements.

TABLE 3.—PAIRED FREQUENCIES (MHz)

(12.5 kHz bandwidth)

Remote transmit	Master transmit
928.35625	952.35625
928.36875	952.36875
928.38125	952.38125
928.39375	952.39375
928.40625	952.40625
928.41875	952.41875
928.43125	952.43125
928.44375	952.44375
928.45625	952.45625
928.46875	952.46875
928.48125	952.48125
928.49375	952.49375
928.50625	952.50625

TABLE 3.—PAIRED FREQUENCIES (MHz)

(12.5 kHz bandwidth)

Remote transmit	Master transmit
928.51875	952.51875
928.53125	952.53125
928.54375	952.54375
928.55625	952.55625
928.56875	952.56875
928.58125	952.58125
928.59375	952.59375
928.60625	952.60625
928.61875	952.61875
928.63125	952.63125
928.64375	952.64375
928.65625	952.65625
928.66875	952.66875
928.68125	952.68125
928.69375	952.69375
928.70625	952.70625
928.71875	952.71875
928.73125	952.73125
928.74375	952.74375
928.75625	952.75625
928.76875	952.76875
928.78125	952.78125
928.79375	952.79375
928.80625	952.80625
928.81875	952.81875
928.83125	952.83125
928.84375	952.84375

TABLE 4.—PAIRED FREQUENCIES (MHz)

(25 kHz BANDWIDTH)

Remote transmit	Master transmit
928.3625	952.3625
928.3875	952.3875
928.4125	952.4125
928.4375	952.4375
928.4625	952.4625
928.4875	952.4875
928.5125	952.5125
928.5375	952.5375
928.5625	952.5625
928.5875	952.5875
928.6125	952.6125
928.6375	952.6375
928.6625	952.6625
928.6875	952.6875
928.7125	952.7125
928.7375	952.7375
928.7625	952.7625
928.7875	952.7875
928.8125	952.8125
928.8375	952.8375

(iii) *Frequencies listed in this paragraph are available for shared use by general access pool users for multiple address operations if frequencies listed in paragraph (a)(1)(i) of this section are exhausted in the particular geographic area:* The frequencies are also available to eligibles in the power pool provided there are no other frequencies available for the type of operation contemplated. The frequencies in this pool may be assigned for paired or unpaired operation. If paired, the corresponding lower frequency shall be for remote unit use. Applications for these frequencies shall be subject to the conditions outlined in § 22.27 of this chapter.

TABLE 5.—PUBLIC MOBILE SERVICE CATEGORY, FREQUENCIES (MHz)

(12.5 kHz BANDWIDTH)

Remote transmit	Master transmit
928.85625	959.85625
928.86875	959.86875
928.88125	959.88125
928.89375	959.89375
928.90625	959.90625
928.91875	959.91875
928.93125	959.93125
928.94375	959.94375
928.95625	959.95625
928.96875	959.96875
928.98125	959.98125
928.99375	959.99375

TABLE 6.—PUBLIC MOBILE SERVICE CATEGORY, FREQUENCIES (MHz)

(25 kHz BANDWIDTH)

Remote transmit	Master transmit
928.8625	959.8625
928.8875	959.8875
928.9125	959.9125
928.9375	959.9375
928.9625	959.9625
928.9875	959.9875

(iv) *Equivalent power and antenna heights for multiple address master stations:*

Antenna height (AAT) in feet	Maximum effective radiated power	
	Watts	dBm
Above 1,000	200	53
901–1,000	250	54
801–900	315	55
701–800	400	56
601–700	500	57
501–600	630	58
500 and below	1,000	60

For mobile operations the maximum ERP is 25 watts (44 dBm).

(2) Fixed point-to-point frequencies.

(i) Table 7 (50 kHz bandwidth).

* * * * *

(ii) Table 8 (100 kHz bandwidth)

* * * * *

(iii) Table 9 (200 kHz bandwidth)

* * * * *

8. Section 94.67 is amended by revising footnote 5 and the entry 928–929 MHz in the table and adding a new footnote 9 to read as follows:

§ 94.67 Frequency tolerance.

* * * * *

Frequency band (MHz)	Tolerance as percentage of assigned frequency
928–929	[9]0.0005

* * * * *

[5] For point-to-point systems, with a channel greater than or equal to 50 kHz bandwidth, .0005; for multiple address master stations, regardless of bandwidth, .00015; for multiple address remote stations with 12.5 kHz bandwidths, .00015; for multiple address remote stations with channels greater than 12.5 kHz bandwidth, .0005.

* * * * *

[9] For remote stations with 12.5 kHz bandwidth, the tolerance is ±.00015.

9. Section 94.71 is amended by revising frequency bands 928–929 and 952–960, and footnotes 6 and 7 in the table of paragraph (b), and paragraph (c)(2)(i); redesignating paragraphs (c) (3) and (4) as (c) (5) and (6); adding new (c) (3) and (4) and revising the introductory text of newly redesignated paragraphs (c) (5) and (6) to read as follows:

§ 94.71 Emission and bandwidth limitations.

* * * * *

(b) * * *

Frequency band (MHz)	Maximum authorized bandwidth
928–929.....	12.5, 25 kHz [1 7]
952–960.....	12.5, 25, 50, 100, 200 kHz [1 6]
*	* * * *

* * * * *

[6] A 12.5 bandwidth applies only to frequencies listed § 94.65(a)(1).

[7] For frequencies listed in § 94.65(a)(1), consideration will be given on a case-by-case basis to authorizing bandwidths up to 50 kHz.

(c) * * *

(2) * * *

(i) Except as noted in paragraph (c)(3) of this section, for operating frequencies below 15 GHz, in any 4 kHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels: $A=35+0.8(P-50)+10\log_{10}B$. (Attenuation greater than 80 decibels is not required.)

Where:

A=attenuation (in decibels) below the mean output power level

P=percent removed from the carrier frequency

B=authorized bandwidth in MHz.

* * * * *

(3) When using transmissions employing digital modulation techniques on the 900 MHz multiple address frequencies with a 12.5 kHz bandwidth, the power of any emission shall be attenuated below the unmodulated carrier power of the transmitter (P) in accordance with the following schedule:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (fd in kHz) of more than 2.5 kHz up to and including 6.25 kHz: At least 53 $\log_{10}$ (f_d/2.5) decibels;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 6.25 kHz up to and including 9.5 kHz: At least 103 $\log_{10}$ (f_d/3.9) decibels;

(iii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 9.5 kHz up to and including 15 kHz: At least 157 $\log_{10}$ (f_d/5.3) decibels;

(iv) On any frequency removed from the center of the authorized bandwidth by a displacement frequency greater than 15 kHz: At least 50 plus 10 $\log_{10}$(P) or 70 decibels, whichever is the lesser attenuation.

(4) When using transmissions employing digital modulation techniques on the 900 MHz multiple address frequencies with a bandwidth greater than 12.5 kHz, the power of any emission shall be attenuated below the unmodulated carrier power of the transmitter (P) in accordance with the following schedule:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 5 kHz up to and including 10 kHz: At least 83 $\log_{10}$ (f_d/5) decibels;

(ii) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 10 kHz up to and including 250 percent of the authorized bandwidth: At least 116 $\log_{10}$ (f_d/6.1) decibels or 50 plus 10$\log_{10}$(P) or 70 decibels, whichever is the lesser attenuation;

(iii) On any frequency removed from the center of the authorized bandwidth by more than 250 percent of the authorized bandwidth: At least 43 plus 10 $\log_{10}$(output power in watts) decibels or 80 decibels, whichever is the lesser attenuation.

(5) For Digital Transmission System channels operating in the 10,550–10,680 MHz band:

* * * * *

(6) For Digital Termination System channels operating in the 17,000–19,700 MHz band:

* * * * *

10. The Table in § 94.73 is amended by revising footnotes 1 and 3 to read as follows:

§ 94.73 Power limitations.

(a) * * *

1 For multiple address operations see § 94.65(a)(1)(iv) of this part.

* * * * *

3 For multiple address operations see § 94.65(a)(1)(iv) of this part. When an omnidirectional transmitting antenna is authorized in the 2150–2160 MHz band, the maximum power shall be 60dBm.

* * * * *

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–7451 Filed 4–8–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 15

[General Docket No. 86–422; FCC 88–101]

Control and Security Alarm Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts the regulations proposed in a Notice of Proposed Rule Making in Gen. Docket No. 86–422 (adopted October 22, 1986, FCC 86–463, 51 FR 46882). The changes to the regulations increase the level of spurious emissions permitted in the restricted frequency bands shown in § 15.205(a) of the regulations; implements a new measurement procedure for determining the average level of emissions from a pulsed system; and adopts a time frame within which all devices must comply with the regulations. This action was initiated by petitions for rule making filed by the Door Operator and Remote Controls Manufacturers Association, the Security Equipment Industry Association, and Transcience Industries.

EFFECTIVE DATE: April 11, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Technical Standards Branch, Office of Engineering and Technology, (202) 653–7313.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in Gen. Docket No. 86–422, FCC 88–101, adopted March 9, 1988, and released March 25, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230) 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

1. In the Notice of Proposed Rule Making (Gen. Docket No. 86–422, adopted October 22, 1986, FCC 86–463, 51 FR 46882), the Commission proposed to relax the emission limit in the restricted frequency bands above 1000 MHz, as shown in § 15.205(a) of the regulations, from 125 μV/m at 3 meters to 500 μV/m at 3 meters. This rule making also proposed to implement a new measurement method for determining the average level of emissions from a pulsed system and a time frame for deleting the existing stay and waiver provisions (see *Order Granting Partial Stay*, FCC 84–12, adopted January 12, 1984, and *Order Granting Waiver in Part*, FCC 84–18, adopted January 16, 1984).

2. Eleven comments and four reply comments were filed in this proceeding. The Commission also incorporated comments filed by the National Telecommunications and Information Administration, Department of Commerce (NTIA) in this proceeding even though those comments were directed in response to a separate proceeding.

3. The majority of comments supported the Commission's proposals. The National Radio Astronomy Observatory (NRAO) stated that the proposed limit could cause interference to radio astronomy observations at distances of up to 51 km and requested that the emission limit be reduced to 15 μV/m at 3 meters or that the existing limit of 125 μV/m at 3 meters be retained. Pacific Bell and Nevada Bell objected to the proposed emission limit stating that interference to common carrier microwave operations in frequency bands above 1000 MHz could result. Genie Home Products, a division of Philips Home Products, Inc. (Genie), requested that the emission limit in the restricted frequency bands above 1000 MHz be increased to 1000 μV/m at 3 meters and that manufacturers be permitted to continue to manufacture and market replacement devices produced under the stay or waiver provisions for a period of 10 years.

4. The Commission's primary concern is whether or not the proposed emission limit is sufficient to protect the safety and other sensitive radio services authorized to operate in the restricted frequency bands from harmful interference. The comments filed by the NTIA indicate that spurious and receiver emissions should be limited to 500 μV/m at 3 meters at frequencies above 960 MHz. However, emissions in the radio astronomy bands above 1000 MHz should continue to be limited to 125 μV/m at 3 meters.

5. The potential for interference to radio astronomy observations was discussed in the NRAO comments. However, NRAO calculated interference potential based on the interfering signal from a control and security alarm device being contained within the main beamwidth of the radio astronomy antenna. Such antennas have beamwidths on the order of minutes of arc to seconds of arc, making it unlikely that emissions from the Part 15 devices would be detected by the radio astronomy station. Furthermore, emissions at the frequency ranges of concern to NRAO generally are rapidly attenuated by intervening obstructions. Control and security alarm devices normally are located within enclosures that tend to reduce the level of any radiated emissions. No specific instances of interference from control and security alarm devices were identified by any of the commenting parties.

6. The comments filed by the Security Equipment Industry Association and the Door Operator and Remote Controls Manufacturers Association, representing a large portion of the manufacturers of control and security alarm devices, indicated that the proposed limits are technically and economically feasible. Based on the above, we believe that a limit of 500 μV/m at 3 meters is sufficient to protect against interference to operations in the restricted frequency bands.

7. No adverse comments were received on the new measurement method for determining the average level of emissions from a pulsed system. This method of measurement is adopted as proposed.

8. None of the regulations adopted herein would require a manufacturer to change their frequency of operation or to use a different method of modulating the signal. Thus, there is no reason to expect that equipment produced under the standards promulgated in this rule making would not be compatible with existing equipment. Therefore, the Commission finds no basis for adopting Genie's request to permit the continued manufacture of devices not complying with the provisions of this Order. The time frame for deleting the existing stay and waiver provisions is adopted as proposed.

9. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b) it is certified that the final rule will not have a significant economic impact on a substantial number of small entities. The adopted regulations relax the emission standards in certain frequency bands above 1000 MHz and delete existing provisions for stay or waiver of the regulations pertaining to these emissions.

10. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Ordering Clauses

11. According, *it is ordered* that under the authority contained in sections 4(i), 302, 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, that Part 15 of the Commission's Rules and Regulations *are amended* as set forth in the attached Appendix B. These rules and regulations are effective April 11, 1988. *It is further ordered* that the Order Granting Partial Stay, adopted January 12, 1984, and the Order Granting Waiver in Part, adopted January 16, 1984, for control and security alarm devices are rescinded in the following manner: effective April 11, 1990, all requests for equipment authorization for control and security alarm devices submitted to the Commission and, effective October 11, 1990, all control and security alarm devices manufactured or imported for marketing within the U.S. and its possessions must comply with the standards contained in §§ 15.201 through 15.215 of the regulations.

12. *It is further ordered* that this proceeding is terminated.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements, Security measures.

Rule Changes

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 is revised to read as follows:

Authority: Secs. 4, 302, 303, and 307 of the Communications Act of 1934, as amended; 47 U.S.C. 154, 302, 303, 307.

2. Section 15.122 is amended by revising the Note under paragraph (a) to read as follows:

§ 15.122 Periodic operation in the bands 40.66–40.70 MHz and above 70 MHz.

* * * * *

(a) * * *

Note.—For pulsed operation, the measured field strength shall be determined by averaging over one complete pulse train, including blanking intervals, as long as the pulse train does not exceed 0.1 seconds. As an alternative or in those cases where the pulse train exceeds 0.1 seconds, the measured field strength shall be determined from the averaged absolute voltage during a 0.1 second interval when the field strength is at its maximum value. The exact method of calculating the average field strength shall be submitted with any application for equipment authorization.

* * * * *

3. Section 15.184 is amended by revising the introductory text to read as follows:

§ 15.184 Interim requirements for operation above 70 MHz.

Manufacture and importation of a radio control for a door opener complying with all of the provisions of this section shall cease October 11, 1990. Applications for certification of devices operating under this section will not be accepted by the Commission after April 11, 1990.

* * * * *

§§ 15.201–15.215 [Amended]

4. The authority citation for §§ 15.201–15.215 is removed.

5. Section 15.205 is amended by removing the Note under paragraph (a), revising the introductory text of paragraph (a), adding new paragraphs (a)(1) and (a)(2), revising the Note under paragraph (b), and adding a new paragraph (f), to read as follows:

§ 15.205 Technical standards.

(a) Only spurious emissions shall be permitted within any of the frequency bands listed below. Spurious emissions from the transmitter, as well as radiated emissions from receivers associated with transmitters operating under these provisions, that fall within these frequency bands shall not exceed the designated emission limits.

* * * * *

(1) Emissions in these bands shall not exceed 15 μV/m at 3 meters on frequencies equal to or below 1000 MHz.

(2) Emissions in these bands on frequencies above 1000 MHz shall not exceed 500 μV/m at 3 meters or, based on the fundamental frequency of the transmitter, the spurious emission limits in paragraph (b) of this section, whichever is the lower value. A power density level may be measured to show the equivalent μV/m limit.

(b) * * *

Note.—For pulsed operation, the measured field strength shall be determined by averaging over one complete pulse train, including blanking intervals, as long as the pulse train does not exceed 0.1 seconds. As an alternative or in those cases where the pulse train exceeds 0.1 seconds, the measured field strength shall be determined from the averaged absolute voltage during a 0.1 second interval when the field strength is at its maximum value. The exact method of calculating the average field strength shall be submitted with any application for equipment authorization.

* * * * *

(f) For those devices produced under the provisions of the Commission's Order Granting Partial Stay, adopted January 12, 1984, FCC 84–12, or Order Granting Waiver in Part, adopted January 16, 1984, FCC 84–18, all requests for a grant of equipment authorization received as of April 11, 1990, and all equipment manufactured or imported after October 11, 1990, must comply with the provisions of §§ 15.201–15.215.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88–7845 Filed 4–8–88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–518; RM–5659]

Television Broadcasting Services;Yosemite Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Final Rule.

SUMMARY: This document allots UHF television Channel 41 to Yosemite Valley, California, as its first local video broadcast service, in response to a petition filed on behalf of Pappas Telecasting Incorporated.

However, this proposal is affected by the Commission's current freeze on allotments, or applications therefor, in certain metropolitan areas, since Yosemite Valley is located within the zone encompassed by Sacramento and Stockton, California, two of the specified communities. Thus, the application process for Channel 41 will be delayed until its availability is announced in a future action by the Commission. With this action, the proceeding is terminated.

EFFECTIVE DATE: May, 16, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the application filing process should be addressed to the Video Services Division, Television Branch, Mass Media Bureau, (202) 632–6357.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–518, adopted March 4, 1988, and released April 1,1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Television broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments, is amended under California, by adding Yosemite Valley, Channel 41.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88–7846 Filed 4–8–88; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 53, No. 69
Monday, April 11, 1988

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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1632

Public Observation of Meetings

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (the Board) was established by Pub. L. 99–335 (June 6, 1986), to administer the Thrift Savings Plan for Federal employees. Regulations of the Board are contained in Title 5 CFR (Chapter VI) Pars 1600 through 1699. The Executive Director of the Board is publishing in Part 1632 proposed regulations concerning procedures which will govern public meetings of the Board. These regulations implement the Government in the Sunshine Act (5 U.S.C. 552b).

DATE: Comments must be received by May 5, 1988.

ADDRESS: Comments may be sent to: John J. O'Meara, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: John J. O'Meara, (202) 523–6367.

SUPPLEMENTARY INFORMATION: The Federal Employees' Retirement System Act of 1986 established a five member Board which is responsible for policies governing investments and the administration of the Thrift Savings Plan. They are appointed by the President; howeve, the Speaker of the House of Representatives and the Majority Leader of the Senate each recommend one candidate for appointment. Initial appointments were for one-year terms, without the advice and consent of the Senate; however all subsequent appointments, will be made for multi-year terms with the advice and consent of the Senate. The Government in the Sunshine Act applies to any agency which is headed by a collegial body composed of two or more individual members, a majority of whom are appointed by the President with the advice and consent of the Senate. The initial Board members will serve until such time as a majority of the Board is confirmed by the Senate, at which time these regulations will apply to public meetings of the Board.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal government procedures applicable to the public meetings of the Board.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date.

Pursuant to 5 U.S.C. 553 (b)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. These Sunshine Act regulations are being issued as interim regulations because they must be effective before the Board conducts its first meeting that is open to public observation.

List of Subjects in 5 CFR Part 1632

Administrative practice and procedure, Sunshine Act, Information, Public meetings.

Federal Retirement Thrift Investment Board.

Francis, X. Cavanaugh,

Executive Director.

Title 5 of the Code of Federal Regulations is amended to add Part 1632 to Chapter VI to read as follows:

PART 1632—RULES REGARDING PUBLIC OBSERVATION OF MEETINGS

Sec.

1632.1 Purpose of scope.
1632.2 Definitions.
1632.3 Conduct of agency business.
1632.4 Meetings open to public observation.
1632.5 Exemptions.
1632.6 Public announcement of meetings.
1632.7 Meetings closed to public observation.
1632.8 Changes with respect to publicly announced meeting.
1632.9 Certification of General Counsel.
1632.10 Transcripts, recordings, and minutes.
1632.11 Procedures for inspection and obtaining copies of transcriptions and minutes.

Authority: 5 U.S.C. 552b and 5 U.S.C. 8474.

§ 1632.1 Purpose and scope.

This part is issued by the Federal Retirement Thrift Investment Board (Board) under section 552b of Title 5 of the United States Code, the Government in the Sunshine Act, to carry out the policy of the Act that the public is entitled to the fullest practicable information regarding the decision making processes of the Board while at the same time preserving the rights of individuals and the ability of the Board to carry out its responsibilities. These regulations fulfill the requirement of subsection (g) of the Act that each agency subject to the provisions of the Act shall promulgate regulations to implement the open meeting requirements of subsections (b) through (f) of the Act.

§ 1632.2 Definitions.

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

(a) The term "Act" means the Government in the Sunshine Act, 5 U.S.C. 552b.

(b) The term "Board" means the Federal Retirement Thrift Investment Board and subdivisions thereof.

(c) The term "meeting" means the deliberations of at least the number of individual agency members required to take action on behalf of the Board where such deliberations determine or result in the joint conduct or disposition of official Board business. However, this term does not include—

(1) Deliberations required or permitted by subsections (d) or (e) of the Act (relating to decisions to close all or a portion of a meeting, or to decisions on the timing or content of an announcement of a meeting), or

(2) The conduct or disposition of official agency business by circulating written material to individual members.

(d) The term "number of individual agency members required to take action on behalf of the agency" means three members.

(e) The term "member" means a member of the Board appointed under section 101 of the Federal Employees' Retirement System Act of 1986, 5 U.S.C. 8472.

(f) The term "public observation" means that the public shall have the right to listen and observe but not the right to participate in the meeting or to record any of the meeting by means of cameras or electronic or other recording devices unless approval in advance is obtained from the Secretary of the Board.

§ 1632.3 Conduct of agency business.

Members shall not jointly conduct or dispose of official Board business other than in accordance with this part.

§ 1632.4. Meetings open to public observation.

(a) Except as provided in § 1632.5 of this part, every portion of every meeting of the agency shall be open to public observation.

(b) The Freedom of Information Act, 5 U.S.C. 552, and the Board's implementing regulations, 5 CFR Part 1611, shall govern the availability to the public of copies of documents considered in connection with the Board's discussion of agenda items for a meeting that is open to public observation.

(c) The Board will maintain mailing lists of names and addresses of all persons who wish to receive copies of agency announcements of meetings open to public observation. Requests for announcements may be made by telephoning or by writing to the Public Affairs Office, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW., Washington, DC 20005.

§ 1632.5 Exemptions.

(a) Except in a case where the Board finds that the public interest requires otherwise, the Board may close a meeting or a portion or portions of a meeting under the procedures specified in § 1632.7 or § 1632.8 of this part, and withhold information under the provisions of §§ 1632.6, 1632.7, 1632.8, or 1632.11 of this part, where the Board properly determines that such meeting or portion of its meeting or the disclosure of such information is likely to:

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to internal personnel rules and practices;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of Title 5 of the United States Code), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) established particular criteria for withholding or refers to particular types of matters to be withheld;

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

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by a Federal agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Board or other Federal agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would:

(i) Be likely to (A) lead to significant speculation in currencies, securities, or commodities, or (B) significantly endanger the stability of any financial institution; or

(ii) Be likely to significantly frustrate implementation of a proposed action, except that paragraph (a)(9)(ii) of this section shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal; or

(10) Specifically concern the issuance of a subpoena, participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition of a particular case of formal agency adjudication pursuant to the procedures in section 554 of Title 5 of the United States Code or otherwise involving a determination on the record after opportunity for a hearing.

§ 1632.6 Public announcement of meetings.

(a) Except as otherwise provided by the Act, public announcement of meetings open to public observation and meetings to be partially or completely closed to public observation pursuant to § 1632.7 of this part will be made at least one week in advance of the meeting. Except to the extent such information is determined to be exempt from disclosure under § 1632.5 of this part, each such public announcement will state the time, place and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated to respond to requests for information about the meeting.

(b) If a majority of the members of the Board determines by a recorded vote that Board business requires that a meeting covered by paragraph (a) of this section be called at a date earlier than that specified in paragraph (a) of this section, the Board shall make a public announcement of the information specified in paragraph (a) of this section at the earliest practicable time.

(c) Changes in the subject matter of a publicly announced meeting, or in the determination to open or close a publicly announced meeting or any portion of a publicly announced meeting to public observation, or in the time or place of a publicly announced meeting made in accordance with the procedures specified in § 1632.9 of this part will be publicly announced at the earliest practicable time.

(d) Public announcements required by this section will be posted at the Board's External Affairs Office and may be made available by other means or at other locations as may be desirable.

(e) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding announcements and the name and telephone number of the official designated by the Board to respond to requests about the meeting, shall also be submitted for publication in the **Federal Register.**

§ 1632.7 Meetings closed to public observation.

(a) A meeting or a portion of a meeting will be closed to public observation, or information as to such meeting or portion of a meeting will be withheld, only by recorded vote of a majority of the members of the Board when it is determined that the meeting or the portion of the meeting or the withholding of information qualifies for exemption under § 1632.5. Votes by proxy are not allowed.

(b) Except as provided in paragraph (c) of this section, a separate vote of the members of the Board will be taken with respect to the closing or the withholding of information as to each meeting or portion thereof which is proposed to be closed to public observation or with respect to which information is proposed to be withheld pursuant to this section.

(c) A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to public observation or with respect to any information concerning such series of meetings proposed to be withheld, so long as each meeting or portion thereof in such series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in such series.

(d) Whenever any person's interests may be directly affected by a portion of the meeting for any of the reasons referred to in exemption (a)(5), (a)(6) or (a)(7) of § 1632.5 of this part, such person may request in writing to the Secretary of the Board that such portion of the meeting be closed to public observation. The Secretary, or in his or her absence, the Acting Secretary of the Board, shall transmit the request to the members and upon the request of any one of them a recorded vote shall be taken whether to close such meeting to public observation.

(e) Within one day of any vote taken pursuant to paragraphs (a) through (d) of this section, the agency will make publicly available at the Board's External Affairs Office a written copy of such vote reflecting the vote of each member on the question. If a meeting or a portion of a meeting is to be closed to public observation, the Board, within one day of the vote taken pursuant to paragraphs (a) through (d) of this section, will make publicly available at the Board's External Affairs Office a full written explanation of its action closing the meeting or portion of the meeting together with a list of all persons expected to attend the meeting and their affiliation, except to the extent such information is determined by the Board to be exempt from disclosure under subsection (c) of the Act and § 1632.5 of this part.

(f) Any person may request in writing to the Secretary of the Board that an announced closed meeting, or portion of the meeting, be held open to public observation. The Secretary, or in his or her absence, the Acting Secretary of the Board, will transmit the request to the members of the Board and upon the request of any member a recorded vote will be taken whether to open such meeting to public observation.

§ 1632.8 Changes with respect to publicly announced meetings.

The subject matter of a meeting or the determination to open or close a meeting or a portion of a meeting to public observation may be changed following public announcement under § 1632.6 only if a majority of the members of the Board determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible. Public announcement of such change and the vote of each member upon such change will be made pursuant to § 1632.6(c). Changes in time, including postponements and cancellations of a publicly announced meeting or portion of a meeting or changes in the place of a publicly announced meeting will be publicly announced pursuant to § 1632.6(c) by the Secretary of the Board or, in the Secretary's absence, the Acting Secretary of the Board.

§ 1632.9. Certification of General Counsel.

Before every meeting or portion of a meeting closed to public observation under § 1632.7 of this part, the General Counsel, or in the General Counsel's absence, the Acting General Counsel, shall publicly certify whether or not in his or her opinion the meeting may be closed to public observation and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting and the persons present, will be retained for the time prescribed in § 1632.10(d).

§ 1632.10 Transcripts, recordings, and minutes.

(a) The Board will maintain a complete transcript or electronic recording or transcription thereof adequate to record fully the proceedings of each meeting or portion of a meeting closed to public observation pursuant to exemption (a)(1), (a)(2), (a)(3), (a)(5), (a)(6), (a)(7) or (a)(9)(ii) of § 1632.5 of this part. Transcriptions of recordings will disclose the identity of each speaker.

(b) The Board will maintain either such a transcript, recording or transcription thereof, or a set of minutes that will fully and clearly describe all matters discussed and provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflecting the vote of each member on the question), for meetings or portions of meetings closed to public observation pursuant to exemptions (a)(8), (a)(9)(A) or (a)(10) of § 1632.5 of this part. The minutes will identify all documents considered in connection with any action taken.

(c) Transcripts, recordings or transcriptions thereof, or minutes will promptly be made available to the public in the External Affairs Office except for such item or items of such discussion or testimony as may be determined to contain information that may be withheld under subsection (c) of the Act and § 1632.5 of this part. These documents, disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription.

(d) A complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording or verbatim copy of a transcription thereof of each meeting or portion of a meeting closed to public observation will be maintained for a period of at least two years, or one year after the conclusion of any Board proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

§ 1632.11 Procedures for inspection and obtaining copies of transcriptions and minutes.

(a) Any person may inspect or copy a transcript, a recording or transcription, or minutes described in § 1632.10(c) of this part.

(b) Requests for copies of transcripts, recordings or transcriptions of recordings, or minutes described in § 1632.10(c) of this part shall specify the meeting or the portion of meeting desired and shall be submitted in writing to the Secretary of the Board, Federal Retirement Thrift Investment Board, 805 Fifteenth Street NW., Washington, DC 20005. Copies of documents identified in minutes may be made available to the public upon request under the provisions of 5 CFR Part 1630 (the Board's Freedom of Information Act regulations).

[FR Doc. 88-7865 Filed 4-8-88; 8:45 am]

BILLING CODE 6760-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 918

[Docket No. AO-162-A6]

Peaches Grown in Georgia; Hearing on Proposed Amendments of Marketing Agreement and Order No. 918

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Marketing Order No. 918 [7 CFR Part 918]. The marketing order, hereinafter referred to as the "order," regulates the handling of peaches grown in Georgia. The purpose of the hearing is to receive evidence on proposals to amend provisions of the order concerning: (1) Limiting the terms of office of committee members to six consecutive years; (2) changing committee voting procedures on size regulation recommendations by requiring one affirmative vote from each of the three growing districts; (3) authorizing container and pack regulations and container marking regulations; (4) adding authority for positive lot identification procedures for inspected peaches; (5) authorizing production research and marketing research and development projects; (6) requiring a referendum a minimum of every six years to determine if growers are in favor of continuing the marketing order; and (7) adding provisions concerning the confidentiality of information provided by handlers to be protected and specifying that the Secretary and the committee may verify the correctness of reports filed by handlers and compliance with recordkeeping requirements.

These proposals are intended to improve the administration, operation, and functioning of the marketing order.

DATE: The hearing will begin at 9:30 a.m., April 28, 1988.

ADDRESS: The hearing will be held at the U.S.D.A. Southeast Fruit and Tree Nut Laboratory, Georgia Highway 49 and U.S Interstate 75, Byron, Georgia 31008.

FOR FURTHER INFORMATION CONTACT: Copies of this notice of hearing may be obtained from Jerry N. Brown, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone: 202-475-5464, or John R. Toth, Officer-In-Charge, Southeast Marketing Field Office, Florida Citrus Mutual Building, 500 3rd Street NW., P.O. Box 2276, Winter Haven, Florida 33883-2276, telephone: 813-299-4770.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluding from the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

The Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*] seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and information impact of the proposals on small businesses.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601 *et seq.*], governing proceedings to formulate marketing agreements and marketing orders [7 CFR Part 900].

Proposals No. 1 through No. 7 have been submitted by the Georgia Peach Industry Committee. The Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture submitted Proposals Nos. 8 through 10. These proposals have not received the approval of the Secretary of Agriculture.

The public hearing is for the purpose of: (1) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the marketing agreement and order; (2) determining whether there is a need for the proposed amendments to the marketing agreement and order; and (3) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written materials in evidence at the hearing should be prepared to submit four copies of such material at the hearing and have any prepared testimony available for presentation at the hearing.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an exparte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel, except Regional Attorneys; the Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 918

Marketing agreements and orders, Peaches, Georgia.

1. The authority citation for 7 CFR Part 918 continues to read as follows:

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

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals:

PART 918—PEACHES GROWN IN GEORGIA

Proposal No. 1

Amend § 918.26 by adding a proviso to read as follows:

§ 918.26 Term of office.

* * * : *Provided*, That no member shall serve more than six full consecutive terms starting with the term beginning March 1, 1989.

Proposal No. 2

The last sentence of § 918.30(a) is revised to read as follows:

§ 918.30 Procedure.

(a) * * * For any decision of the Industry Committee to be valid, not less than five (5) affirmative votes shall be necessary: *Provided*, That any decision on minimum size regulations also shall require at least one (1) concurring vote from each district.

* * * * *

Proposal No. 3

Add a new § 918.61a to read as follows:

§ 918.61a Container regulation.

Whenever the Industry Committee deems it advisable to establish a container regulation for any variety or varieties of peaches, it shall recommend to the Secretary the size, capacity, weight, marking, or pack of the container, or containers, which may be used in the handling of these peaches. If the Secretary finds upon the basis of such recommendation or other information available that such container regulation would tend to effectuate the declared policy of the Act the Secretary shall establish such

regulation. Notice thereof shall be sent by the Industry Committee to all handlers of record.

Proposal No. 4

In connection with Proposal No. 3, the following conforming change is proposed:

§ 918.63 [Amended]

Section 918.63 is amended by changing the words "pursuant to § 918.60 and 918.61," in the first sentence to "pursuant to § 918.60 through 918.61a."

Proposal No. 5

Section 918.64 is amended by designating the current provisions as paragraph (a) and adding a new paragraph (b) to read as follows:

§ 918.64 Inspection.

* * * * *

(b) The Industry Committee may establish with the approval of the Secretary positive lot identification requirements for lots of peaches inspected and certified pursuant to this section. Whenever implemented, such requirements shall at least specify that upon inspection, all peaches shall be identified by tags, stamps, marks, or other means of identification prescribed by the Industry Committee, that such identification shall be affixed to the container by the handler under the supervision of the Industry Committee or designated inspector, and that such identification shall not be altered or removed except as directed by the Industry Committee. For the purposes of this section, lot means the aggregate quantity of peaches of the same variety, in like containers with like identification offered for inspection as a shipping unit.

Proposal No. 6

Insert the undesignated center heading "Research and Development," after § 918.71 and add § 918.72 to read as follows:

Research and Development

§ 918.72 Production research and market research and development.

The Industry Committee, with the approval of the Secretary, may establish or provide for the establishment of projects involving production research and marketing research and development designed to assist, improve or promote the marketing, distribution and consumption of peaches and the efficient production thereof. The expenses of such projects shall be paid from funds collected pursuant to § 918.41, or from any other sources approved by the Secretary.

Proposal No. 7

Amend § 918.81 by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 918.81 Termination.

* * * * *

(d) The Secretary shall conduct a referendum among growers every six years after the efective date of this amended subpart to ascertain whether continuance of this part is favored by growers. However when a continuance referendum is conducted pursuant to paragraph (c) of this section, this referendum shall be conducted six years after the referendum conducted pursuant to paragraph (c). The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of the fruit in the production area; except that termination of this part shall be effective only if announced on or before the last day of the then current fiscal period.

* * * * *

Proposal No. 8

Add a new § 918.76 to read as follows:

§ 918.76 Confidential information.

All data or other information constituting a trade secret or disclosing a trade position or business condition shall be received by, and kept in the custody of, one or more designated employees of the Industry Committee, and information which would reveal the circumstances of a single handler shall be disclosed to no person other than the Secretary.

Proposal No. 9

Add a new § 918.77 to read as follows:

§ 918.77 Verification of reports and records.

For the purpose of checking compliance with record keeping requirements and verifying reports filed by handlers, the Secretary and the Industry Committee through its duly authorized employees, shall have access to any premises where peaches are held and, at any time during reasonable business hours, shall be permitted to examine any peaches held, and any and all records with respect to matters within the purview of this part. Handlers shall furnish labor necessary to facilitate such examinations at no expense to the Industry Committee. All handlers shall maintain complete records which accurately show the quantity of peaches held, sold, and shipped. The Industry Committee, with the approval of the Secretary, may establish the type of records to be maintained. Such records shall be retained by handlers for not less than two years subsequent to the termination of each fiscal period.

Proposal No. 10

Make such changes as may be necessary to make the marketing agreement and order conform with any amendments thereto that may result from the hearing.

Dated: April 6, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-7875 Filed 4-8-88; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-88-3]

Petition for Rulemaking; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before June 10, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204),

Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 31, 1988.

Denise D. Hall,

Acting Manager, Program Management Staff.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Regulations affected	Description of petition
24171	National Rifle Association of America	14 CFR Part 108 § 108.9	To institute rulemaking to require airlines which are mandated to conduct screening under a security program to provide a location at which passengers may check their baggage before undergoing security screening and entering into the sterile area. The rule would ensure uniform procedures for the inspection, detention, and search of persons and property in air transportation

[FR Doc. 88-7881 Filed 4-8-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Parts 21 and 23

[Docket No. 052CE, Notice No. 23-ACE-40]

Special Conditions; Fairchild Models SA227-CC, SA227-DC, and SA228-AE Airplanes; Emergency Lighting System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Fairchild Aircraft Corporation Models SA227-CC, SA227-DC, and SA228-AE Airplanes incorporating an emergency lighting system as an aid for emergency evacuation. The applicable requirements for these airplanes neither contain a requirement for emergency lighting to aid in emergency evacuation, nor do they contain design standards, if an emergency lighting system is installed. These proposed special conditions contain the additional airworthiness standards which the Administrator finds necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATE: Comments must be received on or before May 11, 1988.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 052CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 052CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified in this notice will be considered by the Administrator before taking further action on these proposals. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available in the rules docket for examination by interested persons both before and after the closing date for submission of comments.

Type Certification Basis

The type certification basis for the Fairchild Aircraft Corporation Models SA227-CC, SA227-DC, and SA228-AE Airplane are as follows: Part 23 of the Federal Aviation Regulations, effective February 1, 1965, as amended by Amendments 23-1 through 23-34; Part 36, effective December 1, 1969, as amended by Amendments 36-1 through 36-13; and SFAR 27, effective January 1, 1984 as amended by Amendments 27-1 through 27-6.

Background

On February 17, 1987, Fairchild Aircraft Corporation, Post Office Box 32486, San Antonio, Texas 78284, made application to the FAA for a type certificate for the Fairchild Aircraft Corporation Model SA227-CC Airplanes which will incorporate an emergency lighting system. Later Fairchild Aircraft Corporation made application for Fairchild Aircraft Corporation Models SA227-DC and SA228-AE Airplanes, which will also incorporate the emergency lighting system and will have the same type certification basis.

Fairchild Aircraft Corporation plans to certify a 19-place commuter category airplane which incorporates three window exits and a main cabin door for egress from the airplane. In addition, they propose to install an emergency lighting system for use during emergency evacuation. The commuter category airplane certification standards require an emergency evacuation demonstration but it does not require an emergency lighting system; therefore, the standards do not contain design criteria should this system be installed.

Past emergency evacuation demonstrations on similar airplanes have shown that the most critical aspects of the emergency evacuation are for the passengers to locate and to open the emergency exits. The passenger cabin length is approximately 25 feet with the entrance door at one end of the cabin and the window exits located about the middle of the cabin.

Discussion

The installation of emergency lighting systems in these airplanes was not envisioned when the applicable requirements for the subject airplanes were promulgated.

Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) or § 21.101(b)(2) do not contain adequate or appropriate safety standards because of the novel and unusual design features of the airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.17(a)(2) or § 21.101(b)(2).

An emergency evacuation demonstration is required for the affected airplanes. The applicable requirements neither contain a requirement for emergency lighting to aid in emergency evacuation, nor do they include design criteria should the applicant choose to include such features. If Fairchild Aircraft Corporation chooses to install emergency lighting in the Fairchild Models SA227–CC, SA227–DC, and SA228–AE Airplanes in order to improve emergency evacuation, and use such lighting during the required evacuation demonstration, appropriate standards should be adopted.

Emergency lighting system is not required, but when an applicant choses to provide such lighting, the FAA must evaluate such lighting relative to its intended function. If that intended function would affect the showing of compliance with an existing requirement, the FAA must assure that the additional system performs its function when the critical event occurs, in this case, an actual emergency evacuation. The FAA concludes that specific criteria are necessary.

Experience with such systems in others categories of airplanes leads the FAA to conclude that a source of energy for the emergency lighting system may be proposed that is common to the normal airplanes lighting system. Due to the routine use of the normal lighting system, both in flight and on the ground, the source of energy for the emergency lighting system could be depleted if it were available for routine operations. Because the normal electrical system could be deactivated during emergencies, a source of energy for the emergency lighting system must be available that is independent of the source for the normal lighting system.

In a survivable crash, the cockpit crew may be disabled and unable to turn on the emergency lights. Therefore, in addition to having cockpit controls for turning on the lights, a control must also be availalbe in the cockpit to arm the emergency lighting system. To assure activation of the emergency lighting system, automatic activation must occur when the engine-driven electrical generator power is lost or an impact sensor must be provided to turn the armed system on. The impact sensor detects the operational parameters which indicate a crash situation.

The emergency lighting system should only be armed during flight operations. Because crew action is required to arm the system, there must be a caution light to alert the crew if normal electrical power is on in the airplane and the emergency lighting system is not armed.

Emergency evacuation must be demonstrated and accomplished in 90 seconds or less: however, in a survivable crash where injuries occur, significantly longer evacuation times may be necessary. Therefore, the energy supply for the emergency lighting system must be adequate for ten minutes.

Common practices is to use rechargeable batteries, but non-rechargeable batteries may be used. Regardless of which type of battery is used, the design must provide warning of charging circuit faults or inadequate battery charge.

The emergency lighting system must be functional after being subjected to the inertia forces expected in a survivable crash. Those forces are set forth in § 23.561(b).

During a survivable crash, various modes of system damage will occur, up to and including single transverse vertical separation of fuselage. Any such single occurrence must not render the total emergency lighting system inoperative.

The minimum level of illumination is optional because providing any lighting at all is optional. However, the maximum illumination used during the emergency evacuation demonstration must be the minimum available after any single probable failure.

The FAA has considered the factors proposed by Fairchild Aircraft Corporation for the emergency lighting system installation in the Fairchild Models SA227–CC, SA227–DC, and SA228–AE Airplanes and has concluded that, notwithstanding the existing requirements applicable to these airplanes which did not envision the use of such systems, special conditions should be promulgated for such systems, in addition to the applicable requirements.

Conclusion

In view of the design features discussed above, the following special conditions are proposed for the emergency lighting system installation in the Fairchild Aircraft Corporation Model SA227–CC, SA227–DC, and SA228–AE Airplanes under the provisions of § 21.16 to provide a level of safety equivalent to that intended by the regulations incorporated by reference. This action is not a rule of general applicability and affects only the model/series of airplanes identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety.

PARTS 21 and 23—[AMENDED]

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.17, and § 21.101; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration proposes the following special conditions as a part of the type certification basis for the Fairchild Aircraft Corporation Models SA227–CC, SA227–DC, and SA228–AE Airplanes when equipped with an emergency lighting system intended for use during emergency evacuation of the affected airplanes

Emergency Lighting

1. If an emergency lighting system is installed and used as an aid in showing compliance with any applicable regulatory requirement, including emergency evacuation demonstrations, the following special conditions apply:

(a) The source of illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(b) There must be a caution light which illuminates in the cockpit when power is on in the airplane and the

emergency lighting control device is not armed.

(c) The emergency lights must be operable manually from the flightcrew station and be provided with automatic activation. The cockpit control device must have an "on", "off", and "armed" position so that, when armed in the cockpit, the lights will operate by automatic activation. The emergency light must be armed or turned on during taxiing, takeoff, and landing. For automatic activation of the system, the sensor must—

(1) Activate when the airplane's normal electrical power is lost, or

(2) Activate when subjected to impact operational parameters approved by the FAA; and

(3) Regardless of sensor type, must be capable of being reset by the flightcrew if activated by any occurrence other than a survivable crash.

(d) The energy supply to each emergency lighting unit must provide the required level of illumination for at least 10 minutes at the critical ambient condition after emergency landing.

(e) If rechargeable batteries are used as the energy supply for the emergency lighting system, the charging circuit must be designed to preclude inadvertent battery discharge into charging circuit faults. If the emergency lighting system does not include a charging circuit, then battery condidion monitors are required.

(f) Components of the emergency lighting system, including batteries, wiring relays, lamps, and switches must be capable of normal operation after having been subjected to the inertia forces listed in § 23.561(b).

(g) The emergency lighting system must be designed so that a single probable failure, or probable system damage following a survivable crash, will not render the entire emergency lighting system inoperative. Single transverse vertical separation of the fuselage is considered a probable event during a survivable crash.

The minimum emergency illumination, after a single probable failure, must be specified by the applicant. During the emergency evacuation demonstration, the maximum emergency illumination must be equal to or less than the specified minimum emergency illumination level.

Issued in Kansas City, Missouri on March 21, 1988.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 88-7889 Filed 4-8-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-CE-10-AD]

Airworthiness Directives; British Aerospace (BAe), PLC, Jetstream Model 3101 (Includes Model 3100) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to certain BAe Jetstream Model 3101 (Includes Model 3100) airplanes, which would require an initial inspection of the essential busbar to determine if adequate clearance exists to prevent arcing to surrounding structure, and modification to remedy the inadequate clearance. This proposed action is the result of FAA review of a report of arcing and subsequent issuance of a mandatory Alert Service Bulletin by the foreign airworthiness authority. The actions specified in this proposal would prevent arcing, and possible loss of essential bus services during critical phases of flight.

DATES: Comments must be received on or before July 18, 1988.

ADDRESSES: BAe Alert Service Bulletin (ASB) Jetstream 23-A-JM7631, dated September 10, 1987, applicable to this AD may be obtained from British Aerospace, Technical Librarian, Post Office Box 17414, Dulles International Airport, Washington D.C. 20041; Telephone (703) 435-9100. This information may also be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-10-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Ebina, Brussels Aircraft Certification Staff, AEU-100, Europe Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Beligum; Telephone 513.38.30; or Mr. John P. Dow, Sr., FAA, ACE-109, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-10-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

A Jetstream Series 3100 airplane operator has reported an incident of arcing between the terminal of a cable and an adjacent busbar mounting bracket on the lefthand bulkhead at fuselage station 130. The airplane manufacturer consequently issued Notice to Operators J 31-24-2 to advise operators of this situation and provide a suitable interim rectification action. This was followed by issuance of ASB Jestream 24-A-JM7631, dated September 10, 1987, which describes an initial inspection of the terminal area to ensure adequate clearance exists between the terminal tag of a cable and an adjacent structure. This inspection allows continued operation, and describes remedial action to provide adequate clearance if it does not exist. The Civil Aviation Authority (CAA) of the United Kingdom (UK), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the UK, has classified this Alert Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under UK registration, this section has the same effect as an AD on airplanes certificated for operation in the United States. The

FAA relies upon the certification of CAA–UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this type design certificated for operation in the United States. The FAA has examined the available information related to the issuance of ASB Jetstream 24–A–JM7631, dated September 10, 1987, and the mandatory classification of this ASB by the CAA–UK. Based on the foregoing, the FAA believes that the condition addressed by BAe ASB Jetstream 24–A–JM7631, dated September 10, 1987, is an unsafe condition that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require an inspection to determine if compliance to the ASB exists and remedial measures if compliance does not exist. This action will prevent possible arcing and loss of essential bus services during critical phases of flight.

The FAA has determined there are approximately 120 airplanes affected by the proposed AD. The cost of the proposed action is estimated to be $30 for the inspection action and $120 for the modification action when it is required. The proposed AD is estimated to cost at most $150 per airplane. The total cost to inspect and modify the fleet is estimated to be $18,000 to the private sector.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the Caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

British Aerospace (BAe): Applies to Model 3101 (Includes Model 3100) Jetstream (Serial Numbers 601 thru 646, 648 thru 655, 657, 658, 660 thru 666, 668 thru 695, 697 thru 708, 710 thru 713, 715 thru 741, 743 thru 756, and 758 thru 761) airplanes certificated in any category.

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

To prevent electrical arcing and possible damage to the airplane with loss of essential electrical bus services, accomplish the following:

(a) Visually inspect for correct cable terminal ends on cable PD4 and PD6 at terminal post T1BH–2 as described in British Aerospace (BAe) Alert Service Bulletin (ASB) Jetstream 24–A–JM7631, dated September 10, 1987 "Part A—Initial Inspection." If the installation is not as described in the above ASB, prior to further flight modify the cable terminal configuration of cables PD4 and PD6 at terminal post T1BH–2 as described in BAe ASB Jetstream 24–A–JM7631, dated September 10, 1987 "Part B—Rectification."

(b) A 10% adjustment to the compliance time may be used to allow accomplishment of the AD with other scheduled maintenance activities.

(c) The airplane may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, AEU–100, Europe, Africa and Middle East Office, FAA c/o American Embassy, 1000 Brussels, Belgium.

All persons affected by this directive may obtain copies of the document(s) referred to herein upon request to British Aerospace, Technical Librarian, Post Office Box 17414, Dulles International Airport, Washington, D.C. 20091; Telephone (703) 435–9100; or may examine these documents at the FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on April 1, 1988.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 88–7690 Filed 4–8–88; 8:45 am]

BILLING CODE 4910–13–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 204

Housing Guaranty Standard Terms and Conditions

AGENCY: Agency for International Development (A.I.D.), IDCA.

ACTION: Proposed rule.

SUMMARY: Title 22 U.S.C. sections 2181–2183 establishes a housing guaranty program to assist developing countries. 22 U.S.C. 2182 authorizes the issuance of guaranties to eligible investors who meet certain prescribed criteria. The Standard Terms and Conditions set out in this Proposed Rule are those pursuant to which the United States of America would issue its guaranty.

DATE: Comments must be received by May 11, 1988.

ADDRESS: Comments should be sent to Director, Office of Housing and Urban Programs, Agency for International Development, PRE/H, Room 3208 NS., Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: Michael G. Kitay, Assistant General Counsel, GC/PRE, Room 3328 NS., Washington, DC 20523, Telephone: 202/647–8235 (FTS 647–8235).

SUPPLEMENTARY INFORMATION: Since the inception of the Housing Guaranty Program the Office of Housing (now known as the Office of Housing and Urban Programs) of the Agency for International Development (A.I.D.) has used separately executed Contracts of Guaranty which contain the terms and conditions under which the United States of America will issue its guaranty. Preparing and executing separate Contracts of Guaranty is a cumbersome repetitive process, the purpose of which can be equally well served by publishing a standard rule. Once the rule, (i.e., terms and conditions of A.I.D.'s guaranty) is published, a simple cross reference to the CFR rule in the guaranty legend signed on the reverse side of each guarantied note will suffice to advise noteholders of their contractual rights against A.I.D. as guarantor.

The rulemaking document is not subject to rulemaking under 5 U.S.C. 553 or to regulatory analysis under Executive Order 12291 because it involves a foreign affairs function of the United States.

As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a

significant economic impact on a substantial number of small entities. The provisions of the Paperwork Reduction Act of 1969 (44 U.S.C. 3501–3520) (1962) do not apply. An environmental impact statement is not required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

List of Subjects in 22 CFR Part 204

Loan programs, Foreign relations, Health, Housing and community development, Finance, Guaranteed loans.

The Agency for International Development proposes to add a new Part 204 to Title 22, Chapter II of the Code of Federal Regulations as follows:

PART 204—HOUSING GUARANTY STANDARD TERMS AND CONDITIONS

Subpart A—Definitions

Sec.

204.01 Definitions

Subpart B—The Guaranty

204.11 The guaranty.
204.12 Guaranty eligibility.
204.13 Non-impairment of the Guaranty.
204.14 Representations.
204.15 Transferability of Guaranty.
204.16 Note register.
204.17 Paying agent obligations.

Subpart C—Procedure for Obtaining Compensation

204.21 Application for compensation; payment.
204.22 Right of A.I.D. to cure default.
204.23 Payment to A.I.D. of excess amounts received by the Lender or any Assignee.

Subpart D—Covenants

204.31 Prosecution of claims.
204.32 Change in agreements.
204.33 A.I.D. approval of acceleration of Notes.

Subpart E—Rights of A.I.D.

204.41 Termination of A.I.D.'s obligation.
204.42 Right of A.I.D. to require prepayment of the eligible notes.

Subpart F—Administration

204.51 Arbitration.
204.52 Notice.
204.53 Governing law.

Exhibit A—Application for Compensation

Exhibit B—Assignment

Authority: 22 U.S.C. 2381.

Subpart A—Definitions

§ 204.01 Definitions.

Wherever used in these standard terms and conditions:

(a) "A.I.D." means the United States Agency for International Development or its successor with respect to the housing guaranty authorities contained in Title III, Chapter 2 of Part I of the Foreign Assistance Act of 1961, as amended (the "Act").

(b) "Eligible Note(s)" means (a) Note(s) meeting the eligibility criteria set out in § 204.12 of this part.

(c) "Eligible Investor" means an "eligible investor" as defined in Section 238(c) of the Act.

(d) "Lender" means an Eligible Investor who initially provides loan funds to the Borrower in exchange for Eligible Note(s).

(e) "Investment" respecting any Eligible Note means the principal amount of such Eligible Note.

(f) "Assignee" means the owner of an Eligible Note who is registered as an Assignee on the Note Register of Eligible Notes required to be maintained by the Paying Agent and who is "Eligible Investor."

(g) "Outstanding Investment" respecting any Eligible Note means the Investment less the net amount of any repayments of principal of the Investment made by or on behalf of the Borrower or A.I.D.

(h) "Further Guaranteed Payments" means the amount of any loss suffered by the Lender or by any Assignee by reason of the Borrower's failure to comply on a timely basis with any obligation it may have under an Eligible Note to indemnify and hold harmless the Lender and Assignee from any expense arising out of taxes or any other governmental charges relating to the Note in the country of the Borrower.

(i) "Loss of Investment" respecting any Eligible Note means an amount in Dollars equal to the total of the: (1) Outstanding Investment determined as of the Date of Application, (2) Further Guaranteed Payments unpaid as of the Date of Application and (3) interest accrued at the rate(s) specified in the Note(s) and unpaid on the Outstanding Investment and Further Guaranteed Payments to and including the date on which full payment thereof is made to the Lender or any Assignee.

(j) "Application for Compensation" means an executed application in the form of Exhibit A hereto which the Lender or any Assignee files with A.I.D. pursuant to § 204.21 of this part.

(k) "Applicant" means a Lender or Assignee who files an Application for Compensation with A.I.D.

(l) "Date of Application" means the effective date of an Application for Compensation filed with A.I.D. pursuant to § 204.21 of this part.

(m) "Business Day" means a date on which banks of the District of Columbia of the United States of America are open for business.

(n) "Guaranty Payment Date" means the first Business Day not less than sixty (60) calendar days after the related Date of Application; provided that: (1) Compensation to the party filing the related Application for Compensation is due and payable on such date, in accordance with the terms of this Guaranty and (2) tender of assignment referred to in § 204.21(f) of this part is made as therein provided.

Subpart B—The Guaranty

§ 204.11 The guaranty.

Subject to these standard terms and conditions, the United States of America, acting through A.I.D., agrees to pay to any Lender or Assignee who has been determined to be an Eligible Investor compensation in Dollars equal to its Loss of Investment under the Eligible Note; *Provided, However*, that no such payment shall be made for any such loss arising out of fraud or misrepresentation for which such Lender or Assignee is responsible or of which it had knowledge at the time it became such Lender or Assignee. This Guaranty shall apply to each Eligible Note registered on the Note Register required to be maintained by the Paying Agent.

§ 204.12 Guaranty eligibility.

(a) Eligible Notes only may be guarantied hereunder, and Eligible Investors only are entitled to the benefits of this Guaranty. Notes in order to achieve Eligible Note status must be signed on behalf of the Borrower, manually or in facsimile, by a duly authorized representative of the Borrower; and they must contain a guaranty legend incorporating these standard terms and conditions signed on behalf of A.I.D. by either a manual signature or a facsimile signature of an authorized representative of A.I.D. together with a certificate of authentication manually executed by a Paying Agent whose appointment by the Borrower is consented to by A.I.D. in a Paying and Transfer Agency Agreement.

(b) A.I.D. shall designate in a certificate delivered to the Lender and to the Paying Agent, the person(s) whose signature shall be binding on A.I.D. The certificate of authentication of the Paying Agent issued pursuant to the Paying and Transfer Agency Agreement shall, when manually executed by the Paying Agent, be conclusive evidence building on A.I.D. that the Note has been duly executed on behalf of the Borrower and delivered.

§ 204.13 Non-impairment of the Guaranty.

The full faith and credit of the United States of America is pledged to the performance of this Guaranty. The

Guaranty shall not be affected or impaired by any defect in the authorization, execution, delivery or enforceability by any agreement or other document executed by the Lender, A.I.D., the Paying Agent or the Borrower in connection with the transactions contemplated by this Guaranty. This non-impairment of the guaranty provision shall not, however, be operative with respect to any amount arising out of fraud or misrepresentation for which the Lender or Assignee is responsible or of which it had knowledge prior to the time it became such Lender or Assignee.

§ 204.14 Representations.

Each Lender or Assignee represents and warrants to A.I.D. as follows:

(a) The Lender represents and warrants that it has not received from the Borrower any fee, other than the underwriting or placement fee contemplated by the Parties as compensation for the services to be performed in connection with the loan transaction.

(b) The Lender or Assignee represents and warrants that, to its knowledge, the Borrower has not paid any fee to any other party in connection with obtaining this financing except for fees lawfully paid to the Paying Agent and to the United States of America and/or reasonable and normal legal fees and disbursements for legal counsel, including counsel to the Lender.

(c) The Lender or Assignee represents and warrants that it is an Eligible Investor.

§ 204.15 Transferability of Guaranty.

The Lender or any Assignee may following procedures set out in § 204.16, assign the Eligible Notes to any Eligible Investor who upon accepting the assignment is entitled to all rights under this Guaranty.

§ 204.16 Note register.

The names of all Noteholders are entered upon the Note Register which is maintained by the Paying Agent, in accordance with the Paying and Transfer Agency Agreement. No assignment shall be effective as to A.I.D. or the Borrower until the name of the Assignee has been entered upon such Note Register and (a) new Eligible Note(s) issued in the name of such Assignee. A.I.D., the Borrower and the Paying Agent shall be entitled to treat the persons in whose names the Notes are registered as the owners thereof for all purposes of this Guaranty and shall not be affected by notice to the contrary.

§ 204.17 Paying Agent obligations.

Failure of the Paying Agent to perform any of its obligations pursuant to the Paying and Transfer Agency Agreement shall not impair the Investor's or any Assignee's rights under this Contract of Guaranty, but may be the subject of action for damages against the Paying Agent by A.I.D. as a result of such failure or neglect; provided, however, that the Paying Agent is not authorized to issue and authenticate and have Notes outstanding at any time in excess of the principal amount of the loan.

Subpart C—Procedure for Obtaining Compensation

§ 204.21 Application for compensation; payment.

In order for the Lender or an Assignee to receive compensation under this Guaranty arising out of the Borrower's default under the Note(s), the following action is required:

(a) *Declaration of delinquency.* If the Borrower:

(1) Fails to make, when due and payable, any payment of principal or of interest on any Note or to make any other payment which it is required to make to a Noteholder under the Note;

(2) Effects a material breach of any other covenant or condition in the Loan Documents; or

(3) Makes a material misrepresentation or breaches a warranty; the

The lender or any Assignee may on or after the date of the happening or the discovery of such event, by notice to the Borrower and the Paying Agent, declare that Note(s) to be delinquent.

(b) *Delinquency notice to A.I.D.* If the condition which caused the Lender or Assignee to declare the Note(s) to be delinquent continues for a period of 15 days following the Declaration of Delinquency, the Lender or Assignee as a prerequisite to obtaining compensation pursuant to this Guaranty shall give notice of the Borrower's delinquency to A.I.D.

(c) *Event of Default.* The continuance of the condition which caused the Lender or Assignee to declare the Note(s) to the delinquent for a further period of 15 days following the Delinquency Notice to A.I.D. shall constitute an Event of Default under the Note.

(d) *Notice of Default.* On or after the date of an Event of Default the Lender or any Assignee by notice to the Borrower and to A.I.D. may declare such Note to be in default and indicate its intent to enforce its rights under the Note and/or this Guaranty. No such action, however, shall without the prior approval of A.I.D. be taken in connection with any failure other than nonpayment of principal or interest on any Note.

(e) *Application for compensation.* Within one year after the date of an Event of Default, the Lender or Assignee may file with A.I.D. an Application for Compensation with respect to an (all) Eligible Note(s) held by the Lender or such Assignee.

(f) *Guaranty payment.* On or after the Guaranty Payment Date, the Applicant shall tender assignment of all Applicant's right, title and interest as of the Date of Application in and to all sums for which Application has been made. A.I.D. shall accept the assignment and pay or cause to be paid to Applicant the compensation due to the Applicant pursuant to the Guaranty.

§ 204.22 Right of A.I.D. to cure default.

A.I.D. may at any time make payments to the Lender or any Assignee equal to all installments of principal and interest due and unpaid under any Note; and any Further Guaranteed Payments due and unpaid and any interest on unpaid amounts at the Note interest rate, and thereby prevent or cure any default under the Note.

§ 204.23 Payment to A.I.D. of excess amounts received by the Lender of any Assignee.

If the Lender or Assignee shall, as a result of A.I.D. paying compensation under this Guaranty, receive an excess payment, it shall refund the excess to A.I.D.

Subpart D—Covenants

§ 204.31 Prosecution of claims.

After an assignment to A.I.D. by the Lender or any Assignee pursuant to Section 204.21(f), A.I.D. shall have exclusive power to prosecute all claims related to the oustanding Eligible Notes so assigned. If the Lender or such Assignee continues to have an interest in the outstanding Eligible Notes, the Lender or such Assignee and A.I.D. shall consult with each other with respect to their respective interests in such Eligible Notes and the manner of and responsibility for prosecuting claims.

§ 204.32 Change in agreements.

Neither the Lender nor any Assignee will consent to any change or waiver of any provision of any document contemplated by this Guaranty without prior written consent of A.I.D.

§ 204.33 A.I.D. approval of Acceleration of notes.

Without the prior approval of A.I.D., the Lender or any Assignee shall not

accelerate any Eligible Notes held by it on account of the happening of an Event of Default other than failure to make a payment when dues on the note.

Subpart E—Rights of A.I.D.

§ 204.41 Termination of A.I.D.'s obligation.

As and when A.I.D. shall have compensated the Lender and all Assignees fully for any and all Loss of Investment under this Guaranty, A.I.D. shall not thereafter remain under any further obligation with respect thereto.

§ 204.42 Rights of A.I.D. to require prepayment of the Eligible Notes.

A.I.D. may require the Borrower to prepay the Eligible Notes, in whole or in part, on at least forty-five (45) but not more than sixty (60) calendar days' prior written notice to the Paying Agent in the event the Borrower breaches any of its undertakings or covenants under its Program Agreement with A.I.D. or other obligations with respect to A.I.D., and the Borrower fails to cure such breach within a period of ninety (90) calendar days from the delivery of notice by A.I.D. to the Borrower of such breach.

Subpart F—Administration

§ 204.51 Arbitration.

Any controversy or claim between A.I.D. and the Lender or any Assignee arising out of this Guaranty shall be settled by arbitration to be held in Washington, DC in accordance with the then prevailing rules of the American Arbitration Association, and judgment on the award rendered by the arbitrators may be entered in any court of competent jurisdiction.

§ 204.52 Notice.

Any communication to A.I.D. pursuant to this Guaranty shall be in writing in the English language, shall refer to the A.I.D. Housing Guaranty Project Number inscribed on the Eligible Note and shall be complete on the day it shall be actually received by A.I.D. at the address specified below:

Mail Address:
Office of Housing and Urban Programs, Bureau for Private Enterprise, Agency for International Development, PRE/H, Room 3208 N.S., Washington, DC 20523
Re: A.I.D. Housing Guaranty Project ____-HG-____[1]
Telex Nos.:
ITT 440001 (Answer back is AIDWNDC)
RCA 248379 (Answer back is 248379 AID UR)
WU 892703 (Answer back is AID WSH)
WU 64154 (Answer back is AID 64154)
Fax No.: 647-1805
Cable Address: AID WASH DC

Other addresses may be substituted for the above upon the giving of notice of such substitution in the manner provided in this § 204.52

§ 204.53 Governing law.

This Guaranty shall be governed by and construed in accordance with the laws of the United States of America governing contracts and commercial transactions of the United States Government.

Exhibit A—Application for Compensation

Office of Housing and Urban Programs, Agency for International Development, International Development Cooperation Agency, Washington, DC 20523

Ref: Guaranty dated as of ____, 19____: A.I.D. Housing Project HG—

Gentlemen:

You are hereby advised that payment of $_____ (consisting of $_____ of principal, $_____ of interest and $_____ in Further Guaranteed Payments as defined in § 204.01(i) of the Standard Terms and Conditions of the above-mentioned Guaranty [1]) was due on _____, 19____, on $_____ principal amount of Notes held by the undersigned of the _____ (the "Borrower"), issued pursuant to the Loan Agreement, dated as of _____, _____, between the Borrower and _____. Of such amount $_____ was not received on such date and has not been received by the undersigned at the date hereof. In accordance with the terms and provisions of the above-mentioned Guaranty, the undersigned hereby applies, under Section 204.21 of said Guaranty, for payment of a total of $_____, representing $_____, the outstanding principal amount of the presently outstanding Notes of the Borrower held by the undersigned issued pursuant to said Loan Agreement, and $_____ in Further Guaranteed Payments,[2] plus accrued and unpaid interest thereon to and including the date payment in full is made by you pursuant to said Guaranty. Such payment is to be made at your office in Washington, DC.

[Name of Applicant]

By _____
Name _____
Title _____
Dated _____

Exhibit B—Assignment

The undersigned, being the registered owner of a Note in the principal amount of $_____ issued by the _____ (the "Borrower"), pursuant _____, and guaranty, dated as of _____, _____ the "Guaranty"), between the Lender and the United States of America, acting through the Agency for International Development ("A.I.D."), hereby assigns to A.I.D., without recourse (i) its entire right, title and interest in and to the Note of the Borrower referred to above (which Note is attached hereto), including its rights to unpaid interest on such Note, and (ii) its entire outstanding right, title and interest arising out of said Loan Agreement with respect to such Note, except the undersigned's right to receive payments under the Loan Agreement in respect of which A.I.D. has made no payment to the undersigned as of the date hereof.

[Name of Applicant]

By _____
Name _____
Title _____
Dated _____

Accepted:

UNITED STATES OF AMERICA

By _____
Name _____
Title _____
Dated _____

Date: April 4, 1988.

Mario Pita,

Deputy Director, Agency for International Development, Office of Housing and Urban Programs.

[FR Doc. 88-7861 Filed 4-8-88; 8:45 am]
BILLING CODE 6116-01-M

[1] Enter title and numerical designation of the relevant A.I.D. Housing Guaranty Project as inscribed on each Note guaranty legend.

[1] Strike inapplicable portion.

[2] In the event the Application for Compensation relates to Further Guaranteed Payments, such Application must also contain a statement of the nature and circumstances of the related loss.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 625 and 626

[FHWA Docket No. 87-16, Notice No. 2]

Pavement Policy For Highways; Extension of Comment Period

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period on proposed rule.

SUMMARY: The FHWA issued a notice of proposed rulemaking (FHWA Docket 87-16, 53 FR 2041, January 26, 1988, FR Doc. 88-1397) which proposed to amend its regulation on pavement design policy and procedures. The revisions would require the States to establish a Pavement Management System (PMS). As part of its PMS, each State Highway Agency (SHA) shall have a comprehensive process for the type selection and design of new, reconstructed and rehabilitated pavement structures. The revisions would replace the existing regulation to assure that appropriate practices and procedures are utilized by the States in order to promote safety and cost-effective pavement life cycles. The comment period is being extended to May 27, 1988. This extension will provide additional time for the public to

respond to the issues contained in the NPRM.

DATE: Comments must be received on or before May 27, 1988.

ADDRESS: Submit written, signed comments to the Federal Highway Administration, FHWA Docket No. 87-16, HCC-10, Room 4232, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Norman J. Van Ness, Chief, Pavement Division, Office of Highway Operations, (202) 366-1324 or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

(23 U.S.C. 315; 49 CFR 1.48(b))

Issued on: March 31, 1988.

Robert E. Farris,

Deputy Administrator.

[FR Doc. 88-7806 Filed 4-8-88; 8:45 am]

BILLING CODE 4910-22-M

DEPARMTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-184-86]

Income Taxes; Continued Accruals Beyond Normal Retirement Age

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the requirement for continued accruals beyond normal retirement age under employee pension benefit plans. Changes to the applicable tax law were made by the Omnibus Budget Reconciliation Act of 1986. These regulations will provide the public with guidance needed to comply with the minimum participation and vesting standards and affect employers maintaining employee retirement plans.

DATES: Written comments and request for a public hearing must be delivered or mailed by June 10, 1988. These amendments generally apply to plan years beginning after December 31, 1987, except as otherwise specified in the Omnibus Budget Reconciliation Act of 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-184-86) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Michael C. Garvey of the Employee Benefits and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-6271) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 410 and 411 of the Internal Revenue Code of 1986. These amendments are proposed to conform the regulations to sections 9201 through 9204, Subtitle C (Older Americans Pension Benefits) of Title IX of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) (OBRA 1986) (100 Stat. 1874, 1973).

Explanation of Provisions

Section 9202(b)(1) of OBRA 1986 added subparagraph (H) to section 411(b)(1) of the Internal Revenue Code (Code) to provide rules for continued benefit accruals under defined benefit plans without regard to the attainment of any age. Section 9202(b)(2) of OBRA 1986 redesignated paragraphs (2) and (3) of Code section 411(b) as paragraphs (3) and (4) and added a new paragraph (2) to Code section 411(b) to provide rules for allocations to the accounts of employees in defined contribution plans without regard to the attainment of any age.

Effective with respect to plan years beginning after December 31, 1987, section 411(b)(1)(H)(i) provides the general rule that a defined benefit plan will not be treated as meeting the minimum vesting standards of section 411 (and, accordingly, will not constitute a qualified plan under section 401(a)) if under the plan an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age. Effective for plan years beginning after December 31, 1987, section 411(b)(2) provides that a defined contribution plan will not be treated as satisfying the minimum vesting standards of section 411 (and, accordingly, will not constitute a qualified plan under section 401(a)) if allocations to an employee's account are ceased, or the rate of allocations to an employee's account is reduced, because of the attainment of any age.

The proposed regulations provide that reductions or cessations of account allocations or benefit accruals that are based on factors other than age will not affect the qualification of the plan under section 411(b)(1)(H) or (b)(2). The proposed regulations also provide that benefits under a defined benefit plan may accrue at different rates without violating section 411(b)(1)(H), provided the difference in the rate of benefit accrual is determined without regard to the attainment of any age.

Section 411(b)(1)(H)(ii) provides that a plan will not be treated as failing to satisfy the general rule in section 411(b)(1)(H)(i) merely because the plan contains a limitation (determined without regard to age) on the maximum number of years of service or participation that are taken into account in determining benefits under the plan or merely because the plan contains a limitation on the amount of benefits an employee will receive under the plan. The proposed regulations provide that these limitations are permitted in both defined benefit plans and defined contributions plans (including target benefit plans).

Section 411(b)(1)(H)(iii) provides that, with respect to a employee who, as of the end of a plan year, has attained normal retirement age under a defined benefit plan, certain adjustments may be made to the benefit accrual for the plan year if the plan distributes benefits to the employee or if the plan adjusts the amount of the benefits payable to take into account delayed payment. The continued benefit accrual rules of section 411(b)(1)(H) operate in conjunction with the suspension of benefit payment rules under section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) and the proposed regulations do not change the rules relating to the suspension of pension benefit payments under section 203(a)(3)(B) of ERISA and the regulations thereunder issued by the Department of Labor. However, the proposed regulations provide rules under which benefit accruals required under section 411(b)(1)(H)(i) may be reduced or offset either by the value of actuarial adjustments in an employee's normal retirement benefit or by the value of benefit distributions made to an employee.

Section 411(b)(1)(H)(iv) provides that a defined benefit plan will not be treated as failing to satisfy the general rule of section 411(b)(1)(H)(i) merely because the subsidized portion of an early retirement benefit provided under

the plan (whether provided on a permanent or temporary basis) is disregarded in determining benefit accruals under the plan. The proposed regulations also provide that a plan will not be treated as failing to satisfy the general rule of section 411(b)(1)(H)(i) merely because a social security supplemental benefit or a qualified disability benefit is disregarded in determining benefit accruals under the plan.

The proposed regulations provide that the rate of an employee's benefit accrual under a defined benefit plan or the rate of allocations to an employee's account under a defined contribution plan will be considered to be reduced on account of the attainment of a specified age if optional forms of benefits, ancillary benefits or other benefits, rights or features under a plan that are provided with respect to benefits or allocations prior to such age are not provided (on terms that are at least as favorable to employees) with respect to benefits or allocations after such age. Thus, for example, under the proposed regulations, a plan may not make a lump sum option available only with respect to benefits or allocations attributable to service prior to a specified age. Similarly, a plan may not use actuarial assumptions that are less favorable to employees for determining lump sum benefits payable after a specified age than are used for determining lump sum benefits payable prior to such age. However, the proposed regulations provide that the accrual rate under a defined benefit plan will not be considered to be reduced merely because the subsidized portion of an early retirement benefit, a qualified disability benefit or a social security supplemental benefit provided under the plan ceases to be provided to an employee or is provided on a reduced basis to an employee by a plan on account of the employee's attainment of a specified age.

Section 411 (b)(1)(H)(v) and (b)(2)(D) provide that the Secretary shall prescribe regulations coordinating the requirements of section 411 (b)(1)(H) and (b)(2) with the requirements of sections 411(a), 404, 410, 415 and the antidiscrimination provisions of subchapter D of Chapter 1 (Code sections 401 through 425). The proposed regulations provide that no allocation to the account of an employee in a defined contribution plan and no benefit accrual on behalf of an employee in a defined benefit plan are required under section 411 (b)(1)(H) or (b)(2) if such allocation or benefit accrual would cause the plan to (1) exceed the section 415 limitations on benefits and contributions, or (2) discriminate in favor of highly compensated employees within the meaning of section 401(a)(4).

Section 9203(a)(2) of OBRA 1986 amended Code section 410(a)(2) to provide that a plan will not constitute a qualified plan under section 401(a) if the plan excludes from participation (on the basis of age) an employee who has attained a specified age. The proposed regulations provide that, effective for plan years beginning after December 31, 1987, a plan may not apply a maximum age provision to any employee who has at least one hour of service for the employer on or after January 1, 1988, regardless of when the employee first performed an hour of service for the employer.

In the case of an employee who was ineligible to participate in a plan before the effective date of amended Code section 410(a)(2) because of a maximum age condition and who is eligible to participate in the plan on or after the effective date of such section, hours of service and years of service credited to the employee before the first plan year beginning on or after January 1, 1988, shall be taken into account in accordance with section 411 and the regulations thereunder and in accordance with 29 CFR Part 2530 for purposes of determining the employee's nonforfeitable right to the employee's accrued benefit. However, with respect to an employee described in the preceding sentence, hours of service and years of service credited to the employee before the first plan year beginning on or after January 1, 1988, are not required to be taken into account for purposes of determining the employee's accrued benefit under the plan for plan years beginning on or after January 1, 1988. See, also, section 411(a)(4) and § 1.411(a)–5 for rules relating to service that must be taken into account in determining an employee's nonforfeitable right to the employee's accrued benefit.

Section 9203(b)(2) of OBRA 1986 amended Code section 411(a)(8)(B) to provide rules relating to the determination of a participant's normal retirement age under a defined benefit plan and a defined contribution plan. Because section 203(e) of the pending Technical Corrections Act of 1987 (H.R. 2636) would change the definition of normal retirement age from the definition now set forth in section 411(a)(8)(B) (as amended by OBRA 1986), the proposed regulations do not set forth any rules under section 411(a)(8)(B) (as amended by OBRA 1986).

Section 9202(b) of OBRA 1986 amended Code section 411(B)(2)(C) to require the Secretary to provide by regulations for the application of the continued allocation rules of section 411(b)(2) to target benefit plans. The proposed regulations do not provide detailed special rules applicable to target benefit plans. Target benefit plans are subject to the rules applicable to defiend contribution plans. The Commissioner will prescribe such additional rules relating to the continued allocation of contributions and accrual of benefits under target benefit plans as may be necessary or appropriate.

Effective Date

Section 9204(a)(1) of OBRA 1986 provides that the amendments made with regard to section 411 (b)(1)(H) and (b)(2) "shall apply only with respect to plan years beginning on or after January 1, 1988, and only to employees who have 1 hour of service in any plan year to which such amendments apply." The proposed regulations provide that section 411 (b)(1)(H) and (b)(2) does not apply to an employee who does not have at least 1 hour of service for the employer in a plan year beginning on or after January 1, 1988.

However, the proposed regulations provide that section 411 (b)(1)(H) and (b)(2) applies with respect to all years of service completed by an employee who has at least 1 hour of service in a plan year beginning on or after January 1, 1988. Accordingly, under section 411(b)(1)(H)(i), the proposed regulations provide that, for plan years beginning on or after January 1, 1988, in determining the benefit payable under a defined benefit plan to a participant who has at least 1 hour of service in a plan year beginning on or after January 1, 1988, the plan does not satisfy section 411(a) if the plan disregards, because of the participant's attainment of any age, any year of service completed by the participant or any compensation earned by the participant after attaining such age, including years of service completed and compensation earned before the first plan year beginning on or after January 1, 1988. Under the proposed regulations, section 411(b)(2) does not require allocations to the accounts of employees under a defined contribution plan for any plan year beginning before January 1, 1988. However, the proposed regulations provide that, for plan years beginning on or after January 1, 1988, in determining the allocation to the account of a participant (who has at least 1 hour of service in a plan year beginning on or after January 1, 1988) under a defined

contribution plan that determines allocations under a service related allocation formula, the plan does not satisfy section 411(a) if the plan disregards, because of the participant's attainment of any age, any year of service completed by the participant.

Under the proposed regulations, a defined benefit plan and a defined contribution plan will not be treated as impermissibly disregarding, because of the participant's attainment of any age, a year of service completed by the participant before the first plan year beginning before January 1, 1988, merely because the participant was not eligible under the plan to make mandatory or voluntary employee contributions (as well as contributions under a cash or deferred arrangement described in section 401(k)) for such year.

Title I of ERISA and OBRA 1986

Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has jurisdiction over the subject matter addressed in the OBRA 1986 regulations. Therefore, under section 104 of the Reorganization Plan, these regulations apply when the Secretary of Labor exercises authority under Title I of ERISA (as amended, including the amendments made by Title IX of OBRA 1986 and the amendments by the Tax Reform Act of 1986). Thus, the requirements also apply to employee plans subject to Part 2 of Title I of ERISA.

Under section 9201 of OBRA 1986, these regulations also apply for purposes of applying comparable provisions under section 4(i)(7) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) as amended. No interference is intended under the proposed regulations as to the application of the Age Discrimination in Employment Act of 1967, as in effect prior to its amendment by OBRA 1986, to employees who are not credited with at least 1 hour of service in a plan year beginning on or after January 1, 1988.

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 plan years beginning after 1987, the Service will apply these proposed regulations in issuing rulings and in examining returns with respect to taxpayers and plans. If future guidance is more restrictive, such guidance will be applied without retroactive effect.

Time of Plan Amendments

The proposed regulations provide rules relating to the postponement of the deadline for amending plans to comply with the provisions of OBRA 1986. Plan amendments required to conform the plan to the changes contained in OBRA 1986 need not be made until the dates specified in section 1140 of the Tax Reform Act of 1986 (in general, the last day of the first plan year commencing on or after January 1, 1989). This deferred amendment date is available only if: (1) The plan is operated in accordance with the applicable provisions of OBRA 1986 for the period beginning with the effective date of the provision with respect to the plan; (2) the plan amendments adopted are retroactive to such effective date; and (3) the plan amendments adopted are consistent with plan operation during the retroactive effective period.

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.**

Drafting Information

The principal author of these proposed regulations is Michael C. Garvey of the Employee Benefits 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 regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.401–0—1.425–1

Income taxes, Employee benefits plans, Pensions.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

PART 1—[AMENDED]

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 1.411(b)–2 is also issued under 26 U.S.C. 411(b)(1)(H) and 411(b)(2).

Par. 2. A new § 1.410(a)–4A is added immediately after § 1410(a)–4 to read as follows:

§ 1.410(a)–4A Maximum age conditions after 1987.

(a) *Maximum age conditions.* Under section 410(a)(2), a plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if the plan, either directly or indirectly, excludes any employee from participation on the basis of attaining a maximum age.

(b) *Effective date and transitional rule.* If a plan contains a provision that excludes an employee from participation on the basis of attaining a maximum age, the provision may not be applied in a plan year beginning on or after January 1, 1988, to any employee (regardless of when the employee first performed an hour of service for the employer) who is credited with at least 1 hour of service on or after January 1, 1988. For purposes of determining when such an employee (who is not otherwise ineligible to participate in the plan) must become eligible to participate in the plan under section 410(a)(1)(A)(ii), section 410(a)(1)(B) and the provisions of the plan, hours of service and years of service credited to the employee before the first plan year beginning on or after January 1, 1988, are taken into account in accordance with section 410 and the regulations thereunder and in accordance with 29 CFR Part 2530. Any employee who would be eligible to participate in the plan taking such service into account and whose entry date would be prior to the first day of the first plan year beginning on or after January 1, 1988, must participate in the

plan as of the first day of such plan year.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). Employer X maintains a defined benefit plan that uses a 12-month period beginning July 1 and ending June 30 as its plan year and that specifies a normal retirement age of 65. The plan provides that each employee of X is eligible to become a participant in the plan on the first entry date on or after the employee completes 1 year of service for X. The plan has 2 entry dates, July 1 and January 1. However, prior to the plan year beginning July 1, 1988, the plan contained a provision that excluded from participation any employee first hired within 5 years of attaining the plan's specified normal retirement age of 65. Employee A was hired by X on August 1, 1986 at age 62. A completes 1 year of service for X by August 1, 1987. If A performs at least one hour of service for X on or after January 1, 1988, the plan, in order to meet the requirements of section 410(a)(2), may not apply the maximum age provision to A on or after July 1, 1988, and A must be eligible to become a participant in the plan in accordance with the other eligibility rules contained in the plan, taking into account A's service with X performed prior to July 1, 1988 to the extent required under the terms of the plan or under section 410 and the regulations thereunder and under regulations in 29 CFR Part 2530. Accordingly, if A is still employed by X on July 1, 1988, A must become a participant in the plan on that date.

Example (2). Employer Y maintains a defined benefit plan that uses the calendar year as its plan year and that specifies a normal retirement age of 65. Employee B is first hired by Y in 1988 when B is age 66. In order for the plan to meet the requirements of section 410(a)(2), B may not be excluded from plan participation on the basis of B having attained a specified age.

Par. 3. Section 1.411(a)–1 is amended by revising paragraph (a)(3) to read as follows:

§ 1.411(a)–1 Minimum vesting standards; general rules.

(a) *In general.* * * *

(3) The plan satisfies the requirements of—

(i) Section 411(a)(2) and § 1.411(a)–3 (relating to vesting in accrued benefit derived from employer contributions),

(ii) In the case of a defined benefit plan, section 411(b) (1) and (3) (see §§ 1.411(b)–1 and 1.411(b)–2, relating to accrued benefit requirements, separate accounting and accruals and allocations after a specified age), and

(iii) In the case of a defined contribution plan, section 411(b) (2) and (3) (see §§ 1.411(b)–1(e)(2) and 1.411(b)–2, relating to accruals and allocations after a specified age and separate accounting).

* * * * *

Par. 4. Section 1.411(a)–7 is amended by adding a new paragraph (b)(3) to read as follows:

§ 1.411(a)–7 Definitions and special rules.

* * * * *

(b) *Normal retirement age.* * * *

(3) *Effect of Omnibus Budget Reconciliation Act of 1986 (OBRA).* [Reserved]

* * * * *

Par. 5. A new § 1.411(b)–2 is added after § 1.411(b)–1 to read as follows:

§ 1.411(b)–2 Accruals and allocations after a specified age.

(a) *In general.* Section 411(b)(1)(H) provides that a defined benefit plan does not satisfy the minimum vesting standards of section 411(a) if, under the plan, benefit accruals on behalf of a participant are discontinued or the rate of benefit accrual on behalf of a participant is reduced because of the participant's attainment of any age. Section 411(b)(2) provides that a defined contribution plan does not satisfy the minimum vesting standards of section 411(a) if, under the plan, allocations to a participant's account are reduced or discontinued or the rate of allocations to a participant's account is reduced because of the participant's attainment of any age. A defined benefit plan is not considered to discontinue benefit accruals or reduce the rate of benefit accrual on behalf of a participant because of the attainment of any age in violation of section 411(b)(1)(H) and a defined contribution plan is not considered to reduce or discontinue allocations to a participant's account or reduce the rate of allocations to a participant's account because of the attainment of any age in violation of section 411(b)(2) solely because of a positive correlation between increased age and a reduction or discontinuance in benefit accruals or account allocations under a plan. Thus, for example, if a defined benefit plan or a defined contribution plan provides for reduced or discontinued benefit accruals or account allocations on behalf of participants who have completed a specified number of years of credited service, the plan will not thereby fail to satisfy section 411 (b)(1)(H) or (b)(2) solely because of a positive correlation between increased age and completion of the specified number of years of credited service. See paragraph (b)(2) of this section for rules relating to benefit and service limitations under defined benefit plans and paragraph (c)(2) of this section for rules relating to limitations on allocations under defined contribution plans. Also, if benefit accruals or the rate of benefit accrual on behalf of a participant in a defined benefit plan or allocations or the rate of allocations to the account of a participant in a defined contribution plan are reduced or discontinued under the plan and the reason for the reduction or discontinuance is neither directly nor indirectly related to the participant's attainment of a specified age, the plan does not thereby fail to satisfy the requirements of section 411 (b)(1)(H) or (b)(2). Thus, for example, if a defined benefit plan is amended to cease or reduce the rate of benefit accrual for all plan participants, such cessation or reduction does not fail to satisfy the requirements of section 411(b)(1)(H).

(b) *Defined benefit plans*—(1) *In general.* (i) A defined benefit plan does not satisfy the minimum vesting standards of section 411(a) if, either directly or indirectly, because of the attainment of any age—

(A) A participant's accrual of benefits is discontinued or the rate of a participant's accrual of benefits is decreased, or

(B) A participant's compensation after the attainment of such age is not taken into account in determining the participant's accrual of benefits.

(ii) In determining whether a defined benefit plan satisfies paragraph (b)(1)(i) of this section, the subsidized portion of an early retirement benefit (whether provided on a temporary or permanent basis), a social security supplement (as defined in § 1.411(a)–7(c)(4)(ii)) and a qualified disability benefit (as defined in § 1.411(a)–7(c)(3)) are disregarded in determining the rate of a participant's accrual of benefits under the plan.

(iii) The provisions of paragraph (b)(1)(i) of this section may be illustrated by the following example. In the example, assume that the participant completes the hours of service in a plan year required under the plan to accrue a full benefit for the plan year.

Example. Employer X maintains a defined benefit plan that provides a normal retirement benefit of 1% of a participant's average annual compensation, multiplied by the participant's years of credited service under the plan. Normal retirement age under the plan is age 65. The plan contains no limitations (other than the limitations imposed by section 415) on the maximum amount of benefits the plan will pay to any participant or on the maximum number of years of credited service taken into account under the plan for purposes of determining the amount of any participant's normal retirement benefit. Participant A became a participant in the plan at age 25 and worked continuously for X until A retires at age 70. The plan will satisfy the requirements of section 411(b)(1)(H) and paragraph (b)(2) of this section if, under the plan's benefit

formula, upon A's retirement. A has an accrued normal retirement benefit of at least 45% of A's average annual compensation (1% per year x 45 years).

(2) *Benefit and service limitations*—(i) *In general.* A defined benefit plan does not fail to satisfy section 411(b)(1)(H) and paragraph (b) of this section solely because the plan limits the amount of benefits a participant may accrue under the plan or limits the number of years of service or years of participation taken into account for purposes of determining the accrual of benefits under the plan (credited service). For this purpose, a limitation that is expressed as a percentage of compensation (whether averaged over a participant's total years of credited service for the employer or over a shorter period) and a limitation of the type described in section 401(a)(5)(D) are treated as permissible limitations on the amount of benefits a participant may accrue under the plan. However, in applying a limitation on the number of years of credited service that are taken into account under a plan, the plan may not take into account any year of service that is disregarded in determining the accrual of benefits under the plan (prior to the effective date of section 411(b)(1)(H) and this section) because of the attainment of any age.

(ii) *Limitation not based on age.* Any limitation on the amount of benefits a participant may accrue under the plan and any limitation on the number of years of credited service taken into account under the plan may not be based, directly or indirectly, on the attainment of any age. A limitation that is determined by reference to age or that is not determinable except by reference to age is considered a limitation directly based on age. Thus, a plan provision that, for purposes of benefit accrual, disregards years of service completed after a participant becomes eligible to receive social security benefits is considered a limitation directly based on age. Similarly, a plan provision that, for purposes of benefit accrual, disregards years of service completed after the sum of a participant's age and the participant's number of years of credited service equals a specified number, is considered a limitation directly based on age. Whether a limitation is indirectly based on age is determined with reference to all the facts and circumstances.

(iii) *Examples.* The provisions of paragraph (b)(2) of this section may be illustrated by the following examples. In each example, assume that the participant completes the hours of service in a plan year required under the plan to accrue a full benefit for the plan year.

Example (1). Assume the same facts as in the *Example* set forth in paragraph (b)(1)(ii) of this section, except that the plan provides that not more than 35 years of credited service will be taken into account in determining a participant's normal retirement benefit under the plan. Upon A's retirement at age 70, A will have a normal retirement benefit under the plan's benefit formula of 35% of A's average annual compensation (1% per year x 35 years). The plan will not fail to satisfy the requirements of section 411(b)(1)(H) and this paragraph (b) merely because the plan provides that the final 10 years of A's service under the plan is not taken into account in determining A's normal retirement benefit. The result would be the same if the plan provided that no participant could accrue a normal retirement benefit in excess of 35% of the participant's average annual compensation.

Example (2). Employer Y maintains a defined benefit plan that provides a normal retirement benefit of 50% of a participant's final average compensation. Normal retirement age under the plan is age 65. Other than the limitations imposed by section 415, the plan contains no provision that limits the accrual of the benefit payable to a participant who has less than a specified number of years of credited service for Y. Participant A is hired by Y at age 66 and commences participation in the plan at age 67. Under the plan's benefit formula, if A completes one year of credited service under the plan, A will be entitled to receive (subject to the limitations of section 415) a normal retirement benefit equal to 50% of A's final average compensation.

(3) *Different rates of benefit accrual*—(i) *In general.* A defined benefit plan does not fail to satisfy the requirements of section 411(b)(1)(H) and paragraph (b) of this section solely because the plan provides for the accrual of benefits at different rates with respect to participants under the plan. Accordingly, a plan under which a participant's accrued benefit is determined in accordance with the fractional rule described in section 411(b)(1)(C) and § 1.411(b)–1(b)(3) will not fail to satisfy the requirements of section 411(b)(1)(H) and paragraph (b) of this section solely because the rate at which a participant's normal retirement benefit accrues differs depending on the number of years of credited service a participant would have between the date of commencement of participation and the attainment of normal retirement age. In addition, a plan will not be treated as failing to satisfy section 411(b)(1)(H) and paragraph (b) of this section solely because the plan's benefit formula provides, on a uniform and consistent basis, a normal retirement benefit equal to, for example, 2% of average annual compensation multiplied by a participant's first 15 years of credited service and 1% of average annual compensation multiplied by a participant's years of credited service in excess of 15 years. The preceding sentence applies regardless of when the participant's normal retirement age occurs.

(ii) *Differences not based on age.* Any differences in the rate of benefit accrual described in paragraph (b)(3)(i) of this section may not be based, directly or indirectly, on the attainment of any age.

(4) *Certain adjustments for delayed retirement*—(i) *In general.* Under section 411(b)(1)(H)(iii), a plan may provide that benefit accruals that would otherwise be required under section 411(b)(1)(H)(i) and paragraph (b) of this section for a plan year are reduced (but not below zero) as set forth in paragraph (b)(4) (ii) and (iii) of this section. This paragraph (b)(4) applies for a plan year to a participant who, as of the end of the plan year, has attained normal retirement age under the plan.

(ii) *Distribution of benefits.* (A) A plan may provide that the benefit accrual otherwise required under section 411(b)(1)(H)(i) and paragraph (b) of this section for a plan year is reduced (but not below zero) by the actuarial equivalent of total plan benefit distributions (as determined under this paragraph (b)(4)(ii)) made to the participant by the close of the plan year.

(B) The plan benefit distributions described in this paragraph (b)(4)(ii) are limited to distributions made to the participant during plan years and periods with respect to which section 411(b)(1)(H)(i) and this section apply (including plan years and periods beginning before January 1, 1988) for which the plan could (without regard to section 401(a)(9) and the regulations thereunder) provide for the suspension of the participant's plan benefits in accordance with section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) and regulations issued thereunder by the Department of Labor.

(C) For purposes of determining the total amount of plan benefit distributions that may be taken into account under this paragraph (b)(4)(ii) as of the close of a plan year, distributions shall be disregarded to the extent the total amount of distributions made to the participant by the close of the plan year exceeds the total amount of the distributions the participant would have received by the close of the plan year if the distributions had been made in accordance with the plan's normal form of benefit distribution. Accordingly, the plan is required to accrue a benefit for the plan year on

behalf of a participant in accordance with the plan's benefit formula, taking into account all of the participant's years of credited service, reduced (but not below the participant's normal retirement benefit for the prior plan year) by the actuarial equivalent of total benefit distributions (taken into account under this paragraph (b)(4)(ii) made to the participant by the close of the plan year. If, by the close of the plan year, the actuarial equivalent of total plan benefit distributions made to the participant and taken into account under this paragraph (b)(4)(ii) is greater than the total benefit accruals required under section 411(b)(1)(H)(i) and paragraph (b) of this section for the plan years during which such distributions were made, the plan is not required under section 411(b)(1)(H)(i) and paragraph (b) of this section to accrue any benefit on behalf of the participant for the plan year.

(iii) *Adjustment in benefits payable.* (A) A plan may provide that the benefit accrual otherwise required under section 411(b)(1)(H)(i) and paragraph (b) of this section for the plan year is reduced (but not below zero) by the amount of any actuarial adjustment under the plan in the benefit payable for the plan year with respect to the participant because of a delay in the payment of plan benefits after the participant's attainment of normal retirement age.

(B) For purposes of paragraph (b)(4)(iii)(A) of this section, the actuarial adjustment may be taken into account for a plan year only to the extent it is made to the greater of the participant's retirement benefit as of the close of the prior plan year, including any actuarial adjustment made under the plan for the prior plan year, and the participant's normal retirement benefit as of the close of the prior play year determined by including benefit accruals required by section 411(b)(1)(H)(i) and paragraph (b) of this section. If the retirement benefit, as actuarially adjusted for the plan year in accordance with this paragraph (b)(4)(iii) for delayed payment, exceeds the normal retirement benefit, as determined by including benefit accruals required for the plan year by section 411(b)(1)(H)(i) and paragraph (b) of this section, the plan shall be required to provide the retirement benefit, as actuarially adjusted in accordance with this paragraph (b)(4)(iii) under the plan. Notwithstanding the provisions of this paragraph (b)(4)(iii)(B), in the case of a plan that suspends benefit payments in accordance with section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 and the regulations issued thereunder by the Department of Labor, the plan does not fail to satisfy the requirements of section 411(b)(1)(H) and paragraph (b) of this section solely because the plan provides that the retirement benefit to which a participant is entitled as of the close of a plan year ending after the participant attains normal retirement age under the plan is the greater of the benefit payable at normal retirement age (not including benefit accruals otherwise required by section 411(b)(1)(H) and paragraph (b) of this section) actuarially adjusted under the plan to the close of the plan year for delayed payment, and the retirement benefit determined under the plan as of the close of the plan year determined by including benefit accruals required by section 411(b)(1)(H) and paragraph (b) of this section and determined without regard to any offset that would otherwise be applicable under this paragraph (b)(4)(iii).

(iv) *Examples.* The provisions of paragraph (b)(4) of this section may be illustrated by the following examples. In each example, assume that the participant completes the hours of service in a plan year required under the plan to accrue a full benefit for the plan year and assume that the participant is not married unless otherwise specified.

Example (1). Employer Y maintains a defined benefit plan that provides a normal retirement benefit of $20 per month multiplied by the participant's years of credited service. The plan contains no limit on the number of years of credited service taken into account for purposes of determining the normal retirement benefit provided by the plan. Participant A attains normal retirement age of 65 and continues in the full time service of Y. At age 65, A has 30 years of credited service under the plan and could receive a normal retirement benefit of $600 per month ($20 × 30 years) if A retires. The plan provides for the suspension of A's normal retirement benefit (in accordance with section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) and regulations thereunder issued by the Department of Labor) during the period of A's continued employment with Y. Accordingly, the plan does not provide for an actuarial adjustment of A's normal retirement benefit because of delayed payment and the plan does not pay A's normal retirement benefit while A remains in the full time service of Y. If A retires at age 67, after completing two additional years of credited service for Y, A must receive additional accruals for the two years of credited service completed after attaining normal retirement age in order for the plan to satisfy section 411(b)(1)(H)(i). Accordingly, A is entitled to receive a normal retirement benefit of $640 per month ($20 × 32 years).

Example (2). Assume the same facts as in *Example (1),* except that the plan provides that at the time A's normal retirement benefit becomes payable, the amount of A's normal retirement benefit (determined as of A's normal retirement age and each year thereafter) will be actuarially increased for delayed retirement. The plan offsets this actuarial increase against benefit accruals in plan years ending after A's attainment of normal retirement age, as permitted by paragraph (b)(4)(iii) of this section. Accordingly, the plan does not provide for the suspension of normal retirement benefits (in accordance with section 203(a)(3)(B) of ERISA and regulations thereunder issued by the Department of Labor). Under section 411(b)(1)(H), the plan must provide A with a benefit of at least $620 per month after A completes 31 years of credited service for Y. However, under paragraph (b)(4)(iii) of this section, the plan is not required to provide A with a benefit accrual for A's additional year of credited service for Y because, under the plan, A will be entitled to receive, upon retirement at age 66 after completing 1 additional year of credited service for Y, an actuarially increased benefit of $672 per month. This monthly benefit of $672 is the greater of A's normal retirement benefit at normal retirement age ($20 × 30 years = $600) actuarially adjusted for delayed payment and A's normal retirement benefit ($20 × 31 years = $620) determined by taking into account A's year of credited service after attaining normal retirement age. Under the plan, A will be entitled to receive, upon retirement at age 67 after completing 2 additional years of credited service for Y after attaining normal retirement age, an actuarially increased benefit of $756 per month. This monthly benefit of $756 is the greater of A's actuarially adjusted normal retirement benefit at age 66 ($672) actuarially adjusted to $756 for delayed payment to age 67 and A's normal retirement benefit ($20 × 32 years = $640) determined by taking into account A's years of credited service after attaining normal retirement age.

Example (3). Assume the same facts as in *Example (1),* except that the plan neither provides for the suspension of normal retirement benefit payments (in accordance with section 203(a)(3)(B) of ERISA and regulations thereunder issued by the Department of Labor) nor provides for an actuarial increase in benefit payments because of delayed payment of benefits. Consequently, the plan provides that the normal retirement benefit will be paid to a participant, beginning at age 65 (normal retirement age) even though the participant remains in the service of Y and offsets the value of the benefit distributions against benefit accruals in plan years ending after the participant's attainment of normal retirement age, as permitted by paragraph (b)(4)(ii) of this section. Participant B (who remains in the full time service of Y) receives 12 monthly benefit payments prior to attainment of age 66. The total monthly benefit payments of $7,200 ($600 × 12 payments) have an actuarial value at age 66 of $7,559 (reflecting interest and mortality) which would produce a monthly benefit of $72 commencing at age 66. The benefit accrual for the year of credited service B completed after attaining normal retirement age is $20 per month ($20 × 1 year). Because the actuarial value (determined as a monthly benefit of $72) of

the benefit payments made during the one year of credited service after B's attainment of normal retirement age exceeds the benefit accrual for the one year of credited service after B's attainment of normal retirement age, the plan is not required to accrue benefits on behalf of B for the one year of credited service after B's attainment of normal retirement age and the plan is not required to increase B's monthly benefit payment of $600 at age 66.

Assume B receives 24 monthly benefit payments prior to B's retirement at age 67. The total monthly benefit payments of $14,400 ($600 × 24 payments have an actuarial value at age 67 of $15,839 (reflecting interest and mortality) which would produce a monthly benefit payment of $156 commencing at age 67. The benefit accrual for the two years of credited service B completed after attaining normal retirement age is $40 per month ($20 × 2 years). Because the actuarial value (determined as a monthly benefit of $156) of the benefit payments made during the two years of credited service after B's normal retirement age exceeds the benefit accrual for the two years of credited service after B's normal retirement age ($20 × 2 years = $40), the plan is not required to accrue benefits on behalf of B for the second year of credited service B completed after attaining normal retirement age and the plan is not required to increase B's monthly benefit payment of $600.

Example. (4). Assume that Employer Z maintains a defined benefit plan that provides a normal retirement benefit of 2% of the average of a participant's high three consecutive years of compensation multiplied by the participant's years of credited service under the plan. The plan contains no limit on the number of years of credited service taken into account for purposes of determining the normal retirement benefit provided by the plan. Participant C, who has attained normal retirement age (age 65) under the plan, continues in the full time service of Z. At normal retirement age, C has average compensation of $20,000 for C's high three consecutive years and has 10 years of credited service under the plan. Thus, at normal retirement age, C is entitled to receive an annual normal retirement benefit of $4,000 ($20,000 × .02 × 10 years). Assume further that the plan provides for the suspension of N's normal retirement benefit (in accordance with section 203(a)(3)(B) of ERISA and regulations issued thereunder by the Department of Labor) during the period of C's continued employment with Z. Accordingly, the plan does not provide for the actuarial increase of C's normal retirement benefit because of delayed payment and the plan does not pay C's normal retirement benefit while C remains in the full time service of Z. At age 70, when C retires, C has average annual compensation for C's high three consecutive years of $35,000. Under section 411(b)(1)(H), C must be credited with 15 years of credited service for Z and C's increased compensation after attaining normal retirement age must be taken into account for purposes of determining C's normal retirement benefit. At age 70, C is entitled to receive an annual normal retirement benefit of $10,500 ($35,000 × .02 × 15 years).

Example (5). Assume the same facts as in *Example (4)*, except that the payment of C's retirement benefit is not suspended (in accordance with section 203(a)(3)(B) of ERISA and regulations issued thereunder by the Department of Labor) and, accordingly, the plan provides that retirement benefits that commence after a participant's normal retirement age will be actuarially increased for late retirement. The plan offsets this actuarial increase against benefit accruals in plan years ending after C's attainment of normal retirement age, as permitted by paragraph (b)(4)(iii) of this section. Under this provision, at the close of each plan year after C's attainment of normal retirement age, C's retirement benefit is actuarially increased. Under this provision, the actuarial increase for the plan year is made to the greater of C's normal retirement benefit at the close of the prior plan year (including previous actuarial adjustments) and C's normal retirement benefit at the close of the prior plan year determined by including all benefit accruals. Accordingly, at the close of each plan year, C is entitled to receive an annual normal retirement benefit equal to the greater of C's normal retirement benefit (adjusted actuarially under the plan from the benefit to which C was entitled at the close of the prior plan year) determined at the close of the plan year and C's normal retirement benefit determined at the close of the plan year by taking into account C's years of credited service and benefit accruals after C's attainment of normal retirement age. The foregoing is illustrated in the following table with respect to certain years of credited service performed by C after attaining normal retirement age 65.

Age	Years of credited service	Average compensation for high three consecutive years	Normal retirement benefit with additional accruals (.02 × column 2 × column 3)	Retirement benefit, as actuarially increased under the plan from the benefit at prior age (column 6)	Normal retirement benefit to which C is entitled (greater of column 4 and column 5)
1	*2*	*3*	*4*	*5*	*6*
65	10	$20,000	$4,000	N/A	$4,000
66	11	21,000	4,620	4,482	4,620
67	12	29,000	6,960	5,192	6,960
68	13	30,000	7,800	7,848	7,848
69	14	33,000	9,240	8,880	9,240
70	15	35,000	10,500	10,494	10,500

Example (6). Assume the same facts as in *Example (4)*, except that C does not retire at age 70, but continues in the full time service of Z. Upon C's attainment of age 70, the plan commences benefit payments to C. The annual benefit paid to C in the first plan year is $10,500 ($35,000 × .02 × 15 years). In determining the annual benefit payable to C in each subsequent plan year, the plan offsets the value of benefit distributions made to the participant by the close of the prior plan year against benefit accruals in plan years during which such distributions were made, as permitted by paragraph (b)(4)(ii) of this section. Accordingly, for each subsequent plan year, C is entitled under the plan to receive benefit payments based on C's benefit (at the close of the prior plan year) determined under the plan formula by taking into account all of C's years of credited service, reduced (but not below C's normal retirement benefit for the prior plan year) by the value of total benefit distributions made to C by the close of the prior plan year. The foregoing is illustrated in the following table with respect to certain years of credited service performed by C while benefits were being distributed to C.

Years of benefit distributions	Years of credited service (as of close of the year)	Average compensation for high three years	Normal retirement benefit with additional accruals (.02 × column 2 × column 3)	Suspendible benefit distributions made during the year	Cumulative suspendible benefit distributions made as of close of the year	Annual benefit that is actuarial equivalent of cumulative suspendible benefit distributions made as of close of the year	Retirement benefit to which C is entitled at close of the year (column 4 − column 7, but not less than column 8 for prior year)
1	2	3	4	5	6	7	8
N/A	15	$35,000	$10,500	N/A	N/A	N/A	$10,500
1	16	35,000	11,200	$10,500	$10,500	$1,472	10,500
2	17	45,000	15,300	10,500	21,000	3,209	12,091
3	18	50,000	18,000	12,091	33,091	5,510	12,490

(c) *Defined contribution plans*—(1) *In general.* A defined contribution plan (including a target benefit plan described in § 1.410(a)–4(a)(1)) does not satisfy the minimum vesting standards of section 411(a) if, either directly or indirectly, because of the attainment of any age—

(i) The allocation of employer contributions or forfeitures to the accounts of participants is discontinued, or

(ii) The rate at which the allocation of employer contributions or forfeitures is made to the accounts of participants is decreased.

(2) *Limitations on allocations.* (i) A defined contribution plan (including a target benefit plan described in § 1.410(A)–4(a)(1)) does not fail to satisfy the minimum vesting standards of section 411(a) solely because the plan limits the total amount of employer contributions and forfeitures that may be allocated to a participant's account (for a particular plan year or for the participant's total years of credited service under the plan) or solely because the plan limits the total number of years of credited service for which a participant's account may receive allocations of employer contributions and forfeitures. The limitations described in the preceding sentence may not be applied with respect to the allocation of gains, losses or income of the trust to the account of a participant. Furthermore, a defined contribution plan (including a target benefit plan) does not fail to satisfy section 411(a) solely because the plan limits the number of years of credited service that may be taken into account for purposes of determining the amount of, or the rate at which, employer contributions and forfeitures are allocated to a participant's account for a particular plan year. However, in applying a credited service limitation described in this paragraph (c)(2)(i), the plan may not take into account any year of service (prior to the effective date of section 411(b)(2) and paragraph (c) of this section) that is disregarded in determining allocations to a participant's account because of the participant's attainment of any age.

(ii) Any limitation described in paragraph (c)(2)(i) of this section may not be based, directly or indirectly, on the attainment of any age. The provisions of paragraph (b)(2)(ii) of this section shall also apply for purposes of this paragraph (c).

(iii) The Commissioner shall provide such additional rules as may be necessary or appropriate with respect to the application of section 411(b)(2) and this section to target benefit plans.

(d) *Benefits and forms of benefits subject to requirements*—(1) *General rule.* Except as provided in paragraph (d)(2) of this section, section 411(b)(1)(H) and (b)(2) and paragraphs (b) and (c) of this section apply to all benefits (and forms of benefits) provided under a defined benefit plan and a defined contribution plan, including accrued benefits, benefits described in section 411(d)(6), ancillary benefits and other rights and features provided under the plan. Accordingly, except as provided in paragraph (d)(2) of this section, benefit accruals under a defined benefit plan and allocations under a defined contribution plan will be considered to be reduced on account of the attainment of a specified age if optional forms of benefits, ancillary benefits, or other rights or features under the plan provided with respect to benefits or allocations attributable to credited service prior to the attainment of such age are not provided (on at least as favorable a basis to participants) with respect to benefits or allocations attributable to credited service after such age. Thus, for example, a plan may not provide a lump sum payment only with respect to benefits attributable to years of credited service before the attainment of a specified age. Similarly, except as provided in paragraph (d)(2) of this section, if an optional form of benefit is available under the plan at a specified age, the availability of such form of benefit, or the method for determining the manner in which such benefit is paid, may not, directly or indirectly, be denied or provided on terms less favorable to participants because of the attainment of any higher age. Similarly, if the method for determining the amount or the rate of the subsidized portion of a joint and survivor annuity or the subsidized portion of a joint and survivor annuity or the subsidized portion of a preretirement survivor annuity is less favorable with respect to participants who have attained a specified age than with respect to participants who have not attained such age, benefit accruals or account allocations under the plan will be considered to be reduced on account of the attainment of such age.

(2) *Special rule for certain benefits.* A plan will not fail to satisfy section 411(b)(1)(H) or paragraph (b) of this section merely because the following benefits, or the manner in which such benefits are provided under the plan, vary because of the attainment of any higher age.

(i) The subsidized portion of an early retirement benefit (whether provided on a temporary or permanent basis),

(ii) A qualified disability benefit (as defined in § 1.411(a)–7(c)(3)); and

(iii) A social security supplement (as defined in § 1.411(a)–7(c)(4)(ii)).

(e) *Coordination with certain provisions.* Notwithstanding section 411(b)(1)(H), (b)(2) and the preceding paragraphs of this section, the following rules shall apply.

(1) *Section 415 limitations.* No allocation to the account of a participant in a defined contribution plan (including a target benefit plan described in § 1.410(a)–4(a)(1)) shall be required for a limitation year by section 411(b)(2) and no benefit accrual with respect to a participant in a defined benefit plan shall be required for a limitation year by section 411(b)(1)(H)(i) to the extent that the allocation or accrual would cause the plan to exceed the limitations of

section 415(b), (c), or (e) applicable to the participant for the limitation year.

(2) *Prohibited discrimination.* (i) No allocation to the account of a highly compensated employee in a defined contribution plan (including a target benefit plan) shall be required for a plan year by section 411(b)(2) to the extent the allocation would cause the plan to discriminate in favor of highly compensated employees within the meaning of section 401(a)(4).

(ii) No benefit accrual on behalf of a highly compensated employee in a defined benefit plan shall be required for a plan year by section 411(b)(1)(H)(i) to the extent such benefit accrual would cause the plan to discriminate in favor of highly compensated employees within the meaning of section 401(a)(4).

(iii) The Commissioner may provide additional rules relating to prohibited discrimination in favor of highly compensated employees.

(3) *Permitted disparity.* In the case of a plan that would fail to satisfy section 401(a)(4) except for the application of section 401(1), no allocation to the account of a participant in a defined contribution plan and no benefit accrual on behalf of a participant in a defined benefit plan shall be required under section 411 (b)(1)(H) or (b)(2) for a plan year to the extent such allocation or accrual would cause the plan to fail to satisfy the requirements of section 401(1) and the regulations thereunder for the plan year.

(f) *Effective dates*—(1) *Noncollectively bargained plans*—(i) *In general.* Except as otherwise provided in paragraph (f)(2) of this section, section 411 (b)(1)(H) and (b)(2) and paragraphs (b) and (c) of this section are effective for plan years beginning on or after January 1, 1988, with respect to a participant who is credited with at least 1 hour of service in a plan year beginning on or after January 1, 1988. Section 411 (b)(1)(H) and (b)(2) and paragraphs (b) and (c) of this section are not effective with respect to a participant who is not credited with at least 1 hour of service in a plan year beginning on or after January 1, 1988.

(ii) *Defined benefit plans.* In the case of a participant who is credited with at least 1 hour of service in a plan year beginning on or after January 1, 1988, section 411 (b)(1)(H) and paragraph (b) of this section are effective with respect to all years of service completed by the participant, including years of service completed before the first plan year beginning on or after January 1, 1988. Accordingly, in the case of a participant described in the preceding sentence, a defined benefit plan does not satisfy section 411(b)(1)(H) and paragraph (b) of this section for a plan year beginning on or after January 1, 1988, if the plan disregards, because of the participant's attainment of any age, any year of service completed by the participant or any compensation earned by the participant after attaining such age. However, a defined benefit plan is not required under section 411(b)(1)(H) and paragraph (b) of this section to take into account for benefit accrual purposes any year of service completed before an employee becomes a participant in the plan. See paragraph (b)(2) of this section for rules relating to benefit and service limitations that may be imposed by a defined benefit plan.

(iii) *Defined contribution plans.* Section 411(b)(2) and paragraph (c) of this section are not applicable with respect to allocations of employer contributions or forfeitures to the accounts of participants under a defined contribution plan for a plan year beginning before January 1, 1988. However, in the case of a defined contribution plan under which allocations to the accounts of participants for a plan year are determined on the basis of an allocation formula that takes into account service or compensation for the employer during prior plan years, section 411(b)(2) and paragraph (c) of this section are effective for plan years beginning on or after January 1, 1988, with respect to all years of service completed by the participant, including years of service completed before the first plan year beginning on or after January 1, 1988. Accordingly, in the case of a participant who has at least 1 hour of service in a plan year beginning on or after January 1, 1988, a defined contribution plan containing an allocation formula described in the preceding sentence does not satisfy section 411(b)(2) and paragraph (c) of this section with respect to allocations for a plan year beginning on or after January 1, 1988, if the plan disregards, because of the participant's attainment of any age, any year of service completed by the participant. See paragraph (c)(2) of this section for rules relating to limitations on allocations to the accounts of participants that may be imposed by a defined contribution plan.

(iv) *Employee contributions.* In applying paragraph (f)(1) (i), (ii) and (iii) of this section to plan years beginning on or after January 1, 1988, a year of service completed before the first plan year beginning on or after January 1, 1988, will not be treated as being disregarded under a plan on account of a participant's attainment of a specified age solely because such year of service is disregarded under the plan because the participant was not eligible to make voluntary or mandatory employee contributions (as well as contributions under a cash or deferred arrangement described in section 401(k)) under the plan for such year. A plan is not required to permit a participant to make voluntary or mandatory employee contributions (as well as contributions under a cash or deferred arrangement described in section 401(k)) for a plan year beginning before January 1, 1988, in order to satisfy section 411 (b)(1)(H) or (b)(2) or paragraph (b) or (c) of this section for a plan year beginning on or after January 1, 1988.

(v) *Hour of service.* For purposes of this paragraph (f)(1), one hour of service means one hour of service recognized under the plan or required to be recognized under the plan by section 410 (relating to minimum participation standards) or section 411 (relating to minimum vesting standards). In the case of a plan that does not determine service on the basis of hours of service, one hour of service means any service recognized under the plan or required to be recognized under the plan by section 410 (relating to minimum participation standards) or section 411 (relating to minimum vesting standards).

(vi) *Examples.* The provisions of paragraph (f)(1) of this section may be illustrated by the following examples. In each example, assume that the participant completes the hours of service in a plan year required under the plan to accrue a full benefit or receive an allocation for the plan year.

Example (1). Employer X maintains a noncontributory defined benefit plan (that is not a collectively bargained plan) that provides a normal retirement benefit equal to 1% of a participant's average annual compensation for the participant's three consecutive years of highest compensation, multiplied by the participant's years of credited service under the plan. The plan contains no limit on the number of years of credited service taken into account for purposes of determining the normal retirement benefit provided by the plan. The plan uses the calendar year as its plan year. The plan specifies a normal retirement age of 65 and provides (prior to January 1, 1988) that no compensation earned and no service performed by a participant after attainment of normal retirement age will be taken into account in determining the participant's normal retirement benefit. Participant A attains normal retirement age on December 15, 1985. A continues in the full time service of X and has at least 1 hour of service for X during the plan year beginning on January 1, 1988. As of the plan year ending December 31, 1985, A had 35 years of credited service under the plan. In accordance with the plan provisions in effect prior to January 1, 1988, A's service and compensation during the 1986

and 1987 plan years is not taken into account in determining A's normal retirement benefit for those plan years. Beginning on January 1, 1988, the plan provisions that compensation earned and years of service completed after normal retirement age are not taken into account in determining a participant's normal retirement benefit may not be applied to A. Thus, as of the plan year beginning January 1, 1988, A's normal retirement benefit under the plan must be determined without regard to those provisions. Accordingly, beginning on January 1, 1988, the plan is required to take into account A's service for X and A's compensation from X during the 1986 and 1987 plan years for purposes of determining A's normal retirement benefit in order to satisfy section 411(b)(1)(H) and paragraph (b) of this section.

Example (2). Assume the same facts as in *Example (1),* except that the plan provides that, in determining a participant's normal retirement benefit under the plan (a) not more than 35 years of credited service will be taken into account and (b) no compensation earned after 35 years of credited service have been completed will be taken into account. Accordingly, the plan is not required to take into account A's service for X or A compensation from X during the 1986 and 1987 plan years for purposes of determining A's normal retirement benefit in order to satisfy section 411(b)(1)(H) and paragraph (b) of this section.

Example (3). Assume the same facts as in *Example (1),* except that A retires on December 5, 1987 and does not perform any hours of service for X after A's retirement. Accordingly, the plan is not required to take into account A's service for X and A's compensation from X during the 1986 and 1987 plan years for purposes of determining A's normal retirement benefit in order to satisfy section 411(b)(1)(H) and paragraph (b) of this section.

Example (4). Assume the same facts as in *Example (1),* except that the plan requires, as a condition to accruing benefits attributable to employer contributions under the plan, that a participant make employee contributions under the plan. The plan provides that a participant is not eligible to make employee contributions in a plan year beginning after the plan year in which the participant attains normal retirement age under the plan. Accordingly, A does not make employee contributions during the 1986 and 1987 plan years and, therefore, does not accrue in those plan years a benefit attributable to employer contributions. The plan is not required to take into account A's service for X and A's compensation from X during the 1986 and 1987 plan years in order to satisfy section 411(b)(1)(H) and paragraph (b) of this section. In addition, the plan is not required to permit A to make employee contributions to the plan for the 1986 and 1987 plan years in order to satisfy section 411(b)(1)(H) and paragraph (b) of this section.

Example (5). Employer Y maintains a profit-sharing plan (that is not a collectively bargained plan). The plan is the only qualified plan maintained by Y and uses the calendar year as its plan year. The formula under the plan for allocating employer contributions and forfeitures to the accounts of participants contains a years of service factor. Pursuant to the allocation formula containing the years of service factor, employer contributions and forfeitures for the plan year are allocated among the accounts of participants on the basis of one unit for each full $200 of compensation of the participant for the plan year and one unit for each year of credited service for Y completed by the participant. The plan contains no limit on the number of years of credited service taken into account for purposes of determining the allocation to the account of a participant for the plan year under the plan's allocation formula. The plan specifies a normal retirement age of 65 and provides (prior to January 1, 1988) that no service performed by a participant in a plan year beginning after the attainment of normal retirement age will be taken into account in determining the allocation to the participant's account for a plan year. Participant B attains normal retirement age on December 15, 1985. B continues in the full time service of Y and has at least 1 hour of service for Y during the plan year beginning January 1, 1988. As of the plan year ending December 31, 1985, B had 35 years of credited service under the plan. In accordance with the plan provisions in effect prior to January 1, 1988, B's service during the 1986 and 1987 plan year is not taken into account in determining the allocation of employer contributions and forfeitures to B's account for the 1986 and 1987 plan years. As of the plan year beginning January 1, 1988, the plan provision that years of service in plan years beginning after attainment of normal retirement age are not taken into account in determining the allocation of employer contributions and forfeitures to the accounts of participants may not be applied to B. Thus, the allocation of employer contributions and forfeitures to B's account for the 1988 plan year must be determined under the allocation formula contained in the plan without regard to that provision. Accordingly, the plan is required to take into account B's service for Y during the 1986 and 1987 plan years for purposes of determining the allocation of employer contributions and forfeitures to B's account for the 1988 plan year in order to satisfy section 411 (b)(2) and paragraph (c) of this section. However, the plan is not required to provide any additional allocations to B's account under the plan for the 1986 or 1987 plan year in order to satisfy section 411 (b)(2) and paragraph (c) of this section.

Example (6). Assume the same facts as in *Example (5),* except that the plan provides that, in determining the allocation of employer contributions and forfeitures to the account of a participant for a plan year, not more than 35 years of credited service for Y will be taken into account. Accordingly, the plan is not required to take into account B's service for Y during the 1986 or 1987 plan years for purposes of determining the allocation of employer contributions and forfeitures to B's account for the 1988 plan year under the allocation formula contained in the plan.

(2) *Collectively bargained plans.* (i) In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers, ratified before March 1, 1986, section 411 (b)(1)(H) and (b)(2) is effective for benefits provided under, and employees covered by, any such agreement with respect to plan years beginning on or after the later of—

(A) January 1, 1988, or

(B) The date on which the last of such collective bargaining agreements terminates (determinated without regard to any extension of any such agreement occurring on or after March 1, 1986).

However, notwithstanding the preceding sentence, section 411 (b)(1)(H) and (b)(2) shall be effective for benefits provided under, and employees covered by, any agreement described in this paragraph (f)(2)(i) no later than with respect to the first plan year beginning on or after January 1, 1990.

(ii) The effective date provisions of paragraph (f)(1) of this section shall apply in the same manner to plans described in paragraph (f)(2)(i) of this section, except that the effective date determined under paragraph (f)(2)(i) of this section shall be substituted for the effective data determined under paragraph (f)(1) of this section.

(iii) In accordance with the provisions of paragraph (f)(2)(i) of this section, a plan described therein may be subject to different effective dates under section 411 (b)(1)(H) and (b)(2) for employees who are covered by a collective bargaining agreement and employees who are not covered by a collective bargaining agreement.

(iv) For purposes of paragraph (f)(2)(i) of this section, the service crediting rules of paragraph (f)(1) of this section shall apply to a plan described in paragraph (f)(2)(i) of this section, except that in applying such rules the effective date determined under paragraph (f)(2)(i) of this section shall be substituted for the effective date determined under paragraph (f)(1) of this section. See paragraph (f)(1)(v) of this section for rules relating to the recognition of an hour of service.

(3) *Amendments to plans.* (i) Except as provided in paragraph (f)(3)(ii) of this section, plan amendments required by section 411 (b)(1)(H) and (b)(2) (the applicable sections) shall not be required to be made before the first plan year beginning on or after January 1, 1989, if the following requirements are met—

(A) The plan is operated in accordance with the requirements of the applicable section for all periods before the first plan year beginning on or after January 1, 1989, for which such section is effective with respect to the plan; and

(B) Such plan amendments are adopted no later than the last day of the first plan year beginning on or after January 1, 1989, and are made effective retroactively for all periods for which the applicable section is effective with respect to the plan.

(ii) In the case of a collectively bargained plan described in paragraph (f)(2)(i) of this section that satisfies the requirements of paragraph (f)(3)(i) of this section (as modified by this paragraph (f)(3)(ii)), paragraph (f)(3)(i) shall be applied by substituting for "the first plan year beginning on or after January 1, 1989," the first plan year beginning on or after the later of—

(A) January 1, 1989, or

(B) The date on which the last of such collective bargaining agreements terminate (determined without regard to any extension of any such agreement occurring on or after March 1, 1986).

However, notwithstanding the preceding sentence, section 411 (b)(1)(H) and (b)(2) shall be applicable to plans described in this paragraph (f)(3)(ii) no later than the first plan year beginning on or after January 1, 1990.

Par. 6. Section 1.411(c)–1 is amended by revising paragraph (f)(2) to read as follows:

§ 1.411(c)-1 Allocation of accrued benefits between employer and employee contributions.

* * * * *

(f) *Suspension of benefits,* etc. * * *

(2) *Employment after retirement after retirement.* Except as permitted by paragraph (f)(1) of this section, a defined benefit plan must make an actuarial adjustment to an accrued benefit the payment of which is deferred past normal retirement age. See, also, section 411(b)(1)(H0 (relating to continued accruals after normal retirement age) and § 1.411(b)–2.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

Loans to Plan Participants and Beneficiaries Who Are Parties in Interest With Respect to the Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of hearing.

SUMMARY: Notice is hereby given that the Department of Labor will hold a hearing on April 25, 1988, regarding proposed regulations under section 408(b)(1) of Title I of the Employee Retirement Income Security Act of 1974 (ERISA or the Act), relating to loans to plan participants and beneficiaries who are parties in interest with respect to the plan. The proposed regulations were set forth in a notice of proposed rulemaking published in the **Federal Register** at 53 FR 1798 (January 22, 1988).

DATE: The hearing will be held on Monday, April 25, 1988, beginning at 9:00 a.m., e.s.t.

ADDRESSES: The hearing will be held in Room S–4215 of the Department of Labor Building, 200 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, (202) 523–9141 (not a toll free number), or Kathy D. Lewis, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, (202) 523–7901 (not a toll free number).

SUPPLEMENTARY INFORMATION: On January 22, 1988, the Department of Labor (the Department) published a notice of proposed rulemaking in the **Federal Register** (53 FR 1798) regarding loans to plan participants and beneficiaries under section 408(b)(1) of ERISA (29 U.S.C. 1108(b)(1)). In that notice the Department invited all interested persons to submit written comments concerning the proposed regulations on or before March 22, 1988. The Department has received a number of comments requesting a public hearing. In view of these requests, and the importance of the proposed regulations, the Department has decided to hold a hearing on the proposed regulations on April 25, 1988, beginning at 9:00 a.m., e.s.t., in Room S–4215 of the Department of Labor Building, 200 Constitution Avenue NW., Washington, DC.

Any interested person who wishes to be assured of an opportunity to present oral comments at the hearing should submit by 3:30 p.m., e.s.t., April 15, 1988: (1) A written request to be heard, and (2) an outline (preferably five copies) of the topics to be discussed, indicating the time allocated to each topic. The request to be heard and accompanying outline should be sent to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5671, U.S. Department of Labor, Washington, DC 20210, and marked "Attention: Section 408(b)(1) Hearing." Individuals who have not filed written comments regarding the proposed regulations may nonetheless submit a request to make oral comments at the hearing.

The Department will prepare an agenda indicating the order of presentation of oral comments. In the absence of special circumstances each commentator will be allotted ten minutes in which to complete his or her presentation. Information about the agenda may be obtained on or after April 20, 1988 by telephoning Kathy D. Lewis, Washington, DC, (202) 523–7901 (not a toll free number). Individuals not listed in the agenda will be allowed to make oral comments at the hearing to the extent time permits. Those individuals who make oral comments at the hearing should be prepared to answer questions regarding their comments. The hearing will be transcribed.

Notice of Public Hearing

Notice is hereby given that a public hearing will be held on Monday, April 25, 1988, regarding proposed regulations (published at 53 FR 1798, January 22, 1988) under section 408(b)(1) of ERISA relating to loans to plan participants and beneficiaries. The hearing will be held beginning at 9:00 a.m., e.s.t. in Room S–4215 of the Department of Labor Building, 200 Constitution Avenue NW., Washington, DC.

Signed at Washington, DC, this 6th day of April, 1988.

David M. Walker,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration, United States Department of Labor.

[FR Doc. 88–7858 Filed 4–8–88; 8:45 am]

BILLING CODE 4510–29–M

29 CFR Part 2580

Proposed Regulation Exempting Certain Broker-Dealers and Investment Advisers From Bonding Requirements; Extension of Comment Period

AGENCY: Department of Labor.

ACTION: Notice of extension of comment period.

SUMMARY: This document extends the comment period regrding a proposed regulation under the Employee Retirement Income Security Act of 1974 (ERISA) which would provide certain broker-dealers and investment advisers with an exemption from the requirement for a bond set forth in section 412 of ERISA. The proposed regulation was set

forth in a notice of proposed rulemaking published in the **Federal Register** at 52 FR 31039 (August 19, 1987).

DATE: The comment period is extended through May 18, 1988.

ADDRESSES: Written comments (preferably at least three copies) should be submitted to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N–5671, U.S. Department of Labor, Washington, DC 20210, and marked "Attention: Proposed Bonding Regulation." All submissions will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, Room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Linda Shore, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, (202) 523–7901 (not a toll free number).

SUPPLEMENTARY INFORMATION: On August 19, 1987, the Department of Labor, (the Department), published a notice of proposed rulemaking in the **Federal Register** (52 FR 31039) which would provide certain broker-dealers and investment advisers with an exemption from the requirement for a bond set forth in section 412 of ERISA. In that notice the Department invited all interested persons to submit written comments concerning the proposed regulation on or before October 19, 1987. On November 20, 1987 the Department published a notice in the **Federal Register** (52 FR 44610) extending the comment period for the proposed regulation through January 18, 1988.

The Department has received a request from the Securities Industry Association for additional time to prepare comments, and the Department believes that it is appropriate to grant such additional time. Accordingly, this notice extends the comment period during which comments on the proposed regulation will be received through May 18, 1988.

Notice of Extension of Comment Period

Notice is hereby given that the period of time for the submission of public comments on the proposed regulation exempting certain broker-dealers and investment advisers from the bond otherwise required under section 412 of ERISA (proposed at 52 FR 31039, August 19, 1987), is hereby extended through Wednesday, May 18, 1988.

Signed at Washington, DC, this 6th day of April, 1988.

David M. Walker,

Assistant Secretary of Labor, Pension and Welfare Benefits Administration, United States Department of Labor.

[FR Doc. 88–7857 Filed 4–8–88; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on Amendments; Coal Exploration

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern the filing of notices of intent to conduct coal exploration operations and the issuance of coal exploration permits under the Ohio program.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on (May 11, 1988). If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on May 6, 1988. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on April 26, 1988.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Ms. Nina Rose Hatfield, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Office of Surface Mining Reclamation and Enforcement, 1100 "L" Street, NW., Room 5131, Washington, DC 20240, Telephone: (202) 343–5492.

Ohio Department of Natural Resources, Division of Reclamation, Fountain Square, Building B–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Ms. Nina Rose Hatfield, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission and on subsequent revisions, modifications, and amendments to that program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated March 8, 1988 (Administrative Record No. OH–1019), the Ohio Department of Natural Resources, Division of Reclamation (ODNR) submitted proposed amendments to the Ohio program at Ohio Administrative Code (OAC) Section 1501:13–4–02. The proposed changes were initiated by Ohio and are briefly summarized below:

(1) The proposed amendments would modify OAC Section 1501:13–4–02(C)(1) to add a requirement that the person seeking to explore for coal give telephone notice on the date of commencement of any exploration activities to the Ohio Division of Reclamation district office having jurisdiction over the exploration area.

(2) The proposed amendments would modify OAC Section 1501:13–4–02(C)(1)(a) to add that exploratory operations involving only drilling activities are not considered substantial disturbance of the land surface unless

those activities affect lands designated as unsuitable for coal mining operations.

(3) The proposed amendments would modify OAC Section 1501:13–4–02(E)(2) to provide that notices of intent to explore shall expire on the first anniversary of the date of issuance unless a request for renewal is filed with the Ohio Division of Reclamation at least sixty days prior to the expiration date.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the amendments proposed by ODNR satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendment are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR MORE INFORMATION CONTACT" by 4:00 p.m. on April 26, 1988. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "FOR MORE INFORMATION CONTACT." All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "ADDRESSES." A written summary of each public meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 935

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

Date: March 22, 1988.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 88–7822 Filed 4–8–88; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 948

West Virginia Abandoned Mine Land Reclamation Plan, Public Comment Period on Amendment

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the West Virginia Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the West Virginia plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern modifications to reflect changes that have occurred in the State government and agency structure, public participation procedures, and a proposal to assume responsibility for administering an emergency reclamation program.

This notice sets forth the times and locations that the West Virginia plan and proposed amendments to that plan are available for public inspection, and the comment period during which interested persons may submit written comments on the proposed amendments.

DATES: Written comments must be received on or before 4:00 p.m. on May 11, 1988. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on May 6, 1988; requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on April 26, 1988.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, at the address listed below. Copies of the West Virginia plan, the proposed changes to the plan, and the administrative record of the West Virginia plan are available for public review and copying at the OSMRE Offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive free of charge, one copy of the proposed amendments by contacting the OSMRE, Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301.

Office of Surface Mining Reclamation and Enforcement, Division of Abandoned Mine Lands, 1951 Constitution Avenue, NW., Room 122, Washington, DC 20240, Telephone: (202) 343–5365.

West Virginia Department of Energy, 1615 Washington Street, East, Charleston, West Virginia 25311, Telephone: (304) 348–3500.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, (304) 347–7164.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the West Virginia plan on February 23, 1981. Information pertinent to the general background, revisions, and amendments to the initial program submission, as well as the Secretary's findings and the disposition of comments can be found in the January 23, 1981 **Federal Register** (48 FR 7324–7327).

The Secretary has adopted regulations that specify the content requirements of a State Reclamation Plan and the criteria for plan approval (30 CFR Part 884). The regulations provide that a State may submit to the Director proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.14 in approving or disapproving an amendment or revision. Subsequent actions taken with regard to the West Virginia plan can be found in 30 CFR 948.20 and 948.25.

II. Discussion of Amendments

By letter dated December 30, 1987, West Virginia submitted amendments to the West Virginia plan. The proposed amendments consist of revised narratives to replace several sections of the approved West Virginia plan as provided for by 30 CFR 884.13. Specifically, the following areas of the plan are being revised:

(1) Organization (30 CFR 884.13(d) (1) and (2)): West Virginia is proposing to update certain portions of its AMLR plan to reflect changes that have occurred in the State government and agency structure. The State has also submitted additional material that outlines the administration of a proposed State emergency reclamation program and the procedures for coordinating with OSMRE.

(2) Public participation (30 CFR 884.13(c)(7)): The State has proposed amending its public participation procedures by requiring a public hearing on proposed State AML grants at the State's Division of Abandoned Mine Lands office in Charleston, West Virginia rather than at every Regional Planning and Development Council.

Prior to submission of a construction grant application to OSMRE, the West Virginia Department of Energy will conduct at least one public meeting in Charleston, West Virginia to describe the grant submittal's contents. Additional public meetings may be conducted in other appropriate locations for specific sites in the grant application in the following cases:

(a) A proposed project is expected to cost over one million dollars.

(b) A proposed project is considered potentially sensitive or controversial.

(c) A request by local interests for an explanation of the proposed project.

All public meetings will be conducted as part of the grant submittal process. They will be announced via news releases and legal advertisements. The legal advertisements will be placed in newspapers with circulations in the locations of the proposed projects. The newspapers will comply with Chapter 59, Article 3 of the Code of West Virginia, and copies of the news releases and legal advertisements will be on file in the Office of the West Virginia Secretary of State.

(3) State emergency reclamation activities: On September 19, 1983, OSMRE informed the States and Tribes of the opportunity to amend their reclamation plans to include responsibility for administering emergency response reclamation activities (47 FR 42729–42730). For a State to undertake such activities as part of its reclamation program, it must demonstrate that it has the statutory authority to administer emergency reclamation activities, the technical capabilities to design and supervise emergency response work, and the appropriate procurement procedures to quickly respond to emergencies either directly or through contractors. The State of West Virginia has submitted material to demonstrate compliance with these requirements.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSMRE is now seeking comments on the adequacy of the amendments proposed by West Virginia, and whether the criteria for assumption of emergency response activities specified in 47 FR 42729–42730 (September 19, 1983), have been satisfied. If approved, the amendments would become part of the West Virginia plan.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. on April 26, 1988. If no one requests an opportunity to comment on a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the Charleston Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the location, listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 948

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

Date: March 28, 1988.

Alfred E. Whitehouse,

Acting Assistant Director, Eastern Field Operations.

[FR Doc. 88–7821 Filed 4–8–88; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 116, 117, and 302

[SW H–FRL 3363–3]

Reportable Quantity Adjustments

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On March 2, 1988 (53 FR 6762), the U.S. Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking (NPRM) to adjust reportable quantities (RQs) for five substances listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). These five substances are: lead metal, lead acetate, lead phosphate, lead stearate, and lead sulfide. In the March 2, 1988 NPRM, EPA also provided an update on the RQ adjustment for methyl isocyanate, proposed to delist ammonium thiosulfate as a CERCLA hazardous substance, and proposed to replace the trademark "Kelthane" with the generic name, dicofol. EPA requested that public comments on the NPRM be submitted by April 1, 1988. Several requests for extension of this comment period have been received. The purpose of today's action is to extend the public comment period until April 15, 1988 to allow the public a greater opportunity to evaluate the issues involved in the March 2, 1988 NPRM.

DATES: Comments on the March 2, 1988 NPRM must be received on or before April 15, 1988.

ADDRESSES: Comments should be submitted in triplicate to Emergency Response Division, Superfund Docket Clerk, Attention: Docket Number 102 RQ–R2, Superfund Docket Room LG–100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington,

DC 20460. Copies of materials relevant to the March 2, 1988 NPRM are available for inspection in Room LG–100 at the above address between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials make an appointment by calling 1–202/382–3046. The public may copy a maximum of 50 pages from any regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: Gerain H. Perry, Response Standards and Criteria Branch, Emergency Response Division (WH–548B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the RCRA/Superfund Hotline at 1–800/424–9346; in the Washington, DC metropolitan area at 1–202/382–3000.

Dated: April 5, 1988.

J. W. McGraw,

Acting Assistant Administrator.

[FR Doc. 88–7819 Filed 4–8–88; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 302

[SWH–FRL–3363–2]

Reportable Quantity Adjustments

AGENCY: U.S. Environmental Protection Agency [EPA].

ACTION: Supplement to proposed rule.

SUMMARY: The purpose of this notice is to provide the public with new information and recent determinations that may affect reportable quantity (RQ) adjustments for certain CERCLA hazardous substances. RQ adjustments for these substances were proposed by the U.S. Environmental Protection Agency (EPA) On March 16, 1987 (52 FR 8140).

DATES: Comments must be received on or before May 11, 1988. Comments received after this date may not be considered because of the April 30, 1988 statutory deadline for promulgation of all final RQ adjustments.

ADDRESSES: Comments should be submitted in triplicate to Emergency Response Division, Superfund Docket Clerk, Attention: Docket Number 102 RQ–273C, Superfund Docket Room LG–100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of materials relevant to this notice are available for inspection at the same location between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, excluding Federal holidays. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Ivette O. Vega, Response Standards and Criteria Branch, Emergency Response Division (WH–548B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the RCRA/Superfund Hotline at 1–800/424–9346; in the Washington, DC metropolitan area at 1–202/382–3000.

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking (NPRM) published on March 16, 1987 (52 FR 8140), the U.S. Environmental Protection Agency (EPA) proposed to adjust reportable quantities (RQs) for 273 hazardous substances under section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. Of the 23 hazardous substances proposed for adjustment, 269 substances were identified as potential carcinogens.

Currently, EPA is developing a final rule to promulgate RQ adjustments for these 273 hazardous substances. During this process, EPA has revised the proposed RQs for 18 potential carcinogens for reasons that became apparent after the March 16, 1987 NPRM and therefore were not made available for public comment in the NPRM. These 18 hazardous substances, their proposed RQs, and their revised RQs are listed in Table 1.

TABLE 1: PROPOSED RQ REVISIONS

Hazardous substance	Proposed RQ (lbs.)	Revised RQ (lbs.)
Acetamide, N-fluoren-2-yl	10	1
Acrylonitrile	10	100
Azaserine	10	1
Benz(c)acridine	10	100
Benzotrichloride	1	10
Chrysene	10	100
1,2-Dibromo-3-chloropropane	10	1
Dimethylaminoazobenzene	1	10
3,3'-Dimethlyenzidine	100	10
N-nitroso-N-ethylurea	10	1
1,2-Propylenimine	10	1
Vinyl chloride	10	1
F002	100	10
K019	10	1
K020	10	1
K028	10	1
K029	10	1
K096	10	100

Potency and Weight-of-Evidence Revisions

The RQ revisions for 15 of these 18 hazardous substances are based on potency factor recalculations, consideration of new weight-of-evidence and potency studies, and revisions to the orignal potency calculations.[1] The revised RQ profiles for these 15 hazardous substances are available for inspection in the public docket for the March 16, 1987 NPRM. The docket is contained in Room LG–100, U.S. EPA 401 M Street, SW., Washington, DC 20460 (docket number 102 RQ–273C). An explanation of the reasons for the potency and weight-of-evidence changes, and citations to the studies relied on by the Agency for these changes, are provided in the Technical Analysis Document to Support the Supplement to Proposed Rule: Reportable Quantity Adjustments, available for inspection at the same location.

Technical Revisions

RQs for two of the 18 hazardous substances listed in Table 1, waste streams F002 and K096, have been revised for technical reasons. Although a 100-pound RQ adjustment was proposed for waste stream F002 in the March 16, 1987 NPRM, EPA has decided to revise the proposed RQ adjustment for F002 to 10 pounds to be consistent with EPA's revised definition of this waste stream. A final rule published by EPA on December 31, 1985, broadened the definition of F002 to include (in addition to the wastes already listed as constituents of F002) "* * * all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more" of the substances listed in waste streams F001, F004, and F005 (50 FR 53315, 53319). In effect, the December 31, 1985 rule establishes a policy that all substances listed as constituents of waste streams F001, F004, and F005 are included as constituents of waste stream F002.[2]

Carbon tetrachloride is explicitly listed under waste stream F001, and benzene and 2-nitropropane are explicitly listed under waste stream F005.[3] Thus, under the policy announced

[1] These 15 hazardous substances are: Acetamide, N-fluoren-2-yl; azaserine; benz(c)acridine; benzotrichloride; chrysene; 1, 2-dibromo-3-chloropropane; dimethylaminoazobenzene; 3,3'-dimethylbenzidine; N-nitroso-N-ethylurea; 1,2-propylenimine; vinyl chloride; and waste streams K019, K020, K028, and K029.

[2] The change made by the December 31, 1985 rule to the definition of F002, as well as similar changes to the definitions of F001, F003, F004, and F005, allows EPA to regulate more comprehensively certain solvent mixtures. Previously, only high-concentration solvents before use (i.e., pure, technical grade, and practical grade) were covered. For a detailed discussion of the significance of this change and the scope of the revised definitions of waste streams F001, F002, F003, F004, and F005, see 50 FR 53315, December 31, 1985.

[3] Benzene and 2-nitropropane were added to waste stream F005 by a final rule published on

Continued

in the December 31, 1985 rule, these three hazardous substances are considered part of the definition of waste stream F002. EPA proposed 10-pound adjusted RQs for carbon tetrachloride, benzene, and 2-nitropropane in the March 16, 1987 NPRM. The public has had an opportunity to comment on the proposed RQ adjustments for these three constituents of waste stream F002. No comments were received on the proposed 10-pound RQs for benzene and 2-nitropropane, and the comments recevied on carbon tetrachloride do not appear to warrant a change in the proposd RQ. If the proposed 10-pound RQ adjustments for these three substances are promulgated, the final RQ adjustment for waste stream F002 also will be 10 pounds.

The RQ for waste stream K096 was erroneously proposed to be adjusted to 10 pounds in the March 16, 1987 NPRM. The lowest RQ of any of the hazardous constituents present in this waste stream is 100 pounds. Therefore, EPA has revised the proposed RQ adjustment for waste stream K096 to 100 pounds.

BHP Revision

With respect to the remaining substance, acrylonitrile, the Agency has decided that available data support application of the natural degradative processes of biodegradation, hydrolysis, and photolysis (BHP). As discussed in the March 16, 1987 NPRM (52 FR 8140), when a substance degrades to a less hazardous form by one or more of the BHP processes, its RQ is increased one level. The RQ for acrylonitrile was proposed to be adjusted to 10 pounds based on potential carcinogenicity, but its RQ is being revised to 100 pounds in this supplement due to the application of BHP. Although comments were received on the proposed 10-pound RQ for acrylonitrile, the comments do not address the BHP issue.

Dated: April 4, 1988.

J.W. McGraw,

Acting Assistant Administrator.

[FR Doc. 88-7818 Filed 4-8-88; 8:45 am]

BILLING CODE 6560-50-M

February 25, 1986 (51 FR 6537). The February 25, 1986 rule also added 1,1,2-trichloroethane to F002 and 2-ethoxyethanol to F005, but these two substances are not discussed above because their proposed RQs (100 and 1000 pounds, respectively) do not affect the RQ for waste stream F002.

Notices

Federal Register
Vol. 53, No. 69
Monday, April 11, 1988

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Special Committee on Ethics in Government and the Committee on Rulemaking; Public Meetings

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of meetings of the Special Committee on Ethics in Government and the Committee on Rulemaking of the Administrative Conference of the United States.

Committee: Special Committee on Ethics in Government.

Date: Tuesday, April 26, 1988 at 3:00 p.m.

Location: Library of the Administrative Conference, 2120 L Street NW., Suite 500, Washington, DC.

Agenda: The committee will meet to discuss ethics in government issues related to presidential transitions, such as the rules that should apply to transition team members and remedial actions required of presidential appointees.

Committee: Committee on Rulemaking.

Date: Wednesday, May 4, 1988 at 9:30 a.m.

Location: Library of the Administrative Conference, 2120 L Street NW., Suite 500, Washington, DC.

Agenda: The committee will meet to discuss possible recommendations on the subject of presidential supervision of agency rulemaking.

Public Participation: The committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: (202) 254–7065.

Dated: April 6, 1988.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 88–7859 Filed 4–8–88; 8:45 am]

BILLING CODE 6110–01–M

COMMISSION ON CIVIL RIGHTS

New York State Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:00 p.m. on April 28, 1988, in Room 130 of the Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York. The purpose of the meeting is to review the draft of a summary report of the Committee's November 1987 forum on the 1990 decennial census, to discuss civil rights issues in the State, and to select topics for monitoring and a project in 1988.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Vice Chairperson Setsuko M. Nishi (718/780–5314, 212/790–4320) or John I. Binkley, Director of the Eastern Regional Division (202/523–5264; TDD 202/376–8117.) Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 31, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–7801 Filed 4–8–88; 8:45 am]

BILLING CODE 6335–01–M

Washington Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Washington Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on May 6, 1988, at the Red Lion, 18740 Pacific Highway South, Seattle, Washington 98188. The purpose of the meeting is to plan project activities for the new charter period and to discuss civil rights issues affecting the State of Washington.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Sharon Bumala or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulation of the Commission.

Dated at Washington, DC, April 6, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–7827 Filed 4–8–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Business Development Center Program Applications; Norfolk, VA

April 4, 1988.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $194,118

for the project performance of September 1, 1988 to August 31, 1989. The MBDC will operate in the Norfolk, Virginia, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $165,000 in Federal Funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services)

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is May 24, 1988. Applications must be postmarked on or before May 24, 1988.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Room 6711, Washington, DC 20230 202/377-8280.

FOR FURTHER INFORMATION CONTACT: Willie J. Williams, Regional Director, Washington Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Willie J. Williams,

Regional Director, Washington Regional Office.

Date: April 4, 1988.

[FR Doc. 88-7825 Filed 4-8-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Coastal Zone Management, Federal Consistency Appeal by the City of Ponce from an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Dismissal of appeal.

On July 13, 1987, the City of Ponce, Puerto Rico (Appellant) filed with the Secretary of Commerce of Notice of Appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H (1987). The appeal is taken from an objection by the Puerto Rico Planning Board to the Appellant's consistency certification for U.S. Army Corps of Engineers Permit Application No. 87IPM-20069, under section 10 of the River and Harbor Act of 1899, for an after-the-fact permit to fill wetlands for construction of an industrial park in Ponce, Puerto Rico.

The Puerto Rico Planning Board informed the Department of Commerce that the Puerto Rico Planning Board no longer objects to the Appellant's project provided that the Appellant performs specific mitigation measures. The Appellant has orally expressed a willingness to comply with these mitigation measures. The Appellant did not file its supporting data within the required period.

The Secretary has dismissed the appeal for good cause pursuant to 15 CFR 930.128. The City of Ponce is barred from filing another appeal from the Puerto Rico Planning Board's objection to the aforementioned activities.

FOR ADDITIONAL INFORMATION CONTACT: Cynthia L. Mackey, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: April 6, 1988.

James W. Brennan,

Acting General Counsel.

[FR Doc. 88-7876 Filed 4-8-88; 8:45 am]

BILLING CODE 3510-08-M

Coastal Zone Management; Federal Consistency Appeal by Long Island Lighting Company From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of decision.

SUMMARY: Long Island Lighting Company (LILCO) owns and operates the Shoreham Nuclear Power Station (SNPS) located at Shoreham, Long Island, New York. In conjunction with the construction of SNPS, and pursuant to a series of permits issued by the U.S. Army Corps of Engineers (Corps), LILCO performed periodic maintenance dredging of Wading River Creek and the SNPS intake canal, and maintenance of the intake canal's two stone jetties between 1968 and 1985. The last Corps permit for these activities expired in June, 1985. On March 20, 1986, LILCO applied to the Corps for a permit to peform the same dredging and jetty maintenance activities that had been carried out since 1968.

On April 16, 1986, LILCO submitted to the New York Department of State (New York or State) a consistency certification for the proposed dredging and jetty maintenance project for the State's review under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A). On October 20, 1986, New York objected to LILCO's consistency certification for its proposed dredging and jetty maintenance project on the ground that LILCO had supplied the State with insufficient information upon which a consistency determination could be made. Under CZMA section 307(c)(3)(A) and 15 CFR 930.131 (1987), the State's consistency objection precludes Federal agencies from issuing any permit or license necessary for LILCO's proposed activity to proceed, unless the Secretary of Commerce finds that the objected-to activity may be Federally approved because it is consistent with the objectives of the CZMA (Ground I) or is otherwise

necessary in the interest of national security (Ground II).

On November 19, 1986, in accordance with CZMA section 307(c)(3)(A) and 15 CFR Part 930, Subpart H (1987), LILCO filed with the Secretary of Commerce a notice of appeal from New York's objection to its consistency determination for the proposed dredging and jetty maintenance project. On February 26, 1988, the Secretary, upon consideration of the information submitted by LILCO, the State, and Federal agencies as well as other information in the administrative record of the appeal, made the following findings pursuant to 15 CFR 930.121 (1987):

Ground I

(a) LILCO's proposed project promotes (1) development and protection of coastal resources and (2) coastal access for recreational purposes, and thereby furthers one or more of the competing national objectives or purposes contained in section 302 or 303 of the CZMA.

(b) The proposed project will not cause adverse effects on the resources of the coastal zone substantial enough to outweigh its contribution to the national interest.

(c) The proposed project will not violate the Clean Air Act or the Clean Water Act.

(d) There is no reasonable alternative available to LILCO that would permit the proposed project to be carried out in a manner consistent with the New York Coastal Management Program.

Conclusion

Because the Secretary has found that LILCO has satisfied the first of the two alternative grounds set forth in the CZMA for allowing the objected-to activity to proceed notwithstanding an objection by the State, LILCO's proposed dredging and jetty maintenance project may be permitted by Federal agencies. Further, because LILCO's proposed project has satisfied Ground I, it is not necessary to address Ground II.

For Additional Information Contact: Sydney Anne Minnerly, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: April 5, 1988.

James W. Brennan,

Acting General Counsel.

[FR Doc. 88–7877 Filed 4–8–88; 8:45 am]

BILLING CODE 3510–08–M

Coastal Zone Management; Federal Consistency Appeal by John K. DeLyser From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Decision.

SUMMARY: John K. DeLyser (Appellant) owns waterfront property on LeRoy Island in Sodus Bay, Lake Ontario, Huron, New York. In February, 1986, the Appellant applied for and received from the Army Corps of Engineers (Corps) a permit to construct a dock and boathouse on piles in Sodus Bay. The permit contained several conditions, including a prohibition on construction of boathouses with living quarters. Construction began in April and continued into the summer. In July, the Corps became aware that the Appellant was constructing living quarters in the boathouse. Consequently, the Corps ordered Mr. DeLyser to stop all construction. The Corps then allowed the Appellant to submit an application for an after-the-fact permit, which would authorize inclusion of the residential unit in the dock and boathouse project approved earlier.

On August 18, 1986, Mr. DeLyser submitted to the Corps a consistency certification for the proposed activity for the State of New York's (State of New York) review under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A). On December 8, 1986, the State objected to Mr. DeLyser's consistency certification for his project on the ground that the inclusion of the residence in the project violates the State Coastal Management Program's policy of giving priority in the coastal zone to water dependent uses. As an alternative, the State suggested that Mr. DeLyser construct the residence on the upland portion of his property. Under CZMA section 307(c)(3)(A) and 15 CFR 930.131 (1987), the State's consistency objection precludes Federal agencies from issuing any permit or license necessary for the Appellant's proposed activity to proceed, unless the Secretary of Commerce finds that the objected-to activity may be Federally approved because it is consistent with the objectives of the CZMA (Ground I) or is otherwise necessary in the interest of national security (Ground II).

On January 8, 1987, in accordance with CZMA section 307(c)(3)(A) and 15 CFR Part 930, Subpart H (1987), the Appellant, pleading Ground I, filed with the Secretary of Commerce a notice of appeal from the State's objection to his consistency certification for the residential portion of the project. On February 26, 1988, the Secretary, upon consideration of the information submitted by Mr. DeLyser, the State, Federal agencies and members of the public, as well as other information in the administrative record of the appeal, found, pursuant to 15 CFR 930.121 (1987), that the residential component of Mr. DeLyser's project does not further the objectives or purposes of the CZMA. Accordingly, the requirements of Ground I are not met, and the Secretary, therefore, will not override the State of New York's objection to Mr. DeLyser's consistency certification. This decision will preclude the Corps and other Federal agencies from issuing and permits for the residential component of the Appellant's project.

For Additional Information Contact: Sydney Anne Minnerly, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673–5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: April 5, 1988.

James W. Brennan,

Acting General Counsel.

[FR Doc. 88–7878 Filed 4–8–88; 8:45 am]

BILLING CODE 3510–08–M

Marine Mammals; Application for Permit: Dr. Douglas Wartzok (P375A)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Dr. Douglas Wartzok, Professor and Chairman, Department of Biological Sciences, Purdue University, Fort Wayne, Indiana 46805–1499.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:* Weddell seals (*Leptonychotes weddelli*), 110.

4. *Type of Take:* The Applicant proposes to capture, temporarily restrain, release, recapture and release Weddell seals during scientific studies. Up to 20 will be taken annually to investigate the contribution of various sensory modalities to the seals ability to find breathing holes when blindfolded. Monitoring of the seals under ice will be by camcorder. Seals will be fitted with padded anklets to which either an acoustic pinger or a tether will be attached to aid in seal recovery if needed. Although accidental deaths are not anticipated, and none have occurred in similar experiments on ringed seals, the Applicant has requested a take by accidental death of up to three seals annually. An additional 10 seals taken during the first year of research only, will be temporarily restrained so that blood samples may be taken to be used in a study of the hemorheological properties of seals. All seals will be released in the vicinity of the capture site.

5. *Location and Duration of Activity:* McMurdo Sound, Antarctica over a 5-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Date: March 5, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-7837 Filed 4-8-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Sri Lanka

April 5, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: April 5, 1988.

AUTHORITY: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C.1854).

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports, posted on the bulletin boards of each Customs port of call (202) 343-6580. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The limit and sublimit for Category 339 are being increased for special carryforward for the period January 1, 1988 through May 31, 1988.

A description of textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, dated December 11, 1987). Also see 52 FR 18413, published on May 15, 1987 and 53 FR 52 and 53 FR 53, published on January 4, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 5, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 30, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and man-made fiber textile products, produced or manufactured in Sri Lanka and exported during the period which began on January 1, 1988 and extends May 31, 1988.

Effective on April 5, 1988, the directive of December 30, 1987 is hereby amended to adjust the following limit and sublimit, as provided under the terms of the bilateral agreement of May 10, 1983, as amended:

Category	Adjusted Limit [1]
339	194,753 dozen of which not more than 146,065 dozen shall be in other than tank tops and T-shirts.[2]

[1] The limit and sublimit have not been adjusted to account for any imports exported after December 31, 1987.

[2] In Category 339pt., all TSUSA numbers except 384.0205, 384.0207, 384.0212, 384.0220, 384.0221, 384.2806, 384.2810, 384.2814, 384.2914 and 384.2915.

Also effective on April 5, 1988 you are directed to deduct 52,652 dozen from the charges made to the current limit for Category 339. This same amount is to be charged to the limit established in the directive of May 22, 1986 for Category 339 for the period June 1, 1986 through May 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-7842 Filed 4-8-88; 8:45 am]

BILLING CODE 3510-DR-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 87-2-85CD]

Cable Royalty Fund Fees; Distribution Proceedings Amendment

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice of Amendment of Final Determination.

SUMMARY: The Tribunal is amending its final determination of the distribution of the 1985 cable royalty fund based upon a motion filed by National Association of Broadcasters and supported by the Motion Picture Association of America, Inc. and Multimedia Entertainment, Inc.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, DC 20036, 202–653–5175.

SUPPLEMENTARY INFORMATION: Subsequent to the publication in the **Federal Register** of the Tribunal's Notice of Final Determination of the 1985 Cable Royalty Distribution Proceeding (53 FR 7132, March 4, 1988), the Tribunal received a motion from the National Association of Broadcasters (NAB) with the authorization of Motion Picture Association of America, Inc. (MPAA) and Multimedia Entertainment, Inc. (Multimedia), to amend the final allocation of the Phase II awards in the Program Suppliers category, to reflect that the Phase II parties had agreed to an award of 0.7% for NAB, and that the previous final allocation which read, "MPAA—99.175%, Multimedia—0.825%, NAB—0.7%." The Tribunal so orders the amendment to be made.

J.C. Argetsinger,

Acting Chairman.

Dated: April 6, 1988.

[FR Doc. 88–7856 Filed 4–8–88; 8:45 am]

BILLING CODE 1410–09–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplement Part 14, and Related Clauses in Part 52.214; DD Form 1630 (published in Supplement 4); and OMB Control Number 0704–0215.

Type of Request: Extension of existing approval.

Annual Burden Hours: 600.

Annual responses: 1,200.

Needs and Uses: Information concerns certain data required to support use of the formal advertising method of contracting, including requirements for placement on research and Development Bidder's Lists.

Affected Public: Businesses or others for profit/small businesses or organizations.

Frequency: Recordkeeping-On Occasion.

Respondent's Obligation: Manadatory.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 5, 1988.

[FR Doc. 88–7814 Filed 4–8–88; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: A. Tender of Service—Mobile Homes, B. Letter of Intent—Mobile Homes, C. Accessorial Services—Mobile Homes; FIG E–1 (Tender/Letter of Intent) and DD Form 1863; and OMB Control Number 0704–0056.

Type of Request: Extention.

Annual Burden Hours: 852.

Annual Responses: 1,677.

Needs and Uses: Since mobile homes are moved at the Government's expense, data is needed to choose the best service at the lowest cost. Data provided by the carriers state the type of serivce being offered, ability to perform the service and rate to be charged.

Affected Public: Businesses or others for profit/small businesses or organizations.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 5, 1988.

[FR Doc. 88–7815 Filed 4–8–88; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Application for Appointment as Reserves of the Air Force or USAF Without Component; AF Form 24; and OMB Control Number 0701–0096.

Type of Request: Extension.

Annual Burden Hours: 2,666.

Annual Responses: 8,000.

Needs and Uses: The Air Force uses AF Form 24 to collect information from applicants for direct appointment programs as Reserves of the Air Force or during time of war or National emergency as USAF Without Component. Air Force selection committees use the information to help determine the applicants' suitability for commissioning.

Affected Public: Applicants for Air Force Commissions.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 5, 1988.

[FR Doc. 88–7816 Filed 4–8–88; 8:45 am]

BILLING CODE 3810–01–M

Pilot Program for Military Family Housing

ACTION: Notice of fund availability and application instructions.

SUMMARY: Funds have been appropriated for fiscal year 1988 for the Department of Defense (DOD) to carry out the Pilot Program for Military Family Housing. The purpose of this program is to increase the amount of affordable family housing available to military personnel in communities severely impacted by the presence of military bases and personnel. DOD is soliciting applications for funding under the program. The application instructions are based on the enabling legislation and DOD policies and procedures which contain the key requirements for all applicants to follow in seeking funding from DOD.

DATES: Applications will be accepted from April 11, 1988 to June 17, 1988.

ADDRESS: For further information contact: Renee Anderson, Office of Economic Adjustment, Office of the Secretary of Defense, OASD (FM&P) RM&S, Pentagon Room 4C767, Washington, DC 20301–4000. (202) 697–1768.

SUPPLEMENTARY INFORMATION:

Pilot Program for Military Family Housing

I. Introduction

Section 2321 of the DOD Military Construction Authorization Act of 1988 and 1989 (Pub. L. 100–180, Title II, Section 2321) established the Pilot Program for Military Family Housing. The DOD Appropriation Act of 1988 (Pub. L. 100–498) appropriated $1,000,000 to carry out this authority. The purpose of the program is to provide assistance to units of general local governments to increase, or prevent the decrease, of affordable housing available to military families in communities severely impacted by the presence of military installations and personnel.

II. Who May Apply and What Can Be Funded

DOD may accept applications from the award funds to:

(1) Units of general local government in areas severely impacted by the presence of military installations;

(2) Housing and redevelopment authorities authorized by such units of general local government;

(3) Nonprofit housing corporations authorized by such units of general local governments.

Funds will not be awarded to profit-making organizations.

Military installations include active DOD posts, bases, or stations with Army, Navy, Air Force, or Marine Corps military personnel. The Secretary of Defense shall make the final determination as to whether a community is severely impacted by the presence of a military installation or personnel, and whether there is a need for affordable housing for military families within the community.

Types of Awards

DOD may make grants, enter into cooperative agreements, and supplement funds made available under Federal programs administered by agencies other than DOD. Awards will be competitive and discretionary to eligible applicants. DOD has set July 1, 1988 as its target date for award decisions.

Anticipated Grant Range: $50,000–$200,000.

What Activities May be Funded

Funds available under this program may be used for:

(1) A revolving housing loan fund established and administered by a government, authority or corporation;

(2) A housing loan guarantee fund established and administered by such a government, authority, or corporation to ensure repayment of housing loans made by a private lender;

(3) Feasibility studies of potential housing programs;

(4) One-time start-up costs of housing programs;

(5) Joint community-military technical advisory organizations;

(6) Other similar and related activities as determined by the Secretary of Defense to support the development of affordable housing for military families.

III. Selection Criteria for Awards

DOD will use the following criteria for evaluating applications and making awards:

(1) The extent, or the potential extent, of a joint civilian-military effort to increase or prevent the decrease of affordable housing units in the community served by the local government;

(2) The extent of willingness, or potential extent of willingness, of private organizations to contribute or loan money for the purpose of assisting in the effort;

(3) A commitment by the local government to assure that a reasonable proportion, taking into consideration the extent of Federal funding, of the housing units provided as a result of the effort, will be made available to military personnel;

(4) The feasibility of the proposed effort;

(5) The capacity of the applicant to carry out the proposed activity;

(6) The inadequacy of existing state and local resources to support affordable housing development initiatives for military families;

(7) The degree of need and urgency for affordable housing for military families in the community.

IV. Submission Procedures and Closing Dates for Receipt of Applications

A complete application package consists of Standard Form 424 (SF 424) and all attachments, including Part V, Sections 1 through 5—proposal narrative of no more than 5 typed pages, project management plan, and staff and institutional qualifications. The proposal narrative is a key element in all applications and should include: (1) A brief description of the proposed project; (2) the proposed activities; (3) the project's intended outcome. The narrative should also describe how the proposed project meets the selection criteria described above.

If the applicant is a housing and redevelopment authority or nonprofit corporation, the application must also include a statement by the Chief Executive Officer of the appropriate unit of general local government that the proposed activities are not inconsistent with local housing and community development plans or programs.

The closing date for receipt of applications is June 17, 1988. Late applications will not be accepted.

Applications are subject to the intergovernmental review requirements of Executive Order 12372 and DOD's implementing regulations at 32 CFR Part 243.

Mailing Address and Telephone

Office of Economic Adjustment, Office of the Secretary of Defense, OASD(FM&P)RM&S, Pentagon Room 4C767, Washington, DC 20301–4000 Attn:

Housing Grant Program. Telephone (202) 697–1768.

Number of Copies of Final Proposal

All applicants must submit one (1) signed original application and four (4) copies. Each copy must be covered with a signed Standard Form 424.

V. Grantee Responsibilities

The following laws, regulations, and procedures apply to applicants for and recipients of funding:

(1) The National Defense Authorization Act for Fiscal Years 1988 and 1989.

(2) The applicable Office of Management and Budget Circulars (A–87, A–122, A–102 revised March 11, 1988, A–110, and A–128).

(3) The grant agreement.

The grantee must carry out activities assisted under the program in compliance with public laws prohibiting discrimination because of race, color, national origin, sex, handicap, and age in programs and activities receiving Federal assistance.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 88–7813 Filed 4–8–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Logistics Agency

Privacy Act of 1974; Notice of a New Continuing Computer Matching Program Between the Department of Defense (DoD) and the Department of Health and Human Services (HHS).

AGENCY: Defense Manpower Data Center (DMDC), Defense Logistics Agency (DLA), Department of Defense (DoD).

ACTION: This action constitutes notice for any public comment on a proposed new ongoing computer matching program between the Department of Defense (DoD) and the Department of Health and Human Services (HHS) for debt collection purposes under the Debt Collection Act of 1982 (Pub. L. 97–365). The HHS component participating in this proposed action is the Health Resources and Services Administration (HRSA) of the Public Health Service.

SUMMARY: The Department of Defense, under an interagency agreement with the Office of Management and Budget (OBM), Department of the Treasury and the Office of Personnel Management (OPM), announces a proposal to match by computer DoD employment records of active and retired military members, including the Reserve and Guard; the OPM government-wide Federal active and retired civilian records with the records of individuals who are delinquent debtors to the U.S. Government under certain programs administrated by the Department of Health and Human Services (HHS).

The purpose of the computer match is to identify and locate HHS delinquent debtors who are receiving Federal salary or benefit payments so as to permit HHS to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures against the debtors under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365).

DATES: This proposed action will be effective without further notice on April 11, 1988, unless comments are received which would result in contrary determination.

ADDRESS: Send written comments to Mr. Robert J. Brandewie, Deputy Director, Defense Manpower Data Center, Suite 200, 550 Camino El Estero, Monterey, CA 93940–3231. Telephone: (408) 646–4131; Autovon: 878–2951.

FOR FURTHER INFORMATION CONTACT: Mr. Aurelio Nepa, Jr., Staff Director, Defense Privacy Office, Room 205, 400 Army Navy Drive, Arlington, VA 22202–2803. Telephone: (202) 694–3027; Autovon: 224–3027.

SUPPLEMENTARY INFORMATION:

This proposed computer matching program is being conducted in order to identify by name and locate by address those individuals Federally employed or retired that are indebted and delinquent in their repayment to the U.S. Government under certain programs administered by HHS.

The Office of Management and Budget (OMB) has designated the Financial Management Service of the Department of Treasury, as the Lead Agency to coordinate and monitor the implementation of the U.S. Government's Federal Salary Offset Program. An interagency agreement, restricted exclusively to the implementation of the Debt Collection Act of 1982 (Pub. L. 97–365), established an Interagency Working Group to facilitate computer matching and subsequent salary offset procedures throughout the Federal government under the auspices and oversight of the OMB. This Interagency Working Group consists of the Department of the Treasury, Office of Personnel Management and the Department of Defense. As a result, a centralized computer data base for computer matching made up of Department of Defense and Office of Personnel Management records has been established for debt collection purpose in order to have a data bank record of active and retired military members, including the Reserve and Guard, and further including OPM government-wide active and retired civilian personel that are receiving Federal salaries or other Federal benefit payments. This newly established data bank is being maintained by the Defense Manpower Data Center of the Department of Defense and is available for matching purposes by any Federal creditor agency.

Set forth below is the information required by the paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget on May 11, 1982 (47 FR 21656, May 19, 1982). A copy of this proposed notice has been provided to the President of the Senate, the Speaker of the House of Representatives and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on April 1, 1988 pursuant to the cited OMB matching guidelines.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 5, 1988.

Report of a New Continuing Computer Matching Program Between the Department of Defense (DOD) and the Department of Health and Human Services (HHS)

a. *Authority:* The legal authority under which the computer matching will be conducted is 5 U.S.C. 552a, the Privacy Act of 1974; 5 U.S.C. 5514, Installment deduction of indebtedness; 10 U.S.C. 136, Asst. Secretaries of Defense, appointment, powers and duties; Federal Claims Collection Act of 1966 (Pub. L. 89–508) 31 U.S.C. 952(d); the Debt Collection Act of 1982 (Pub. L. 97–365) 5 U.S.C. 5514, 31 U.S.C. 3711 and 3716–3718; Section 206 of Executive Order 11222; 4 CFR Chapter II, Federal Claims Collection Standards (General Accounting Office–Department of Justice); 5 CFR 550.1101–550.1108, Collection by Offset from Indebted Government Employees—(OPM); 45 CFR Part 30, Claims Collection (HHS); Office of Management and Budget, "Revised Supplemental Guidance for Conducting Matching Programs," dated May 11, 1982 (47 FR 21656, May 19, 1982) and "Guidelines on Relationship Between the Privacy Act of 1974 and the Debt Collection Act of 1982," March 30, 1983 (48 FR 15556, April 11, 1983); the Interagency Agreement for Federal Salary Offset Initiative (Office of

Personnel Management and the Department of Defense) signed April 1987, published at 52 FR 37492, October 7, 1987.

b. *Program Description:* The purpose of this computer matching program is to identify and locate those individuals who are receiving Federal salaries or benefit payments that are indebted and delinquent in their repayment of debts to the U.S. Government under certain programs administered by the Health Resources and Services Administration (HRSA) of the Department of Health and Human Services (HHS) in order to collect the debts by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

The HRSA of HHS, as the source agency, will provide the Defense Manpower Data Center (DMDC) of the DoD, the matching agency, at Monterey, California, a computer tape of all the individual delinquent debtor records of those indebted to the U.S. Government under certain Public Health Service (PHS), HHS programs.

Upon receipt of the computer tape file of debtor accounts, the DMDC will perform a computer match using all nine digits of social security numbers of delinquents against a DMDC computer data base. The DMDC computer data base, established under an interagency agreement, consists of records of active duty and retired military members, including the Reserve and Guard, and all the OPM Government-wide employed civilian and retired civilian records.

Matching records, "hits" based on the social security number, will be furnished to HRSA consisting of the member's name, service or agency, category of employee, salary or benefit amounts, and current work or home address from DMDC's data base records. The "hit" information from DMDC will be referred to HRSA for action to recover the outstanding debt(s) by salary or administrative offset when other collection actions have been pursued and have been unsatisfactory.

The HRSA will be responsible for reviewing the "hit" records to assure that each individual is positively identified in the match as the debtor; to assure that the debtor is afforded proper due process under GAO regulation (4 CFR Chapter II) "Federal Claims Collection Standards" and that a proper accounting of any further disclosures outside the USDA shall be maintained by in accordance with 5 U.S.C. 552a(c) of the Privacy Act. The HRSA is responsible for insuring that the debt is valid and the information is accurate, complete, timely and relevant. Hard copy match records will be used by the HRSA to determine any continued benefit entitlement level, if any, and to contact the debtor if necessary. The notification to the debtor shall include information concerning the amount to be collected, and may include the amount of the proposed monthly deductions if offset procedures is contemplated. The debtor shall be given an opportunity to enter into voluntary agreement to repay the debt before any administrative or salary offset measures are initiated. The debtor shall further be given an opportunity to inspect and copy records related to the debt and for review of the decision related to the debt. If no collection action is needed, the DoD record provided by DMDC will not be used by the HRSA for any other purposes.

c *Records to the Matched:* The following systems of records, subject to the Privacy Act of 1974 (5 U.S.C. 552a), each containing an appropriate routine use permitting records to be matched, are as follows:

Department of Health and Human Services (Source Agency)

(1) HHS component: Public Health Services (PHS)
System identification: 09–15–0045
System name: Health Resources and Services Administration Loan Repayment/Debt Management Records Systems, HHS/HRSA/OA
Federal Register citation: 51 FR 42519, November 24, 1986
Amended: 52 FR 48880, December 28, 1987

Department of Defense (Matching Agency)

(1) DoD component: Defense Logistics Agency (DLA)
System identification: S322.11 DLA–LZ
System name: Federal Creditor Agency Debt Collection Data Base
Federal Register citation: 52 FR 37495, October 7, 1987
(2) Agency: Office of Personnel Management (OPM)
System identification: OPM/GOVT–1
System name: General Personnel Records
Federal Register citation: 49 FR 36954, September 20, 1984
(3) Agency: Office of Personnel Management (OPM)
System identification: OPM/CENTRAL–1
System name: Civil Service Retirement and Insurance Records
Federal Register citation: 49 FR 36950, September 20, 1984

d. *Period of the Match:* The initial match will begin as soon as possible after publication of this public notice and then conducted no more often than semiannually thereafter.

e. *Security Safeguards:* Automated records at the DMDC facility at Monterey, California are stored in limited access computer facilities and accessible only by password. Access to the computer center is by key or picture identification. Hard copy records are maintained in Federal office buildings in lockable file cabinets and accessed only by authorized Federal employees on a need-to-know basis.

f. *Retention and Disposition of Records:* Under written Memorandum of Understanding (MOU) agreement between the DoD/DMDC and the HRSA/HHS Department, it is agreed that tapes provided by the HRSA for matches shall be destroyed or returned to the HRSA upon successful completion of each match and shall be used only for debt collection purposes. Non-hit records will not be used for any purposes. Hard copy matched records (hits) will be used by HRSA to conduct individual reviews and may be used to contact the debtor for payment pursuant to the Debt Collection Act of 1982. Records relating to "hits" will be retained by HRSA until the completion of any necessary administrative collection or legal action and will then be disposed of in accordance with approved records control schedules and/or approved disposition authority from the Archivist of the United States. The HRSA will be responsible for maintaining any disclosure accounting records that may be required by 5 U.S.C. 552(c) of the Privacy Act, as a result of the match information received from DMDC when contacting other agencies pursuing individual debtors. If no collection action is needed, the DoD record will not be used for any other purpose. The HRSA tape file will be used and accessed only to the match agreed to; it will not be used to extract information concerning "non hit" individuals for any purpose and it will not be duplicated or disseminated within or outside the DoD matching agency.

[FR Doc. 88–7817 Filed 4–8–88; 8:45 am]
BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (EIS) for the Mississippi River—Gulf Outlet New Lock and Connecting Channels, New Orleans, LA

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a Draft EIS.

SUMMARY: The action being taken is to determine whether to repair, to replace, to expand, or to take no action concerning the existing Inner Harbor Navigation Canal (IHNC) lock on the Mississippi River-Gulf Outlet (MRGO) at New Orleans, Louisiana. The reason for the action is the obsolete status of the existing structure. The intended effect of any action would be to increase navigational efficiency and relieve vessel congestion in the vicinity of the lock.

FOR FURTHER INFORMATION CONTACT: Questions regarding the Draft EIS should be addressed to Mr. Bill Wilson, (504) 862–2527, U.S. Army Corps of Engineers, Planning Division (CELMN–PD–RE), P.O. Box 60267, New Orleans, Louisiana 70160–0267.

SUPPLEMENTARY INFORMATION:

Proposed Action

The study will determine the advisability of repairing, replacing, or expanding the lock facilities connecting the MRGO and the Gulf Intracoastal Waterway with the Mississippi River at New Orleans, Louisiana.

2. Alternatives

The alternatives being considered are those specified in section 844(a) of Pub. L. 99–662, the Water Resources Development Act (WRDA) of 1986. These include (a) replacement or expansion of the existing IHNC lock and connecting channels at the existing lock site in Orleans Parish, or (b) construction of a new lock and connecting channels near Violet in St. Bernard Parish. Alternative lock sizes and plans at the two locations will be comparted to the No-Action alternative.

3. Scoping Process

a. Initial studies for the replacement of the existing IHNC lock began in the late 1950's. On February 1, 1960, a public meeting was held. Public involvement during the 1960's was generally limited until the MRGO was put into service in the mid 1960's. Two public meetings were held in late 1972: One in New Orleans on November 29, and the other in Chalmette (St. Bernard Parish), on December 10–11. The purpose of these meetings was to discuss the alternative plans and present the plan tentatively selected at that time. Both extensive project support and opposition were voiced at these meetings. In 1975, a tentative plan in St. Bernard Parish was approved by the Chief of Engineers. However, President Carter in 1977 directed the Corps to restudy the plan with a view toward replacing the lock at the existing site. Subsequently, a public meeting soliciting community feedback was held on May 2, 1978, by the Board of Commissioners for the Port of New Orleans. Planning for a new lock was suspended in late 1982. Legislative guidance regarding a new lock was included in the WRDA of 1986, thus planning has now resumed.

b. Public input for scoping will be achieved through the distribution of a notice to all segments of the public having an interest in the project. In addition, a news release will be issued to the local media. The notice and release will request submission of views on alternatives and any other project-related issues considered significant. The basis for significant issues to be addressed in the EIS will consist of the responses to the public notice and news release. Through this notice of intent and the public notice, all segments of the affected public, including Federal, state, and local agencies, and other interested organizations and individuals will be invited to participate in the planning process.

c. Significant issues that will be discussed in the EIS include business and industrial activity, displacement of people, employment, navigation, tax revenues, property values, public facilities and services, public transportation, noise, housing, community cohesion, community facilities, endangered species, wildlife resources, fishery resources, marsh, forest resources, wildlife refuges and management areas, oyster beds, natural and scenic streams and bayous, National Register sites, and other cultural resources.

d. The U.S. Department of the Interior will provide a Fish and Wildlife Coordination Act Report to accompany the EIS.

e. A 45-day period will be allowed for all interested agencies and individuals to review and comment on the draft report and EIS.

4. Meeting Schedule

Public meetings for the specific purpose of scoping are not being considered. Interest group meetings and/or workshops will be conducted after responses to the public notice have been received and evaluated.

5. Availability

The draft EIS is scheduled to be available to the public in July 1989.

Date: March 25, 1988.

Lloyd K. Brown,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 88–7802 Filed 4–8–88; 8:45 am]

BILLING CODE 3710–84–M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement; Australia

Pursuant to section 131 of the Atomic Energy of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Australia concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/AU(EU)–6, for the retransfer of 4 fuel elements from the United Kingdom to Australia for use in the HIFAR research reactor. The fuel elements contain 27.65 kilograms of uranium enriched to 60 percent in the isotope uranium–235.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy

Date: April 5, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88–7893 Filed 4–8–88; 8:45 am]

BILLING CODE 6450–01–M

Proposed Subsequent Arrangement; Sweden

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government for the United States of America and the Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer:

RTD/EU(SW)-77, for the transfer of fuel assemblies containing 7,430 kilograms of uranium, enriched to approximately 3.23 percent in the isotope uranium-235 from Sweden to the Federal Republic of Germany for use in the Kernskraftwerk Brunsbuttel power reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date April 5, 1988.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 88-7894 Filed 4-8-88; 8:45 am]

BILLING CODE 6450-01-M

Response Actions at Four FUSRAP Sites in New York: Notice of Intent To Prepare a Remedial Investigation/ Feasibility Study—Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare a remedial investigation/feasibility study—environmental impact statement.

SUMMARY: Notice is hereby given that the Department of Energy (DOE), as part of its Formerly Utilized Sites Remedial Action Program (FUSRAP), intends to conduct a comprehensive environmental review and analysis of the Linde and Ashland 1 and 2 sites in Tonawanda, New York, and the Colonie site near Albany, New York, to determine the nature, extent, and environmental impacts of existing contamination at the sites and to evaluate alternative response actions. These response actions are expected to include long-term management of the wastes in-place or at an appropriate alternate site. This environmental review and analysis process will integrate the requirements of both the National Environmental Policy Act (NEPA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA). The Environmental Impact Statement (EIS) requirements under NEPA will be incorporated into the Remedial Investigation/Feasibility Study (RI/FS) documents of CERCLA.

The purpose of this Notice of Intent (NOI) is to present pertinent background information on the proposed scope and content of the RI/FS-EIS and to solicit comments and suggestions for consideration in their preparation. Federal, State, and local agencies, interested organizations, and individuals desiring to submit comments or suggestions for consideration in the preparation of the RI/FS-EIS are invited to do so. Public scoping meetings will be held on April 26, in Tonawanda and on April 27, in Colonie, as noted below. Upon completion of the draft RI/FS-EIS addressing the four sites, the availability of the document will be announced in the **Federal Register**, at which time comments from the public will again be solicited. Comments received during the public comment period will be addressed in the final RI/FS-EIS.

DATES: Written comments or suggestions postmarked by May 6, 1988, will be considered in the course of implementing the integrated CERCLA/NEPA process and its documentation. Comments or suggestions postmarked after that date will be considered to the maximum extent practicable. Scoping meetings will be held at Franklin Middle School Auditorium, 540 Parkhurst Boulevard, Tonawanda, on April 26, 1988, at 7:30 p.m., and at Lecture Center No. 2, State University of New York at Albany, in Colonie on April 27, at 7:30 p.m. Requests to speak at these meetings should be received by Mr. Gross at the address below by April 22, 1988. Requests to speak may also be made during registration for the meetings.

ADDRESS: All comments or suggestions on the scope of the RI/FS-EIS and requests to speak at the scoping meeting discussed above should be addressed to: Mr. Peter J. Gross, Director, Technical Services Division, U.S. Department of Energy, Oak Ridge Operations, Post Office Box E, Oak Ridge, Tennessee 37831 (615-576-0948).

SUPPLEMENTARY INFORMATION:

Background

The FUSRAP was established in 1974 by the U.S. Atomic Energy Commission, predecessor of the DOE. The primary objective of FUSRAP is to identify and decontaminate sites where radioactive material was handled or processed under government nuclear programs. The goals of decontamination under FUSRAP are (1) to control radioactive contamination at the sites, in compliance with applicable criteria for the protection of human health and the environment, and (2) to certify the sites for unrestricted use following decontamination, to the extent possible. As part of its responsibility under the Atomic Energy Act, as amended, and CERCLA, as amended, and in accordance with NEPA requirements, DOE plans to conduct response actions at four FUSRAP sites in the State of New York: the Ashland 1 and 2 sites, the Linde site, and the Colonie site. The analyses for these sites are being presented in a single set of environmental documents to assure that any cumulative impacts of the New York actions are properly assessed. Also, this will allow DOE to make a comprehensive evaluation of disposal requirements for the FUSRAP New York sites.

The one FUSRAP New York site for which DOE expects to conduct a response action that is not included is the Seaway site in Tonawanda, New York. The Seaway site is being treated independently because the scope of the response action is expected to be very limited and does not appear to have the potential to result in a significant impact. Further, the property owner's use of the site is restricted until DOE reaches a decision and implements the response action. The proposed response action would be to stabilize the radioactive waste in-place. Preliminary analysis indicates that this would be suitable because of the current and future use of the site (i.e., an industrial landfill) and the very low average concentration of radioactive waste at the site. DOE is coordinating the Seaway response action with New York State and the Environmental Protection Agency and plans for public participation are being developed. DOE expects to be able to reach a decision and implement the Seaway action this year. DOE will conduct the Seaway action in conformance with the requirements of NEPA and CERCLA.

Colonie Site—The Colonie site is located at 1130 Central Avenue in the town of Colonie, about 6 km (4 mi) northwest of downtown Albany and is readily accessible by a well-developed regional transportation system. The site is situated in an area that supports commercial, light industrial, and residential land use, and the Colonie site is zoned for industrial use. The Colonie site was used for the processing of uranium and thorium by National Lead (NL) Industries from 1958 to 1984. Prior to these operations, the facility was a brass foundry. In 1960, concurrent foundry activities ceased and operations were concentrated on the manufacturing of enriched uranium products until 1972. Fuel elements were produced from 1958 to 1968, and depleted uranium was handled from 1968 to 1980. Limited operations continued after a temporary restraining order was lifted soon after its imposition in 1980 (the restraining order resulted from local opposition to uranium contamination from airborne releases).

The 1984 Energy and Water Development Appropriations Act authorized DOE to undertake a decontamination research and development project at the Colonie site. Plant operations ceased in 1984 and site ownership was transferred to DOE. In 1985, adjacent property was donated to DOE by the Niagara Mohawk Electric Company. Together, the properties constitute the Colonie site, which is currently managed by the DOE Oak Ridge Operations Office with assistance from Bechtel National, Inc., the project management contractor. The Colonie site is surrounded by a chain-link fence and covers 4.5 ha (11.2 acres); a 45-year-old combined office/operations building occupies one-third of the site.

Radioactive waste present at the Colonie site is low-level waste including uranium process wastes (and a small amount of thorium process wastes) and uranium-contaminated soil, asphalt, and building materials. There is a pile of radioactively contaminated material being temporarily stored within the building. This material is from removal actions conducted by DOE at Colonie vicinity properties which became contaminated as a result of airborne releases of depleted uranium from plant operation at the Colonie site. There are two areas of buried radioactive waste at the Colonie site which constitute localized areas of elevated radioactivity. Chemical wastes and packaged chemicals present at the site include acids, bases, and degreasing agents; carbon tetrachloride, benzene, and PCBs; and cyanide, heavy metals, and asbestos. Some of the chemicals have been removed as part of the site maintenance activities. The total waste volume from response actions at Colonie is estimated to be 23,000 m^3 (30,000 yd^3).

Linde Site—The Linde site is located about 16 km (10 mi.) to the northeast of the eastern end of Lake Erie, within the town of Tonawanda. The site is an industrial area of about 43 ha (105 acres) that is owned by Union Carbide Corporation. It is readily accessible by a well-developed regional transportation system. The Linde site includes parking lots and office buildings as well as large buildings currently used as research laboratories, fabrication facilities, storage areas, and warehouses. About 1,700 individuals are employed at the site. The site was operated for the processing of uranium ores from 1940 through 1948 by Linde Air Products Corporation (a division of Union Carbide Corporation since 1948). This operation was part of a Federal reseach and development program for the Manhattan Engineer District (MED). Several separate activities were carried out in five different buildings (14, 30, 31, 37, and 38). Building 14 was a pilot plant for uranium separation during the early part of the program. Building 30 was the primary facility used for uranium processing, and Buildings 31 and 37 were used for uranium separation. Uranium dioxide was converted to uranium tetrafloride in Building 38. All of these structures have since been converted to other commercial/industrial uses, with the exception of Building 37, which was demolished in 1980.

Building 90 is a relatively new facility, and prior to its construction, contaminated soils were removed from the entire construction site. This displaced soil is currently part of an open pile of contaminated material located west of the building.

In 1953, the site was decontaminated in accordance with the then-current criteria. In 1976, a follow-up survey of the site indicated that additional decontamination should be considered. After 1976, Buildings 14, 31, and 37—three of the original five buildings used for uranium processing—were decontaminated further. Based on a supplemental radiological study in 1981, the remaining two buildings (30 and 38) and nine designated open areas of contaminated soil have been identifed for possible response action. The total volume of radioactive wastes that would result from decontamination of open areas and of the two buildings (30 and 38) is estimated to be about 20,000 m^3 (26,000 yd^3). The wastes would be low-activity, long-lived radioactive wastes consisting primarily of contaminated soil, rubble, and process equipment. The Linde site was formally designated for inclusion in FUSRAP on February 29, 1980.

Ashland 1 Site—The Ashland 1 site is located just south of the Niagara River in an industrial area in Tonawanda, New York, and is readily accessible by a well-developed regional transportation system. It contains two oil storage tanks and one building, the National Fuel Gas distribution center, which is occupied for only a few hours per month. The only other activity at the site results from its use as an electrical switchyard and oil storage area.

The site is a 4-ha (10-acre) tract of land and was used for the disposal of uranium tailings in the 1940s. The tailings were generated at the Linde site during Linde Air Product's participation in the MED ore-processing program. The MED leased the Ashland 1 site in 1943 and purchased it from the Haist group in 1944. The site was owned by the General Services Administration from 1949 to 1960, at which time it was sold to Ashland Oil, Inc. From 1944 to 1946, an estimated 7,300 metric tons (8,000 short tons) of ore residues (i.e., low-activity, long-lived radioactive waste) containing about 0.54 percent uranium-238 (by weight) were spread to a depth of 0.3 to 1.5 m (1 to 5 ft) over two-thirds of the Ashland 1 site. This area was released for unrestricted use following a 1958 radiological survey and was subsequently used for oil refinery operations, which ceased in 1982.

An estimated 4,600 m^3 (6,000 yd^3) of residues—comprising mostly low-grade uranium ore tailings—were transferred in 1974 from the Ashland 1 site to the adjacent Seaway Industrial Park site in order to make way for the construction of two oil storage tanks. As discussed earlier, response action at the Seaway site is being handled as a separate action.

The results of a 1976 radiological survey indicated that contamination at the Ashland 1 site posed no immediate health hazard to the general public under current use of the site. However, it was concluded that potential health hazards could result from relocation or reuse of the residues and contaminated soils or from future uses of the site that would involve excavation and/or habitation. This indicated a need for further assessment of the site to identify possible options for response action; hence, this site was formally designated for inclusion in FUSRAP on June 22, 1984.

Ashland 2 Site—The Ashland 2 site is located in an industrial area about 0.4 km (0.25 mi) north of the Ashland 1 site in Tonawanda, New York. The radioactively contaminated portion of the site is a fill area covering about 0.8 ha (2 acres). The radioactive material in this fill area, estimated to be about 37,000 m^3 (48,000 yd^3), was derived from tailings deposition, including partial relocation of material originally deposited at Seaway and from construction activities at the Ashland 1 site. Based on current use of the site, there is no immediate health hazard to the general public. However, as with the Ashland 1 site, potential health hazards could result from relocation or reuse of the radioactively contaminated soil or from future use of the site that would involve excavation and/or habitation. Adjacent to the contaminated fill area is a larger portion of the Ashland 2 site (currently thought to be uncontaminated), which is being evaluated for suitability as a possible location for long-term waste containment.

Proposed Action and Alternatives

DOE intends to conduct a comprehensive environmental process to meet the requirements of CERCLA and NEPA for implementing response actions at the four New York sites. The environmental review and analysis process has two major parts, a remedial investigation and a feasibility study, which are also the titles or partial titles of the reports resulting from these phases. The results of each part are presented in a report.

The remedial investigation will characterize the four sites and the nature and extent of contamination. Bench or pilot tests of potential waste treatment technologies will be conducted as appropriate. Also, a baseline risk assessment will be conducted to identify the primary health and environmental threats at each of the four sites.

During the feasibility study waste treatment technologies will be screened, remedial alternatives will be identified and screened, general performance criteria for each alternative will be developed, and a detailed evaluation and comparison of reasonable (i.e., screened) alternatives will be performed. Alternatives to be considered include: (1) No action; (2) treatment with disposal of remaining waste either on- or off-site; and (3) containment or institutional control alternatives which control the threats posed by the hazardous substances and/or prevent exposure. Examples of specific alternatives which are expected to be retained through screening include: (1) In-situ stabilization of the wastes at each of the four sites; (2) decontamination of the sites and consolidation of all or some of the wastes at one of the four sites (a portion of the Ashland 2 site is being evaluated as a possible location for a containment cell(s)); and (3) no action at each of the four sites. (The "no action" alternative will be developed because it is required under CERCLA and NEPA and provides a useful baseline for determining the costs and effects of the other alternatives being considered.)

The remedial investigation and feasibility study will be conducted concurrently. The data collected during the investigation will influence the development of the remedial alternatives in the feasibility study, which in turn will affect the data needs and scope of treatability studies and could result in additional field investigations.

The results of the environmental process will be presented in a series of reports. DOE expects to issue a draft RI/FS–EIS addressing the four sites in late 1990 for a 45-day public comment period. Also, at this time there will be a public hearing so that oral as well as written comments can be provided on the draft documents. By the fall of 1991, DOE expects to issue the final RI/FS–EIS, which will include the responses to public comments received on the draft reports. The DOE will select a remedial action alternative for each of the four sites in one or more Records of Decision to be issued no sooner than 30 days after the final RI/FS–EIS is issued. (If any of these sites are added to the EPA National Priorities List, EPA will need to concur in the slection of the alternative for that site.)

Public participation in the environmental review and analysis process is encouraged. In addition to the scoping meeting, public information meetings will be held when significant new phases of the work are planned, when important new information becomes available or when community concern warrants a meeting. Public meetings will be held on a quarterly basis or as appropriate. Fact sheets, technical reports and other information relating to the DOE activities at these four sites will be placed in the Kenmore Branch and William K. Sanford Town Libraries at the addresses noted below.

Nothing in this NOI or the documents to be prepared is intended to represent a statement on the applicability of NEPA to remedial actions under CERCLA.

Preliminary List of Potential Issues

There are a number of potential issues related to response actions at the four New York FUSRAP sites. Some deal with potential environmental impacts, whereas others are factors that may include or be influenced by implementation of one or more of the alternatives. This list is based on DOE experience with major issues that have been raised relative to other DOE proposals of this nature. Interested parties are invited to participate in the scoping process discussed below and to help refine this list to arrive at the significant issues to be analyzed in depth in the integrated CERCLA/NEPA process and to eliminate from detailed study the issues that are not significant.

Following is a list of potential major issues that may require analysis in the integrated CERCLA/NEPA process:

1. Potential radiological impacts in terms of both radiation doses and resulting health risks:
   - On people, including workers and the public, individuals and the total population, children and adults, present and future generations;
   - Along transportation routes and near other sites included in the alternatives;
   - Associated with both routine operations and accidents;
   - Associated with various pathways to man, including surface waters and ground waters, gases, dust, and particulates;
   - Due to natural forces such as erosion and flooding;
   - Associated with human intrusion into the contaminated materials.
2. Potential socioeconomic impacts:
   - Associated with land uses, values, and marketability;
   - On local transportation systems.
3. Potential chemical impacts:
   - Associated with contamination of surface waters and ground waters by heavy metals and other contaminants potentially contained in the wastes/residues.
4. Potential engineering and technical issues:
   - The most reasonable engineering options for each type of waste/residue;
   - Probable duration of isolation;
   - Rates and magnitude of loss of containment;
   - Site-specific geohydrological data;
   - Site-specific wind dispersion patterns;
   - Site characterization and research and development work necessary before the decision or before actual implementation of an alternative.
5. Potential institutional issues:

• Project-specific criteria for decontamination, effluents, environmental concentrations, and release of a site for unrestricted or restricted uses;

• Future institutional controls (monitoring and maintenance);

• Institutional issues that need to be resolved before an alternative could be implemented.

6. Potential issues relative to mitigative measures and monitoring:

• Worker health physics procedures;

• Erosion and dust control measures.

Scoping

The scoping process will involve all interested agencies (Federal, State, and local), groups, and members of the public. Comments are invited on the alternatives and the issues to be considered in the integrated CERCLA/NEPA process. Public scoping meetings are scheduled starting at 7:30 p.m., to be held on April 26, 1988, in Tonawanda, New York, and on April 27, 1988, in Colonie, New York (at the address given under Dates above). These will be informal meetings with a presiding officer, and DOE will establish procedures governing the conduct of the meetings. The meetings will not be conducted as evidentiary hearings, and those who choose to make statements may not be cross-examined by other speakers. To ensure that everyone who wishes to speak has a chance to do so, 5 minutes will be allotted for each speaker and speakers are encouraged to summarize written comments. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations; persons wishing to speak on behalf of an organization should identify the organization in their request. Persons who have not submitted a request to speak in advance may register to speak at the scoping meetings; they will be called on to present their comments if time permits. Written comments will also be accepted at the meetings.

Both oral and written scoping comments will be considered and will be given equal weight. A transcript of the scoping meetings will be retained by DOE and made available for inspection at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, during business hours, Monday through Friday. In addition, anyone may make arrangements with the reporter to purchase a copy of the transcript.

Copies of the scoping meetings transcript and other CERCLA/NEPA documents and major references used in the preparation of these documents will be made available during normal business hours at the Kenmore Branch Library, 160 Delaware Road, Village of Kenmore, New York 14217 (near Tonawanda); at the William R. Sanford Town Library, 629 Albany-Shaker Road, Loudonville, New York 12211; and at other locations as appropriate. A notice of locations of availability will be published in the **Federal Register** at the time of announcement of availability of the draft RI/FS–EIS.

Those interested parties who do not wish to submit comments or suggestions during the scoping period but who would like to receive a copy of the draft RI/FS–EIS for review and comment should notify Mr. Peter J. Gross at the address given above in the Address section.

Dated at Washington, DC, this 6th day of April, 1988.

Ernest C. Baynard, III,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 88–7883 Filed 4–8–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–305–000 et al.]

Niagara Mohawk Power Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Niagara Mohawk Power Corporation

[Docket No. ER88–305–000]

April 4, 1988.

Take notice that on March 30, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing proposed transmission agreement for additional transmission service to New York State Electric & Gas Corporation (NYSEG) of power and energy generated at Nine Mile Point No. 2. The power and energy to be transmitted by Niagara Mohawk are NYSEG;s 18% share of Nine Mile Point No. 2. The rate are proposed to be effective August 1, 1987. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Copies of the filing were served upon the New York Public Service Commission and NYSEG.

Comment date: April 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

Kansas Power and Light Company

[Docket No. ER88–306–000

April 4, 1988.

Take notice that on March 30, 1988, Kansas Power and Light Company (KPL) tendered for filing a newly executed renewal contract dated February 12, 1988, with the City of Osage City, Osage City, Kansas for wholesale service to that community. KPL states that this contract permits the City of Osage City to receive service under rate schedule WTU–12/83 designated Supplement No. 11 to R.S. FERC No. 194. The proposed effective date is July 1, 1988. The proposed contract change provides essentially for the ten year extension of the original terms of the presently approved contract. In addition, KPL states that copies of the contract have been mailed to the City of Osage City and the State Corporation Commission.

Comment date: April 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

3. Kansas Power and Light Company

[Docket No. ER88–307–000]

April 4, 1988.

Take notice that on March 30, 1988, Kansas Power and Light Company (KPL) tendered for filing a contract dated December 21, 1987, with the City of Burlingame, Kansas for wholesale service to that community. KPL states that this contract permits the City of Burlingame to receive service under rate schedule WTU–12/83. The effective date of the contract shall be not later than July 1, 1988, or the date such facilities are completed and power becomes available. In addition, KPL states that copies of the contract have been mailed to the City of Burlingame and the State Corporation Commission.

Comment date: April 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corporation

[Docket No. ER88–304–000]

April 4, 1988.

Take notice that on March 30, 1988, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing proposed changes to Rate Schedule No. 97 under which Niagara Mohawk provides transmission service to New York State Electric & Gas Corporation (NYSEG) from NYSEG's Somerset Generating Plant and for loads remote from NYSEG's transmission system and served by Niagara Mohawk facilities. The new rates are proposed to be effective April 1, 1987. Niagara Mohawk has requested waiver of the notice requirements for good cause shown. The

changes are set forth on proposed Supplement No. 8 to Rate Schedule No. 97, which would supersede Supplement No. 7.

Copies of the filing were served upon the New York Public Service Commission and NYSEG.

Comment date: April 18, 1988, in accordance with Standard Paragraph E at the end of this notice.

5. Bangor Hydro-Electric Company

[Docket No. ER88-303-000]

April 5, 1988.

Take notice that on March 30, 1988, Bangor Hydro-Electric Company tendered for filing proposed changes in its FERC Electric Service Tariff as follows:

FPC No. 4 (Lubec Water and Electric District)
FPC No. 5 (Union River Electric Cooperative, Inc.)
FPC No. 7 (Eastern Maine Electric Cooperative, Inc.)
FERC No. 27 (Swan's Island Electric Cooperative, Inc.)
FERC No. 52 (Isle Au Haut Electric Power Co.)

The proposed changes would increase base revenues from jurisdictional sales and service by 18.06% based on the 12 month period ending December 31, 1986. The filing would also change the calculation of the FERC fuel clause to include recovery of costs associated with purchases from qualifying facilities within the meaning of the Public Utility Regulatory Policies Act of 1978.

The proposed tariff changes implement a Stipulation between Bangor Hydro-Electric Company and its wholesale customers: Eastern Maine Electric Cooperative, Inc., Union River Electric Cooperative, Inc., Swans Island Electric Cooperative, Inc., Lubec Water and Electric District, and Isle Au Haut Electric Power Co.

Copies of the filing changes were served on the above-named wholesale customers, on Dirigo Electric Cooperative, Inc., on the Maine Public Utilities Commission, and on the Maine Public Advocate.

Comment date: April 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Company

[Docket No. ER88-302-000]

April 5, 1988.

Take notice that on March 30, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing, as a change in rate schedule, an Interconnection Agreement Between Pacific Gas and Electric Company and Modesto Irrigation District (Agreement), covering rates, terms, and conditions for services rendered by PG&E pursuant to the Agreement and for the interconnection of the Parties' electrical systems.

Prior to January 1, 1988, PG&E directly served the City and County of San Francisco (CCSF) under FPC 53, as amended, with partial requirements services and support services to meet CCSF's load (which load includes Modestop). From July, 1985 through midnight, December 31, 1987, PG&E provided the services described above to CCSF, including support services for specified resources of Modesto and the Turlock Irrigation District (Turlock), under an interim extension of FPC 53 (Interim Agreement). By means of a four-party agreement, filed with FERC on December 28, 1987 (Docket No. ER88-168-000), CCSF, Turlock, Modesto and PG&E extended the Interim Agreement, with modifications, until April 1, 1988. Upon its effective date, PG&E will provide services directly to Modesto under the Agreement.

Pursuant to the Agreement, PG&E will provide the following services:

Reserved Transmission Service.	(Rate Schedule A).	Section B.1
Control Area Services.	.....	Section B.2
Scheduling Service.	(Rate Schedule B).	Section B.2.1
Regulation Service.	(Rate Schedule c).	Section B.2.2
Other Charges	.....	Section B.3
Voltage Regulation.	(Rate Schedule D).	Section B.3.1
Reactive Power Correction.	(Rate Schedule E).	Section B.3.2
Spinning Reserves.	(Rate Schedule F).	Section B.3.3
Standby Station Service.	(Rate Schedule G).	Section B.3.4
Customer Service.	(Rate Schedule H).	Section B.3.5
Coordination Services.	.....	Section B.4
Ceiling Price for Capacity Component of Coordination Power Service.	(Ceiling A-1)	Section B.4.1
Ceiling Price for Energy Component of Coordination Power Service	(Ceiling A-2)	Section B.4.2
Ceiling and Floor Price for Coordination Transmission Service.	(Ceiling B)	Section B.4.3

PG&E and Modesto are requesting a waiver of the sixty-day notice period provided in § 35.3 of the Commission's regulations (18 CFR 35.3) and an effective date of April 1, 1988, to follow immediately the expiration of the four-party extension of the Interim Agreement.

Copies of this filing were served upon Turlock, CCSF, Modesto and the Public Utilities Commission of the State of California.

Comment date: April 19, 1988, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER88-301-000]

April 5, 1988.

Take notice that on March 30, 1988, Pacific Gas and Electric Company (PG&E) tendered for filing, as changed rate schedules, Settlement Agreements between PG&E and Shelter Cove Resort Improvement District No. 1, PG&E and Lassen Municipal Utility District, and PG&E and the City of Santa Clara and an Amendment between PG&E and Shasta Dam Area Public Utility District (Agreement), covering rates, terms and conditions for services rendered by PG&E to the four specified customers pursuant to the separate Agreements between PG&E and each customer.

PG&E has separate rate settlement agreements with the City of Santa Clara (CSC), Shelter Cove Resort Improvement District No. 1 (RID #1), and CP National Corporation (CPN) which expired on December 31, 1987. In addition, PG&E and Shasta Dam Area Public Utility District (Shasta) have a rate settlement agreement which expires as of December 31, 1988. PG&E and Shasta desire, as a result of the small Shasta load served by PG&E, to amend the existing PG&E-Shasta rate settlement agreement.

PG&E, CSC, and RID #1 have agreed to an effective date of January 1, 1988; PG&E and Shasta have agreed to use the FERC acceptance date as the effective date: With regards to LMUD, PG&E requests that the Assignment Agreement be made effective upon: (1) The CPUC granting CPN authority to sell its aforementioned electric system to LMUD *and* (2) execution of an Agreement between PG&E and LMUD for the sale of LMUD's electric facilities (as previously owned by CPN) located in Tehama and Plumas counties to PG&E (Sale Agreement) which is expected to occur on May 2, 1988, but this Sale Agreement shall not be effective before May 2, 1988 nor after October 30, 1988 except as the parties may otherwise agree. As of the effective date, PG&E will not longer serve CPN on Rate Schedule R-2.

Copies of this filing were served upon CSC, RID #1, LMUD, Shasta and the

Public Utilities Commission of the State of California.

Comment date: April 19, 1988, in accordance with Standard Paragraph E at the end of this document.

8. Mobile Joliet Refining Corporation

[Docket No. QF86-683-001]

April 5, 1988.

On March 24, 1988, Mobile Joliet, Refining Corporation (Applicant) of Rt. 55 and Arsenal Road, P.O. Box 874, Joliet Illinois 60434 submitted for filing and application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility was originally certified as a qualifying small power production facility on January 13, 1987 (Docket No. QF86-683-000, 38 FERC ¶62,015). The facility will consist of a combustion turbine generator, a heat recovery steam generator, and a condensing steam turbine generator. The heat recovered from the facility will be used in the refinery. The maximum net electric power production of the facility will be 27.6 MW. The primary energy source will be waste in the form of refinery off gas produced by refinery hydrocarbon cracking process. The installation of the facility was completed in November 1987.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell

Acting Secretary.

[FR Doc. 88-7796 Filed 4-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM88-4-000 and RM88-5-000]

Environmental Impact Statement; Independent Power Producers and Bidding Programs; Scoping Sessions

Issued April 5, 1988

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of scoping session locations and availability of scoping session documents.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this notice to inform the public of scoping session locations and the availability of scoping session documents. On March 18, 1988, the Commission issued a notice of intent to prepare an environmental statement (EIS) and to hold scoping sessions. The notice of intent to prepare an EIS indicated that a second notice with the exact time and location for each scoping session would be issued in the near future. This notice contains that information.

EFFECTIVE DATE: April 5, 1988.

DATE AND LOCATION: The scoping sessions will be held in Baltimore, Maryland, and Albuquerque, New Mexico, from 8:30 a.m. to 5:00 p.m., on Monday, April 18, 1988.

FOR FURTHER INFORMATION CONTACT:

Michael Schopf, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8002.

Bernard W. Tenebaum, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8100.

SUPPLEMENTARY INFORMATION:

On March 18, 1988, the Federal Energy Regulatory Commission (Commission) issued a notice of intent to prepare an environmental impact statement (EIS) and to hold scoping sessions [1] for two notices of proposed rulemaking (NOPRs) issued by the Commission on March 16, 1988.[2] One NOPR proposes regulations to govern a class of non-traditional utility suppliers, called independent power producers (IPPs). The second NOPR proposes regulations to govern bidding programs under the Public Utility Regulatory Policies Act of 1978 (PURPA).

[1] 53 FR 9682 (Mar. 24, 1988).

[2] "Regulations Governing Bidding Programs" 53 FR 9324, (Docket No. RM88-5-000) (Mar. 22, 1988); "Regulations Governing Independent Power Producers" 53 FR 9327 (Docket No. RM88-4-000) (Mar. 22, 1988).

The notice of intent to prepare an EIS indicated that a second notice with the exact time and location for each scoping meeting would be issued in the near future. This notice contains that information. The scoping sessions will be held at the following locations on Monday, April 18, 1988:

Baltimore, Maryland
Local Time: 8:30 am-5:00 pm.
Place: Day's Inn (Port Room), 100 Hopkins Place, Baltimore, Maryland 21201, (301) 576-1000.

Albuquerque, New Mexico
Local Time: 8:30 am-5:00 pm.
Place: Albuquerque Convention Center (Acoma Room), 401 Second Street, NW., Albuquerque, New Mexico 87102, (505) 768-4575.

Scoping documents are being prepared and are expected to be available on Wednesday, April 13, 1988. The scoping documents may be obtaining by contacting the Commission's Public Inquiries Branch, address: Federal Energy Regulatory Commission, Public Inquiries Branch, Room 2214, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8055.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-7795 Filed 4-8-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP88-316-000 et al.]

Southern Natural Gas Company et al.; Natural Gas Certificate Filings

Take notice that the following fillings have been made with the Commission:

1. Southern Natural Gas Company

March 31, 1988.

[Docket No. CP88-316-000]

Take notice that on March 28, 1988, Southern Natural Gas Company (Southern), P.O. Box 2536, Birmingham, Alabama 35202-2563, filed in Docket No. CP88-316-000 an application pursuant to section 7 of the Natural Gas Act, for a blanket certificate of public convenience and necessity authorizing Southern to transport natural gas on behalf of others as specified in Subpart G of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that the blanket certificate would permit it to offer transportation services to interestate pipelines and to other shippers pursuant to §§ 284.222 and 284.223 of the Commission's Regulations, respectively.

Southern would provide such services pursuant to Rate Schedules IT and FT of Southern's FERC Gas Tariff as filed in Docket No. RP88–17–000. The transportation would comply with the regulations and requirements of Order No. 436 as modified by Order No. 500, it is stated.

Comment date: April 21, 1988, in accordance with Standard Paragraph F at the end of this notice.

2. Teal Gathering Company et al.[1]

[Docket No. CI88–366–000 et al.]

April 4, 1988.

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate with pregranted abandonment authorization for the term listed herein, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Requested term of authorization
CI88–366–000, Mar. 17, 1988	Teal Gathering Company, P.O. Box 21734, 525 Milam Street, Shreveport, Louisiana 71151.	Unlimited.
CI88–382–000, Mar. 25, 1988	Conoco Inc., P.O. Box 2197, CH–1134, Houston, Texas 77252	3 years.

Comment date: April 18, 1988, in accordance with Standard Paragraph J at the end of the notice.

3. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP87–190–005]

April 4, 1988.

Take notice that on March 24, 1988, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP87–190–005 a petition to amend a certificate issued in Docket No. CP87–190–000 to extend the authorized term to expire on September 30, 1999, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

It is stated that by order issued June 30, 1987, in Docket No. CP87–190–000, 39 FERC ¶ 61,380 (1987), Lone Star was granted authorization to provide firm transportation service for Coastal States Gas Transmission Company, and to construct and operate certain facilities in interstate commerce necessary to perform the transportation service for a period of one year from the date of issuance of the order. Lone Star, in its petition to amend, requests authority to extend this authorization to expire September 30, 1999, the date of expiration of its gas transportation contract. Lone Star proposes no other changes.

Comment date: April 25, 1988, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in detemining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenicence and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

J. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 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 the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–7598 Filed 4–8–88; 8:45 am]

BILLING CODE 6717–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Hearing Series on the Status of Minorities and Women in Corporate America

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of hearing series.

SUMMARY: Notice is hereby given that the Equal Employment Opportunity Commission has scheduled a series of public hearings to gather information relating to the advancement of minorities and women in corporate America.

Time and Date: The series will be held from 9:00 am to 5:00 pm on June 15, 16 and 17, 1988.

Place: The location of the hearing is the Office of Personnel Management Auditorium 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Linda Jackson, Chair, Hearings Task Force, Equal Employment Opportunity Commission, Room 500, 2401 E Street NW., Washington, DC 20507, (202) 634–6700

SUPPLEMENTARY INFORMATION: The hearings will address important issues within the Commission's jurisdiction under Title VII of the Civil Rights Act of 1964, as amended, which prohibits employment discrimination based on race, color, religion, sex and national origin. These hearings will be informational; any evidence presented will not be used by the Commission in the investigation of a charge or litigation of a lawsuit.

Over the last two decades, minorities and women have enjoyed great progress in their efforts to enter this nation's business community. Yet little attention has been given to the mobility of those groups beyond their arrival in the workplace. In these hearings, the Commission will interact with individuals to explore issues relating to equal employment opportunity in corporate America, and particularly, advancement opportunities.

The three days of hearings will examine independent, yet related issues that include racial and cultural barriers to advancement, factors and practices that enhance the mobility of minorities and women, and corporate efforts to address these equal employment opportunity issues. The Commission will be hearing testimony from witnesses who may include chief executive officers, other corporate and government officials and employees, academicians, and members of various special interest groups. The Commission will choose the witnesses to appear at the hearing.

The Commission is accepting information from interested persons who have knowledge in this area, including those who have first-hand experience with impediments to advancement or with approaches for combatting this problem. Written testimony from the business and labor communities, economists and other specialists, and affected individuals or groups are especially welcome. Written testimony should be limited to 25 pages, including appendices, and should be submitted no later than May 15. Testimony received after this date will be accepted, but may not be considered before the hearing. After the hearings, the Commission will compile relevant materials and publish a report.

Written statements should be addressed to: Executive Secretariat, Equal Employment Opportunity Commission, Room 503, 2401 E Street NW., Washington, DC 20507. Please mark "Hearings" at the lower left hand corner of the envelope.

Signed this 4th day of April 1988.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 88–7826 Filed 4–8–88; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Revision of 3067–0163

Title: Individual and Family Grant (IFG) Program Information

Abstract: The information is necessary for program management purposes. While States administer the IFG program, FEMA regional office staff are responsible for monitoring the State's performance and adherence to FEMA regulations and policy guidance. The information enables regional staff to monitor program delivery and compliance with other Federal requirements.

Type of Respondents: State or local governments

Number of Respondents: 125

Burden Hours: 2,003

Frequency of Recordkeeping or Reporting: Weekly, On Occasion

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: March 31, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88–7811 Filed 4–8–88; 8:45 am]

BILLING CODE 6718–21–M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 2067–0172

Title: Radiological Protection Data Base

Abstract: Increasing use of radioactive materials and nuclear technology require a Radiological Protection Program designed to protect the public. Development and maintenance of a Data Base will assist Federal and State governments to track the status and development efforts to implement a radiological defense program with Federal financial and guidance support.

Type of Respondents: State or local governments

Number of Respondents: 5,150

Burden Hours: 2,575

Frequency of Recordkeeping or Reporting: Quarterly

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646–2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395–7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Date: March 31, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88–7812 Filed 4–8–88; 8:45 am]

BILLING CODE 6718–21–M

FEDERAL HOME LOAN BANK BOARD

[No. 88–239]

Applications for Unlisted Trading Privileges and Opportunity for Hearing; Cincinnati Stock Exchange

Date: April 6, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Cincinnati Stock Exchange has filed, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, applications ("Applications") with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities.

American Savings and Loan Association, Miami, Florida (FHLBB No. 5405), Common Stock, $.50 Par Value

Northeast Savings, F.A., Hartford, Connecticut (FHLBB No. 3231), Common Stock, $.01 Par Value

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments: Any interested person may inspect the Applications at the Board, and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to the Applications are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the Applications after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to the Applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202) 377–6415 or at the above address.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–7867 Filed 4–8–88; 8:45 am]

BILLING CODE 6720–01–M

[No. 88–240]

Applications for Unlisted Trading Privileges and Opportunity for Hearing; Midwest Stock Exchange, Inc.

April 6, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Midwest Stock Exchange, Inc. has filed, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, applications ("Applications") with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities.

Crossland Savings Bank, FSB, Brooklyn, New York (FHLBB No. 7812), Common Stock, $1.00 Par Value

Centrust Savings Bank, Miami, Florida (FHLBB No. 2745), Common Stock, $.01 Par Value

Empire of America, FSB, Buffalo, New York (FHLBB No. 5160), Common Stock, $1.00 Par Value

Comfed Savings Bank, Lowell, Massachusetts (FHLBB No. 3483), Common Stock, $.01 Par Value

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments: Any interested person may inspect the Applications at the Board, and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to the Applications are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the Applications after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to the Applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202) 377–6415 or at the above address.

By the Federal Home Loan Bank Board,

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 88–7868 Filed 4–8–88; 8:45 am]

BILLING CODE 6720–01–M

[No. 88–241]

Applications for Unlisted Trading Privileges and Opportunity for Hearing; Philadelphia Stock Exchange

Date: April 6, 1988.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Philadelphia Stock Exchange has filed, pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, applications ("Applications") with the Federal Home Loan Bank Board ("Board") for unlisted trading privileges in the following securities.

Standard Federal Bank, Troy, Michigan (FHLBB No. 0161), Common Stock, $1.00 Par Value

Coast Savings and Loan Association, Los Angeles, California (FHLBB No. 7046), Common Stock, No Par Value

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Comments: Any interested person may inspect the Applications at the Board, and, within 15 days of publication of this notice in the **Federal Register**, submit to the Corporate and Securities Division, Office of General Counsel, Federal Home Bank Board, 1700 G Street NW., Washington, DC 20552, written data, views and arguments bearing upon whether the extensions of unlisted trading privileges pursuant to the Applications are consistent with the maintenance of fair and orderly markets and the protection of investors. Following this opportunity for hearing, the Board will approve the Applications after the date mentioned above if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to the Applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

FOR FURTHER INFORMATION CONTACT: John P. Harootunian, Assistant General Counsel for Securities Policy, Corporate and Securities Division, Office of General Counsel, at (202) 377–6415) or at the above address.

By the Federal Home Loan Bank Board,

John F. Ghizzoni,

Asistant Secretary

[FR Doc. 88–7869 Filed 4–8–88; 8:45 am]

BILLING CODE 6720–01–M

[No. AC 708; FHLBB No. 7472]

Central Savings and Loan Association, Columbia, PA; Approval of Conversion Application

Date: April 6, 1988.

Notice is hereby given that on March 30, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Central Savings and Loan Association, Columbia, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, 20 Stanwix Street, Pittsburgh, Pennsylvania 15222.

By the Federal Home Loan Bank Board.

John F. Ghizzoni
Assistant Secretary.

[FR Doc. 88-7870 Filed 4-8-88; 8:45 am]
BILLING CODE 6720-01-M

[No. AC-707; FHLBB No. 6526]

Cherokee Federal Savings Bank, Canton, GA; Approval of Conversion Application

Date: April 6, 1988.

Notice is hereby given that on March 30, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Cherokee Federal Savings Bank, Canton, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Atlanta, 1475 Peachtree Street, NE., Atlanta, Georgia 30309.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,
Assistant Secretary.

[FR Doc. 88-7871 Filed 4-8-88; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Evergreen Marine Corp., et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 213-010879-003

Title: Evergreen Marine Corporation (Taiwan) Ltd. and Japan Line, Ltd. Space Charter and Sailing Agreement in the Far East-North America Trades.

Parties: Evergreen Marine Corporation (Taiwan) Ltd. Japan Line, Ltd.

Synopsis: The proposed amendment would remove the U.S. East Coast-Far East trade from the scope of the agreement. It would also clarify that the 40,000 TEU ceiling in the agreement applies on a monthly basis and would eliminate the 18 vessel limitation on the number of vessels to be operated under the agreement.

Agreement No.: 217-011176-001

Title: Ozean-Linie GmbH/n.v. CMB s.a. d/b/a Deppe Line, Space Charter Agreement.

Parties: Ozean Linie GmbH nv CMB sa d/b/a Deppe Line.

Synopsis: The proposed amendment would restrict the scope of the agreement to the trade between San Juan, Puerto Rico and Northern Europe.

Agreement No.: 217-011187

Title: Ozean-Linie GmbH/Deppe Linie GmbH d/b/a Deppe Line Space Charter Agreement.

Parties: Ozean Line GmbH ("Ozean") Deppe Linie GmbH d/b/a Deppe Line ("Deppe").

Synopsis: The proposed agreement would permit Deppe to charter space from Ozean aboard Ozean vessels operating in the trade between ports in Northern Europe and ports on the Atlantic and Gulf coasts of Florida and other U.S. Gulf ports.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

Dated: April 6, 1988.

[FR Doc. 88-7872 Filed 4-8-88; 8:45 am]
BILLING CODE 6730-01-M

Ocean Freight Forwarder License Revocations; Bernard Lang & Co., Inc., et al.

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License Number: 209

Name: Bernard Lang & Co., Inc.
Address: 15 Maiden lane, New York, NY 10038
Date Revoked: March 7, 1988
Reason: Surrendered license voluntarily

License Number: 935

Name: Nancy Paul Horton and Thomas J. Kelly dba The Interport Company
Address: 747 Devon Avenue, Park Ridge, IL 60068
Date Revoked: March 9, 1988
Reason: Failed to maintain a valid surety bond

License Number: 1716R

Name: The W. Allen Jennings Company, Inc. dba The Jennings Co.
Address: P.O. box 10126, 2 Whitaker Bldg., Suite 111, Savannah, GA 31412
Date Revoked: March 23, 1988
Reason: Surrendered license voluntarily

Robert G. Drew,
Director, Bureau of Domestic Regulation.

[FR Doc. 88-7873 Filed 4-8-88; 8:45 am]
BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants; Lana Davault Willis, et al.

Notice is given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to

con'act the Office of Freight Forwarder and Passenger Vessel Operations, Federal Maritime Commission, Washington, DC 20573.

Lana Davault Willis, 1111 Thomas Drive, Humble, TX 77338

Utoku Express (U.S.A.) Inc., 2132A East Dominguez Street, Long Beach, CA 90810

Officers:

Kazuo Murayama, President

Kuzuo Tajima, Director

Tomonobu Kaieada, Secretary/V. President

Katsufumi Segawa, V. Pres./Gen. Mgr.

P.B. Forwarding International, Inc., 15499 Lakes, Of Delray Blvd., C-3, Apt. #107, Delray Beach, FL

Officers:

Paul Benton Fierman, President

Barbara Lee Gould, Vice President

Sylvia Glasser, Secretary/Treasurer

Continental Freight Forwarders, Inc., 401 Broadway, Suite 1612, New York, NY 10013

Officer: Wehbe Hakim, President/ Director

Richard G. Shih, 750 S. Glasgow Ave., Inglewood, CA 90301

Dale M. A. Zerda, 580 Washington St., Rm. 204, San Francisco, CA 94111

Cruz Del Sur Shipping, Inc., 1040 Elizabeth Ave., Elizabeth, NJ 07201

Officer: Carlos Goncalves, President/ Stockholder

MBW Forwarding, Inc., 600 First Avenue, Suite 332, Seattle, WA 98104

Officers:

Peter Joseph Bouffard, President/Dir.

Janice Lee Williams, VP/Sec./Dir.

Robert Mark Mares, Treas./Director

HWH Overseas, Inc., 99 Hudson Street, New York, NY 10013

Officers:

Brigitte Day, President/Director

George Pratsikas, Secretary/Treasurer.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: April 5, 1988.

[FR Doc. 88-7789 Filed 4-8-88; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0631]

Request for Comment; Private Sector Presentment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comment.

SUMMARY: The Board is requesting comment on the concept of requiring paying banks to pay for checks presented by private sector collecting banks before 2:00 p.m. in same-day funds, and without the imposition of any fees for these presentments.

DATE: Comments must be submitted on or before Auguest 3, 1988.

ADDRESS: Comments, which should refer to Docket No. R-0631, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Street NW., Washington, DC 20551, Attention: Mr. William W. Wiles, Secretary; or may be delivered to Room B-2223 between 8:45 a.m. and 5:00 p.m. All comments received at the above address will be included in the public comments file, and may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director (202/452-2231), Louise L. Roseman, Assistant Director (202/452-2789), or Thomas C. Luck, Senior Analyst (202/ 452-3935), Division of Federal Reserve Bank Operations; or Joseph R. Alexander, Senior Attorney (202/452-2489), Legal Division. For the hearing impaired *only*: Telecommunication Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3254).

SUPPLEMENTARY INFORMATION:

Background

As a result of concerns related to the practice of delayed availability—the holds that some depository institutions (collectively referred to as "banks") place on the proceeds of checks deposited into their customers' accounts before the funds may be withdrawn—Congress passed the Expedited Funds Availability Act, Title VI of Pub. L. 100-86, 101 Stat. 552, 635 (the "Act"). Banks that impose holds had argued that their availability schedules reflected the time needed for the collection and return of checks that were not paid, and provided a measure of protection against the risk that the bank could not recover funds from the depositor if those funds had already been withdrawn from the depositor's account.

In part to reduce the risk to the depository bank [1] from the Act's requirements that funds be made available on a more prompt basis, Congress gave the Board of Governors broad regulatory authority to make improvements to the check collection and return system. To carry out the provisions of the Act, the Board is given the responsibility to regulate "(A) any aspect of the payment system, including the receipt, payment, collection or clearing of checks; and (B) any related function of the payment system with respect to checks." 12 U.S.C. 4008(c).

The Board issued a comprehensive proposal to implement the Act in December 1987, 52 FR 47112 (Dec. 11, 1987), which includes a number of initiatives to improve the check return system. The current check return system is inefficient and is the primary cause of the delay a depositary bank may experience in learning that checks have not been paid. It typically takes over three times longer to return a check than it does to collect a check. In contrast to the high-speed, automated processing involved in the forward collection of checks, the check return system is a slow, labor intensive operation. The proposed improvements to the check return system were designed to speed the return of unpaid checks and to provide notifications of nonpayment for large-dollar checks being returned.

In addition to the initiatives to improve the check return process, it may be possible to make improvements to the forward collection process. Today, Federal Reserve Banks receive same-day payment for checks presented to paying banks prior to 2:00 p.m. by debiting the paying bank's or a correspondent bank's account on the books of a Federal Reserve Bank. In a number of instances, collecting banks negotiate payment terms with paying banks that are similar to, or more favorable than, those accorded Reserve Banks. For example, participating banks receive same-day payment for checks presented through their local clearinghouse exchange, and certain collecting banks negotiate arrangements with paying banks that provide for same-day payment for checks presented after 2:00 p.m. Correspondent banks assert, however, that in other instances their presentment and payment terms are less favorable than those of the Reserve Banks, due to barriers erected by the paying banks. These barriers can be in the form of the method of payment by the paying bank, a requirement to maintain balances at the paying bank, or presentment fees. Some banks use such barriers, including presentment fees, to establish delayed disbursement

[1] The term "depositary bank" is defined in the proposed regulation as the first bank to which a check is transferred even though it is also the paying bank or the payee. Proposed 12 CFR 229.2, 52 FR 47112, 47150 (Dec. 11, 1987).

arrangements that slow the forward collection of checks.

Presentment fees are charges that certain paying banks commonly charge private sector presenting banks when presentment is made. Proponents of presentment fees maintain that the fees discourage presentments after locally established clearinghouse deadlines, or offset the cost of processing checks that are presented after this time, thus making the paying bank's operations more efficient.

Presentment fees may not reflect a service rendered to the collecting bank by the paying bank, and may discourage the prompt presentment of checks because banks often seek to avoid the position of presentment fees. Moreover, presentment fees may create a monopoly pricing situation by paying banks because collecting banks have no alternative but to present checks drawn on a bank to that bank.

Since 1917, the Federal Reserve Act has prohibited Reserve Banks from paying presentment fees, 12 U.S.C. 342, and Reserve Banks will not collect checks drawn on banks that would require the Reserve Banks to pay these fees. The issue of whether Reserve Banks should pay presentment fees has been debated for the past few years. In 1987, Congress directed the General Accounting Office (GAO) to study and report on presentment fees. Specifically, the GAO was asked to study (1) the Federal Reserve System's exemption from the imposition of presentment fees, and (2) the impact of the imposition of presentment fees on the efficiency of the check collection system. Pub. L. 100–86, section 1202, 101 Stat. 661.

Methods to avoid presentment fees and other barriers to direct presentments by private sector collecting banks have been discussed for a number of years. Several years ago, the California Bankers Clearing House Association (CBCHA) proposed a direct settlement service (DSS), whereby presentment of checks by private sector collecting banks would be deemed to have been made by a Federal Reserve Bank, and thus would be subject to the same terms as presentments by a Reserve Bank. Under the proposed service, collecting banks could present checks directly to paying banks without the imposition of presentment fees, and receive immediate payment through the Federal Reserve, with the Federal Reserve handling any returned checks and adjustments. A preliminary staff analysis of the proposed direct settlement service concluded that the societal costs of DSS would likely exceed the societal benefits.

The Board proposed an approach to encourage the direct presentment of returned checks by returning banks in its regulations to implement the Expedited Funds Availability Act. Proposed 12 CFR 229.32, 52 FR at 47157, sets forth the responsibility of the depositary bank in accepting and paying for returned checks. This section would require the depositary bank to pay for returned checks it receives from returning or paying banks in usable funds on the day the returns are received. No substantial objections to this requirement were raised by commenters. Bank of America, N.T. & S.A., San Francisco, California, in its comments on the proposal, urged the Board to expand this provision to apply to presentments of forward collection checks, by requiring paying banks to pay in same-day funds for checks presented by private sector collecting banks before 2:00 p.m.

Discussion

The Board requests public comment on the concept of requiring paying banks to pay for checks in funds that are available for use by the presenting bank on the day that the checks are presented, without the imposition of presentment fees and free from other barriers to direct presentment. This "same-day payment" concept would include the following general features:

(1) The paying bank must accept checks from any presenting bank.

(2) The paying bank cannot assess a presentment fee on a presenting bank for checks presented before 2:00 p.m.

(3) The paying bank must pay for checks presented prior to 2:00 p.m. Payment must be made to the presenting bank so that the funds are available for use by the presenting bank on the day the checks are presented for payment. Acceptable methods of payment might include wire transfer, net settlement through the Federal Reserve, adjustment of correspondent balances before the closing of Fedwire, or any other means of payment acceptable to the presenting bank.

The Board believes that such a same-day payment requirement could speed the foward collection of checks consistent with the purposes of the Expedited Funds Availability Act. Nevertheless, same-day payment may impose unwelcome burdens and operational difficulties on paying banks.

Same-day payment has the potential to accelerate the collection of some checks by encoraging more direct presentments by private sector collecting banks. Same-day payment would allow banks to present directly to those paying banks that provide delayed disbursement services to their corporate customers. Banks providing delayed disbursement services have tried to avoid presemtment by private collecting banks through presentment fees, inaccessible locations, and other means. The Federal Reserve's High Dollar Group Sort program has been successful in obtaining faster availability for remotely disbursed checks that are collected through the Federal Reserve. Same-day payment would likely facilitate prompt collection by the private sector of remotely disbursed checks.

Support for same-day payment is expected from certain correspondent and other collecting banks. Some banks will receive improved availability for the checks they collect, including faster collection of delayed disbursement checks. Correspondent banks with large check collection operations may view the elimination of all presentment fees before 2:00 p.m., and the requirement that payment be made in usable funds on the day of presentment, as making them more comparable competitively with the Federal Reserve Bank. Banks that are currently net payors of presentment fees may also find the elimination of these fees to be advantageous in terms of reductions in operating costs.

Same-day payment is likely, however, to pose problems for paying banks. Specifically, some paying banks may be concerned with the additional complexities resulting from the receipt of checks from new sources, the additional bundles of checks (i.e., cash letters) to process and payments for cash letters to make, and the problems with reconcilement of cash letters after the cash letters have been presented and paid. Paying banks may also experience less certainty with respect to the timing and volume of checks received for payment. This uncertainty may result in an increase in operating costs, especially in the labor intensive adjustment operation.

Banks that currently receive revenue from presentment fees may also be opposed to same-day payment, as may banks and corporations that engage in delayed disbursement and related cash management practices. Same-day payment may make the provision of cash management services more difficult for some paying banks. The arrival pattern of checks may be less predictable, and checks may be presented later in the day. Later presentment would result in cash management information, which is used to determine the amount of funds to invest each day, being sent to corporate

treasurers later than at present. Since the markets are thinner later in the day, a delay in investing the funds may result in a slightly lower yield.

The paying bank may be put at some, albeit small, increased risk by accepting direct presentments if the presenting bank should fail after presentment but before returned checks are settled. Banks that currently exchange checks do so on the basis of agreements, and if one of the parties perceives some risk of failure of the other party, it would either compensate for the risk or void the agreement. The free flow of checks allowed by same-day payment obviates the need for bilateral agreements and, therefore, may increase risk to the paying bank.

Conclusion

Same-day payment raises several important issues that are central to the efficiency of the nation's check collection system. Public comment on the issues addressed by same-day payment, under which paying banks must pay for checks presented by collecting banks prior to 2:00 p.m. in same-day useable funds, without the imposition of presentment fees, may assist the Federal Reserve in determining the operational effect of the proposal. Based on the comments received, a specific proposal may be developed, which could be issued for public comment prior to final adoption of formal rules on this issue.

Specifically, the Board requests comments to respond to the following questions:

A. What is the potential demand for use of a same-day payment requirement and the anticipated public benefits if it were implemented?

(1) *Collecting banks.* By what degree would same-day payment increase direct presentments by private sector collecting banks? How many banks would use same-day payment to make direct presentments? Would presenting banks be primarily larger correspondent banks or a cross-section of the banking community?

(2) *Paying banks.* Would most direct presentments be on a local basis? How many of the paying banks would be new endpoints to which collecting banks do not now separately sort? What are the characteristics of these paying banks—are they large, small, city, country, etc.? Would paying banks receive cash letters primarily from local and regional banks, or are cash letters likely to be presented by depositary or other collecting banks operating on a nationwide basis?

(3) *Volume.* How much volume might be presented for same-day payment? How are these items being collected currently?

(4) *Overall Benefits.* Would same-day payment remove barriers to more prompt collection of checks? Is same-day payment an appropriate enhancement for the check collection system? What are the most significant advantages or drawbacks to same-day payment?

B. What operational characteristics should same-day payment assume?

(1) *Time and place of presentment.* What is the most appropriate cutoff time for presentment to the paying bank? Should different cutoff times be established for different classes of paying banks (i.e., noon for city banks, later (2:00 p.m.) for country banks)?

How would collecting banks keep track of changing presentment points and intercept arrangements? Should the Federal Reserve maintain a directory of presentment places?

(2) *Adjustments and quality of work.* Are any rules necessary to assure adjustments are handled and settled promptly? How would payment for adjustments be made? Is it necessary to specify whether and how compensation would be made for the time value of money when errors are made?

Should a paying bank be able to refuse to accept checks from a presenting bank, if experience indicates that the cash letter information accompanying the checks presented is often in error? Is there any need for standards regarding accuracy of cash letter information? Who should enforce such standards?

(3) *Payment.* What structure should settlement for same-day payment assume? What settlement options should be permitted? What should be the Federal Reserve's involvement? When should payment be made? Should any advance notice be required before a bank begins to present checks for same-day payment?

(4) *Payor bank services.* Is there a need for presenting banks to provide payor bank services when presenting checks for same-day payment? What would be the effects on the cash management services of paying banks, if payor bank services were provided by a number of differenc presenters? Should a paying bank be able to name a Federal Reserve office as a presentment point so that payor bank services, or truncation, could be performed?

C. What impact would same day payment have on:

(1) *Paying bank operations.* What are the operational problems that paying banks will encounter with same-day payment? What could be done to minimize such problems?

(2) *Clearinghouses.* Would the implementation of same-day payment prompt a breakdown in current clearinghouse arrangements? Would clearinghouses tend to move their clearing hour to a later time?

(3) *Existing correspondent relationships.* What effect would same-day payment have on existing inter-city clearing arrangements among correspondent banks? Would such arrangements continue?

(4) *Cash management services of banks.* How would same-day payment affect the provision of cash management services by banks? How would corporations be affected by a same-day payment rule?

(5) *Delayed disbursement.* Would collecting banks focus on improving clearing of checks drawn on banks offering delayed disbursement services?

(6) *Costs/revenues of banks.* How could collecting bnanks reduce check collection costs by using same-day payment? Would banks lose significant revenues from the loss of presentment fees? What additional costs would collecting banks incur in presenting checks under this concept?

(7) *Speed of collection.* How much would same-day payment enable collecting banks to speed the collection of checks and improve availability?

(8) *Time and place.* What effect would same-day payment have on presentment of checks to banks that conduct banking operations in several states? As nationwide banking emerges, are there special rules which should be developed to recognize the interests of both collecting and paying banks?

D. What are the factors affecting risk arising from a same-day payment rule?

(1) *Impact on risk management.* Would same-day payment affect banks' ability to manage to manage daylight overdrafts? Would bank wire transfer systems become congested with late-in-the-day transfers to effect settlement for checks presented for same-day payment?

(2) *Bank failure.* What is the risk to the paying bank of failure of the depositary bank prior to settlement for returned checks? Is this risk significant? What could be done to offset such risk?

E. Are there alternatives to the same-day payment?

(1) Should the Federal Reserve prohibit presentment fees by regulation without addressing the other terms of payment for checks presented to the paying bank? What effect would a

prohibition of presentment fees have on the check collection practices of presenting banks? What effect would a prohibition of presentment fees have on paying banks? Should a prohibition on presentment fees be accompanied by other rules, such as a restriction on the time of day that presentment fees could be imposed?

(2) Would depository institutions be more favorable to reviewing a specific same-day payment proposal at a later time, perhaps after the initial implementation of the Expedited Funds Availability Act is completed?

By order of the Board of Governors of the Federal Reserve System, April 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-7791 Filed 4-8-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88M-0083]

Baxter Healthcare Corp.; Premarket Approval of MicroScan® Rapid Panels

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Baxter Healthcare Corp., West Sacramento, CA, for premarket approval, under the Medical Device Amendments of 1976, of the MicroScan® Rapid Panels. After reviewing the recommendation of the Microbiology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by May 11, 1988.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: On August 20, 1987, Baxter Healthcare Corp., West Sacramento, CA 95691, submitted to CDRH an application for premarket approval of the MicroScan® Rapid Panels. The device is a rapid microdilution device for determining minimal inhibitory concentration in the performance of antimicrobial susceptibility testing. The device is designed for use in determining identification to the species level and/or antimicrobial agent susceptibility of rapidly growing aerobic and facultatively anaerobic Gram-negative bacilli *Enterobacteriaceae* glucose nonfermenters and non-*Enterobacteriaceae* glucose fermenters). The MicroScan® Rapid Panels include Rapid Neg Combo Type 1, Rapid Urine Combo Type 1, and Rapid Neg/Urine MIC Type 1 and utilize 96 well microdilution panels.

On February 8, 1988, the Microbiology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 24, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Joseph L. Hackett (HFZ-440), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 11, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 30, 1988.

James S. Benson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 88-7848 Filed 4-8-88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan; Environmental Impact Statement; and Wilderness Review for the Alaska Maritime National Wildlife Refuge, AK; Corrections

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability; Corrections.

SUMMARY: This document corrects a notice of availability that appeared on page 4224 in the **Federal Register** of Friday, February 12, 1988 (53 FR 4224).

FOR FURTHER INFORMATION CONTACT: William Knauer, Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

Text

The following corrections are made in the **Federal Register** Document 88-5329 appearing on page 4224:

On page 4224, column three, second paragraph, second sentence, "Dates," is corrected to read "A public meeting will be held in Kodiak, Alaska, on Tuesday, April 12, 1988, at 7:00 p.m., in the

Cafeteria of the Kodiak Junior High School, Rezanof Drive and Powell Avenue."

On page 4224, column three, second paragraph, sixth sentence, "Dates," is corrected to read "To be considered in the preparation of the final plan all comments and testimony, both oral and written, should be received no later than May 18, 1988."

Date: April 4, 1988.

Walter O. Stieglitz,

Regional Director.

[FR Doc. 88-7862 Filed 4-8-88; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permits, William Gruenerwald et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-726239

Applicant: William Gruenerwald, Colorado Springs, CO

The applicant requests a permit to import one male and two female onagers (*Equus hemionus onager*), captive born at the Cologne Zoo, West Germany, and transport to applicant's Canyon Colorado Equid Sanctuary in New Mexico for the purpose of captive breeding.

PRT-726322

Applicant: Ronald L. Tremper, Center for Reptile & Amphibian Propagation, Fresno, CA

The applicant requests a permit to import 10 captive born radiated tortoises (*Geochelone* (=*Testudo*) *radiata*) from Stuttgart, West Germany, for captive-breeding purposes.

PRT-725879

Applicant: Louisville Zoological Garden, Louisville, KY

The applicant requests a permit to import four juvenile Cuban crocodiles (*Crocodylus rhombifer*) from the Skansen-Akvariet in Stockholm, Sweden for purposes of captive propagation.

PRT-718807

Applicant: Audubon Zoological Gardens, New Orleans, LA

The applicant requests a permit to import seven, unsexed captive-hatched juvenile tuataras (*Sphenodon punctatus*) from the Wildlife Service Department of Internal Affairs, Wellington, New Zealand. These tuataras are to be imported for the purpose of developing a breeding program.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate applicant and PRT number when submitting comments.

Date: April 5, 1988.

R.K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 88-7896 Filed 4-8-88; 8:45 am]

BILLING CODE 4310-RN-M

Receipt of Applications for Permits; Toledo Zoological Gardens

The following applicant has submitted an amended application for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-726229

Applicant: Toledo Zoological Gardens, Toledo, Ohio

On March 30, 1988, a notice of application for a permit to import a pair of giant pandas that have been held in captivity in China since 1978, was published (53 FR 10298). The applicant has amended its application in order to import a substitute pair of pandas held in captivity in China since 1984. All other aspects of the application remain unchanged.

Documents and other information submitted with this application are available to the public during normal business (7:45 am to 4:15 pm) Room 403, 1375 K Street NW., Washington, DC 20005, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 27329, Washington, DC 20038-7329.

Interested persons may comment on this application within 30 days of the date of its original publication (March 30, 1988) by submitting written views, arguments, or data to the Director at the above address. Please refer to the application and PRT number when submitting comments.

Dated: April 6, 1988.

Marshall P. Jones,

Acting Chief, U.S. Office of Management Authority.

[FR Doc. 88-7897 Filed 4-8-88; 8:45 am]

BILLING CODE 4310-RN-M

Bureau of Land Management

[ID-943-08-4220-11; I-23203]

Realty Action; Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to Idaho Forest Industries, Inc. of Coeur d'Alene, Idaho 83814, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

T. 46 N., R. 1 W.
Sec. 24, S½SE¼
T. 49 N., R. 5 W.
Sec. 3, SW¼;
Sec. 9, lots 1 and 3;
Sec. 17, NW¼SE¼.
Comprising 363.65 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian, Idaho

T. 48 N., R. 2 W.
Sec. 19, lots 2, 3, N½NE¼, NE¼NW¼, SE¼SW¼;
Sec. 20, W½SW¼;
Sec. 29, NW¼NW¼;
Sec. 30, NE¼NE¼.
T. 48 N., R. 3 W.
Sec. 23, E½NE¼, NE¼SE¼;
Sec. 24, lots 2, 3, 4, 5, NW¼SW¼.
Comprising 725.10 acres of private land.

The purpose of the exchange was to acquire non-federal land that which has high public value for timber and wildlife. The public interest was well served through completion of this exchange.

The values of the federal public land and the non-federal land in the exchange were both appraised at $419,000 and $419,800 respectively. Idaho Forest Industies, Inc. waived the $800 difference in values.

Charles J. Haszier,

Deputy State Director for Operations.

Date: March 30, 1988.

[FR Doc. 88-7805 Filed 4-8-88; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

Information Collection Request Under OMB Review

AGENCY: National Park Service, Interior.

ACTION: Notice of information collection request under OMB review.

SUMMARY: On behalf of the land managing bureaus in the Department of the Interior, the National Park Service has submitted the information collection request listed below to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). The request is for revision of an existing information collection requirement approved by OMB and assigned clearance No. 1024–0037. Copies of the request and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau Clearance Officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Application for and issuance of Federal permits under the Archeological Resources Protection Act and the Antiquities Act

Abstract: Permit applicants provide information to Federal land managers on the survey, collection or excavation work that they propose to conduct at archeological resources on public or Indian lands, their qualifications and institutional affiliation, and written certification by a suitable repository of its willingness to preserve the materials recovered on behalf of the United States Government (if recovered from public lands) or the Indian owner (if recovered from Indian lands and the Indian owner does not wish to take custody). If the work proposed is on Indian lands, the applicant must also obtain written consent from the Indian landowner and the Indian tribe having jurisdiction over the lands. This information allows the Federal land manager to determine if a permit should be issued and what terms and conditions should be placed on the permit. Each permittee is required to provide the Federal land manager with a preliminary and a final report on the work completed. This information enables the Federal land manager to determine if the terms and conditions of the permit were met and to incorporate the information into existing acheological inventories and historic preservation plans.

Departmental Form Numbers: DI 1926 (permit application), DI 1927 (ARPA permit) and DI 1928 (AA permit).

Frequency: On occasion.

Description of Respondents: Individuals, academic institutions and consulting firms desiring to conduct scientific research or environmental compliance activities at archeological resources located on public or Indian lands.

Annual Responses: 1050 responses, consisting of an estimated 350 permit applications and 700 reports (350 preliminary reports and 350 final reports).

Annual Burden Hours: 1050 hours.

Bureau Clearance Officer: Russell K. Olsen, telephone (202) 523–5133.

Russell K. Olsen,

Information Collection Clearance Officer.

[FR Doc. 88–1854 Filed 4–8–88; 8:45 am]

BILLING CODE 4310-70-M

[DES-88-18]

Availability of a Draft Environmental Impact Statement; Gates of the Arctic National Park and Preserve; AK

ACTION: Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Wilderness Recommendation Gates of the Arctic National Park and Preserve, Alaska, and the holding of public hearings and public meetings.

For Gates of the Arctic National Park and Preserve, four alternatives were examined ranging from no action, which means no additional wilderness designation, to designating all lands within the study area as wilderness. Alternative 2, the proposed action excludes a majority, about 69 percent of the study area, from wilderness designation.

DATES AND ADDRESSES: The public is invited to comment on the DEIS. The public comment period will end July 18, 1988. Written comments should be mailed to Mr. Q. Boyd Evison, Regional Director, Alaska Regional Office, National Park Service, 2525 Gambell, Anchorage, AK 99503. Comments must be received by July 18, 1988, to be considered in the development of the final EIS.

Two formal public hearings have been scheduled to receive oral and written comments on this wilderness DEIS. A section 810 review will be conducted as part of the hearings. The public hearings will also provide the opportunity to receive oral and written comments on Wilderness Recommendations for Wrangell-St. Elias National Park and Preserve and Lake Clark National Park and Preserve draft EISs, which are also on public review. One hearing will be held in Anchorage, Alaska, on Monday, June 6, 1988, 7:00 p.m., Third Floor Conference Room, Alaska Regional Office, National Park Service, 2525 Gambell Street. Another hearing has been tentatively scheduled for Tuesday, June 7, at 7:00 p.m. in Arlington, Virginia, at the Professional Center, Third Floor, Metropolitan Campus of George Mason University, 3401 North Fairfax Drive. The actual date and time will be verified in the local newspapers.

In addition, 5 public meetings will be held on Gates of the Arctic National Park and Preserve Wilderness DEIS. A section 810 review will be conducted as part of the meetings. They will be in Fairbanks on Tuesday, June 7, Allakaket and Coldfoot on Wednesday, June 8, Bettles on Thursday, June 9, and Anaktuvuk on Friday, June 10, 1988. The exact times and locations will be announced in local news media.

FOR FURTHER INFORMATION CONTACT: Division of Planning, Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503; (907) 257–2654. The headquarters at Fairbanks, Alaska, phone (907) 456–0281 will have reading copies available to the public as will the NPS Alaska Regional Office (address above); the Alaska Resources Library in Anchorage, Alaska, 701 C Street; the Alaska Public Lands Information Office in Fairbanks, Alaska, Third and Cushman Streets; and the Office of Public Affairs, National Park Service, Department of the Interior in Washington, DC, 18th and C Streets, NW.

Gerald D. Patten,

Associate Director, Planning and Development.

Bruce Blanchard,

Director, Office of Environmental Project Review, United States Department of the Interior.

Dated: April 4, 1988.

[FR Doc. 88–7855 Filed 4–8–88; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303-TA-19 and 20 and 731-TA-391-399 (Preliminary)]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany, France, Italy, Japan, Romania, Singapore, Sweden, Thailand, and the United Kingdom

AGENCY: International Trade Commission.

ACTION: Institution of preliminary countervailing duty and antidumping investigations, and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary countervailing duty investigations Nos. 303–TA–19 and 20 (Preliminary) under section 303 of the Tariff Act of 1930 (19 U.S.C. 1303) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of antifriction bearings (other than tapered roller bearings) and parts thereof whether finished or unfinished, provided for in items 681.10, 681.39 and 692.32 of the Tariff Schedules of the United States (TSUS), which are alleged to be subsidized by the governments of Singapore and Thailand.[1]

The Commission also gives notice of the institution or preliminary antidumping investigations Nos. 731–TA–391–399 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the following countries of antifriction bearings (other than tapered roller bearings) and parts thereof, whether finished or unfinished, provided for in items 680.30, 680.33, 680.37, 680.39, 680.04, 681.10, 681.39 and 692.32[2] of the Tariff Schedules of the United States (TSUS), that are alleged to be sold in the United States at less than fair value:

Country	Investigation No.
Federal Republic of Germany	731–TA–391 (preliminary).
France	731–TA–392 (preliminary).
Italy	731–TA–393 (preliminary).
Japan	731–TA–394 (preliminary).
Romania	731–TA–395 (preliminary).
Singapore	731–TA–396 (preliminary).
Sweden	731–TA–397 (preliminary).
Thailand	731–TA–398 (preliminary).
United Kingdom	731–TA–399 (preliminary).

As provided in sections 303 and 733(a), the Commission must complete preliminary countervailing duty and antidumping investigations in 45 days, or in this case by May 16, 1988.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: March 31, 1988.

FOR FURTHER INFORMATION CONTACT: Diane Mazur (202–252–1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1809. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to petitions filed on March 31, 1988, by the Torrington Co., Torrington, Connecticut.

Participation in the investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on April 21, 1988 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Diane Mazur (202–252–1184) not later than April 14, 1988 to arrange for their appearance.

Written Submissions

Any person may submit to the Commission on or before April 25, 1988 a written statement of information pertinent to the subject of the investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m.

[1] Antifriction bearings (other than tapered roller bearings) and parts thereof from Singapore and Thailand subject to investigation include ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing (TSUS item 681.10 and HTS subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUS item 681.39 and HTS subheading 8485.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUS item 692.32 and HTS subheading 8708.99.50).

[2] For purposes of these investigations, the subject bearings and parts thereof include the following articles, whether finished or unfinished: antifriction balls and rollers (TSUS item 680.30 and proposed Harmonized Tariff Schedule (HTS) subheading 8482.91.00); ball bearings with integral shafts (TSUS item 680.33 and HTS subheading 8482.10.10); ball bearings (including radial ball bearings) and parts thereof (TSUS item 680.37 and HTS subheadings 8482.10.50 and 8482.99.10); spherical roller bearings and parts thereof (TSUS item 689.39 and HTS subheadings 8482.30.00 and 8482.99.50); other roller bearings (except tapered roller bearings) and parts thereof (TSUS item 680.39 and HTS subheadings 8482.99.70; ball or roller bearing type pillow blocks and parts thereof (TSUS item 681.04 and HTS subheadings 8483.20.80, 8483.20.80, 8483.90.30, and 8483.90.70); ball or roller bearing type flange, take-up, cartridge, and hanger units, and parts of the foregoing (TSUS item 681.10 and HTS subheadings 8483.20.40, 8483.30.40, 8483.90.20, and 8483.90.30); machinery parts containing any of the foregoing bearings, not containing electrical features and not specially provided for (TSUS item 681.3900 and HTS subheading 8485.90.00); and parts of motor vehicles containing any of the foregoing bearings and not specially provided for (TSUS item 692.3295 and HTS subheading 8708.99.50).

to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: April 6, 1988.

[FR Doc. 88-7833 Filed 4-8-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub-No. 227X)]

CSX Transportation, Inc.; Abandonment Near Chillicothe in Ross County, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by CSX Transportation, Inc. of approximately .87 miles of track in Ross County, OH subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on May 11, 1988. Petitions to stay must be filed April 26, 1988, and petitions for reconsideration must be filed by May 6, 1988. Formal expressions of an intent to file an offer of financial assistance under 49 1152.27(c)(2)[1] must be filed by April 21, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 227X) to:

(1) Office of the Secretary Case Control Branch Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Lawrence H. Richmond, 100 North Charles Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: April 4, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-7808 Filed 4-8-88; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 6X)]

Southern Railway Co.; Abandonment Exemption in Fauquier County, VA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the abandonment by Southern Railway Company of approximately 5.14 miles of its Warrenton Branch between milepost CW-3.76 at or near Casanova and milepost CW-8.90 at or near Warrenton, in Fauquier County, VA, subject to a 180 day public use condition and standard employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption is effective on May 11, 1988. Formal expressions of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 21, 1988, petitions to stay must be filed by April 26, 1988, and petitions for reconsideration must be filed by May 6, 1988.

ADDRESSES: Send pleadings referring to Docket No. AB-290 (Sub-No. 6X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Virginia K. Young, Attorney, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: April 4, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-7809 Filed 4-8-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application; Applied Science Laboratories

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 19, 1988, Applied Science Laboratories, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-Methylaminorex (1590)	I
Methadone (9250)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances

[1] *See Exemption of Rail Line Abandonment or Discontinuance—Offers of Financial Assistance*____ I.C.C.2d____ served December 21, 1987, and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

[1] See Exempt. or Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48 440-48 446).

may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 11, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: April 4, 1988.

[FR Doc. 88-7851 Filed 4-8-88; 8:45am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Arenol Chemical Corp.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to using a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 3, 1988, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 11, 1988.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 US.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: April 4, 1988.

[FR Doc. 88-7852 Filed 4-8-88; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Arenol Chemical Corp.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 3, 1988, Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105).	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than May 11, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: April 1, 1988.

[FR Doc. 88-7850 Filed 4-8-88; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-71]

Bobby Watts, M.D.; Revocation of Registration

On September 23, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Bobby Watts, M.D. (Respondent) of 4005 Ames Drive, Nashville, Tennessee 37218, proposing to revoke his DEA Certificate of Registration AW2182234 and to deny any pending applications for the renewal of such registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the Order to Show Cause was Respondent's lack of authorization to handle controlled substances in the State of Tennessee. In addition, the Order to Show Cause alleged that Respondent's continued registration with DEA is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

By letter dated October 22, 1987, Respondent requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On October 30, 1987, Judge Bittner issued an Order for Prehearing Statements. In lieu of filing a prehearing statement, Government counsel filed a motion for summary disposition on November 10, 1987. In an Order dated November 12, 1987, Judge Bittner stayed the Order for Prehearing Statements and provided Respondent an opportunity to respond to the motion for summary disposition. Respondent failed to file such a response within the specified time period. The Administrative Law Judge then provided Respondent with a further opportunity to respond to the Govenment's motion. Respondent submitted a letter dated January 6, 1988, however he did not address the Government's motion for summary disposition. Judge Bittner considered the motion for summary disposition, and on January 22, 1988, issued her opinion and recommended decision. No hearing was held, since no factual issues were involved. Neither side filed exceptions to the recommended decision of the

Administrative Law Judge. On February 23, 1988, Judge Bittner transmitted the record in this matter to the Administrator. The Administrator, having considered the record in its entirety, hereby enters his final order in this matter pursuant to 21 CFR 1316.67.

The Administrative Law Judge found that in an Order dated May 7, 1987, the State of Tennessee, Department of Health and Environment, Board of Medical Examiners suspended Respondent's license to practice medicine in the State of Tennessee. Judge Bittner further found, as does the Administrator, that DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances. See 21 U.S.C. 823(f). The Administrator and his predecessors have consistently so held. See. *Emerson Emory, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985); *Aqostino Carlucci, M.D.*, Docket No. 82–20; 49 FR 33184 (1984).

The Administrative Law Judge concluded that at least until November 1987, when Government counsel filed its motion for summary disposition, Respondent was not authorized in Tennessee to practice medicine or to handle controlled substances, and Respondent has not shown that he has subsequently been reauthorized to handle controlled substances. Therefore, because Respondent lacks this state authority, he is not entitled to a DEA registration and his DEA Certificate of Registration may be revoked pursuant to 21 U.S.C. 824(a)(3).

The Administrative Law Judge also found that the motion for summary disposition was properly entertained and must be granted. When no fact question is involved, or when the facts are agreed, there is no requirements that an agency convene a plenary, adversarial administrative proceeding, even though the pertinent statute prescribes a hearing. Congress does not intend administrative agencies to perform meaningless tasks. See, *U.S. v. Consolidated Mines and Smelting Co., Ltd.*, 445 F.2d 432, 435 (9th Cir. 1971); *NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *Alfred Tennyson Smurthwaite, N.D.*, Docket No. 77–29, 43 Fed. Reg. 11873 (1978).

Based on Respondent's lack of authorization to handle controlled substances in the State of Tennessee, the Administrative Law Judge recommended that Respondent's DEA registration be revoked. The Administrator adopts the Administrative Law Judge's opinion and recommended ruling in its entirety. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AW2182234, previously issued to Bobby Watts, M.D., be, and it hereby is revoked, and any pending applications for the renewal of such registration, be, and they hereby are denied. This order is effective immediately.

John C. Lawn,

Administrator.

Date: April 5, 1988.

[FR Doc. 88–7853 Filed 4–8–88; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance; Murata Erie North America, Inc., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period March 28, 1988–April 1, 1988.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–20,436; Murata Erie North America, Inc., Carlisle Div., Carlisle, PA

TA–W–20,442; Witco Corp., Kendall/ Amalie Div., Youngsville, PA

TA–W–20,438; Southwest General Industry, Phoenix, AZ

TA–W–20,456; Philadelphia Steel & Wire Corp., Philadelphia, PA

TA–W–20,455; Parker-Hannifin Corp., Waverly, OH

TA–W–20,455; Fairbanks Morse, Engine Accessories, Roscoe, IL

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–20,447; General Instrument Corp., Tocom Div., Irving, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,448; General Instrument Corp., Tocom Div., Brownsville, TX

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,452; Mack Truck, Inc., Hagerstown, MD

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA–W–20,470; Abingdon Harwood Manufacturing Corp., Abindgon, VA

A certification was issued covering all workers of the firm separated on or after March 17, 1988.

TA–W–20,434; Levolor-Lorentzen, Inc., North Bergen, NJ

A certification was issued covering all workers of the firm separated on or after January 13, 1987.

TA–W–20,435; Mirro Corp., Manitowoc, WI

A certification was issued covering all workers of the firm separated on or after September 19, 1987.

TA–W–20,468; Wolvering Knitting Mills, Bay City, MI

A certification was issued covering all workers of the firm separated on or after February 4, 1987.

TA–W–20,444; Fairbanks Morse Engine Div., Beloit, WI

A certification was issued covering all workers of the firm separated on or after January 19, 1987.

TA–W–20,451; Levolor-Lorentzen, Inc., Hialeah, FL

A certification was issued covering all workers of the firm separated on or after January 3, 1987.

TA–W–20,370; Health-Tex, Inc., Central Falls, RI

A certification was issued covering all workers of the firm separated on or after December 23, 1986.

TA–W–20,370A; Health-Tex, Inc., Cranston, RI

A certification was issued covering all workers of the firm separated on or after December 23, 1986.

TA–W–20,370B; Health-Tex, Inc., Elmwood Ave., Providence, RI

A certification was issued covering all workers of the firm separated on or after December 23, 1986.

I hereby certify that the aforementioned determinations were issued during the period March 28, 1988–April 1, 1988. Copies of these determinations are available for inspection in Room 6434. U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: April 5, 1988.

[FR Doc. 88–7787 Filed 4–8–88; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–20,398]

Sealed Power Division, Sealed Power Corp., Muskegon, MI; Negative Determination Regarding Application for Reconsideration

By an application dated March 21, 1988, Local #637 of the United Auto Workers of America (UAW) requested administrative reconsideration of the Department's notice of negative determination on the subject petition for trade adjustment assistance for workers at the Sealed Power Division, Sealed Power Corporation, Muskegon, Michigan. The denial notice was signed on March 14, 1988 and published in the **Federal Register** on March 25, 1988 (53 FR 9824).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union submitted newspaper clippings concerning the U.S. International Trade Commission's report on imports of auto parts including piston rings. The union also cites that the Department is inconsistent in its determinations by certifying workers at the Muskegon Piston Ring Company in Muskegon in 1987 and denying the workers at the subject firm in 1988.

Workers at Sealed Power in Muskegon produce piston rings. Investigative findings show that the "Contributed importantly" test of the increased import criterion was not met for workers at the subject plant in 1987. The "contributed importantly" test is generally demonstrated through a survey of the firm's customers. The department's survey revealed that respondents which reported increased imports of piston rings while decreasing their purchases from Sealed Power represented only a minor portion of the survey group's reduction in purchases from the subject firm. Moreover, Sealed Power had increased sales and production of piston rings in 1987 compared to 1986.

A review of the petition indicates that worker separations began in 1980 and continued through the investigative period. Section 223(b)(1) of the Trade Act of 1974 does not permit the certification of workers who were laid off more than one year from the date of the petition which in this case is January 4, 1988.

With respect to the auto parts report issued by U.S. International Trade Commission, its findings are industry-wide and would not, by themselves, form a basis for certification of a specific worker group. Worker group certifications under the Trade Act of 1974 must meet the group Eligibility Requirements set in section 222 of the Act which state that increased imports must have "contributed importantly" to worker separations and production and/or sales declines at the workers' firm.

The union claims that the Department's certification of workers at the Muskegon Piston Ring Division (MPR) of Goetze Corporation of America (TA–W–18,877) should govern this petition as well. The factual determinations required of the Department under the Trade Act are very fact specific. Accordingly, each worker petition must be judged on its own merits and in the time frame in which it was filed and for the product which the workers produced. Workers of MPR met all the criteria necessary for certification including the "contributed importantly" test. The Department's survey in that investigation showed that customers which increased purchases of imported piston rings accounted for an important portion of MPR's reduced sales in 1986 compared with 1985. This is a different finding from that obtained in the Department's investigation at Sealed Power.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 31st day of March 1988.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 88–7786 Filed 4–8–88; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Retiree Health of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:30 a.m., Thursday, April 28, 1988, at the American Association of Retired Persons (AARP), 1909 K Street NW., Room 701, Washington, DC 20049.

This seven-member work group was formed by the Advisory Council to study issues relating to retiree health benefit programs for employee welfare plans covered by ERISA.

The purpose of the April 28 meeting is to hear from several experts who will speak of recent congressional proposals in the field of Retiree Health Benefits. In addition, the work group will take testimony from employee representatives, employer representatives and other interested individuals and groups regarding subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written

requests on or before April 25, 1988 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before April 25, 1988.

David M. Walker,

Assistant Secretary, Pension and Welfare Benefits Administration.

Signed at Washington, DC, this 5th day of April, 1988.

[FR Doc. 88-7807 Filed 4-8-88; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities; Arts and Artifacts Indemnity Panel Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue NW., Washington, DC 20506, in Room 730, from 9:00 a.m. to 5:30 p.m. on May 3, 1988.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July 1988.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 16, 1978, I have determined that the meeting would fall within exemptions (4) and (9) of U.S.C. 552(b) and that it is essential to close the meetings to protect the free exchange of views and to avoid interference with the operations of the committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Stephen J. McCleary, 1100 Pennsylvania Avenue NW., Washington, DC 20506, or call 202/786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 88-7832 Filed 4-8-88; 8:45 a.m]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Jazz Fellowships Section) to the National Council on the Arts will be held on April 27-28, 1988 from 9:00 a.m.-7:00 p.m., and on April 29, 1988 from 10:00 a.m.-6:00 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on April 29, 1988, from 1:00 p.m.-3:00 p.m. for a general program overview and guidelines discussion.

The remaining sessions of this meeting on April 27-28, 1988 from 9:00 a.m.-7:00 p.m., and on April 29, 1988 from 10:00 a.m.-1:00 p.m. and from 3:00 p.m.-6:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination by the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(b) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Martha Y. Jones,

Program Specialist, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-7804 Filed 4-8-88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Commonwealth Edison Co.; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50-295 and 50-304]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-39 and DPR-48 issued to Commonwealth Edison Company, (the licensee), for operation of the Zion Nuclear Power Station, Units 1 and 2, located in Lake County, Illinois.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would clarify and upgrade the Technical Specifications for measuring the leakage through pressure isolation valves in the Zion Nuclear Power Station Units 1 and 2.

The proposed action is in accordance with the licensee's application for amendment dated November 13, 1987 and modified March 4, 1988.

The Need for the Proposed Action

The proposed change to the TS is required in order to clarify and upgrade procedures for measuring the leakage through pressure isolation valves.

Environmental Impacts of the Proposed Action

The Commission had completed its evaluation of the proposed revision to Technical Specification (TS), and has concluded that the proposed changes to the Technical Specifications provide reasonable assurance that the facility can be operated safely. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts

associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on December 16, 1987 (52 FR 47807). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Actions

Since the Commission has concluded that there are no significant effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Zion Nuclear Power Station, Units 1 and 2, dated December 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon this 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 amendments dated November 13, 1987 as supplemented March 4, 1988 which are available for public inspection at the Commission's Public Document Room 1717 H Street NW., Washington, DC 20555; and at the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Dated at Rockville, Maryland this 1st day of April 1988.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-7834 Filed 4-8-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-266 and 50-301]

Wisconsin Electric Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions from the requirements of 10 CFR Part 50, Appendix R, Section III.G.3.b, to Wisconsin Electric Power Company (the licensee) for the Point Beach Nuclear Plant, Units 1 and 2, located at the licensee's site in Manitowoc County, Wisconsin. The exemptions were requested by the licensee in a letter dated June 11, 1986, as supplemented by letter dated October 10, 1986.

Environmental Assessment

Identification of Proposed Action

10 CFR Part 50, Appendix R, Section III.G.3.b, requires a fixed fire suppression system for areas containing redundant trains of safe shutdown cables. Implementation of TMI-related modifications at Point Beach included the rerouting of several of the safe shutdown instrument cables from the monitor tank area through the Component Cooling Water Heat Exchanger and Boric Acid Tank Room (Fire Zone 237) and the Computer and Instrument Rack Room (Fire Zone 336) to the Control Room. As a result of these modifications, the Component Cooling Water Heat Exchanger and Boric Acid Tank Room, and the Computer and Instrument Rack Room are not in compliance with Section III.G.3.b of Appendix R.

The Need for the Proposed Action

The proposed exemptions are needed to permit the licensee to operate the plant without being in violation of the Commission's requirements.

Environmental Impact of the Proposed Action

The proposed exemptions are from the specific requirement of Appendix R, Section III.G.3.b to have a fixed suppression system for areas containing redundant trains of safe shutdown cables. In its June 11, 1986 application, the licensee stated that alternate shutdown capability, independent of the fire zones for which the exemptions are proposed, will be provided. In the unlikely event of fire in these fire zones, and damage to the redundant instrument cables, alternate shutdown capability is provided. There are no changes in plant operation or effluents or ability to shut down the plants to be considered with the proposed exemptions. Therefore, in consideration of the above, the exemption does not involve a significant environmental impact.

Alternative to Proposed Action

Because the staff has concluded that there is no significant impact associated with the proposed exemptions, any alternative to the exemption will have either no environmental impact or greater environmental impact.

The installation of fixed fire suppression systems would result in additional costs to the licensee without adding any benefits already available by the independent shutdown capability.

Agencies and Persons Consulted

The staff reviewed the licensee's request and has not consulted other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action.

Based upon this 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 licensee's application dated June 11, 1986, as supplemented on October 10, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Dated at Rockville, Maryland this 4th day of April 1988.

For the Nuclear Regulatory Commission.

Kenneth E. Perkins,

Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects.

[FR Doc. 88-7835 Filed 4-8-88; 8:45 am]

BILLING CODE 7590-01-M

Naturally Occurring and Accelerator-Produced Radioactive Materials—1987 Review (NUREG-1310); Availability

The U.S. Nuclear Regulatory Commission (NRC) has published a report entitled, "Naturally Occurring and Accelerator-Produced Radioactive Materials—1987 Review, NUREG-1310." From time to time, the issue as to whether the NRC should seek legislative authority to regulate naturally occurring and accelerator-produced radioactive materials (NARM) is raised. Because NARM exists in the environment, in homes, in workplaces, in medical institutions, and in consumer products,

the issue of Federal controls over NARM is very old and very complex. NUREG–1310 presents a review of NARM sources and uses as well as incidents and problems associated with those materials. A review of previous congressional and Federal agency actions on radiation protection matters, in general, and on NARM, in particular, is provided to develop an understanding of existing Federal regulatory activity in ionizing radiation and in control of NARM. In addition, State controls over NARM are reviewed. Eight questions are examined in terms of whether the NRC should seek legislative authority to regulate NARM. The assessment of these questions serves as the basis for developing and evaluating five options. The evaluation of those options leads to two recommendations.

Copies of NUREG–1310 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC.

Dated at Washington, DC, this 4th day of April 1988.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 88–7836 Filed 4–8–88; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Reestablishment of an Investment Policy Advisory Committee

The U.S. Trade Representative has taken steps to reestablish an Investment Policy Advisory Committee. This Committee will be chartered pursuant to section 135(c)(2) of the Trade Act of 1974 (19 U.S.C. 2155(c)(2)), as amended; the Federal Advisory Committee Act (5 U.S.C. App. 1); section 4(b) of Executive Order No. 11846, March 27, 1985; and Executive Order No. 12188. The charter of this Committee will be filed 15 days from the date of this notice.

The Investment Policy Advisory Committee is being reestablished to provide the United States Trade Representative with policy advice and information regarding direct investment to the extent it relates to international trade, including the following areas: operations of multinational enterprises, and multilateral and bilateral agreements on international investment, direct investment by Americans abroad and issues of direct foreign investment in the United States.

The Committee will meet approximately three or four times per year, depending on the needs of the U.S. Trade Representative. The U.S. Trade Representative or his designee will convene meetings of the Committee.

Members of the Committee shall be appointed by, and serve at the discretion of the U.S. Trade Representative. Individuals wishing further information or to be considered for appointment to serve on the Committee should contact: The United States Trade Representative, Office of Private Sector Liaison, 600 17th Street NW., Washington, DC 20506, (202) 395–6120.

Barbara W. North,

Director, Office of Private Sector Liaison.

[FR Doc. 88–7823 Filed 4–8–88; 8:45 am]

BILLING CODE 3190–01–M

Reestablishment of an Intergovernmental Policy Advisory Committee

The U.S. Trade Representative has taken steps to reestablish an Intergovernmental Policy Advisory Committee on Trade. This Committee will be chartered pursuant to section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 9(a)(2)). The charter of this Committee will be filed 15 days from the date of this notice.

The Committee will advise, consult with, and make recommendations to the U.S. Trade Representative and relevant Cabinet agencies on policy issues including, but not limited to, statutes and/or regulations enacted or promulgated by state and local governments that may affect U.S. trade policy objectives, as well as statutes, regulations, and other acts promulgated or enacted by the federal government that may affect the relationship between international trade and state and local governments.

The Committee will meet approximately three or four times per year, depending on the needs of the U.S. Trade Representative. The U.S. Trade Representative or his designee will convene meetings of the Committee.

Members of the Committee shall be appointed by, and serve at the discretion of the U.S. Trade Representative. Representatives from the private sector wishing further information or to be considered for appointment to serve on the Committee should contact: The United States Trade Representative, Office of Private Sector Liaison, 600 17th Street NW., Washington, DC 20506, (202) 395–6120.

Barbara W. North,

Director, Office of Private Sector Liaison.

[FR Doc. 88–7824 Filed 4–8–88; 8:45 am]

BILLING CODE 3190–01–M

PEACE CORPS

Agency Information Collection Activities Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of submission of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget, a request to approve the use of the Medical History and Examination Forms through June 1, 1991. All applicants for service in the Peace Corps must undergo physical and dental examinations prior to service. The results of these examinations are used to ensure that the applicants will, with reasonable accommodation, be able to serve in Peace Corps without jeopardizing their health. The Peace Corps Office of Medical Services (M/MS) is responsible for the collection and review of applicant medical information.

Information about the forms:

Agency Address: Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526.

Title: Medical History and Examination Forms.

Request: Approval of Use.

Frequency of Collection: One time per respondent.

General Description of Respondent: All individuals who are nominated and/or invited for Peace Corps Service and their physicians.

Estimated Number of Responses: 15,540 per year.

Estimated Hours for Respondents to Furnish Information: Thirty (30) minutes for Medical Examination Section and fifteen (15) minutes for Medical History Section.

Respondents' Obligation to Reply: Required for entrance into the Peace Corps Comments: Comments on this form request should be directed to Francine Picoult, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

A copy of the form may be obtained from Karl Pulley, Office of Medical Services, Peace Corps, 806 Connecticut

Avenue, NW., Room P-214, Washington, DC 20526. Mr. Pulley may be called at (202)-254-6916. This is not a request to which 44 U.S.C. 3504(h) applies. This notice is issued in Washington, DC on April 4, 1988.

Margaret H. Thome,

Associate Director for Management.

[FR Doc. 88-7831 Filed 4-8-88; 8:45 am]

BILLING CODE 6051-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-16348/File No. 812-6964]

Application for Exemption; United Services Life Insurance Co.

Date: April 5, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants:

United Services Life Insurance Company ("USL"), United Services Variable Life Separate Account I (USL Separate Account I"), United Services Variable Life Separate Account II ("USL Separate Account II"), United Services Variable Life Separate Account III ("USL Separate Account III"), United Services Variable Life Separate Account IV ("USL Separate Account IV") (collectively the "USL Separate Accounts"), Bankers Security Life Insurance Society ("BSL"), Bankers Security Variable Life Separate Account I ("BSL Separate Account I"), Bankers Security Variable Life Separate Account II ("BSL Separate Account II"), Bankers Security Variable Life Separate Account III ("BSL Separate Account III"), Bankers Security Variable Life Separate Account IV ("BSL Separate Account IV") (Collectively the "BSL Separate Accounts") and USLICO Series Fund (the "Fund") (collectively the "Applicants").

Relevant 1940 Act Sections and Rules: Exemptions requested under sections 6(c) and 17(b) and Rule 17d-1, from sections 9(a), 13(a), 15(a), 15(b), 17(a) and Rules 6e-2(b)(15) and 17d-1.

Filing Date: The application was filed on January 22, 1988.

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 April 27, 1988. 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: SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Jeffrey S. Puretz, 1730 Pennsylvaina Avenue NW., Suite 1100, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Nancy M. Rappa, (202) 272-2622 or Special Counsel Lewis B. Reich, (202) 272-2061 (Office of Insurance Products and Legal Compliance).

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 which may be contacted at (800) 231-3282 (in Maryland (301) 253-4300) .

Applicants' Representations

1. USL is a stock life insurance company and, except for New York, is authorized to conduct business in all of the states, the District of Columbia, Japan, Guam and on U.S. military bases. USL was originally incorporated under the laws of the District of Columbia and later redomesticated as a life insurance company under the laws of the Commonwealth of Virginia. USL Separate Accounts I, II, III and IV were established as separate investment accounts of USL in September 1986 under the insurance laws of the Commonwealth of Virginia., BSL, a wholly-owned subsidiary of USL, is a stock life insurance company authorized to conduct business as a life insurance company in all of the states, the District of Columbia, and the Dominican Republic. BSL Separate Accounts I and II were established as separate investment accounts in 1982 under the insurance laws of the State of New York and BSL Separate Accounts III and IV were similarly established in 1986. The USL and BSL Separate Accounts are separate investment accounts to which assets are allocated to support benefits payable under single premium and level premium variable life insurance policies issued by USL and BSL (the "USL and BSL Policies"). The USL and BSL Separate Accounts are registered under the 1940 Act as open-end diversified management companies.

2. The Fund is an open-end diversified management investment company organized in the form of a Massachusetts business trust. The Fund will initially be authrized to issue four series or classes of shares, each of which will represent an interest in one of the Fund's portfolios. Shares of each portfolio will be purchased and redeemed by a corresponding sub-account of the Continuing Accounts.

3. The USL Continuing Account will be a separate investment account of USL, operated as a unit investment trust ("UIT") to fund benefits under the Policies. Similarly, the BSL Continuing Account will be a separate investment account of BSL, operated as a UIT, which will fund benefits under the Policies. The Fund, which will assume the assets and investment-related liabilities of the USL and BSL Separate Accounts, will be the continuing funding vehicle for the Policies of USL and BSL.

4. An Agreement and Plan of Reorganization ("USL Agreement") will be entered into among USL, each of the USL Separate Accounts and the Fund, subject to the approval of the individuals who make contributions or for whom contributions are made under the USL Policies ("USL Policyowners"). A separate Agreement and Plan of Reorganization will be entered into among BSL, each of the BSL separate accounts, and the Fund, subject to the approval of those who contribute or for whom contributions are made, under the BSL Policies ("BSL Policyowners"). Those Agreements provide that USL and BSL will assume all costs to be incurred in effecting the reorganizations, including the expenses of organizing the Fund. Applicants state that, with respect to policies issued prior to the effective time of the reorganizations, no investment advisory or other expenses shall become the responsibility of the Fund or shall be charged against the Stock, Money Market, Bond or Asset Allocation Portfolios of the Fund of a type or in an amount which could not have been charged against the Separate Accounts had the reorganizations not occurred. USL and BSL have agreed to continue to pay initially the costs of legal, compliance, and audit services for the Fund. USL and BSL will bear these costs until the net assets of the Fund have increased to a point where, in the opinion of the companies, the Fund may bear the expenses without significant adverse impact on the interests held by Policyowners. In addition, to prevent any existing Policyowner from bearing the cost of the higher advisory fee payable by the Fund, USL and BSL will make an annual adjustment to the cash

value of each Policy outstanding as of the date of the reorganization in an amount equal to .25% on an annual basis of the cash value of the Policy less the amount of any outstanding loan attributable to the Policy.

5. USL and BSL Policyowners under the USL and BSL Policies currently have voting rights with respect to each of the USL and BSL Separate Accounts in which they have an interest. Under both the USL or BSL Policies, a USL or BSL Policyowner may cast one vote for each $100 of the cash value of a USL or BSL Policy (less outstanding indebtedness) allocated to a particular USL and BSL Separate Account. Following the reorganizations, USL or BSL Policyowners will have the opportunity to instruct USL and BSL, respectively, as to the voting of Fund shares attributable to their respective interests under the USL or BSL Policies, on matters as to which they currently have a voting right. USL and BSL, respectively, will vote the shares of each Portfolio held by the USL and BSL Continuing Accounts attributable to the USL and BSL Policies, in accordance with the instructions received from USL and BSL Policyowners. Shares of the Fund held by the USL and BSL Continuing Accounts which are not attributable to USL and BSL Policyowners or for which instructions have not been received will be voted in proportion to the instructions received from USL and BSL Policyowners. Voting rights exercised by the current USL and BSL Policyowners will consist of the right to instruct USL or BSL on the exercise of voting interests in the Fund, rather than to vote directly on matters submitted to USL and BSL Policyowners by the USL and BSL Separate Accounts. These differences will not, as a practical matter, diminish the USL and BSL Policyowners' existing voting rights.

6. The Applicants may be deemed to be affiliated persons of each other or affiliated persons of an affiliated person under section 2(a)(3) of the 1940 Act, and the reorganizations may be deemed to involve one or more purchases or sales of securities or property between and among certain of the Applicants. Therefore, the Agreements and the reorganizations may require an exemption from section 17(a) of the 1940 Act, pursuant to section 17(b) of the 1940 Act, for the agreement and the reorganization. Therefore, Applicants request an order pursuant to section 17(b) of the 1940 Act exempting the proposed reorganization transactions from the provisions of section 17(a).

7. Applicants represent that the terms of the proposed transactions, as described in this Application and the Agreements, including the consideration to be paid and received, are reasonable and fair, do not involve overreaching, are consistent with the investment policies of each of the USL and BSL Separate Accounts, and are consistent with the general purposes of the 1940 Act.

8. Applicants note that the proposed reorganizations will benefit existing and future USL and BSL Policyowners by facilitating the future expansion of investment alternatives under the USL and BSL Policies and subsequent policies. The addition of a new portfolio to the Fund, with different investment objectives, is more easily and economically accomplished through a UIT than by the establishment of a new management separate account. This potential benefit is created at no cost to any USL or BSL Policyowner, as USL and BSL have undertaken to assume all expenses relating to the reorganizations and the establishment of the Fund.

9. Applicants state that the exchange of the assets of each of the USL and BSL Separate Accounts for corresponding Portfolio shares will be effected in conformity with section 22(c) of the 1940 Act and Rule 22c–1 thereunder.

10. Applicants state that the investment objectives, policies, and restrictions of each of the Portfolios derived from the USL and BSL Separate Accounts will not differ in any material respect from the investment objectives, policies, and restrictions of the corresponding USL and BSL Separate Accounts immediately preceding the reorganizations, except with respect to the restriction on borrowing. The Fund will be permitted to borrow up to 25% of its assets, whereas the USL and BSL Separate Accounts are currently permitted to borrow only up to 5% of their assets. However, this difference does not affect the fairness of the transaction, and indeed, permits the Fund greater flexibility than currently permitted to the USL and BSL Separate Accounts to borrow to meet redemptions for emergency or administrative purposes. The reorganizations will not require liquidation of any assets of any of the USL and BSL Separate Accounts or the Fund. The only sales of assets of the USL and BSL Separate Accounts will be those arising in the ordinary course of business. Therefore, neither the USL and BSL Separate Accounts nor the Fund will incur any extraordinary costs, such as brokerage commissions, in effecting the transfer of assets. Based on a review of existing federal income tax laws and regulations, USL and BSL Policyowners will recognize no gain or loss on the transfer of assets of USL and BSL Separate Accounts to the Fund, and the USL and BSL Separate Accounts and the Fund will pay no tax as a result of the transfer.

Additionally, in the event that Policyowners of USL or BSL approve the USL or BSL reorganization, but Policyowners of the other company do not approve the reorganization, then the transfer of assets by the company whose reorganization has been approved will be a tax-free transaction for purposes of determining the basis and holding period of the assets transferred.

11. USL and BSL Policyowners will be fully informed of the terms of the Agreements through the proxy materials and will have an opportunity to approve or disapprove the Agreements and the reoganizations at the meetings of USL and BSL Policyowners called for that purpose.

12. Applicants may be deemed to be affiliated persons of each other or affiliated persons of an affiliated person under section 2(a)(3) of the 1940 Act, and the reorganizations may be deemed to be transactions that are prohibited under section 17(d). Accordingly, Applicants request an order pursuant to Rule 17d–1 approving the proposed reorganizations.

13. Participation of each of the USL and BSL Separate Accounts, including the USL and BSL Continuing Accounts, and the Fund in the Agreements will be on an equal basis and will not result in advantages to any one of the USL and BSL Separate Accounts or the Fund to the detriment of any other party. Each of the USL and BSL Separate Accounts will have its assets transferred to a corresponding Portfolio of the Fund with identical policies and restrictions. Because there will be no need to liquidate assets of any of the USL and BSL Separate Accounts or of the Fund because of the reorganizations, none of the USL and BSL Separate Accounts or the Fund will incur any extraordinary costs, such as brokerage commissions, in effecting the transfer of assets. Further, none of the USL and BSL Separate Accounts or the fund will bear any of the costs of the reorganizations, which will be borne entirely by USL or BSL, respectively.

14. Although the voting privileges under the UIT structure will be different from the voting rights under the management separate account structure, Applicants assert that, for all practical purposes, USL or BSL Policyowners will have the same voting power regardless of which structure is utilized.

15. Applicants believe that the reorganizations will result in certain economies of scale and efficiencies of administration to USL and BSL that should also benefit the USL and BSL Separate Accounts and the USL and BSL Policyowners. The reorganizations also will permit other separate accounts of USL and BSL and other affiliated insurance companies to use the Fund as the underlying investment vehicle for their insurance products. In addition the establishment of the Fund will benefit USL and BSL Policyowners by permitting broader diversification of assets and consequent reduction of investment risk; certain economies of scale and other operating efficiencies, with the potential to result in lower overall expense ratios; and enhanced ability to add (and maintain) new investment options to fund the USL and BSL Policies; more flexibility in portfolio management; and the possibility of enhanced investment performance.

16. Applicants therefore represent that the terms of the proposed agreements and the related transactions meet all the requirements of section 17(d) of the 1940 Act and Rule 17d–1 thereunder and that an order should be granted permitting the proposed transactions pursuant to these provisions.

Mixed Funding Relief

17. Applicants also request an exemption, pursuant to section 6(c) of the 1940 Act, from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rule 6e–2(b)(15) thereunder, to the extent necessary to permit Applicants to rely on the relief provided under Rule 6e–2(b)(15), even though shares of the Fund may be offered to other separate accounts sponsored by USL and BSL or its affiliates offering variable annuity policies. Rule 6e–2(b)(15) provides a separate account, organized as a UIT, partial exemptions from the eligibility restrictions of section 9(a) and from sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent those latter provisions might be deemed to require "pass-through" voting with respect to an underlying mutual fund's shares. The exemptions are available only where all of the assets of the unit investment trust are shares of management investment companies "which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company."

18. The use of a common underlying fund to support insurance products other than and in addition to variable life insurance policies is referred to herein as "mixed funding". Applicants submit that the exemptive relief requested with respect to the proposed mixed funding is appropriate in the public interest and consistent with protection of investors and the purposes fairly intended by the policy and provision of the 1940 Act. The use of a common underlying fund avoids additional start-up and ongoing expenses for the operation and administration of separate management investment.

19. Applicants agree that the exemptive relief requested in connection with the mixed funding be subject to the following conditions:

(1) A majority of the Board of Trustees of the Fund (the "Board") will consist of persons who are not "interested persons" of the Fund, as defined by section 2(a)(19) of the 1940 Act and the Rules thereunder, and as modified by any applicable order of the Commission.

(2) The Board will monitor the Fund for the existence of any material irreconcilable conflict between the interests of owners of variable life insurance policies or variable annuity contracts issued by Separate Accounts investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable Federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any portfolio are being managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance policyowners; or (f) a decision by an insurer to disregard the voting instructions of its policyowners or contractowners.

(3) USL and BSL and any affiliated insurance company whose separate account invests in the Fund will report any potential or existing conflicts to the Board. Such insurance companies will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each such insurance company to inform the Board whenever voting instructions of policyowners or contractowners are disregarded.

(4) If it is determined by a majority of the Board, or a majority of its disinterested trustees, that a material irreconcilable conflict exists, each insurance company designated by the Board will, at its expense, take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series and reinvesting such assets in a different investment medium, including another series of the Fund, or submitting the question of whether such segregation should be implemented to a vote of all affected policyowners or contractowners and, as appropriate, segregating the assets of any particular group (i.e., annuity contractowners, life insurance policyowners or owners of policies or contracts of one or more insurer) that votes in favor of such segregation, or offering to the affected policyowners or contractowners the option of making such a change; and (b) establishing a new registered management investment company or management separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required at the Fund's election to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed against any separate account as a result of such a withdrawal. For purposes of this condition (4) a majority of the distinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or any other Applicant be required to establish a new funding medium for any variable annuity contract or variable life insurance policy if an offer to do so has been declined by vote of a majority of affected policyowners or contractowners.

(5) Applicants represent that if and to the extent that Rule 6e–2 is amended to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed funding on terms that materially differ from any exemptive order issued by the SEC in connection with this application, then the appropriate Applicants shall take all steps as may be necessary to comply with the amended rule.

(6) Participating insurance companies and their separate accounts participating in the Fund shall provide pass-through voting privileges to all policyonwers and contractowners so

long as and to the extent that the Commission continues to interpret the 1940 Act to require pass-through voting privileges for such persons.

(7) All reports received by the Board of potential or existing conflicts, determining the existence of a conflict, notifying participating insurance companies of a conflict and determining whether any proposed action adequately remedies a conflict will be properly recorded in the minutes of the Board or other appropriate records and such minutes or other records shall be made available to the Commission upon request.

20. Applicants submit, for all of the reasons stated herein, that their exemptive requests, including those under section 17 of the 1940 Act, meet the standards set out in section 6(c) of the 1940 Act and that an order should, therefore, be granted on the grounds and conditions stated herein.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-7879 Filed 4-8-88; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01-0344]

First New England Capital L.P., Notice of Issuance of a Small Business Investment Company License

On February 19, 1988, a notice was published in the **Federal Register** (53 FR 5071) stating that an application has been filed by First New England Capital L.P., with the Small Business Administration (SBA) pursuant to the Regulations governing small business investment companies (13 CFR 107.102 (1987)) for a license as a small business investment company.

Interested parties were given until close of business March 20, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(C) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01-0344 on March 25, 1988, to First New England Capital L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: April 6, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-7829 Filed 4-8-88; 8:45 am]

BILLING CODE 8025-01-M

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, DC, will meet on May 2, 1988, at 9:00 a.m. until 5:00 p.m. at the Old Supreme Courtroom, Texas Capitol Building, 3rd Floor, 11th and Congress Avenue, Austin, Texas. At the hearing, private sector executives, local officials, trade associations, small and minority business entrepreneurs, will represent testimony regarding the challenges they face in the development of their businesses, along with proposed solutions to these problems for possible implementation.

Persons wishing to obtain further information should contact Milton Wilson, Jr., Office of Minority Small Business Outreach, U.S. Small Business Administration, 1441 L Street NW., Room 602, Washington, DC 20416, Telephone (202) 653-6526, no later than April 25, 1988.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 88-7830 Filed 4-8-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/1185]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Stability and Load Lines and on Fishing Vessels Safety, Working Group on Ship Design and Equipment; Meetings

The Working Group on Stability and Load Lines and on Fishing Vessels Safety and the Working Group on Ship Design and Equipment of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct open meetings on April 28, 1988, and May 10, 1988, respectively, in Room 2415 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The meeting for the Working Group on Stability and Loadlines and on Fishing Vessels Safety will be held between 9:00 a.m. and 12:00 noon, while the meeting for the Working Group on Ship Design and Equipment will commence at 9:30 a.m.

Working Group on Stability and Load Lines and on Fishing Vessels Safety

The purpose of the SOLAS Working Group on Stability and Load Lines and on Fishing Vessels Safety meeting (April 28, 1988) will be to discuss the results and activities of the 32nd Session of the International Maritime Organization (IMO) Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF), held September 2 to 11, 1987, and to prepare for the 33rd Session of IMO SLF scheduled for July 4 to 8, 1988. Items of discussion will include the following: Subdivision and damage stability of dry cargo ships, including Ro-Ro ships; intact stability; subdivision and stability requirements for MODUs; flooding protection and residual stability standards for passenger ships; survival capabilities of ships carrying irradiated nuclear fuel; double bottoms in cargo ships; load lines and stability for timber deck cargo ships; below deck openings in cargo tanks; basic principals for future revisions to the 1966 Load Line Convention; safety of fishing vessels, including discussions on external forces caused by fishing gear and possible revisions to the 1977 Torremolinos Convention; the Work Programme of SLF 33; and review of reporting requirements on Codes and Assembly resolutions related to the work of the Subcommittee.

Working Group on Ship Design and Equipment

The purpose of the SOLAS Working Group on Ship Design and Equipment meeting (May 10, 1988) will be to discuss the results and activities of an Intersessional meeting and the 31st Session of the International Maritime Organization (IMO) Subcommittee on Ship Design and Equipment (DE), held February 29 to March 4, 1988 and March 7 to 11, 1988, respectively, and to prepare for the 32nd Session of IMO DE scheduled for December 5 to 9, 1988. Items of discussion will include the following: Harmonization of alarm provisions; maneuverability of ships; review of the MODU Code; helicopter facilities offshore; operating mechanisms for watertight doors and operating procedures in service; materials other than steel for pipes; below deck openings into cargo tanks; design and construction of sea inlets under slush ice conditions; requirements for purpose- and non-purpose-built ships dedicated for the carriage of irradiated nuclear fuel; ventilation of vehicle decks during loading and unloading, surveillance of vehicle spaces, warning lights and operational procedures

covering vehicle spaces; amendments of regulations II–1/41, 42, and 43 of the 1974 SOLAS Convention, as amended; and, review of reporting requirements on Codes and Assembly resolutions related to the work of the Subcommittee.

Members of the public may attend up to the seating capacity of the room.

For further information regarding the meeting of the SOLAS Working Group on Stability and Loadlines and on Fishing Vessels Safety (April 28, 1988) contact Mr. J.S. Spencer or Mr. H.P. Cojeen at (202) 267–2988, and for further information regarding the meeting of the SOLAS Working Group on Ship Design and Equipment (May 10, 1988) contact Captain G.G. Piche or Commander C.E. Bills at (202) 267–2967, U.S. Coast Guard Headquarters (G–MTH), 2100 Second Street SW., Washington, DC 20593–0001.

Dated: March 28, 1988.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 88–7803 Filed 4–8–88; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–88–12]

Petition for Exemption; Summary of Petitions Received; Dispositions Issued; Skyworld Airlines, et al.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: May 2, 1988.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 31, 1988.

Denise D. Hall,

Acting Manager Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
25508	Skyworld Airlines	14 CFR 121.391 (a) and (e)	To allow petitioner to board passengers with three flight attendants on board its B–707 airplane while the fourth flight attendant supervises boarding from either a position on the ramp or inside a terminal building.
25555	SilverStar Aviation, Inc	14 CFR 135.271(g)	To allow petitioner to assign certain of its flight crewmembers to other duties during a helicopter hospital emergency medical evacuation service assigriment. These duties would be limited to conducting training, public relations, or routine transportation missions.
25562	Bar Harbor Airways, Inc., dba Eastern Express.	14 CFR 135.225(e)(1)	To allow pilots of petitioner to perform IFR takeoffs at foreign airports when the visibility is less than 1 mile.

[FR Doc. 88–7882 Filed 4–8–88; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at Zanesville Municipal Airport, Zanesville, OH; Closing

Notice is hereby given that on or about March 15, 1988, the Flight Service Station at Zanesville Municipal Airport, Zanesville, Ohio was closed. Services to the general public, formerly provided by this office, are being provided by the Automated Flight Service Station in Cleveland, Ohio. This information will be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

William H. Pollard,

Director, Great Lakes Region.

Issued in Des Plaines, Illinois on March 28, 1988.

[FR Doc. 88–7891 Filed 4–8–88; 8:45 am]

BILLING CODE 4910–13–M

Flight Service Station at LaCrosse Municipal Airport, LaCrosse, WI; Closing

Notice is hereby given that on or about March 15, 1988, the Flight Service Station at LaCrosse Municipal Airport, LaCrosse, Wisconsin was closed. Services to the general public, formerly provided by this office, are being provided by the Automated Flight Service Station in Green Bay, Wisconsin. This information will be reflected in the FAA organization statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

William H. Pollard,

Director, Great Lakes Region.

Issued in Des Plaines, Illinois on March 28, 1988.

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BILLING CODE 4910–13–M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in January 1988. The modes of transportation involved are identified by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
2787-X	DOT-E 2787	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.302(a)(1), 175.3	To authorize shipment of certain nonflammable compressed gases, in non-DOT specification pressure vessels equipped with a regulating valve, a pressure relief valve, and a squibb actuated valve. (Modes 1, 2, 3, 4.)
3302-X	DOT-E 3302	Airco Industrial Gases, Murray Hill, NJ.	49 CFR 173.302, 175.3	To authorize use of non-DOT specification sampling bottles (cylinders), for transportation of certain nonflammable gases. (Modes 1, 2, 3, 4.)
3302-X	DOT-E 3302	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.302, 175.3	To authorize use of non-DOT specification sampling bottles (cylinders), for transportation of certain nonflammable gases. (Modes 1, 2, 3, 4.)
4453-P	DOT-E 4453	W.A. Murphy, Inc., El Monte, CA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To become a party to exemption 4453. (Modes 1, 3.)
4600-X	DOT-E 4600	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.315, 178.245 3(a)	To authorize transport of hydrogen bromide (anhydrous) in DOT Specification 51 type portable tanks with a design pressure of 525 psig. (Mode 1.)
4612-X	DOT-E 4612	EM Science, Cincinnati, OH	49 CFR 173.135, 173.122, 173.136, 173.139, 173.154, 173.206, 173,230, 173.245, 173.247, 173.252, 173.253, 173.271, 173.276, 173.281, 173.293, 173.346, 173.382.	To authorize shipment of small quantities of hazardous materials in inside glass bottles overpacked in metal cans further overpacked in DOT Specification 12B fiberboard boxes. (Mode 1.)
4990-X	DOT-E 4990	Joseph E. Seagram & Sons, Inc., New York, NY.	49 CFR 173.125	To authorize use of AAR Specification 206W tank car, for transportation of certain flammable liquids. (Mode 2.)
5206-X	DOT-E 5206	Kesco, Incorporated, Adrian, PA	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5206-X	DOT-E 5206	Thermex Energy Corporation, Dallas, TX.	49 CFR 173.114a	To authorize privately operated bulk hopper-type units, for transportation of blasting agents. (Mode 1.)
5861-X	DOT-E 5861	HTL Division, Pacific Scientific, Duarte, CA.	49 CFR 173.304(a)(1), 175.3, 178.47.	To authorize use of a stainless steel other than prescribed in the regulations, in the construction of a cylinder patterned after the DOT Specification 4DS cylinders, for transportation of a nonflammable compressed gas. (Modes 1, 2, 4, 5.)
6016-X	DOT-E 6016	Airco Distribution Gases, Murray Hill, NJ.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in non-DOT specification portable tanks. (Mode 1.)
6325-X	DOT-E 6325	Atlas Powder Company, Dallas, TX	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MC-306, MC-307 or MC-312 cargo tanks. (Mode 1.)
6325-X	DOT-E 6325	Wampum Hardware Company, New Galilee, PA.	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MC-306, MC-307 or MC-312 cargo tanks. (Mode 1.)
6325-X	DOT-E 6325	Wampum Distributing Company, New Galilee, PA.	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MC-306, MC-307 or MC-312 cargo tanks. (Mode 1.)
6325-X	DOT-E 6325	Armstrong Explosives Company, New Galilee, PA.	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MC-306, MC-307 or MC-312 cargo tanks. (Mode 1.)
6325-X	DOT-E 6325	Belmont Mine Supply Company, INc., New Galilee, PA.	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MC-306, MC-307 or MC-312 cargo tanks. (Mode 1.)
6325-X	DOT-E 6325	Northern Ohio Explosives, Inc., New Galilee, PA.	49 CFR 173.154(a)	To authorize transport of oxidizers in non-DOT specification cargo tanks or DOT Specification MC-306, MC-307 or MC-312 cargo tanks. (Mode 1.)
6563-X	DOT-E 6563	Mada Medical Products, Inc., Carlstadt, NJ.	49 CFR 173.302(a)(1), 175.3	To authorize shipment of certain nonflammable gases in non-DOT specification steel cylinders, made in compliance with DOT Specification 3E with certain exceptions. (Modes 1, 2, 3, 4, 5.)
6602-X	DOT-E 6602	Ethyl Corporation, Baton Rouge, LA.	49 CFR 173.245(a), 173.314(c)	To authorize use of 105A500W or 106A500X multi-unit tank car tanks, for shipment of certain corrosive liquids and nonflammable compressed gases. (Modes 1, 2.)
6602-X	DOT-E 6602	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.245(a), 173.314(c)	To authorize use of 105A500W or 106A500X multi-unit tank car tanks, for shipment of certain corrosive liquids and nonflammable compressed gases. (Modes 1, 2.)
6602-X	DOT-E 6602	Jones Chemicals, Incorporated, Caledonia, NY.	49 CFR 173.245(a), 173.314(c)	To authorize use of 105A500W or 106A500X multi-unit tank car tanks, for shipment of certain corrosive liquids and nonflammable compressed gases. (Modes 1, 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
6651-X	DOT-E 6651	Park Chemical Company, Detroit, MI.	49 CFR 173.28(h), 173.28(m)	To authorize one-time reuse of involved single-trip containers, for transportation of certain Class B poisonous solids. (Mode 1.)
6691-X	DOT-E 6691	Industrial Gas Distributors, Inc., Billings, MT.	49 CFR 173.34(e)(15)(i), Part 107, Appendix B.	To authorize use of DOT Specification 3A or 3AA cylinders over 35 years old which may be retested every 10 years, for transportation of certain flammable and nonflammable compressed gases. (Modes 1, 2, 3, 4, 5.)
6735-X	DOT-E 6735	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.252	To authorize transportation of bromine in a non-DOT specification cylinder constructed in accordance with all requirements of DOT Specification 4B, 4BA or 4BW except that the cylinder shall be marked "DOT-E 6735" in lieu of the DOT specification marking. (Modes 1, 2, 3.)
6743-X	DOT-E 6743	Atlas Powder Company, Dallas, TX	49 CFR 173.114a(h)(3), 173.182	To authorize shipment of an oxidizing material and a blasting agent in DOT Specification 56 or 57 portable tanks. (Mode 1.)
6765-X	DOT-E 6765	Messer Griesheim Industries, Inc., Valley Forge, PA.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765-X	DOT-E 6765	Union Carbide Corporation, Danbury, CT.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6765-X	DOT-E 6765	Teisan Kabushiki Kaisha, Tokyo, Japan.	49 CFR 173.318(a), 176.76(h)(4)	To authorize use of non-DOT specification containerized portable tanks, for transportation of a flammable and nonflammable gas. (Modes 1, 3.)
6801-X	DOT-E 6801	Phillips Petroleum Company, Bartlesville, OK.	49 CFR 173.119(a)(7), 173.119(e)(1).	To authorize use of a one-gallon glass bottle, packed in a DOT Specification 12B fiberboard box, for shipment of certain flammable liquids. (Modes 1, 2.)
6883-X	DOT-E 6883	Hedwin Corporation, Baltimore, MD.	49 CFR 173.119, 173.154, 173.221, 173.245(a)(26), 173.249(a)(1), 173.250a(a)(1), 173.256(a), 173.257(a)(1), 173.263(a)(29), 173.265(d)(6), 173.266(b)(8), 173.272(g), 173.272(i)(9), 173.277(a)(6), 173.287(c)(1), 173.288, 173.289(a)(1), 173.292(a)(1), 173.346(a), 178.19.	To authorize manufacture, marking and sale of non-DOT specification molded polyethylene containers, for shipment of oxidizers, poison B, corrosive liquids, organic peroxides and flammable liquids. (Modes 1, 2, 3.)
6908-X	DOT-E 6908	Garrett Fluid Systems Company, Tempe, AZ.	49 CFR 173.302(a)(1), 175.3, 178.65.	To authorize variances from the specifications for DOT Specification 39 cylinders, for shipment of certain nonflammable gases. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Battery Pak, Inc., Spring, TX	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Datachecker Systems, Santa Clara, CA.	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Wildlife Materials, Inc., Carbondale, IL.	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4.)
7052-P	DOT-E 7052	Synergistic Batteries, Inc., Marietta, GA.	49 CFR 172.101, 172.420, 175.3	To become a party to exemption 7052. (Modes 1, 2, 3, 4.)
7446-X	DOT-E 7446	Kaiser Aluminum and Chemical Corporation, Erie, PA.	49 CFR 173.302(a)(1), 173.304(a), 178.38.	To authorize manufacture, marking and sale of dry powder-fire extinguishant or bromotrifluoromethane charged with compressed air or nitrogen, in non-DOT specification seamless aluminum cylinders. (Modes 1, 2, 3.)
7465-X	DOT-E 7465	State of Alaska, Department of Transportation, Juneau, AK.	49 CFR 173.119, 173.304, 176.83, 176.905(1), Part 172, Part 176 Subpart H.	To authorize stowage and transportation of motor vehicles, gasoline including camp stove or lantern fuel) and liquefied petroleum gas aboard passenger vessels. (Mode 3.)
7541-X	DOT-E 7541	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	49 CFR 173.315(a)	To authorize use of a non-DOT specification portable tank for transportation of certain flammable and nonflammable compressed gases. (Modes 1, 3.)
7548-X	DOT-E 7548	U.S. Department of Defense, Falls Church, VA.	46 CFR 146.29-100	To authorize stowage of explosives on deck of vessel, over the square of the hatch. (Mode 3.)
7621-X	DOT-E 7621	Great Lakes Chemical Corporation, El Dorado, AR.	49 CFR 173.357, 174.63(b)	To authorize use of DOT Specification 51/ISO portable tanks, for shipment of poison B liquid. (Modes 1, 2, 3.)
7654-X	DOT-E 7654	Tennessee Eastman Company, Kingsport, TN.	49 CFR 173.119(f)	To authorize use of a glass bottle not exceeding 500 milliliter capacity inside a metal container overpacked in a DOT Specification 12B fiberboard box, for transportation of a flammable liquid. (Modes 1, 2.)
7654-X	DOT-E 7654	Texas Eastman Company, Longview, TX.	49 CFR 173.119(f)	To authorize use of a glass bottle not exceeding 500 milliliter capacity inside a metal container overpacked in a DOT Specification 12B fiberboard box, for transportation of a flammable liquid. (Modes 1, 2.)
7654-X	DOT-E 7654	J.T. Baker Chemical Company, Phillipsburg, NJ.	49 CFR 173.119(f)	To authorize use of a glass bottle not exceeding 500 milliliter capacity inside a metal container overpacked in a DOT Specification 12B fiberboard box, for transportation of a flammable liquid. (Modes 1, 2.)
7674-X	DOT-E 7674	U.S. Department of Defense, Falls Church, VA.	49 CFR 174.104(a)	To authorize shipment of certain Class A explosives on flat-cars and open-top rail cars. (Mode 2.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7891-X	DOT-E 7891	Sigma-Aldrich Corporation, Saint Louis, MO.	49 CFR 172.400, 172.402(a)(2), 172.402(a)(3), 172.504 Table 1, 172.504(a), 173.126, 173.138, 173.237, 173.246, 173.25(a), 175.3.	To authorize transport of packages bearing the DANGEROUS WHEN WET label, in motor vehicles which are not placarded FLAMMABLE SOLID W. (Modes 1, 2, 4.)
7929-X	DOT-E 7929	Austin Powder Company, Cleveland, OH.	49 CFR 173.65	To authorize transport of flaked or pelletized TNT in woven polyethylene or polypropylene cloth outer bags, with plastic film liners. (Modes 1, 2.)
7943-X	DOT-E 7943	Alstar Company, Tracy, CA	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7943-X	DOT-E 7943	All Pure Chemical Company, Inc., Tracy, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in one or two one-gallon polyethylene containers packed in fiberboard boxes, complying with DOT Specification 12B except for handholes in top flaps. (Mode 1.)
7943-P	DOT-E 7943	T Chem Products, Santa Fe Springs, CA.	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To become a party to exemption 7943. (Mode 1.)
7945-P	DOT-E 7945	U.S. Department of Defense, Falls Church, Va.	49 CFR 173.304(a)(1), 175.3, 178.47.	To become a party to exemption 7945. (Modes 1, 2, 4, 5.)
7945-X	DOT-E 7945	HTL Division, Pacific Scientific, Duarte, CA.	49 CFR 173.304(a)(1), 175.3, 178.47.	To authorize use of a stainless steel other than that prescribed in the regulations, in the construction of a cylinder patterned after DOT Specification 4DS cylinders, for shipment of a nonflammable compressed gas. (Modes 1, 2, 4, 5.)
7991-X	DOT-E 7991	CSX Transportation, Inc., Jacksonville, FL.	49 CFR Parts 100-177	To authorize transport of railway track torpedoes and fuses in flagging kits of specified construction. (Mode 1.)
8156-X	DOT-E 8156	Union Carbide Corporation, Danbury, CT.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, 2.)
8156-X	DOT-E 8156	Liquid Air Corporation, Walnut Creek, CA.	49 CFR 173.121, 173.302(a)(4), 173.302(f), 173.304(a)(1).	To authorize transport of certain flammable or nonflammable compressed gases and carbon bisulfide in a DOT Specification 39 steel cylinder up to 225 cubic inches in volume. (Modes 1, 2.)
8168-X	DOT-E 8168	Container Corporation of America, Wilmington, DE.	49 CFR Part 173, Subparts E, F, H...	To authorize additional hazardous materials and classes of materials authorized for shipment in DOT Specification 21C fiber drum. (Modes 1, 2, 3.)
8214-X	DOT-E 8214	Morton Thiokol, Incorporated, Ogden, UT.	49 CFR 173.153, 173.154, 175.3	To authorize a new packaging arrangement for shipment of inflators and modules for passive restraint systems. (Modes 1, 2, 3, 4.)
8299-X	DOT-E 8299	HTL Division, Pacific Scientific, Duarte, CA.	49 CFR 173.304(a)(1), 175.3, 178.44.	To authorize manufacture, marking and sale of a non-DOT specification pressure vessel comparable to a DOT Specification 3HT cylinder with certain exceptions, for transportation of a compressed gas. (Modes 1, 2, 4, 5.)
8329-X	DOT-E 8329	Texas Instruments, Inc., Dallas, TX...	49 CFR 173.266	To authorize use of DOT Specification 57 portable tanks in less than truckload quantities with other hazardous materials subject to 49 CFR 177.848. (Mode 1.)
8390-X	DOT-E 8390	J.T. Baker Chemical Company, Phillipsburg, NJ.	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%-98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT Specification 12A80 fiberboard boxes. (Mode 1.)
8427-X	DOT-E 8427	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.276	To authorize use of a stainless steel DOT Specification seamless 3A or 3E cylinder, for shipment of a flammable liquid. (Mode 4.)
8445-X	DOT-E 8445	Dow Consumer Products, Inc., Indianapolis, IN.	49 CFR Part 173, Subparts D, E, F and H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-X	DOT-E 8445	Union Carbide Corporation, Danbury, CT.	49 CFR Part 173, Subparts D, E, F and H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8445-X	DOT-E 8445	Monsanto Company, St. Louis, MO...	49 CFR Part 173, Subparts D, E, F and H.	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT Specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1.)
8453-X	DOT-E 8453	Atlas Powder Company, Dallas, TX...	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Mode 1.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8453-X	DOT-E 8453	Austin Powder Company, Cleveland, OH.	49 CFR 173.114a	To authorize use of non-DOT specification cargo tanks and DOT Specification MC-306, MC-307, or MC-312 stainless steel cargo tanks, to transport blasting agent. (Mode 1.)
8645-X	DOT-E 8645	Austin Powder Company, Cleveland, OH.	49 CFR 173.154(a)(18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commercially designated as "HEF", in DOT Specification MC-307 or MC-311 insulated cargo tanks at ambient temperature (Mode 1.)
8770-X	DOT-E 8770	Eastman Kodak Company, Rochester, NY.	49 CFR 172.402, 173.286(c)	To authorize shipment of a corrosive liquid and minute quantity of a flammable, poisonous solid in DOT Specification 12A, 12B or 15A fiberboard or wooden boxes with inside glass bottles. (Modes 1, 2, 3.)
8811-X	DOT-E 8811	Hoechst Celanese Corporation, Somerville, NJ.	49 CFR 173.294, 178.340-3, 178.343-2.	To authorize use of modified DOT Specification MC-312 cargo tanks made of titanium, for shipment of certain corrosive materials. (Mode 1.)
8843-X	DOT-E 8843	GOEX, Inc., Cleburne, TX	49 CFR 173.246, 175.3	To authorize manufacture, marking and sale of non-DOT specification nonrefillable cylinders, for transportation of bromine trifluoride. (Modes 1, 2, 3, 4.)
8871-X	DOT-E 8871	Bulk Lift International, Inc., Carpenterville, IL.	49 CFR 173.182, 173.217, 173.245(b), 173.366.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags, having a capacity of approximately 2,000 pounds each, and top and bottom outlets, for shipment of corrosive solid, nitrates and poisons. (Modes 1, 2, 3.)
9043-X	DOT-E 9043	Ozella Harrington Trucking Company, Benson, AZ.	49 CFR 173.154(a)(18)	To authorize shipment of ammonium nitrate solution, classed as an oxidizer in a DOT Specification MC-306 stainless steel insulated cargo tanks modified to DOT Specification 307 cargo tanks. (Mode 1.)
9072-X	DOT-E 9072	Morton Thiokol, Inc., Brigham City, UT.	49 CFR 173.92	To authorize shipment of rocket motors, Class B explosive in specially designed non-DOT specification containers. (Mode 1.)
9080-X	DOT-E 9080	Henderson's Welding and Manufacturing Corporation, Seminole, TX.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of four non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable liquids and corrosive liquids. (Mode 1.)
9132-X	DOT-E 9132	Welchem, Inc., Houston, TX	49 CFR 173.119, 173.245, 178.253	To authorize use of non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids. (Mode 1.)
9136-X	DOT-E 9136	Sonoco Plastic Drum, Inc., Lockport, IL.	49 CFR 173.119, 173.221, 173.245b(a)(6), 173.271, 173.357(b), 178.19.	To authorize manufacture, marking and sale of DOT Specification 34 drums of up to 30 gallon capacity, for shipment of various poison B liquids, flammable liquids, organic peroxides, oxidizers and corrosive materials. (Modes 1, 2, 3.)
9176-X	DOT-E 9176	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 173.304(a), 177.840(a)(1)	To authorize manufacture, marking and sale of DOT Specification 4L cylinders, for transportation of certain nonflammable gases. (Mode 1.)
9211-X	DOT-E 9211	American Overseas Marine Corporation, Quincy, MA.	49 CFR 146.29-35(f)	To authorize installation and operation of electrically-powered lighting, air conditioning, alarm, fire detection, and cargo-handling systems in cargo holds containing Class A, B and C explosives in a Maritime Prepositioning Ship (TAKX). (Mode 3.)
9463-X	DOT-E 9463	Guzzler Manufacturing, Inc., Birmingham, AL.	49 CFR 173.119 (a), (m), 173.245(a), 173.340-8(c), 173.346(a), 178.340-7, 178.342-5, 178.342-7(a), 178.343-5.	To authorize manufacture, marking and sale of non-DOT specification cargo tanks complying generally with DOT Specification MC-307/312 except for full opening rear head for shipment of flammable, corrosive or poison B waste liquids or semi-solids. (Mode 1.)
9525-X	DOT-E 9525	American Cyanamid Company, Wayne, NJ.	49 CFR 178.42, Part 173, Subparts D, E, and H.	To authorize use of a welded stainless steel cylinder equivalent to DOT Specification 3E with exceptions, for transportation of certain pyroforic liquids, flammable liquids, poison B liquids and flammable solids. (Modes 1, 3, 4.)
9525-X	DOT-E 9525	Cyanamid Canada, Inc., East Willowdale, Canada.	49 CFR 178.42, Part 173, Subparts D, E, and H.	To authorize use of a welded stainless steel cylinder equivalent to DOT Specification 3E with exceptions, for transportation of certain pyroforic liquids, flammable liquids, poison B liquids and flammable solids. (Modes 1, 3, 4.)
9527-X	DOT-E 9527	Carolina Aircraft Corporation, Ft. Lauderdale, FL.	49 CFR 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for air shipment. (Mode 4.)
9571-X	DOT-E 9571	U.S. Department of Defense, Falls Church, VA.	49 CFR Parts 100-177	To authorize transport of not more than 5 grams of an approved or unapproved explosive in a special packaging essentially without regulation. (Modes 1, 2, 3, 4, 5.)
9718-P	DOT-E 9718	Eurotainer, 75008 Paris, France	49 CFR 173.315, 178.245	To become a party to exemption 9718. (Modes 1, 2, 3.)
9785-X	DOT-E 9785	Hapag-Lloyd (America) Inc., Staten Island, NY.	49 CFR 176.11, 176.83	To authorize highway and rail as additional modes of transportation. (Modes 1, 2, 3.)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9851-X	DOT-E 9851	American Airlines, Inc., Dallas, TX	49 CFR Parts 100-199	To reissue exemption originally issued on an emergency basis to authorize shipment of insulated dewars containing liquid nitrogen in the cabin of a passenger carrying aircraft with certain conditions. (Mode 5.)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9722-N	DOTE-E 9722	Russell-Stanley Corporation, Red Bank, NJ.	49 CFR 173.266	To authorize manufacture, marking and sale of a DOT Specification 34 drum of 55-gallon capacity, for the shipment of hydrogen peroxide solution in water, containing not more than 70% hydrogen peroxide by weight (modes 1, 2, and 4.)
9785-N	DOTE-E 9785	Hapag-Lloyd AG, Hamburg, West Germany.	49 CFR 176.11, 176.83	To authorize stowage and segregation of hazardous materials transported in freight containers to be in accordance with the proposed Amendment 24-86 to the International Maritme Dangerous Goods Code. (modes 1, 2, and 3.)
9791-N	DOTE-E 9791	Pressed Steel Tank Co., Inc., Milwaukee, WI.	49 CFR 173, 301(h), 173.302(a), 173.34(a)(1), 178.37.	To authorize manufacture, marking and sale of a high strength, non-specification cylinder comforming in part with the DOT-3AA specification, for transportation of certain nonflammable, nonliquefied compressed gases. (mode 1.)
9823-N	DOTE-E 9823	Moog Incorporated Carleton Group, East Aurora, NY.	49 CFR 173.302(a)(4), 175.3, 178.65.	To authorize use of a non-DOT specification, toroidal shape pressure vessel for transportation of helium. (modes 1, 2, and 4.)
9827-N	DOTE-E 9827	Mobay Corporation, Kansas City, MO.	49 CFR 173.359	To authorize shipment of certain organophosphorus compounds, in a DOT Specification 34 polyethylene drum with a maximum capacity of 30 gallons. (modes 1, 2.)
9846-N	DOTE-E 9846	Elexcon and Systems, Inc., Lafayette, LA.	49 CFR 173.154, 173.164, 173.178, 173.182, 173.217, 173.234, 173.245b.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2200 pounds each, and top and bottom outlets, for shipment of a flammable solid, oxidizing materials, and corrosive solids. (modes 1, 2.)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE8470-X	DOT-E 8470	Thiokol Corporation, Brigham City, UT.	49 CFR 173.92(a)	To authorize use of a non-DOT specification box for shipping rocket motors. (mode 1.)
EE9904-N	DOT-E 9904	Fomo Products, Inc., Norton, OH	49 CFR 173.1200(a)(8)(ii)(E), 178.65-11(a).	To authorize a one-time return shipment of materials in a packaging which deviate from certain test criteria. (mode 1.)
EE 9905-N	DOT-E 9905	Moli Energy Limited, Burnaby, B.C., Canada.	49 CFR 172.101, 172.420	To authorize transport of lithium batteries containing parallel branches of series connected cells without diodes. (mode 1.)
EE 9906-N	DOT-E 9906	Boston University School of Medicine/Pulmonary Ctr., Boston, MA.	49 CFR 173.316, 176.63(b)	To authorize use of non-DOT specification packaging and patient use of oxygen systems on board a passenger ship. (mode 3.)
EE 9908-N	DOT-E 9908	Pennwalt Corporation, King of Prussia, PA.	49 CFR 173.31(b), (c), Part 107, Appendix B(1).	To authorize a one-time shipment of carbon disulfide in a DOT Specification 105A300W tank car tank which is overdue for retest. (mode 2.)

WITHDRAWAL EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9871-N	Olin Hunt Specialty Products, Inc., Seward, IL.	49 CFR 173.251(b)(1), 175.3	To authorize shipment of boron tribromide classed as a corrosive material in accordance with 49 CFR 173.251(b)(1) except that a stainless steel container not to exceed 1.2 liters will be substituted for the specified glass inner container. (modes 1, 2, 3, and 4.)

Denials

8489-P Request by Syn-Tex Convertors, Ltd. Winnipeg, Manitoba, Canada authorize shipment of copper arsenate as an additional commodity denied January 29, 1988.

8706–X Request by Petro-Steel Division of Prairie State Equipment Sioux Falls, SD to amend paragraph 7c to authorize a 10-inch maximum diameter bottom outlet denied January 12, 1988.

9771–N Request by Honeywell Inc., Defense Systems Division Hopkins, MN to authorize shipment of unclassed waste explosive scrap, for disposal, packaged in specially designed containers denied January 22, 1988.

Issued in Washington, DC, on March 21, 1988.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 88–7895 Filed 4–8–88; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 17]

Surety Companies Acceptable on Federal Bonds; American Surety Co.

A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following company under sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1987 Revision, on page 24606 to reflect this addition:

American Surety Company. Business Address: 7470 North Figueroa St., Los Angeles, California 90041.

Underwriting Limitation [b]*: $109,000.*

Surety License [c]*:* CA.

Incorporated In: California. Federal Process Agents [d].

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202/FTS) 287–3918.

Dated: March 30, 1988.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 88–7793 Filed 4–8–88; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held April 20, 1988, in Room 600, 301 4th Street SW., Washington, DC, from 11:30 a.m. to 12:00 p.m

The Commission will meet with Mr. Richard Werksman, Assistant General Counsel and Deputy Ethics Officer, USIA for a briefing on standards of conduct for federal advisory committee members.

Please call Gloria Kalamets, (202) 485–2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: April 5, 1988.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 7820 Filed 4–8–88; 45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 69
Monday, April 11, 1988

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

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:07 p.m. on Wednesday, April 6, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following matters:

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,199
Capital Bank & Trust Co., Baton Rouge, Louisiana

Recommendation regarding Capital Bank & Trust Co., National Association, Baton Rouge, Louisiana.

Matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: April 7, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-7933 Filed 4-7-88; 1:11 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Wednesday, April 13, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for Federal deposit insurance for a Federal branch:

The Bank of East Asia, Limited, Hong Kong, for Federal deposit insurance of deposits received at and recorded for the account of its Federal branch to be lcoated at 202-204 Canal Street, New York (Manhattan), New York.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,194
Orlando Consolidated Office, Orlando, Florida
Case No. 47,195 (Amendments)
Omaha Consolidated Office, Omaha, Nebraska

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum and resolution re: Supervisory Policy of the Federal Financial Institutions Examination Council, entitled "Selection of Securities Dealers and Unsuitable Investment Practices."

Memorandum and resolution re: Establishment of the "Insured Bank Liquidation Records" system pursuant to the Privacy Act of 1974 which concerns records of individuals who had obligations with FDIC-insured institutions that have failed or that were provided open-bank assistance by the Corporation and for which the Corporation is acting in its corporate capacity or in its receivership capacity as liquidator of certain of the institutions' assets.

Memoradum and resolution re: Proposed Statement of Policy Regarding Independent External Audits of State Nonmember Banks.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: April 6, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-7944 Filed 4-7-88; 1:29 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Wednesday, April 13, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6) (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note. Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re:
Alaska National Bank of the North, Fairbanks, Alaska (5915) (Memo dated March 18, 1988)
Audit Report re:
South Denver National Bank, Glendale, Colorado (2702) (Memo dated March 3, 1988)
Audit Report re:
United Bank of Texas, Austin, Texas (6869) (Memo dated March 4, 1988)
Audit Rport re:
Waxahachie Bank and Trust Company, Waxahachie, Texas (2724) (Memo dated March 4, 1988)
Audit Report re:
Des Moines Consolidated Office, Cost Center-203 (Memo dated March 3, 1988)
Audit Report re:
Orlando Consolidated Office, Cost Center—104 (Memo dated February 24, 1988)
Audit Report re:
San Jose Consolidated Office, Cost Center—604 (Memo dated March 4, 1988)
Audit Report re:
San Juan Consolidated Office, Cost Center—501 (Memo dated March 10, 1988)
EDP Audit Report re:
Costa Mesa Consolidated Office (Memo dated March 18, 1988)
EDP Audit Report re:
Des Moines Consolidated Office (Memo dated February 29, 1988)
EDP Audit Report re:
Minneapolis Consolidated Office (Memo dated February 29, 1988)
EDP Audit Report re:
New York Regional Office (Memo dated March 17, 1988)

Discussion Agenda:

Application for Federal deposit insurance:

Winchester Co-operative Bank, an operating non-FDIC-insured co-operative bank located at 19 Church Street, Winchester, Massachusetts.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: April 6, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-7945 Filed 4-7-88; 1:29 pm]

BILLING CODE 6714-01-M

U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME:

April 21-22, 1988

PLACE:

Hotel Washington, Capital Room, Pennsylvania Avenue at 15th Street, Washington, DC 20004

STATUS:

April 21, 1988, 8:00 a.m.-10:00 a.m.—Closed
Sec. 1703.202(2) and (6) of the Code of Federal Regulations, 45 CFR Part 1703
April 21, 1988, 10:30 a.m.-5:00 p.m.—Open
April 22, 1988, 9:00 a.m.-2:00 p.m.—Closed
Section 1703.202(2) and (6) of the Code of Federal Regulations, 45 CFR Part 1703
April 22, 1988, 3:00 p.m.-4:30 p.m.—Awards Ceremony, OEOB-NCLIS Staff and award recipients only

MATTERS TO BE DISCUSSED:

Chairman's Report
Approval of January 14-15, 1988 Minutes
Executive Director's Report
—FY 88 Second Quarter Program Report
—Administrative Report
NCLIS Committee Reports—
—Public Affairs
—White House Conference
—Program Review
—Budget
—School Library
—International
—Legislative
—Bicentennial
Information for Governance Meeting Report
Guest Speaker, Robert Chartrand, Senior Specialist in Information and Technology Policy, CRS, "Review of Current Legislation on Information Policy"
Preservation: Electronic Archives Inventory
NAC: Federal Funding for Minimum Network Equipment
NCLIS Recognition Award

Special provisions will be made for handicapped individuals by calling Jane McDuffie (202) 254-3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT:

Margaret Phelan, NCLIS Acting Executive Director, 1111 18th Street, NW., Suite 310, Washington, DC 20036, (202) 254-3100.

Dated: April 5, 1988.

Jane McDuffie,

Staff Assistant.

[FR Doc. 88-7902 Filed 4-7-88; 10:46 am]

BILLING CODE 7527-01-M

Corrections

Federal Register
Vol. 53, No. 69
Monday, April 11, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 561

[PP-5H5467/R937; FRL-3331-4]

Pesticide Tolerances for Ethephon

Correction

In rule document 88-3557 appearing on page 5367 in the issue of Wednesday, February 24, 1988, make the following correction:

§ 561.225 [Corrected]

In the third column, in § 561.225(a), in the table, the first heading "Foods" should read "Feeds".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3457/R938; FRL-3333-2]

Pesticide Tolerance for 3,5-Dichloro-N-(1,1-Dimethyl-2-Propynyl)Benzamide

Correction

In rule document 88-3899 appearing on page 5378 in the issue of Wednesday, February 24, 1988, make the following correction:

§ 180.317 [Corrected]

In the second column, in the heading for § 180.317, in the second line, "propynyl)benzamide" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Part 193

[OPP-300179; FRL 3330-3]

Proposed Revocation of Food Additive Regulations for Certain Pesticide Chemicals

Correction

In proposed rule document 88-3429 beginning on page 4643 in the issue of Wednesday, February 17, 1988, make the following correction:

§ 193.400 [Corrected]

On page 4644, in the third column, in § 193.400(a), in the fifth line, "ethylamino" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-240079; FRL-3329-7]

State Registration of Pesticides

Correction

In notice document 88-3436 beginning on page 4888 in the issue of Thursday, February 18, 1988, make the following correction:

On page 4889, in the first column, under **Connecticut**, in the first line, "Chempar" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/44C; FRL 3310-4]

Alachlor; Notice of Intent to Cancel Registrations; Conclusion of Special Review

Correction

In notice document 87-30041 beginning on page 49480 in the issue of Thursday, December 31, 1987, make the following corrections:

1. On page 49484, in the first column, in paragraph d, in the 11th line, "2(methylsulfonyl)" should read "2-(methylsulfonyl)"; and in the 12th line insert a hypen between "hydroxyethyl)" and "phenyl".

2. On page 49487, in the first column, in the 16th line, "hydroxyethylethylaniline" should read "hydroxyethyl-ethylaniline".

3. On page 49490, in the first column, in the 13th line, "II.8.5.b." should read "II.B.5.b.".

4. On page 49499, in the first column, in the second complete paragraph, in the 18th line, "carcinogenesis" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180759; FRL-3336-1]

Receipt of Applications for Emergency Exemptions From Pennsylvania To Use Dinoseb; Solicitation of Public Comment

Correction

In notice document 88-4464 beginning on page 6695 in the issue of Wednesday, March 2, 1988, make the following correction:

On page 6696, in the second column, in the second line from the bottom, "Treflan" was misspelled.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180757; FRL 3329-5]

Receipt of Application for a Specific Exemption To Use Thiophanate-Methyl; Solicitation of Public Comment

Correction

In notice document 88-3435 beginning on page 4887 in the issue of Thursday, February 18, 1988, make the following corrections:

1. On page 4887, in the third column, in the first line, "OOP-180757" should read "OPP-180757".

2. On page 4888, in the first column, in the fifth line, "1987-99" should read "1987-88'.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51702; FRL-3351-4]

Toxic and Hazardous Substances; Certain Chemical Premanufacture Notices

Correction

In notice document 88-5976 beginning on page 8960 in the issue of Friday, March 18, 1988, make the following corrections:

1. On page 8962, in the second column, under **"P 88-382"**, in the second line, "aliphatic" was misspelled.

2. On page 8972, in the second column, under **"P 88-663"**, the *"Chemical"* should read "(S) 1,3-Divinyl-1,3-dimethyl-1,3-bis(trimethylsiloxy) disiloxane hexamethyl disoloxane.".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Information Exchanger; Open Meeting

Correction

In notice document 88-3625 appearing on page 5218 in the issue of Monday, February 22, 1988, make the following correction:

In the second column, the signature should read:

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

BILLING CODE 1505-01-D

Federal Register

Monday
April 11, 1988

Part II

Department of Education

34 CFR Part 99

Family Educational Rights and Privacy; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 99

Family Educational Rights and Privacy

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary revises and renames the Department of Education regulations formerly titled the Privacy Rights of Parents and Students. These regulations are retitled Family Educational Rights and Privacy and eliminate some of the regulatory requirements placed on educational agencies and institutions. The regulations have also been rewritten for clarity.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Ellen Campbell or Connie Moore, Family Policy and Regulations Office, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3021, Federal Office Building No. 6), Washington, DC 20202. Telephone: (202) 732-2057.

SUPPLEMENTARY INFORMATION: Under Executive Order 12291, the Department of Education regularly reviews its regulations to determine whether the Department can decrease burdens on the public and otherwise simplify and clarify existing regulations. As part of this process, the Department has reviewed the regulations implementing the Family Educational Rights and Privacy Act (FERPA).

The FERPA regulations of the former Department of Health, Education, and Welfare (HEW) (45 CFR Part 99) were transferred to the Department of Education (ED) and recodified in Part 99 of Title 34 of the Code of Federal Regulations on May 9, 1980 (45 FR 30802). These regulations implement FERPA, which was enacted as section 438 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232g).

The FERPA sets out requirements designed to afford parents and students privacy and other rights with respect to education records. The statute applies to educational agencies and institutions that receive funds under an applicable program administered by ED. For purposes of FERPA an applicable program is a program that was either formerly administered by the Commissioner of Education prior to the establishment of ED on May 4, 1980 or any program that came into existence after ED was established, unless the law creating the new program has the effect of making FERPA inapplicable. Educational agencies and institutions to which FERPA applies must maintain education records consistent with the requirements of FERPA. In brief, FERPA requires those agencies or institutions to provide parents and eligible students access to records directly related to the students; to permit parents and eligible students to challenge those records on the grounds that they are inaccurate, misleading, or otherwise in violation of the student's privacy or other rights; to obtain the written consent of parents and eligible students before releasing personally identifiable information about the students contained in education records to other than organizations or individuals described in statutory exceptions; and to notify parents and eligible students of these rights.

On June 10, 1987, the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** (52 FR 22250). The NPRM included a discussion of the numerous revisions and invited public comment. The revisions are intended to simplify and clarify the regulations and not to alter any interpretation under existing regulations.

In response to the Secretary's invitation in the NPRM, educational associations, organizations, universities, and individuals submitted 20 letters, which contained a total of 113 comments. More than half of the letters were from institutions of higher education and were transmitted through an organization representing the higher education community. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations.

Executive Order 12606

The Secretary has reviewed these regulations in accordance with Executive Order 12606, "The Family." The regulations was assessed in light of the criteria set forth in the Executive Order to determine whether they have any potential negative impact on the family. They were found to have no negative impact. In fact, the regulations will strengthen the autonomy, stability, and rights of the family unit.

The criterion of the Order which is most applicable to these regulations asks: "Does this action strengthen or erode the authority and rights of parents in the education, nurture, and supervision of their children?" The statute and the implementing regulations strengthen the rights of parents by reaffirming their basic right to have access to the education records of their children, their right to be assured of the privacy of their children's records, and their right to challenge records believed to be inaccurate, misleading, or otherwise in violation of the student's privacy.

Another criterion which is applicable to these regulations asks: "Does this action by government strengthen or erode the stability of the family and, particularly, the marital commitment?" Overall, these regulations are found to strengthen the stability of the family. In particular, the FERPA provisions which afford parents the right to have access to and some control over the education records of their children serve to encourage parents to be involved in the education of their children. Furthermore by affording both parents (whether custodial or non-custodial) the right to have access to the records, the regulations serve to encourage joint parental involvement in their children's education.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the NPRM, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education department, Family educational rights, Privacy, Parents, Reporting and recordkeeping requirements, Students.

(Catalog of Federal Domestic Assistance number does not apply.)

Dated February 19, 1988.

William J. Bennett,

Secretary of Education.

The Secretary revises Part 99 of Title 34 of the Code of Federal Regulations to read as follows:

PART 99—FAMILY EDUCATIONAL RIGHTS AND PRIVACY

Subpart A—General

Sec.

99.1 To which educational agencies or institutions do these regulations apply?
99.2 What is the purpose of these regulations?
99.3 What definitions apply to these regulations?
99.4 What are the rights of parents?
99.5 What are the rights of eligible students?
99.6 What information must an educational agency's or institution's policy contain?
99.7 What must an educational agency or institution include in its annual notification?

Subpart B—What are the Rights of Inspection and Review of Education Records?

99.10 What rights exist for a parent or eligible student to inspect and review education records?
99.11 May an educational agency or institution charge a fee for copies of education records?
99.12 What limitations exist on the right to inspect and review records?

Subpart C—What are the Procedures for Amending Education Records?

99.20 How can a parent or eligible student request amendment of the student's education records?
99.21 Under what conditions does a parent or eligible student have the right to a hearing?
99.22 What minimum requirements exist for the conduct of a hearing?

Subpart D—May an Educational Agency or Institution Disclose Personally Identifiable Information from Education Records?

99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?
99.31 Under what conditions is prior consent not required to disclose information?
99.32 What recordkeeping requirements exist concerning requests and disclosures?
99.33 What limitations apply to the redisclosure of information?
99.34 What conditions apply to disclosure of information to other educational agencies or institutions?
99.35 What conditions apply to disclosure of information for Federal or State program purposes?
99.36 What conditions apply to disclosure of information in health and safety emergencies?
99.37 What conditions apply to disclosing directory information?

Subpart E—What are the Enforcement Procedures?

99.60 What functions has the Secretary delegated to the Office and to the Education Appeal Board?
99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?
99.62 What information must an educational agency or institution submit to the Office?
99.63 Where are complaints filed?
99.64 What is the complaint procedure?
99.65 What is the content of the notice of complaint issued by the Office?
99.66 What are the responsibilities of the Office in the enforcement process?
99.67 How does the Secretary enforce decisions?

Authority: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g), unless otherwise noted.

Subpart A—General

§ 99.1 To which educational agencies or institutions do these regulations apply?

(a) This part applies to an educational agency or institution to which funds have been made available under any program administered by the Secretary of Education that—

(1)(i) Was transferred to the Department under the Department of Education Organization Act (DEOA); and

(ii) Was administered by the Commissioner of Education on the day before the effective date of the DEOA; or

(2) Was enacted after the effective date of the DEOA, unless the law enacting the new Federal program has the effect of making section 438 of the General Education Provisions Act inapplicable.

(Authority: 20 U.S.C. 1230, 1232g, 3487, 3507)

(b) The following chart lists the funded programs to which Part 99 does not apply as of April 11, 1988:

Name of program	Authorizing statute	Implementing regulations
1. High School Equivalency Program and College Assistance Migrant Program	Section 418A of the Higher Education Act of 1965 as amended by the Education Amendments of 1980 (Pub. L. 96-374) 20 U.S.C. 1070d-2).	Part 206.
2. Programs administered by the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research.	The Rehabilitation Act of 1973, as amended. (29 U.S.C. 700, *et seq.*).	Parts 350-359, 361, 365, 366, 369-371, 373-375, 378, 379, 385-390, and 395.
3. Transition program for refugee children	Immigration and Nationality Act, as amended by the Refugee Act of 1980, Pub. L. 96-212 (8 U.S.C. 1522(d)).	Part 538.
4. College Housing	Title IV of the Housing Act of 1950, as amended (12 U.S.C. 1749, *et seq.*).	Part 614.
5. The following programs administered by the Assistant Secretary for Educational Research and Improvement: Educational Research Grant Program. Regional Educational Laboratories Research and Development Centers. All other research or statistical activities funded under Section 405 or 406 of the General Education Provisions Act..	Section 405 of the General Education Provisions Act (20 U.S.C. 1221e), and section 406 of the General Education Provisions Act (20 U.S.C. 1221-1).	Parts 700, 706-708.

Note: The Secretary, as appropriate, updates the information in this chart and informs the public.

(c) This part does not apply to an educational agency or institution solely because students attending that agency or institution receive non-monetary benefits under a program referenced in paragraph (a) of this section, if no funds under that program are made available to the agency or institution.

(d) The Secretary considers funds to be made available to an educational agency or institution of funds under one or more of the programs referenced in paragraph (a) of this section—

(1) Are provided to the agency or institution by grant, cooperative agreement, contract, subgrant, or subcontract; or

(2) Are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Pell Grant Program and the Guaranteed Student Loan Program (Titles IV–A–1 and IV–B, respectively, of the Higher Education Act of 1965, as amended).

(e) If an educational agency or institution receives funds under one or more of the programs covered by this section, the regulations in this part apply to the recipient as a whole, including each of its components (such as a department within a university).

(Authority: 20 U.S.C. 1232g)

§ 99.2 What is the purpose of these regulations?

The purpose of this part is to set out requirements for the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(Authority: 20 U.S.C. 1232g)

(Note: 34 CFR 300.560–300.576 contain requirements regarding confidentiality of information relating to handicapped children who receive benefits under the Education of the Handicapped Act.)

§ 99.3 What definitions apply to these regulations?

The following definitions apply to this part:

"Act" means the Family Educational Rights and Privacy Act of 1974, as amended, enacted as section 438 of the General Education Provisions Act.

(Authority: 20 U.S.C. 1232g)

"Attendance" includes, but is not limited to—

(a) Attendance in person or by correspondence; and

(b) The period during which a person is working under a work-study program.

(Authority: 20 U.S.C. 1232g)

"Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended.

(Authority: 20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means to permit access to or the release, transfer, or other communication of education records, or the personally indentifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

(Authority: 20 U.S.C. 1232g(b)(1))

"Educational agency or institution" means any public or private agency or institution to which this part applies under § 99.1(a).

(Authority: 20 U.S.C. 1232g(a)(3))

"Education records" (a) The term means those records that are—

(1) Directly related to a student; and

(2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include—

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(2) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit, and the law enforcement records are—

(i) Maintained separately from education records;

(ii) Maintained solely for law enforcement purposes; and

(iii) Disclosed only to law enforcement officials of the same jurisdiction;

(3)(i) Records relating to an individual who is employed by an educational agency or institution, that—

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee; and

(C) Are not available for use for any other purpose.

(ii) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under paragraph (b)(3)(i) of this definition.

(4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are—

(i) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;

(ii) Made, maintained, or used only in connection with treatment of the student; and

(iii) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution; and

(5) Records that only contain information about an individual after he or she is no longer a student at that agency or institution.

(Authority: 20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has reached 18 years of age or is attending an institution of postsecondary education.

(Authority: 20 U.S.C. 1232g(d))

"Institution of postsecondary education" means an institution that provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

(Authority: 20 U.S.C. 1232g(d))

"Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

(Authority: 20 U.S.C. 1232g)

"Party" means an individual, agency, institution, or organization.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable information" includes, but is not limited to—

(a) The student's name;

(b) The name of the student's parent or other family member;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number or student number;

(e) A list of personal characteristics that would make the student's identity easily traceable; or

(f) Other information that would make the student's identity easily traceable.

(Authority: 20 U.S.C. 1232g)

"Record" means any information recorded in any way, including, but not limited to, handwriting, print, tape, film, microfilm, and microfiche.

(Authority: 20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Education or an official or employee of the Department of Education acting for the Secretary under a delegation of authority.

(Authority: 20 U.S.C. 1232g)

"Student", except as otherwise specifically provided in this part, means any individual who is or has been in attendance at an educational agency or institution and regarding whom the agency or institution maintains education records.

(Authority: 20 U.S.C. 1232g(a)(6))

§ 99.4 What are the rights of parents?

An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights.

(Authority: 20 U.S.C. 1232g)

§ 99.5 What are the rights of eligible students?

(a) When a student becomes an eligible student, the rights accorded to, and consent required of, parents under this part transfer from the parents to the student.

(b) The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.

(c) If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission, but has never been in attendance.

(Authority: 20 U.S.C. 1232g(d))

§ 99.6 What information must an educational agency's or institution's policy contain?

(a) Each educational agency or institution shall adopt a policy regarding how the agency or institution meets the requirements of the Act and of this part. The policy must include—

(1) How the agency or institution informs parents and students of their rights, in accord with § 99.7;

(2) How a parent or eligible student may inspect and review education records under § 99.10, including at least—

(i) The procedure the parent or eligible student must follow to inspect and review the records;

(ii) With an understanding that it may not deny access to education records, a description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of those records;

(iii) A schedule of fees (if any) to be charged for copies; and

(iv) A list of the types and locations of education records maintained by the agency or institution, and the titles and addresses of the officials responsible for the records;

(3) A statement that personally identifiable information will not be released from an education record without the prior written consent of the parent or eligible student, except under one or more of the conditions described in § 99.31;

(4) A statement indicating whether the educational agency or institution has a policy of disclosing personally identifiable information under § 99.1(a)(1), and , if so, a specification of the criteria for determining which parties are school officials and what the agency or institution considers to be a legitimate educational interest;

(5) A statement that a record of disclosures will be maiintained as required by § 99.32, and that a parent or eligible student may inspect and review that record;

(6) A specification of the types of personally identifiable information the agency or institution has designated as directory information under § 99.37; and

(7) A statement that the agency or institution permits a parent or eligible student to request correction of the student's education records under § 99.20, to obtain a hearing under § 99.21(a), and to add a statement to the record under § 99.21(b)(2).

(b) The educational agency or institution shall state the policy in writing and make a copy of it available on request to a parent or eligible student.

(Authority: 20 U.S.C. 1232g(e) and (f))

(Approved by the Office of Management and Budget under control number 1880–0508)

§ 99.7 What must an educational agency or institution include in its manual notification?

(a) Each educational agency or institution shall annually notify parents of students currently in attendance, and eligible students currently in attendance, at the agency or institution of their rights under the Act and this part. The notice must include a statement that the parent or eligible student has a right to—

(1) Inspect and review the student's education records;

(2) Request the amendment of the student's education records to ensure that they are not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights;

(3) Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that the Act and the regulations in this part authorize disclosure without consent;

(4) File with the U.S. Department of Education a complaint under § 99.64 concerning alleged failures by the agency or institution to comply with the requirements of the act and this part; and

(5) Obtain a copy of the policy adopted under § 99.6.

(b) The notice provided under paragraph (a) of this section must also indicate the places where copies of the policy adopted under § 99.6 are located.

(c) An educational agency or institution may provide this notice by any means that are reasonably likely to inform the parents and eligible students of their rights.

(d) An agency or institution of elementary or secondary education shall effectively notify parents of students who have a primary or home language other than English.

(Authority: 20 U.S.C. 1232g(e))

(Approved by the Office of Management and Budget under control number 1880–0508)

Subpart B—What are the Rights of Inspection and Review of Education Records?

§ 99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a) Except as limited under § 99.12, each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student.

(b) The educational agency or institution shall comply with a request for access to records within a reasonable period of time, but in no case more than 45 days after it has received the request.

(c) The educational agency or institution shall respond to reasonable requests for explanations and interpretations of the records.

(d) The educational agency or institution shall give the parent or eligible student a copy of the records if failure to do so would effectively prevent the parent or student from exercising the right to inspect and review the records.

(e) The educational agency or institution shall not destroy any education records if there is an outstanding request to inspect and review the records under this section.

(f) While an education agency or institution is not required to give an eligible student access to treatment records under paragraph (b)(4) of the

definition of "Education records" in § 99.3, the student may have those records reviewed by a physician or other appropriate professional of the student's choice.

(Authority: 20 U.S.C. 1232g(a)(1)(A))

§ 99.11 May an educational agency or institution charge a fee for copies of education records?

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

(Authority: 20 U.S.C. 1232g(a)(1))

§ 99.12 What limitations exist on the right to inspect and review records?

(a) If the education records of a student contain information on more than one student, the parent or eligible student may inspect, review, or be informed of only the specific information about that student.

(b) A postsecondary institution does not have to permit a student to inspect and review education records that are—

(1) Financial records, including any information those records contain, of his or her parents;

(2) Confidential letters and confidential statements of recommendation placed in the education records of the student before January 1, 1975, as long as the statements are used only for the purposes for which they were specifically intended; and

(3) Confidential letters and confidential statements of recommendation placed in the student's education records after January 1, 1975, if—

(i) The student has waived his or her right to inspect and review those letters and statements; and

(ii) Those letters and statements are related to the student's—

(A) Admission to an educational institution;

(B) Application for employment; or

(C) Receipt of an honor or honorary recognition.

(c)(1) A waiver under paragraph (b)(3)(i) of this section is valid only if—

(i) The educational agency or institution does not require the waiver as a condition for admission to or receipt of a service or benefit from the agency or institution; and

(ii) The waiver is made in writing and signed by the student, regardless of age.

(2) If a student has waived his or her rights under paragraph (b)(3)(i) of this section, the educational institution shall—

(i) Give the student, on request, the names of the individuals who provided the letters and statements of recommendation; and

(ii) Use the letters and statements of recommendation only for the purpose for which they were intended.

(3)(i) A waiver under paragraph (b)(3)(i) of this section may be revoked with respect to any actions occurring after the revocation.

(ii) A revocation under paragraph (c)(3)(i) of this section must be in writing.

(Authority: 20 U.S.C. 1232g(a)(1) (A) and (B))

Subpart C—What are the Procedures for Amending Education Records?

§ 99.20 How can a parent or eligible student request amendment of the student's education records?

(a) If a parent or eligible student believes the education records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy or other rights, he or she may ask the educational agency or institution to amend the record.

(b) The education agency or institution shall decide whether to amend the record as requested within a reasonable time after the agency or institution receives the request.

(c) if the educational agency or institution decides not to amend the record as requested, it shall inform the parent or eligible student of its decision and of his or her right to a hearing under § 99.21.

(Authority: 20 U.S.C. 1232g(a)(2))

§ 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

(a) An educational agency or institution shall give a parent or eligible student, on request, an opportunity for a hearing to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy or other rights of the student.

(b)(1) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall—

(i) Amend the record accordingly; and

(ii) Inform the parent or eligible student of the amendment in writing.

(2) If, as a result of the hearing, the educational agency or institution decides that the information in the education record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent or eligible student of the right to place a statement in the record commenting on the contested information in the record or stating why he or she disagrees with the decision of the agency or institution, or both.

(c) If an educational agency or institution places a statement in the education records of a student under paragraph (b)(2) of this section, the agency or institution shall—

(1) Maintain the statement with the contested part of the record for as long as the record is maintained; and

(2) Disclose the statement whenever it discloses the portion of the record to which the statement relates.

(Authority: 20 U.S.C. 1232g(a)(2))

§ 99.22 What minimum requirements exist for the conduct of a hearing?

The hearing required by § 99.21 must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence relevant to the issues raised under § 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

(Authority: 20 U.S.C. 1232g(a)(2))

Subpart D—May an Educational Agency or Institution Disclose Personally Identifiable Information From Education Records?

§ 99.30 Under what conditions must an educational agency or institution obtain prior consent to disclose information?

(a) Except as provided in § 99.31, an educational agency or institution shall obtain a signed and dated written consent of a parent or an eligible student before it discloses pesonally identifiable information from the student's education records.

(b) The written consent must—

(1) Specify the records that may be disclosed;

(2) State the purpose of the disclosure; and

(3) Identify the party or class of parties to whom the disclosure may be made.

(c) When a disclosure is made under paragraph (a) of this section—

(1) If a parent or eligible student so requests, the educational agency or institution shall provide him or her with a copy of the records disclosed; and

(2) If the parent of a student who is not an eligible student so requests, the agency or institution shall provided the student with a copy of the records disclosed.

(Authority: 20 U.S.C. 1232g (b)(1) and (b)(2)(A))

§ 99.31 Under what conditions is prior consent not required to disclose information?

(a) An educational agency or institution may disclose personally identifiable information from an education record of a student without the consent required by § 99.30 if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.

(2) The disclosure is, subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll.

(3) The disclosure is, subject to the requirements of § 99.35, to authorize representatives of—

(i) The Comptroller General of the United States;

(ii) The Secretary; or

(iii) State and local educational authorities.

(4)(i) The disclosure is in connection with financial aid for which the student has applied or which the student has received, if the information is necessary for such purposes as to—

(A) Determine eligibility for the aid;

(B) Determine the amount of the aid;

(C) Determine the conditions for the aid; or

(D) Enforce the terms and conditions of the aid.

(ii) As used in paragraph (a)(4)(i) of this section, "financial aid" means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) that is conditioned on the individual's attendance at an educational agency or institution.

(Authority: 20 U.S.C. 1232g(b)(1)(D))

(5)(i) The disclosure is to State and local officials or authorities, if a State statute adopted before November 19, 1974, specifically requires disclosures to those officials and authorities.

(ii) Paragraph (a)(5)(i) of this section does not prevent a State from further limiting the number or type or State or local officials to whom disclosures may be made under that paragraph.

(6)(i) The disclosure is to organizations conducting studies for, or on behalf of, educational agencies or institutions to—

(A) Develop, validate, or administer predictive tests;

(B) Administer student aid programs; or

(C) Improve instruction.

(ii) The agency or institution may disclose information under paragraph (a)(6)(i) of this section only if—

(A) The study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization; and

(B) The information is destroyed when no longer needed for the purposes for which the study was conducted.

(iii) For the purposes of paragraph (a)(6) of this section, the term "organization" includes, but is not limited to, Federal, State, and local agencies, and independent organizations.

(7) The disclosure is to accrediting organizations to carry out their accrediting functions.

(8) The disclosure is to parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954.

(9)(i) The disclosure is to comply with a judicial order or lawfully issued subpoena.

(ii) The educational agency or institution may disclose information under paragraph (a)(9)(i) of this section only if the agency or institution makes a reasonable effort to notify the parent or eligible student of the order or subpoena in advance of compliance.

(10) The disclosure is in connection with a health or safety emergency, under the conditions described in § 99.36.

(11) The disclosure is information the educational agency or institution has designated as "directory information", under the conditions described in § 99.37.

(12) The disclosure is to the parent of a student who is not an eligible student or to the student.

(b) This section does not forbid or require an educational agency or institution to disclose personally identifiable information from the education records of a student to any parties under paragraphs (a) (1) through (11) of this section.

(Authority: 20 U.S.C. 1232g (a)(5)(A), (b)(1) and (b)(2)(B))

§ 99.32 What recordkeeping requirements exist concerning requests and disclosures?

(a)(1) An educational agency or institution shall maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The agency or institution shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include—

(i) The parties who have requested or received personally identifiable information from the education records; and

(ii) The legitimate interests the parties had in requesting or obtaining the information.

(b) If an educational agency or institution discloses personally identifiable information from an education record with the understanding authorized under § 99.33(b), the record of the disclosure required under this section must include—

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the educational agency or institution; and

(2) The legitimate interests under § 99.31 which each of the additional parties has in requesting or obtaining the information.

(c) The following parties may inspect the record relating to each student:

(1) The parent or eligible student.

(2) The school official or his or her assistants who are responsible for the custody of the records.

(3) Those parties authorized in § 99.31(a) (1) and (3) for the purposes of

auditing the recordkeeping procedures of the educational agency or institution.

(d) Paragarph (a) of this section does not apply if the request was from, or the disclosure was to—

(1) The parent or eligible student;

(2) A school official under § 99.31(a)(1);

(3) A party with written consent from the parent or eligible student; or

(4) A party seeking directory information.

(Authority: 20 U.S.C. 1232g(b)(4)(A))

(Approved by the Office of Management and Budget under control number 1880–0508)

§ 99.33 What limitations apply to the redisclosure of information?

(a)(1) An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student.

(2) The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not prevent an educational agency or institution from disclosing personally identifiable information with the understanding that the party receiving the information may make further disclosures of the information on behalf of the educational agency or institution if—

(1) The disclosures meet the requirements of § 99.31; and

(2) The educational agency or institution has complied with the requirements of § 99.32(b).

(c) Paragraph (a) of this section does not apply to disclosures of directory information under § 99.31(a)(11) or to disclosures to a parent or student under § 99.31(a)(12).

(d) Except for disclosures under § 99.31(a) (11) and (12), an educational agency or institution shall inform a party to whom disclosure is made of the requirements of this section.

(Authority: 20 U.S.C. 1232g(b)(4)(B))

§ 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

(a) An educational agency or institution that discloses an education record under § 99.31(a)(2) shall—

(1) Make a reasonable attempt to notify the parent or eligible student at the last known address of the parent or eligible student, unless—

(i) The disclosure is initiated by the parent or eligible student; or

(ii) The policy of the agency or institution under § 99.6 includes a notice that the agency or institution forwards education records to other agencies or institutions that have requested the records and in which the student seeks or intends to enroll;

(2) Give the parent or eligible student, upon request, a copy of the record that was disclosed; and

(3) Give the parent or eligible student, upon request, an opportunity for a hearing under Subpart C.

(b) An educational agency or institution may disclose an education record of a student in attendance to another educational agency or institution if—

(1) The student is enrolled in or receives services from the other agency or institution; and

(2) The disclosure meets the requirements of paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(b)(1)(B))

§ 99.35 What conditions apply to disclosure of information for Federal or State program purposes?

(a) The officials listed in § 99.31(a)(3) may have access to education records in connection with an audit or evaluation of Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs.

(b) Information that is collected under paragraph (a) of this section must—

(1) Be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to in paragraph (a) of this section; and

(2) Be destroyed when no longer needed for the purposes listed in paragraph (a) of this section.

(c) Paragraph (b) of this section does not apply if—

(1) The parent or eligible student has given written consent for the disclosure under § 99.30; or

(2) The collection of personally identifiable information is specifically authorized by Federal law.

(Authority: 20 U.S.C. 1232g(b)(3))

§ 99.36 What conditions apply to disclosure of information in health and safety emergencies?

(a) An educational agency or institution may disclose personally identifiable information from an education record to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health of safety or the student or other individuals.

(b) Paragraph (a) of this section shall be strictly construed.

(Authority: 20 U.S.C. 1232g(b)(1)(I))

§ 99.37 What conditions apply to disclosing directory information?

(a) An educational agency or institution may disclose directory information if it has given public notice to parents of students in attendance and eligible students in attendance at the agency or institution of—

(1) The types of personally identifiable information that the agency or institution has designated as directory information;

(2) A parent's or eligible student's right to refuse to let the agency or institution designate any or all of those types of information about the student as directory information; and

(3) The period of time within which a parent or eligible student has to notify the agency or institution in writing that he or she does not want any or all of those types of information about the student designated as directory information.

(b) An educational agency or institution may disclose directory information about former students without meeting the conditions in paragraph (a) of this section.

(Authority: 20 U.S.C. 1232g(a)(5) (A) and (B))

Subpart E—What are the Enforcement Procedures?

§ 99.60 What functions has the Secretary delegated to the Office and to the Education Appeal Board?

(a) For the purposes of this subpart, "Office" means the Family Policy and Regulations Office, U.S. Department of Education.

(b) The Secretary designates the Office to—

(1) Investigate, process, and review complaints and violations under the Act and this part; and

(2) Provide technical assistance to ensure compliance with the Act and this part.

(c) The Secretary designates the Education Appeal Board to act as the Review Board required under the Act.

(Authority: 20 U.S.C. 1232g (f) and (g), 1234)

§ 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

If an educational agency or institution determines that it cannot comply with the Act or this part due to a conflict with State or local law, it shall notify the

Office within 45 days, giving the text and citation of the conflicting law.

(Authority: 20 U.S.C. 1232g(f))

§ 99.62 What information must an educational agency or institution submit to the Office?

The Office may require an educational agency or institution to submit reports containing information necessary to resolve complaints under the Act and the regulations in this part.

(Authority: 20 U.S.C. 1232g (f) and (g))

§ 99.63 Where are complaints filed?

A person may file a written complaint with the Office regarding an alleged violation under the Act and this part. The Office's address is: Family Policy and Regulations Office, U.S. Department of Education, Washington, DC 20202.

(Authority: 20 U.S.C. 1232g(g))

§ 99.64 What is the complaint procedure?

(a) A complaint filed under § 99.63 must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

(b) The Office investigates each timely complaint to determine whether the educational agency or institution has failed to comply with the provisions of the Act or this part.

(Authority: 20 U.S.C. 1232g(f))

§ 99.65 What is the content of the notice of complaint issued by the Office?

(a) If the Office receives a complaint, it notifies the complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(b) The notice to the agency or institution under paragraph (a) of this section—

(1) Includes the substance of the alleged violation; and

(2) Informs the agency or institution that the Office will investigate the complaint and that the educational agency or institution may submit a written response to the complaint.

(Authority: 20 U.S.C. 1232g(g))

§ 99.66 What are the responsibilities of the Office in the enforcement process?

(a) The Office reviews the complaint and response and may permit the parties to submit further written or oral arguments or information.

(b) Following its investigation, the Office provides to the complainant and the educational agency or institution written notice of its findings and the basis for its findings.

(c) If the Office finds that the educational agency or institution has not complied with the Act or this part, the notice under paragraph (b) of this section—

(1) Includes a statement of the specific steps that the agency or institution must take to comply; and

(2) Provides a reasonable period of time, given all of the circumstances of the case, during which the educational agency or institution may comply voluntarily.

(Authority: 20 U.S.C. 1232g(f))

§ 99.67 How does the Secretary enforce decisions?

(a) If the eductional agency or institution does not comply during the period of time set under § 99.66(c), the Secretary may take an action authorized under 34 CFR Part 78, including—

(1) Issuing a notice of intent to terminate funds under 34 CFR 78.21;

(2) Issuing a notice to withhold funds under 34 CFR 78.21, 200.94(b) or 298.45(b), depending upon the applicable program under which the notice is issued; or

(3) Issuing a notice to cease and desist under 34 CFR 78.31, 200.94(c) or 298.45(c), depending upon the program under which the notice is issued.

(b) If, after an investigation under § 99.66, the Secretary finds that an educational agency or institution has complied voluntarily with the Act or this part, the Secretary provides the complianant and the agency or institution written notice of the decision and the basis for the decision.

(Note: 34 CFR Part 78 contains the regulations of the Education Appeal Board.)

(Authority: 20 U.S.C. 1232g(g))

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Analysis of Comments and Changes

The following is an analysis of comments and changes in the regulations since publication of the NPRM. Substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes are not addressed.

Two issues were raised that cannot be addressed under any specific section of the regulations. In one case commenters raised the issue in the context of different sections of the regulations; in the other case the issues concerned a section that was removed from the regulations. The following is a discussion of those two issues:

• Release of records from another agency or institution.

Comment: Several commenters believed an agency or institution should not be required to provide a student a copy of a transcript or other records from another agency or institution unless the originating agency or insitution is no longer in existence. Other commenters believed language should be included that would permit an educational agency or institution to decline a request for disclosure of a student's transcript or other records from another agency or institution, unless the originating agency or institution is no longer in existence.

Discussion: The records in question fall within the definition of education records in that they are directly related to a student and are maintained by an educational agency or institution. An agency or institution is required to provide a parent or an eligible student access to all records, including those transcripts and records it did not originate but that it maintains. This requirement is set forth in the section entitled, "What rights exist for a parent or eligible student to inspect and review education records?" The FERPA does not forbid or require an agency or institution to disclose records to a third party, nor would it prevent an agency or institution from establishing a policy of not disclosing to third parties records that had originated at another agency or instituion.

Change: None.

• *Waiver of Rights.*

Comment: One commenter expressed concern about the removal of the section which set forth the conditions under which a parent or a student could waive any or all of his or her rights under the Act. While not endorsing nonstatutory waivers, the commenter believed that if nonstatutory waivers will continue to be recognized, the conditions governing those waivers are necessary in order to protect against any possible abuse. A second commenter supported the deletion of the general waiver provision, stating that there is no authority for waivers beyond the very narrow ones set forth in the statute.

Discussion: There was no statutory requirement for the waiver provision that was included in the regulations or the conditions under which nonstatutory waivers could be permitted. Therefore, the section was removed. However, in removing it, the Secretary does not intend to preclude educational agencies and institutions from establishing policies and conditions under which parents or students would be allowed to execute nonstatutory waivers.

Change: None.

The Secretary's discussion of the other comments received on the NPRM follows:

Section 99.1 To which educational agencies or institutions do these regulations apply?

Comment: One commenter questioned the specific legislative authority exempting programs from this part and the effect of exempting the programs.

Discussion: The statute appears in Part C of the General Education Provisions Act (GEPA). Prior to the establishment of the Department, Part C applied only to programs administered by the Commissioner of Education. The Commissioner had no authority over programs administered by the Assistant Secretary of Education and the Director of the National Institute of Education. For programs that were transferred to the Department under the Department of Education Organization Act (DEOA), the provisions of Part C continued to apply only to those programs administered by the Commissioner on the day preceding the effective date of the DEOA. Thus, FERPA does not apply to former National Institute of Education programs and the former National Center for Educational Statistics, Rehabilitation Services, National Institute of Disability and Rehabilitation Research, College Housing, and the Transition Program for Refugee Children.

Change: None.

Section 99.3 What definitions apply to these regulations?

Definition of "Directory Information".

Comment: Several commenters objected to the standard proposed in the definition of "directory information," stating there is no authority to broaden the term to include other information beyond that identified by Congress. Others stated that what may be considered an invasion of privacy by one person may not be so considered by another, which could result in inconsistency.

In contrast, an equal number of commenters stated that the standard is "most helpful," a "notable improvement" and "should be incorporated in the regulations." One commenter asked that distinguished academic performance or public service be included.

One commenter asked how the standard was developed. Others seemed to believe the standard would replace the items that have been designated by statute.

Discussion: The statute states that " 'directory information' relating to a student includes the following: * * *" and then lists items which may be considered directory information. The Department had interpreted the word "includes" to mean the list was not prescriptive. To clarify that interpretation, the phrase "* * * and other similar information" was added to the definition in the regulations published in 1976.

The Secretary, in revising the regulations, decided it would be preferable to establish a standard for interpreting the scope of the legislation. The standard, together with the list of items, should provide sufficient guidance for educational agencies and institutions. The standard would permit an agency or institution to mention distinguished academic performance or public service as long as it had designated that information as directory information and the parent or student had not objected to such a disclosure.

Change: None.

Section 99.3 Definition of "Education Records".

Comment: A commenter believed the regulations are unclear on whether the definition of education records includes or excludes records relating to an individual in attendance at an educational agency or institution who is also employed as a result of his or her status as a "student."

Discussion: All records relating to a student who is also an employee of an educational agency or institution are included in the definition of education records if the student's employment is contingent on the fact that he or she is a student. For example, all records, including employment records, of a student enrolled in a work-study program are education records; likewise, all records of a student who, because he or she is a student, is employed by the educational agency or institution to serve as a teaching assistant, lecturer, or in some other capacity, are education records. Excluded from the definition of education records are the employment records of an employee—including, for example, a teaching assistant or lecturer—whose employment did not result from and does not depend on the fact that he or she may also be a student at the agency or institution, provided that these employment records are made and maintained in the normal course of business, relate exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose.

Change: The definition has been rewritten for clarity.

Comment: One commenter believed that personally identifiable information relating to events or matters that transpire after the student is no longer in attendance should be covered by the definition of education records. The commenter was concerned that the exclusion of this information from the definition is without statutory authority, that it would allow an educational agency or institution to collect negative allegations or information on a former student, and that the parent or student would have no protection against release of the information to third parties.

Discussion: The exclusion is intended to allow educational agencies and institutions and their alumni organizations to perform their traditional functions of fund-raising and publishing information concerning the accomplishments of alumni. Most, if not all, alumni organizations perform these functions in contact with the former students. Since the collection and use of negative information about alumni is not an accepted or usual practice of educational agencies or institutions, the Secretary has decided that any expectation of abuse is minimal and would be insufficient to justify imposing an additional regulatory burden.

Change: None.

Section 99.3 Definition of "Parent".

Comment: One commenter believed the definition of "parent" should specifically state that a school district must provide rights to both natural parents, custodial and noncustodial. Another commenter believed that the new section "What are the rights of parents?" should specifically state that "noncustodial" parents are included in the Act's coverage. The commenters believed the proposed additions would further clarify the rights of noncustodial parents.

Discussion: In revising the regulations, the Secretary recognized the need to clarify the rights of custodial and noncustodial parents. Therefore, the new section was added to state specifically that the agency or institution shall give full rights under the law to either parent unless the agency or institution has been provided with evidence that there is a court order, State statue, or legally binding document relating to such matters as divorce, separation, or custody, that specifically revokes these rights. The Secretary believes this new section provides sufficient clarification and that the definition of "parent" should remain as it appeared in the proposed regulations.

Change: None.

Section 99.3 Definition of "Student".

Comment: One commenter stated that the inclusion of "former student" in the definition of "student" improves the definition. Two other commenters

appeared to believe that the purpose of the revision was to extend the law's coverage to include former students.

Discussion: Former students are covered under the statute's definition of student and have been entitled to the same rights as students in attendance since the law's passage. The intent of the revision is to make this clear in the definition section of the regulations. Those specific provisions of the regulations where rights are limited to current students are clearly stated in the revised regulations. See § 99.7 regarding annual notification, § 99.34 regarding disclosure to other educational agencies and institutions and § 99.37 regarding directory information.

Change: None.

Section 99.5 What are the rights of eligible students?

Comment: Two commenters believed the paragraph that was removed from this section, which is entitled "Student Rights" in the current regulations, should be reinserted. The paragraph stated that the rights of an eligible student are not affected by a provision in the regulations that allows an agency or institution to disclose information to the parents of such a student without the student's written consent. One of these commenters believed the reference should be reinserted in order to make clear the fact that the student's right to have access to his or her education records is not affected by the student's status as a dependent. The other commenter believed the removal of the reference may result in increased pressure on institutions to grant a parent's request for access without formally establishing that the student is in fact a dependent as defined in section 152 of the Internal Revenue Code.

Discussion: This section of the regulations clearly states that when a student becomes an eligible student, all of the FERPA rights transfer from the parents to the student. The section of the regulations entitled "Under what conditions is prior consent not required to disclose information?" provides that an agency or institution may disclose information to the parents of a dependent student without the student's consent; the provision does not require the school to do so. The paragraph that is being removed was not intended to have any effect on an agency's or institution's decision on whether to grant the parent's request for information. Nor was it intended to affect an agency's or institution's policies in establishing that a student is a dependent as defined in section 152 of the Internal Revenue Code.

Change: None.

Comment: Three commenters believed educational agenices and institutions should be required to allow the parents of dependent students to inspect and review the education records of the student. Another commenter believed that even allowing educational agencies and institutions to afford the parents the opportunity to have access undermined the intent of the law by removing the student's right to have control over the disclosure. This commenter believed that specific procedures for release of information to parents in specific circumstances were needed.

Discussion: The statute clearly provides that the parents' rights afforded by the law transfer to the student when the student reaches age 18 or is attending an institution of postsecondary education. The statute also clearly provides that an educational agency may disclose the education records of a dependent student to the parents of the student without the student's consent. The Secretary has no authority to change these statutory provisions. He finds nothing in the statute to indicate that Congress intended the Department to develop procedures such as the one commenter suggested and believes that to do so would impose an unnecessary regulatory burden.

Change: None.

Comment: A commenter believed the regulations should clarify the status of handicapped students over the age of 18 whose handicapping condition is such as to affect their ability to understand and/or exercise their rights under the Act.

Discussion: The Secretary has carefully considered this question in light of the fact that at age 18 the rights transfer from the parent to the student. He has decided that a student who is so severely handicapped as to prevent the student from exercising his or her rights under the Act would in most cases be under the legal care or guardianship of another person or entity. In the absence of a court's order of guardianship, the Secretary believes it would be reasonable to presume that the parents of such a student are the persons who are in the best position to act on behalf of the student. Therefore, the Secretary has decided that no specific provision in the regulations is necessary.

Change: None.

Comment: One commenter was concerned about the statement in the proposed regulations that provides that an individual does not have rights in components of an "agency or institution at which the individual has never been in attendance." The commenter questioned whether a student who is enrolled in one component of a university and takes one course in another component is considered to be a student in attendance at, and with rights in, both components. The commenter believed the provision could result in the disclosure of records by a component of the institution in which the student has never been in attendance.

Discussion: In revising the regulations, two significant phrases were unintentionally omitted from the statement. The statement should have read, "If an individual is or has been in attendance at one component of an educational agency or institution, that attendance does not give the individual rights as a student in other components of the agency or institution to which the individual has applied for admission but has never been in attendance." Concerning the commenter's specific question, if an individual applied for but was not admitted to a component, the individual would have no rights with regard to his or her application for admission to that component. This result is consistent with extensive legislative history on the subject. However, if an individual took a course in the component to which he or she had been denied admission, that individual would have FERPA rights with respect to that course, but still would not have rights with respect to the denied application for admission to that component.

Change: The phrases "is or has been in attendance at" and "to which the individual has applied for admission" have been added.

Comment: A commenter was concerned that an institution might misinterpret the language in this provision to mean that a student would not have rights with respect to records which happen to be maintained in a component other than the component in which the student is enrolled.

Discussion: A student cannot be denied access or other rights with respect to his or her education records, regardless of location.

Change: None.

Comment: A commenter suggested that the words "his or her parent" in this section be changed to "the parents" and the words "parents of students" be changed to "parents."

Discussion: In revising the regulations, the Secretary changed the definition of "parent" to eliminate the need to refer to "the parent of the student" or "his or her parent" throughout the regulations. The need for changing the terminology in this section was overlooked.

Change: The terminology has been revised to read "parents."

Section 99.6 What information must an educational agency's or institution's policy contain?

Comment: One commenter believed an educational agency or institution should be required to include in its policy a statement that grades may not be appealed.

Discussion: The legislative history of FERPA indicates that the Act was not intended to be used to replace previously established procedures to appeal the grade given the student's performance in a course. However, given the discretion delegated to educational agencies or institutions in implementing FERPA, an agency or institution might choose to permit parents of students or eligible students to use FERPA procedures to challenge a grade. Therefore, the Secretary has decided that it is not necessary or appropriate to require educational agencies and institutions to state in their policies that a student's grade may not be appealed.

Change: None.

Comment: Another commenter expressed agreement with the revisions made in this section with regard to the written policy each educational agency or institution must adopt. However, the commenter seemed to believe that the regulations required an educational agency or institution to publish its policy as part of its annual notification and that this requirement was being removed in revising the regulations.

Discussion: The only revisions made in this section, which was previously numbered 99.5, were made for the purpose of clarification. Neither the current nor the revised regulations require that an educational agency or institution include its policy in the annual notification. Both regulations require that the annual notification include a statement of where the policy may be obtained.

Change: None.

Section 99.7 What must an educational agency or institution include in its annual notification?

Comment: One commenter believed the intent of the law is that educational agencies and institutions be required to "make notification available" to parents or students rather than to "notify" parents or students. Therefore, the commenter suggested that the word "notify" in the first paragraph of the section be replaced by the words "make notification available."

Discussion: The statute requires educational agencies and institutions to inform the parents or the eligible students of the rights accorded them by the Act. In order to inform the parents or the eligible students of their rights, educational agencies and institutions would be required to notify, not simply make notification available.

Change: None.

Comment: One commenter pointed out that the revised regulations would require educational agencies and institutions to notify parents of students in attendance "and" eligible students in attendance whereas the former regulations required that parents "or" students be notified.

Discussion: The use of the word "or" can connote the idea that an educational agency or institution has an option either to notify parents of all students—whether the students are eligible or not—or to notify only eligible students. Conversely, use of "and" could be construed to require disclosure to eligible students and all parents, whether or not they were the parents of noneligible students. The word "and" is used in this section with the understanding that in the phrase "parents and eligible students" the word "parents" means the parents of students who are not eligible students. Thus, the requirements in question apply both to eligible students and to parents of students who are not eligible students.

Change: None.

Comment: One commenter, writing on behalf of an institution of higher education, believed language should be inserted to relieve notification requirements with respect to parents who reside outside the continental United States. The commenter also believed agencies and institutions should not be required to notify parents of students who have a primary or home language other than English if the student has demonstrated the minimal command of the English language required for admission to the institution.

Discussion: The statute requires that educational agencies or institutions inform the parents or students of their rights. It does not, however, require that the parents or students be notified individually; a general notification, such as by publication in a newsletter or college bulletin, is adequate. The requirement that an agency or institution notify parents of students who have a primary or home language other than English applies only to elementary and secondary schools. Institutions of higher education are not required to inform parents of rights, just eligible students.

Change: None.

Comment: One commenter asked for information on how educational agencies and institutions are to notify former students of their rights and the agency's or institution's policies.

Discussion: Both the current regulations and the revised regulations provide that notification must be given only to parents of students in attendance or eligible students in attendance. The notification of rights and policy need not be provided to former students or their parents. In any case, as noted in the discussion of the preceding comment, a general notification by publication in a newsletter or college bulletin is adequate to satisfy the statutory and regulatory requirements.

Change: None.

Section 99.10 What rights exist for a parent or eligible student to inspect and review education records?

Comment: A commenter believed there was a need to clarify the requirement that an educational agency or institution comply with a request for access to records within "a reasonable period of time, but in no case more than 45 days after it has received the request." The commenter indicated that the regulations should emphasize that it is quite often reasonable to provide access within a shorter period of time than the 45-day limit.

Discussion: The Secretary finds that, in practice, schools often provide access within a period of time which is considerably shorter than the 45-day limit. He has decided that the phrase "but in no case more than 45 days" serves to emphasize that 45 days is the maximum time allowed for compliance.

Change: None.

Comments: Two commenters were of the opinion that parents should be entitled to obtain copies of the education records of their children. Both commenters indicated that having copies of the records would provide protection against a school's losing or misplacing records. One of the commenters believed the provision would be particularly beneficial for families who move to a new location, in the event the education records are misplaced or lost in transit or in the event transfer of the records is delayed. The other commenter believed such a provision would also relieve schools of the necessity of determining when a denial of copies would effectively result in a denial of access.

Discussion: Both the current and the revised regulations set forth conditions which apply to the disclosure of information to other educational agencies and institutions in which a student seeks or intends to enroll. One of the conditions is that an agency or

institution which transfers records to another agency or institution must give the parent or eligible student, upon request, a copy of the record that was disclosed. This is required by statute.

The second case in which an educational agency or institution must provide copies is when a parent or student gives a written consent for the disclosure of information from the student's education records and requests a copy of the records disclosed. This is also a statutory requirement.

The current and the revised regulations also require an educational agency or institution to provide copies of education records if a failure to do so would effectively result in a denial of access, and to include in their written policy a description of the circumstances in which the agency or institution believes it has a legitimate cause to deny a request for a copy of education records. These requirements, while not specifically stated in the statute, are necessary to implement the statutory requirement that an educational agency or institution shall not have a policy of denying, or effectively preventing, a parent or student the right to inspect and review the education records of the student.

The Secretary has decided that it would impose an unnecessary burden to require educational agencies or institutions to provide copies except as is now required by statute and the implementing regulations. However, nothing in the statute or the regulations would preclude an educational agency or institution from adopting a policy of providing copies in other cases, if it so chooses.

Change: None.

Comments: Two commenters believed the provision that prohibits educational agencies and institutions from destroying records if there is a pending request for access should be expanded. Both commenters believed educational agencies and institutions should be required to notify parents prior to destruction of documents and afford them an opportunity to inspect and review or obtain the records.

Discussion: The Secretary had decided that such a requirement would impose an unnecessary burden on educational agencies and institutions. In many cases, State law or agency or institutional policies and procedures prescribe a period of time in which education records are required to be maintained. Nothing in the Act or these regulations would preclude an educational agency or institution from implementing a policy of notifying parents or eligible students prior to the destruction of any education records.

Change: None.

Comments: One commenter expressed concern about the provision that accords an eligible student the right to have his or her medical treatment records reviewed by a physician or other appropriate professional of the student's choice. The commenter questioned whether postsecondary institutions would be obligated to verify the credentials of the professional chosen by the student.

Discussion: This provision is based on a requirement in the statute. The provision describes the rights of inspection and review of education records in the revised regulations. Neither the statute nor the regulations prescribe any procedures for verification.

Change: None.

Comments: One commenter believed that a provision in this section lends support to parents who claim they should have the right to have access so long as they are supporting the student in college. The provision in question reads, "* * * each educational agency or institution shall permit a parent or eligible student to inspect and review the education records of the student." It is the phase "parent or eligible student" that the commenter believed lends support to the parent's claim.

Discussion: Two word "parent" in the phase "parent or eligible student" means the parent of a student who is not an eligible student. Thus, at the college level, FERPA affords the eligible student the right of inspection and review. FERPA does not, however, prohibit an educational agency or institution from disclosing the education records of an eligible student to the parents of the eligible student if the student is a dependent child as defined in section 152 of the Internal Revenue Code of 1954. The provision which allows educational agencies and institutions to disclose information to parents of eligible students is set forth in the section entitled, "Under what conditions is prior consent not required to disclose information?"

Change: None.

Section 99.11 May an educational agency or institution charge a fee for copies of education records?

Comments: One commenter believed fees for copying should be limited to the actual cost of reproduction. The commenter believed that unless fees are limited to the actual cost of copying, an educational agency or institution might incorporate into the fee costs for search and retrieval of education records. A second commenter indicated that an educational agency or institution should be allowed to charge a fee for search and retrieval, if done manually, and for any other costs incurred in providing copies.

Discussion: Educational agencies and institutions are entitled to charge reasonable fees for the actual cost of reproduction, secretarial time, and postage. The Secretary considered whether to include a provision to allow educational agencies and institutions to charge a fee for search and retrieval. He decided that providing parents or students access to education records is a function that is generally a part of the accepted and normal business of educational agencies and institutions.

Change: None.

Section 99.12 What limitations exist on the right to inspect and review records?

Comment: One commenter was concerned about the removal of the provision that required educational agencies and institutions to document the confidentiality of letters and statements of recommendation that were placed in the education records of a student prior to January 1, 1975. The commenter believed that the requirement provided the only reliable way of determining that a letter or statement was indeed "confidential."

Discussion: The provision was removed because it placed an undue burden on agencies and institutions to expect that they would be able to document the confidentiality of letters or statements that were solicited or sent and retained more than 10 years ago.

Change: None.

Comment: A commenter raised a question relating to the provision that an educational agency or institution cannot require a waiver as a condition for admission to or receipt of a service or benefit from the agency or institution. With that in mind, the commenter asked whether a placement office would be denying a service or benefit to a student by advising the student that a professor will not write a letter of recommendation or an employer will not accept a letter of recommendation, or both, unless the student signs a waiver.

Discussion: A faculty member's refusal to write a reference without a waiver would be considered an action of that individual and not of the agency or institution. A placement office would not be denying a service or benefit by advising the student of the faculty member's or employer's refusal.

Change: None.

Comment: One commenter believed the provision in this section that allows an applicant for admission to waive his

or her rights under certain conditions should be removed.

Discussion: The provision is required by statute. Therefore, the Secretary has no authority to remove it from the regulations.

Change: None.

Section 99.21 Under what conditions does a parent or eligible student have the right to a hearing?

Comments: Two commenters believed that a parent or student should have the option of inserting a statement in an education record without first going through the hearing process that is provided in this section. The commenters interpreted the statute as intending that an educational agency or institution must provide a parent or a student both an opportunity for a hearing and an opportunity to insert a statement in the record. They believed the regulations misapply the statute's intent by requiring that a parent or student go through the hearing process before exercising the right to place a statement in the record. One of the commenters stated that this requirement can result in extensive delay in cases where a parent's or student's interest in inserting a clarifying statement in the record is time-sensitive.

Discussion: The statute provides that the parents or students must be afforded "an opportunity for a hearing * * * to challenge the content of [the] records and to provide an opportunity for the correction or deletion of [data] and to insert into [the] records a written explanation * * * respecting the content of [the] records." the statute is not definitive on the question of whether the parent's or student's right to place a statement in the records exists independent of the hearing process. However, the Secretary believes that the order in which the hearing and the statement are addressed in the statute indicates that the Congressional intent was that a parent or student should exhaust the administrative remedy afforded by the hearing process before exercising the right to place an explanatory statement in the record.

After considering this issue, the Secretary has decided that to require a hearing would be burdensome in cases where an educational agency or institution and the parent or student are clearly in agreement that an explanatory statement alone is the appropriate remedy. If one or the other of the two parties disagrees, then the parents or eligible student must exhaust the remedy afforded by the hearing process before entering an explanation in the record. The Secretary finds no reason to regulate on this issue since it may be resolved by the two parties directly involved.

The Secretary has also considered whether an agency or institution could be required to allow a parent or student to insert a statement in the record if the parent or student considers the matter to be time-sensitive. There is no FERPA provision which would require an agency or institution to expedite the process in a situation where a parent or student believes time is a factor. The explanatory statement provided for in the regulations is not intended to serve any purpose other than to document the parent's or student's final position on the accuracy of an education record.

Change: None.

Comment: One commenter believed the statement that a parent or student inserts in the education record could provide an unlimited opportunity to enter a statement of disagreement. The commenter suggested that such a statement should be limited to a declaration of disagreement and that the educational agency or institution should have the right to refuse to include information beyond such a declaration.

Discussion: The statute requires that a parent or student be afforded an opportunity to insert into the records "a written explanation * * * respecting the content of [the disputed] records." The Secretary has no authority to require that the statement be limited to a declaration of disagreement.

Change: None.

Comment: One commenter suggested an amendment of the provision which requires that an educational agency or institution disclosed a parent's or a student's explanatory statement whenever it discloses the portion of the record to which the statement relates. The commenter believed that educational agencies or institutions with complex or automated recordkeeping systems should not be required to provide a copy of the explantatory statement along with a disclosed record. Instead, the commenter believed agencies or institutions should be allowed to include on the disclosed record a reference to the fact that the explanatory statement exists and will be made available on request.

Discussion: The statute requires that the statement be maintained with the record. The Secretary believes the regulatory requirement that the statement be disclosed whenever the contested record is disclosed is necessary to meet the statutory intent.

Change: None.

Section 99.30 Under what conditions must an educational agency or institution obtain prior consent to disclosed information?

Comment: One commenter believed that it seemed inappropriate to require that a student's written consent state the purpose of the release. The commenter seemed to believe that the written consent is intended to be a mechanism to restrict what he assumes is a student's right to have information released from his or her own education records. In interpreting the provision in this way, the commenter believed that requiring the student to state the purpose of the release limited his right to have the records released.

Discussion: The statute requires that the purpose of the release be stated in the written consent; therefore, the Secretary has no authority to remove the provision. The purpose of the written consent is to document that the student consented to a disclosure of information from his or her education records; the consent is not intended in any way to restrict any of a student's rights.

Change: None.

Comment: Another commenter indicated that educational agencies and institutions should be able to accept requests by telephone with proper safeguards.

Discussion: The commenter did not specify whether he or she was referring to requests made by a third party for disclosure of information from a student's education records or a request made by a parent or eligible student to disclose information to a third party. Concerning the former, the regulations do not require that a request be in writing in order for an agency or institution to disclose information pursuant to one of the statutory exclusions permitting disclosure without consent. Concerning the latter, the statute requires an agency or institution to obtain written consent of a parent or eligible student before disclosing information to a third party.

Change: None.

Section 99.31 Under what conditions is prior consent not required to disclose information?

Comment: A commenter believed the term "legitimate educational interest" should be more definitive. The commenter indicated that some institutions interpret the term too broadly while others interpret it too narrowly.

Discussion: The Secretary believes the Department could not make a definitive statement of legitimate

educational interest that would apply to each school district and college and university across the nation. Each educational agency and institution must establish its own criteria, according to its own procedures and requirements, for determining when its school officials have a legitimate educational interest in a student's records.

Change: None.

Comment: Two commenters disagreed with the proposal to add language to clarify that education records may be disclosed without consent to a postsecondary institution in which a student seeks or intends to enroll. The commenters believed the addition expanded the scope of the statute and that the statutory purpose of the provision was to facilitate the transfer of records when a student moves from one public school system to another. In the case of postsecondary institutions, the commenters believed it would be more appropriate to require consent of the parent or the student before transferring records.

Discussion: The current regulations did not clearly specify that postsecondary educational institutions are covered by the exception. The provision has been applicable in practice to postsecondary institutions since enactment of the law. The change to this provision clarifies that "schools" include institutions of postsecondary education.

Change: None.

Comment: A commenter asked that the definition of "financial aid" be explicitly broadened to include all debts owed to an institution as a result of the student's participation in the institution's programs. The commenter strongly believed that Congress did not intend that an institution should be restricted by the law from collecting any and all debts owed it by students.

Discussion: The statute was intended to provide parents or students some control over the disclosure of information from the student's education records. With certain specified exceptions, including the provision with regard to financial aid, information cannot be disclosed without a student's written consent. The statute refers to disclosure "in connection with a student's application for, or receipt of, financial aid." In that context, the definition of financial aid could not be broadened to include other debts owed the institution.

Change: None.

Comment: One commenter, a representative of a State Department of Education, believed a provision should be included to acknowledge that State law may in some cases be more protective of students' privacy than Federal law, particularly in restricting the conditions under which information can be disclosed without the parent's written consent.

Discussion: The current and revised regulations provide that a State is not prevented from further limiting the number or type of State or local officials to whom disclosures may be made without consent. The regulations also state under the section "What are the rights of eligible students?" that the law and regulations "do not prevent educational agencies or institutions from giving students rights in addition to those given to parents of students." The Secretary has decided that no regulatory purpose would be served by including a provision such as suggested by the commenter.

Change: None.

Comment: A commenter suggested a change in the provision that allows disclosure "to organizations conducting studies for, or on behalf of, educational agencies or institutions [if] the study is conducted in a manner that does not permit personal identification of parents or students by individuals other than representatives of the organization * * *." The commenter believed the word "by" should be changed to "to".

Discussion: The word "by" is used in the statute, and the Secretary believes the meaning is clear.

Change: None.

Comment: None.

Discussion: In the notice of proposed rulemaking (NPRM) for these regulations the phrase "parents or students" was used in § 99.31(a)(6)(ii)(A). However, the statute requires organizations that receive information under this exception to the consent requirement to protect the information "in such a manner as will not permit the personal identification of students and their parents * * *."

Change: The word "or" has been changed to "and" to ensure that both groups are fully protected.

Comment: A commenter believed the educational agency or institution should be relieved in some cases of the requirement of making a reasonable effort to notify a parent or student in advance of compliance with a subpoena. The commenter indicated that in legal actions to which the student is a party, the court process itself requires that any subpoena be served on the opposing party, thereby making any notification effort by the educational agency or institution superfluous.

Discussion: The statutory language requires that parents or students be notified of "all such orders or subpoenas" in advance of compliance. The language was modified in the course of promulgating the current regulations to require that the agency or institution "make a reasonable effort to notify * * *." The modification was made in recognition that it would be difficult in many cases for the agency or institution to comply with the statutory requirement and in the belief that the modification was in accord with the Congressional intent.

The Secretary has decided that he has no authority to relieve educational agencies or institutions of the statutory requirement that parents and students be notified of "all such orders or subpoenas." The Secretary has also decided that even in cases where the parent or student brings the action, the notification serves to assure that the party serving a subpoena is in fact acting on behalf of the parent or student.

Change: None.

Comment: One commenter suggested that a condition be added to allow a postsecondary institution to contact a parent of an eligible student without the student's consent if the institution suspects that the student has a physical or emotional problem of which the university believes the parent may be unaware and that affects the student's academic or campus life.

Discussion: The Secretary has no authority to regulate an exception to the statutory requirement that at age 18 the rights afforded by FERPA transfer from the parent to the student. However, if an institution determined that the circumstances of a situation were such as to constitute a health or safety emergency and if the university decided that the parent is the party who is in the best position to deal with the emergency, then the disclosure could be made under the section of the regulations that provides for disclosure in those emergencies.

Change: None.

Comment: Four commenters believed a condition should be added to permit disclosure without a student's consent if the agency or institution has reason to believe that the student has provided inaccurate or misleading information concerning his or her academic record to another educational agency or institution, to an employer, to a professional association, or to a governmental agency to whom the student applies for benefits or services.

Another commenter believed educational agencies and institutions should be allowed to disclose information without prior written consent to government officials, including U.S. Senators and Representatives, State legislators, and governors, who have been contacted by

a parent or student who believes his or her rights under this law have been violated. The commenter indicated that the agencies or institutions are unable to respond to, or to defend themselves against, the parent's or student's allegations because they cannot release information to the government officials without the parent's or student's written consent.

Discussion: The Secretary understands the concerns of the commenters and has carefully considered whether provisions could be included in the regulations to address the problems. He has decided that the statute is specific in stating the conditions under which disclosure can be made without consent and that he has no authority to include the provisions proposed by the commenters.

Change: None.

Section 99.32 What recordkeeping requirements exist concerning requests and disclosures?

Comment: A commenter suggested that the term "list" be changed to "record" in this section. The commenter indicated that as long as a record of requests for and disclosures of information is maintained, the form of the record is irrelevant.

Discussion: The Secretary did not intend to prescribe the form of the record; the intent was to suggest a convenient way to maintain the information. However, in order to conform to the statutory language, the term "record" will be used.

Change: The term "record" has been substituted for "list."

Comment: One commenter stated that keeping a record of requests for disclosure is impractical and implies that a record must be kept even for requests that are denied. The commenter also believed it impractical to require the record of disclosure to be kept with the education records of the student, inasmuch as most institutions maintain records in computerized formats. Another commenter believed maintaining a record of disclosures without consent is self-incriminating. The commenter also stated that institutions should be free to establish their own retention schedule.

Discussion: The student requires each educational agency and institution to maintain a record, kept with the education records of each student, that will indicate all parties who have requested or obtained access to a student's education records, including those parties to whom the statute permits disclosure without consent. While the statute states that the record should be kept with the education records of a student, it does not intend to require the agency or institution to keep it in one file or in one location. However, it does intend to require the agency or institution to make the record available to a parent or student as part of the parent's or student's general access to the education records. Since parents or students should be able to learn of those parties interested in the records, the record of disclosure should be maintained as long as the agency or institution maintains records on the student.

Change: None.

Comment: A commenter asked whether the placement office of an educational agency or institution would be required to keep a list (record) of all parties to whom a student's credential files were sent if the student had given a blanket consent to release his or her education records without specifying the individual parties.

Discussion: The statutory and regulatory language require an agency or institution to maintain a record of each disclosure.

Change: None.

Comment: One commenter questioned the recordkeeping requirement concerning disclosure and redisclosure of information to parties if prior written consent for disclosure is not required. An educational agency or institution may disclose information to a party if consent is not required with the understanding that that party may redisclose the information to another party to whom information can be disclosed without consent. The agency or institution must keep a record of the parties to whom the disclosure and redisclosures are made and the legitimate educational interests all parties have in the records. The commenter believed the recordkeeping requirement places an undue burden on institutions and that most reasonable approach is to assert that no information may be redisclosed.

Discussion: The Secretary did not intend any change in the recordkeeping requirement. At the time the final regulations were issued in 1976, the Department had considered whether student consent should be required if disclosure by a party excepted from the consent requirement is to another party excepted from the consent requirement—even though the institution could disclose information without consent to either excepted party. The Secretary considered, for example, whether an institution that disclosed information to the Department of Education under the Guaranteed Student Loan Program as permitted by the "financial aid" exception, would be required to tell the Department of Education not to make a future disclosure of that information to the bank that loaned the money under the program—even though the bank could obtain the information directly from the institution under the same exception.

If the Department of Education could disclose the information freely to other excepted parties, there would be no harm done to the consent requirement. However, the student would no longer have a means to discover all of the parties outside the institution who had had access to his or her records without consent. To remedy this problem, the Secretary authorized an institution to disclose information to excepted parties with the understanding it would be redisclosed to other excepted parties, but only if a record of access were kept for all of those parties.

The Secretary did not intend to impose a recordkeeping burden on educational institutions. Rather, the intent was to give a better understanding of the disclosure and recordkeeping requirement with regard to excepted parties.

Section 99.34 What conditions apply to disclosure of information to other educational agencies or institutions?

Comment: A commenter believed an example should be inserted in this section to specify that the phrase "is enrolled in or receives service from the other agency or institution" encompasses consortia, cross-enrollment, joint-enrollment, work-study, and coordination of such programs among postsecondary institutions and participating agencies and institutions.

Discussion: The Secretary believes the provision, as it now stands, can clearly be construed to encompass the examples included in the comment.

Change: None.

Comment: None.

Discussion: The proposed regulations changed the definition of student to include former students in order to make clear that most rights accorded students in attendance also apply to former students. In cases where the provisions of a section do not apply to former students, the term "students in attendance" is used. The provision in this section that, in the proposed regulations, stated "an educational agency or institution may disclose an education record of a student to another educational agency or institution if the student is enrolled in or receives services from the other agency or institution" would extend the provision beyond the statutory authority and

would indicate that an agency or institution could disclose information on former students without consent to another agency or institution if the former student is enrolled in or receives services from the other agency or institution.

Change: The provision has been clarified to state that it applies only to students in attendance.

Section 99.36 What conditions apply to disclosure of information in health and safety emergencies?

Comments: One commenter believed that the regulations, in stating that the provisions of the section "shall be strictly construed," rightly leaves it to the educational agency or institution to develop its own definition of emergency. The commenter viewed the revision as helpful to educational agencies and institutions and as a step to assure an appropriate deregulation and an appropriate recordkeeping process within the institution on defining when an emergency may arise. Another commenter believed the factors that were removed from the health and safety emergency section in revising the regulations should be reinserted. The commenter believed that the statute specifically directs the Secretary to issue regulations concerning disclosure in a health or safety emergency and also believed that the criteria provided useful guidance.

Discussion: The statute, in setting forth the conditions in which personally identifiable information from an education record or records can be disclosed without a parent's or student's consent states that "[such a disclosure may be made], subject to regulations of the Secretary in connection with an emergency, [to] appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons." The regulations required that educational agencies or institutions include four specific criteria in the factors to be taken into account in determining whether personally identifiable information from the education records of a student could be disclosed under the section.

The Secretary based his decision to remove the nonstatutory criteria from the regulations on his belief that educational agencies and institutions are capable of making those determinations without the need for Federal regulation. It is the Secretary's opinion that Congress did not intend to require that regulations be promulgated that would impose burdensome requirements on agencies and institutions. He believes the requirement that agencies and institutions strictly construe the provision fully meets the Congressional intent. Nothing in the statute or legislative history prohibits an agency or institution from considering the four specific criteria that have been removed.

Change: None.

Section 99.37 What conditions apply to disclosing directory information?

Comment: One commenter thought the use of the word "and" in the text of the first paragraph under the section was incorrect.

Discussion: In the proposed regulations the word "and" was inserted in place of the word "or" in the phrase "* * * parents of students in attendance and eligible students in attendance * * *." However, replacing the word "or" with the word "and" does not remove all possibility for misinterpreting the provision. As clarification, we note that in the phrase "parents of students in attendance," the word "students" means students who are not eligible students. Thus, the educational agency or institution must notify both, all eligible students and the parents of all students who are not eligible students.

Change: None.

Comment: A commenter, a representative of a postsecondary educational institution, believed that the refusal that student's are allowed to exercise over the designation of directory information should be limited to the students' address and telephone number. The commenter indicated that the students' right of refusal has in some cases enabled students to commit fraudulent acts with a lessened chance of discovery.

Discussion: The statute provides students the right to refuse to allow the educational agency or institution to designate any or all of the items of information about the directory information.

Change: None.

Section 99.61 What responsibility does an educational agency or institution have concerning conflict with State or local laws?

Comment: One commenter believed the Department of Education should give some direction to State schools or institutions that are mandated by State law to allow a student to have access to confidential letters of recommendation to which the student, under FERPA, has waived his or her right of access. The commenter indicated that if placement directors send a credential file that contains confidential letters of recommendation to schools or institutions in States that have those mandates, the schools or institutions will return the file on the basis that the confidentiality of the letters cannot be protected.

Discussion: The Secretary is unable to advise State schools or institutions with respect to the laws of each State. With respect to the Federal law, the statute provides that the access rights afforded by the law shall not operate to make letters and statements of recommendation available to students in institutions of postsecondary education who have executed a valid waiver of the right to inspect and review the letters or statements. In implementing the law, the regulations provide that a postsecondary institution "does not have to permit" a student to inspect and review the letters and statements of recommendation provided the student has executed a valid waiver. Under these provisions, an educational agency or institution is not precluded from providing a student access to a letter or statement of recommendation. Therefore, if a State law requires that a State institution afford a student access to letters or statements of recommendation, the Federal law would not interfere, irrespective of whether the student has executed a valid waiver of his or her right.

Change: None.

Section 99.64 What is the complaint procedure?

Comment: A commenter proposed that the intended meaning of the word timely as it appears in the second paragraph of this section should be defined.

Discussion: The Secretary has decided not to include a definition in the regulations for two reasons. First, the word appears only once in the regulations. Secondly, the meaning of the word would depend largely on the circumstances which are peculiar to each case. A complaint might involve complex circumstances and attempts by a complainant to resolve the issue independently that might reasonably have delayed the filing of the complaint. Such a complaint would be considered timely. Another complaint might involve

an allegation of a violation that occurred many years ago and was never pursued despite the full knowledge of the student. In this case, the complaint would not be considered timely.

Change: None.

Section 99.67 How does the Secretary enforce decisions?

Comment: A commenter believed the law should be changed to provide that the Secretary may decide to withhold Federal funding under programs in addition to those administered by the Department of Education.

Discussion: The Secretary has no authority to withhold Federal funds under programs in other Federal agencies.

Change: None.

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Federal Register

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April 11, 1988

Part III

Federal Reserve System

Estimated Price Ranges and Deadline for Federal Reserve Returned Check Services; Notice

FEDERAL RESERVE SYSTEM

[Docket No. R-0630]

Estimated Price Ranges and Deadline for Federal Reserve Returned Check Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board is publishing estimated ranges of prices and deadlines for new Federal Reserve returned check services to be implemented in September, 1988. Although the actual prices and deadlines will not be available until June 1988, the Board is providing this advance notice of the likely ranges of prices and deadlines so that those who plan on using these services or offering competing services can plan appropriate responses.

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director (202/452-2231), Louise L. Roseman, Assistant Director (202/452-2789), or Nalini T. Rogers, Analyst (202/452-3801), Division of Federal Reserve Bank Operations; for the hearing impaired only: Telecommunication Device for the Deaf, Earnestine Hill or Dorothea Thompson (202/452-3254).

SUPPLEMENTARY INFORMATION: The Expedited Funds Availability Act gives the Board of Governors broad regulatory authority to improve the check collection and return system. The Board published a comprehensive proposal to implement the Act in December 1987, 52 FR 47112 (Dec. 11, 1987), which included a number of initiatives to speed the return of unpaid checks. These improvements to the check return system are designed to reduce the risk to the depositary bank from making funds available for withdrawal on a more prompt basis, as mandated by the Act. The Board also published for comment new Federal Reserve services to facilitate bank compliance with the proposed requirements. 52 FR 47171 (Dec. 11, 1987).

Currently, the Federal Reserve Banks do not explicitly price returned checks; instead, the costs of handling returns are incorporated in the forward collection fees. With the introduction of new check return services, returns will be priced explicitly, with the returned check fees assessed on the paying or returning bank depositing returns with a Federal Reserve Bank.[1] Forward collection fees will be reduced due to the elimination of the return cost component. In its proposal, the Board included estimated price ranges for returned check services, as well as general guidelines regarding return deadlines and sorting requirements.

A number of correspondent banks noted in their comments on the proposal that more detailed information regarding the Federal Reserve's new returned check services is needed for their development of competing services. Other banks stated that further information would be useful in planning how to meet their new expeditious return responsibilities most effectively. The Federal Reserve's forward collection and returned check fees and return deadlines, which will become effective when the new return services are implemented, will not be available for Board approval until June 1988.

Given the industry's desire for more information prior to this time, the Board has compiled returned check price and deadline estimates, on an office by office basis. The tables appended include returned check price ranges, deadlines, and sorting requirements for each Federal Reserve office. These estimates provide more definitive information than that published in the Board's proposal in December.

The new returned check deposit deadlines will correspond generally to forward collection deadlines in order to minimize transportation costs to banks depositing returns with the Federal Reserve. Each Reserve Bank will offer a raw return[2] deadline that corresponds to the office's RCPC forward collection deadline, around midnight. Generally, these midnight deadlines will include sorting requirements, in which case at least one earlier mixed return deadline will be offered, no earlier than 8:00 p.m. All fine sort returns will also be eligible for deposit at fine sort forward collection deadlines.[3] All automated or qualified returned checks will be eligible for deposit at any of the basic forward collection deadlines.

The raw return price ranges for each Reserve Bank office published in the December proposal were $0.25–$0.75 for local items, and $0.30–$1.00 for nonlocal (other Fed) items. Revised price ranges have been established, $0.30–$0.75 for local items, and $0.40–$1.00 for nonlocal items. Selected final prices may be slightly lower than this range due to special sorting requirements. In addition, Reserve Banks are still in the process of refining their volume and cost estimates; therefore, in some cases, other final prices and deadlines published in June may vary from the estimates published here.

Although the proposal stated that fees for qualified returned checks initially were expected to be the same as fees for forward collection checks of the same type, Board and Reserve Bank staff have found, upon further review, that processing qualified returned checks will be significantly more costly on a per item basis than forward collection items. This is due, in part, to the handling of qualified returns in a separate processing stream, the significantly smaller check return volume as compared to forward collection volume, and the need to sort these items to a larger number of endpoints. Consequently, qualified return prices are expected to be two to three times the corresponding forward collection price.

[1] Returns must be explicitly priced since some returned checks handled by the Federal Reserve will not follow the same route as they followed in the collection process, and therefore may not be subject to the Reserve Bank's forward collection fees. Also, paying banks and returning banks could deposit returned checks with the Federal Reserve in various ways that result in different costs being incurred.

[2] A raw return is a returned check that has not been prepared for automated processing.

[3] Fine sort return prices and deadlines will be the same as those for forward collection fine sort items. These will not be announced until June 1988, in order to allow Reserve Banks more time to analyze the changes needed in forward collection fine sort fees.

Part I—Raw Returns

District/Office	Deposit Deadline [2]	Item Fee Range by Component (cents)		Return Letter Fee (dollars) [1]	Sorting Requirements
		Local	Other Fed		
1 Boston	0001	45 to 60	60 to 85	1.00/2.50	City/RCPC/OF.
	1900	45 to 60	60 to 85	1.00	None.
	2100	50 to 70	70 to 90	1.00	None.
Lewiston	0001	35 to 50	50 to 70	1.00/2.50	Local/OF.
	2100	40 to 60	60 to 85	1.00	None.

District/Office	Deposit Deadline [2]	Item Fee Range by Component (cents)		Return Letter Fee (dollars) [1]	Sorting Requirements
		Local	Other Fed		
Windsor Locks	0001	45 to 60	60 to 85	1.00/2.50	Local/OF.
	1900	45 to 60	60 to 85	1.00	None.
	2100	50 to 70	70 to 90	1.00	None.
2 New York:					
Buffalo	0001	60 to 75	70 to $1.00	0.50/2.00	City/RCPC/OF.
	2000	60 to 75	70 to $1.00	0.50	None.
	1200 Sat	60 to 75	70 to $1.00	0.50	None.
Jericho	0001	60 to 75	70 to $1.00	0.50/2.00	City/RCPC/Country/OF.
	2000	60 to 75	70 to $1.00	0.50	None.
Cranford	0001	60 to 75	70 to $1.00	0.50/2.00	City/RCPC/OF.
	2000	60 to 75	70 to $1.00	0.50	None.
Utica	0001	60 to 75	70 to $1.00	0.50/2.00	City/RCPC/OF.
	2000	60 to 75	70 to $1.00	0.50	None.
3 Philadelphia	0030	35 to 50	45 to 60	1.75/2.75	Local/OF.
	2000	35 to 50	45 to 60	2.25	None.
	2000	30 to 45	45 to 60	1.75/2.75	Local/OF.
	2300	45 to 60	60 to 75	2.25	None.
	0830	30 to 45	45 to 60	1.75/2.75	City Clearinghouse/OF.
4 Cleveland	0001 [3]	50 to 75	70 to $1.00	1.75	None.
	1800 [3]	50 to 75	70 to $1.00	1.75	None.
	2200 [3]	50 to 75	70 to $1.00	1.75	None.
	0930	50 to 75	70 to $1.00	1.75/3.50	City.
Cincinnati	0001 [3]	50 to 75	70 to $1.00	1.75/3.50	RCPC/OF.
	1800 [3]	50 to 75	70 to $1.00	1.75	None.
	2230 [3]	50 to 75	70 to $1.00	1.75	None.
	0830	50 to 75		1.75/3.50	City.
Pittsburgh	0001 [3]	50 to 75	70 to $1.00	1.75	None.
	0130	50 to 75		1.75/3.50	RCPC.
	0830	50 to 75		1.75/3.50	City.
	1600 [3]	50 to 75	70 to $1.00	1.75	None.
Columbus	0001 [3]	50 to 75	70 to $1.00	1.75	None.
	0745	50 to 75		1.75/3.50	City.
	1800 [3]	50 to 75	70 to $1.00	1.75	None.
	2200 [3]	50 to 75	70 to $1.00	1.75	None.
5 Richmond	0001	30 to 45	40 to 60	1.25/2.25 [4]	Local/OF.
	2115 [5]	30 to 45	40 to 60	2.00	None.
Baltimore	0001	30 to 45	40 to 60	1.75/2.75 [4]	Local/OF.
	2030 [5]	30 to 45	40 to 60	2.25	None.
Charlotte	0001	30 to 45	40 to 60	1.25/2.25 [4]	Local/OF.
	2130 [5]	30 to 45	40 to 60	1.50	None.
Columbia	0001	30 to 45	40 to 60	1.50/2.50 [4]	Local/OF.
	2200 [5]	30 to 45	40 to 60	1.75	None.
Charleston	0001	30 to 45	40 to 60	1.50/3.00 [5]	Local/OF.
	2115 [5]	30 to 45	40 to 60	2.00	None.
6 Atlanta	0001	30 to 45	40 to 60	0.50/2.00	City/RCPC/OF.
	2130	32 to 48	48 to 72	0.50	None.
	2200		40 to 60	0.50	OF.
Birmingham	0001	30 to 45	40 to 60	0.50/2.00	Local/OF.
	1900		40 to 60	0.50	OF.
	2130	32 to 48	48 to 72	0.50	None.
Jacksonville	0001	30 to 45	40 to 60	0.50/2.00	Local/OF.
	2100	32 to 48	48 to 72	0.50	None.
	2300		40 to 60	0.50	OF.
Nashville	0001	30 to 45	40 to 60	0.50/2.00	Local/OF.
	0900	30 to 45		0.50/2.00	Local.
	2030	32 to 48	48 to 72	0.50	None.
New Orleans	0001	30 to 45	40 to 60	0.50/1.75	Local/OF.
	0900 Sat		40 to 60	0.50	OF.
	2030	32 to 48	48 to 72	0.50	None.
Miami	0001	30 to 45	40 to 60	0.50/2.00	Local/OF.
	2130	32 to 48	48 to 72	0.50	None.
7 Chicago	0001	45 to 68	55 to 82	1.00/2.00	City/RCPC/OF.
	2100	45 to 68	55 to 82	1.00	None.
Detroit	0001	45 to 68	55 to 82	1.00/2.50	City/RCPC/OF.
	2000	45 to 68	55 to 82	1.00	None.
Des Moines	0001	45 to 68	55 to 82	1.00/2.00	City/RCPC/OF.
	2000	45 to 68	55 to 82	1.00	None.
Indianapolis	0001	45 to 68	55 to 82	1.00/2.00	City/RCPC/OF.
	2100	45 to 68	55 to 82	1.00	None.
Milwaukee	0001	45 to 68	55 to 82	1.00/2.00	City/RCPC/OF.
	2130	45 to 68	55 to 82	1.00	None.
8 St. Louis	0001	35 to 53 [6]	40 to 60 [6]	1.50/2.50	Local/OF.
	1500 [3]	35 to 53 [6]	40 to 60 [6]	1.50	None.
	1500 [3]	35 to 53 [6]	40 to 60 [6]	1.50/2.50	Local/OF.
	2000 [3]	35 to 53 [6]	40 to 60 [6]	1.50	None.
Little Rock	0001	35 to 53 [6]	40 to 60 [6]	0.50/2.25	Local/OF.
	1500	35 to 53 [6]	40 to 60 [6]	0.50/2.25	Local/OF.
	2030	35 to 53 [6]	40 to 60 [6]	0.50	None.
Louisvill	0001	35 to 53 [6]	40 to 60 [6]	0.50	None.
	0001	35 to 53 [6]	40 to 60 [6]	0.50/2.50	Local/OF.

District/Office	Deposit Deadline [2]	Item Fee Range by Component (cents)		Return Letter Fee (dollars) [1]	Sorting Requirements
		Local	Other Fed		
	1500	35 to 53 [6]	40 to 60 [6]	0.50/2.50	Local/OF.
Memphis	0001	35 to 53 [6]	40 to 60 [6]	1.75/2.75	Local/OF.
	1500	35 to 53 [6]	40 to 60 [6]	1.75/2.75	Local/OF.
	2200	35 to 53 [6]	40 to 60 [6]	1.75	None.
9 Minneapolis	0001	45 to 55	60 to 80	0.75	None.
	0001	35 to 45	60 to 80	0.75/2.75	City/RCPC/Country/OF.
	1230	35 to 45	60 to 80	0.75/2.75	Country/OF.
	2200	35 to 45	60 to 80	0.75	None.
	0800	35 to 45		0.75/2.75	City.
Helena	0001	30 to 40	40 to 55	1.00	None.
	1200	30 to 40		1.00/2.00	Country.
	1900	30 to 40	40 to 55	1.00/2.00	City/RCPC/Country/OF.
	0030	30 to 40		1.00/2.00	RCPC.
	0830	30 to 40	40 to 55	1.00	None.
	1000	30 to 40		1.00/2.00	City.
10 Kansas City	0001	40 to 60	40 to 60	1.00/2.00	Local/OF.
	0001	25 to 33		1.00	City Group Sort.
	2130	30 to 45	40 to 60	1.00	None.
Denver	0001	40 to 60	40 to 60	0.75/1.75	Local/OF.
	2030	30 to 45	40 to 60	0.75	None.
	0900	30 to 45	40 to 60	0.75	None.
Oklahoma City	0001	36 to 54	40 to 60	1.00/2.00	Local/OF.
	2000	30 to 40	40 to 60	1.00	None.
Omaha	0030	36 to 54	40 to 60	1.00/2.00	Local/OF.
	2000	30 to 40	40 to 60	1.00	None.
11 Dallas	0001	40 to 60	47 to 70	1.00/2.00	City/RCPC/Country/OF.
	2000	40 to 60	47 to 70	1.00	None.
Houston	0001	40 to 60	47 to 70	1.00/2.00	City/RCPC/OF.
	2000	40 to 60	47 to 70	1.00	None.
San Antonio	0001	40 to 60	47 to 70	1.00/2.00	City/RCPC/OF.
	2000	40 to 60	47 to 70	1.00	None.
El Paso	0001	40 to 60	47 to 70	1.00/2.00	City/RCPC/OF.
	2000	40 to 60	47 to 70	1.00	None.
12 San Francisco	0001	35 to 50	55 to 80	1.00/2.00	City/RCPC/Country/OF.
	2100	45 to 70	60 to 90	1.00	None.
Los Angeles	0001	35 to 50	55 to 80	1.00/2.00	City/RCPC/OF.
	2100	45 to 70	60 to 90	1.00	None.
Portland	0001	30 to 45	50 to 75	1.00/2.00	City/RCPC/OF.
	2100	40 to 60	55 to 80	1.00	None.
Salt Lake City	0001	30 to 45	50 to 75	1.00/2.00	City/RCPC/OF.
	2100	40 to 60	55 to 80	1.00	None.
Seattle	0001	30 to 45	50 to 75	1.00/2.00	City/RCPC/OF.
	2100	40 to 60	55 to 80	1.00	None.

[1] This is a fixed charge that applies to each return letter. The first fee applies to local depositors; the second fee applies to interterritory depositors.
[2] Deadlines reported in military time i.e. 12:01 a.m. is shown as 0001, 9:00 a.m. is shown as 0900, 9:00 p.m. is shown as 2100.
[3] Availability differs by deadline.
[4] The second return letter fee applies to Other Fed return letters from local depositors as well as to local return letters received from interterritory depositors, except in Charleston where return letter fees are $1.50/local letter from local depositor; $2.00/Other Fed letter from local depositor; $3.00/local letter from interterritory depositor.
[5] These offices are considering an additional deadline between 0600 and 0900 for raw Other Fed return letters. Prices may be slightly higher than those shown at 0001 for Other Fed returns.
[6] Fees may vary by deadline even though the same range is shown for all.

Part II—Qualified Returns: Estimated Price Ranges and Deadlines for Federal Reserve Return Item Services

Section A: Open to Local Depositors, Consolidated Senders and Direct Shippers

District/Office	City			RCPC			Country	
	Unsorted		Group Sort	Unsorted		Group Sort	Unsorted Regular	Group Sort
	Regular	Premium		Regular	Premium			
1 Boston:								
Return Letter Fee ($) [1]	1.00/2.50	1.00/2.50		1.00/2.50	1.00/2.50			
Item Fee Range (cents/item)	4.0–5.1	6.0–7.5		6.0–6.6	7.0–9.9			
Deposit deadline [2]	0700	0830		0001	0245			
Lewiston:								
Return Letter Fee ($) [1]				1.00/2.50	1.00/2.50			
Item Fee Range (cents/item)				4.0–5.4	5.0–6.6			
Deposit deadline [2]				0001	0200			
Windson Locks:								
Return Letter Fee ($) [1]				1.00/2.50	1.00/2.50			
Item Fee Range (cents/item)				6.0–6.6	7.0–9.9			
Deposit deadline [2]				0001	0245			
2 New York:								
Return Letter Fee ($) [1]								
Item Fee Range (cents/item)								
Deposit deadline [2]								

District/Office	City			RCPC			Country	
	Unsorted		Group Sort	Unsorted		Group Sort	Unsorted Regular	Group Sort
	Regular	Premium		Regular	Premium			
Buffalo:								
Return Letter Fee ($) [1]	0.50/2.00			0.50/2.00	0.50/2.00			
Item Fee Range (cents/item)	4.4-6.6			4.8-7.5	9.4-14.1			
Deposit deadline [2]	0815			0001	0315			
Jericho:								
Return Letter Fee ($) [1]	0.50/2.00	0.50/2.00		0.50/2.00	0.50/2.00		0.50/2.00	
Item Fee Range (cents/item)	4.6-6.9	9.0-13.5		4.8-7.5	9.4-14.0		7.4-11.1	
Deposit deadline [2]	0700	0830		0001	0230		1200	
Cranford:								
Return Letter Fee ($) [1]	0.50/2.00	0.50/2.00		0.50/2.00	0.50/2.00			
Item Fee Range (cents/item)	4.6-6.9	9.0-13.5		4.8-7.5	9.4-14.1			
Deposit deadline [2]	0700	0830		0001	0230			
Utica:								
Return Letter Fee ($) [1]	0.50/2.00			0.50/2.00	0.50/2.00			
Item Fee Range (cents/item)	4.6-6.9			4.8-7.5	9.4-14.1			
Deposit deadline [2]	0001			0001	0245			
3 Philadelphia:								
Return Letter Fee ($) [1]	1.75/2.75	1.75/2.75		1.75/2.75	1.75/2.75			
Item Fee Range (cents/item)	3.0-4.5	3.8-5.7		4.4-6.6	7.0-10.5			
Deposit deadline [2]	0700	0830		0030	0230			
4 Cleveland:								
Return Letter Fee ($) [1]	1.75/3.50	1.75/3.50		1.75/3.50	1.75/3.50			
Item Fee Range (cents/item)	4.5-4.8	5.3-5.6		6.0-6.3	8.3-8.6			
Deposit deadline [2]	0930	1030		0001	0300			
Cincinnati:								
Return Letter Fee ($) [1]	1.75/3.50			1.75/3.50	1.75/3.50			
Item Fee Range (cents/item)	4.5-4.8			6.0-6.3	8.3-8.6			
Deposit deadline [2]	0830			0001	0245			
Pittsburgh:								
Return Letter Fee ($) [1]	1.75/3.50	1.75/3.50		1.75/3.50	1.75/3.50			
Item Fee Range (cents/item)	4.5-4.8	5.3-5.6		6.0-6.3	8.3-8.6			
Deposit deadline [2]	0830	0930		0130	0330			
Columbus:								
Return Letter Fee ($) [1]	1.75/3.50			1.75/3.50	1.75/3.50			
Item Fee Range (cents/item)	4.5-4.8			6.0-6.3	8.3-8.6			
Deposit deadline [2]	0745			0001	0230			
5 Richmond:								
Return Letter Fee ($) [1]	1.25/2.25			1.25/2.25	1.25/2.25			
Item Fee Range (cents/item)	3.2-4.8			4.2-6.3	8.6-12.9			
Deposit deadline [2]	0900			0001	0245			
Baltimore:								
Return Letter Fee ($) [1]	1.75/2.75	1.75/2.75		1.75/2.75	1.75/2.75			
Item Fee Range (cents/item)	3.4-5.1	4.0-6.0		4.4-6.6	8.6-12.9			
Deposit deadline [2]	0700	0830		0001	0315			
Charlotte:								
Return Letter Fee ($) [1]	1.25/2.25			1.25/2.25	1.25/2.25			
Item Fee Range (cents/item)	3.2-4.8			4.0-6.0	9.4-14.1			
Deposit deadline [2]	0900			0001	0245			
Columbia:								
Return Letter Fee ($) [1]	1.50/2.50			1.50/2.50	1.50/2.50			
Item Fee Range (cents/item)	3.4-5.1			4.0-6.0	8.6-12.9			
Deposit deadline [2]	0900			0001	0245			
Charleston:								
Return Letter Fee ($) [1]	1.50/3.00			1.50/3.00	1.50/3.00			
Item Fee Range (cents/item)	3.6-5.4			4.2-6.3	8.6-12.9			
Deposit deadline [2]	0900			0001	0230			
6 Atlanta:								
Return Letter Fee ($) [1]	0.50/2.00			0.50/2.00	2.00/3.50			
Item Fee Range (cents/item)	2.2-3.3			3.6-5.4	6.0-9.0			
Deposit deadline [2]	0900			0001	0130			
Birmingham:								
Return Letter Fee ($) [1]	0.50/2.00			0.50/2.00	2.50/4.00			
Item Fee Range (cents/item)	2.4-3.6			3.6-5.4	6.8-10.2			
Deposit deadline [2]	0900			0001	0130			
Jacksonville:								
Return Letter Fee ($) [1]	0.50/2.00			0.50/2.00	3.00/4.50			
Item Fee Range (cents/item)	2.2-3.3			3.4-5.1	7.2-10.8			
Deposit deadline [2]	0900			0001	0230			
Nashville:								
Return Letter Fee ($) [1]	0.50/2.00	1.50/3.50		0.50/2.00	2.00/3.50			
Item Fee Range (cents/item)	2.6-3.9	4.0-6.0		3.6-5.4	7.0-10.5			
Deposit deadline [2]	0900	1000		0001	0130			
New Orleans:								
Return Letter Fee ($) [1]	0.50/1.75			0.50/1.75	3.00/4.25			
Item Fee Range (cents/item)	2.0-3.0			3.6-5.4	7.0-10.5			
Deposit deadline [2]	0900			0001	0215			
Miami:								
Return Letter Fee ($) [1]	0.50/2.00			0.50/2.00	0.50/3.00			

District/Office	City			RCPC			Country	
	Unsorted		Group Sort	Unsorted		Group Sort	Unsorted Regular	Group Sort
	Regular	Premium		Regular	Premium			
Item Fee Range (cents/item)	2.2-3.3			3.4-5.1	5.8-8.7			
Deposit deadline [2]	0830			0001	0300			
7 Chicago:								
Return Letter Fee ($) [1]	1.00/2.00	1.00/2.00		1.00/2.00	1.00/2.00			
Item Fee Range (cents/item)	4.4-6.6	5.0-7.5		6.6-9.9	8.0-12.0			
Deposit deadline [2]	0630	0730		0001	0100			
Detroit:								
Return Letter Fee ($) [1]	1.00/2.50			1.00/2.50	1.50/3.00			
Item Fee Range (cents/item)	3.2-4.8			4.2-6.3	7.8-11.7			
Deposit deadline [2]	0900			0001	0215			
Des Moines:								
Return Letter Fee ($) [1]	1.00/2.00			1.00/2.00	1.00/2.00			
Item Fee Range (cents/item)	3.0-4.5			4.6-6.9	8.8-13.2			
Deposit deadline [2]	0800			0001	0230			
Indianapolis:								
Return Letter Fee ($) [1]	1.00/2.00	1.00/2.00		1.00/2.00	1.00/2.00			
Item Fee Range (cents/item)	2.8-4.2	3.2-4.8		3.4-5.1	7.2/10.8			
Deposit deadline [2]	0900	0930		0001	0315			
Milwaukee:								
Return Letter Fee ($) [1]	1.00/2.00			1.00/2.00	1.00/2.00			
Item Fee Range (cents/item)	3.8-5.7			4.0-6.0	7.0-10.5			
Deposit deadline [2]	0915			0100	0215			
8 St. Louis:								
Return Letter Fee ($) [1]	1.50/2.50	2.00/3.00		1.50/2.50	2.00/3.00		1.50/2.50	
Item Fee Range (cents/item)	4.0-6.0	6.2-9.3		4.4-6.6	6.2-9.3		4.8-7.2	
Deposit deadline [2]	0900	0930		0230	0300		2000	
Little Rock:								
Return Letter Fee ($) [1]	0.50/2.25	0.50/2.25		0.50/2.25	0.50/2.25			
Item Fee Range (cents/item)	4.2-6.3	6.2-9.3		5.0-7.5	7.2-10.8			
Deposit deadline [2]	0900	1030		0001	0130			
Louisville:								
Return Letter Fee ($) [1]	0.50/2.50	1.00/3.00		0.50/2.50	1.00/3.00			
Item Fee Range (cents/item)	4.0-6.0	6.4-9.6		4.2-6.3	9.4-14.1			
Deposit deadline [2]	0815	0900		0001	0230			
Memphis:								
Return Letter Fee ($) [1]	1.75/2.75	2.75/3.75		1.75/2.75	2.75/3.75			
Item Fee Range (cents/item)	4.0-6.0	6.2-9.3		4.6-6.9	7.0-10.5			
Deposit deadline [2]	0800	0930		0001	0130			
9 Minneapolis:								
Return Letter Fee ($) [1]	1.00/3.00			1.00/3.00	1.00/3.00		1.00/3.00	
Item Fee Range (cents/item)	4.2-5.1			6.5-7.8	8.5-10.5		8.0-9.9	
Deposit deadline [2]	0800			0001	0230		1230	
Helena:								
Return Letter Fee ($) [1]	1.00/2.00			1.00/2.00	1.00/2.00		1.00/2.00	
Item Fee Range (cents/item)	3.8-5.7			5.4-8.1	7.8-11.7		5.8-8.7	
Deposit deadline [2]	1000			0001	0030		1200	
10 Kansas City:								
Return Letter Fee ($) [1]	1.00/2.00	1.00/2.00					1.00/2.00	
Item Fee Range (cents/item)	3.4-5.1	7.0-10.5					6.0-9.0	
Deposit deadline [2]	0830	0930					0001	
Denver:								
Return Letter Fee ($) [1]	.75/1.75			.75/1.75	.75/1.75		.75/1.75	
Item Fee Range (cents/item)	3.4-5.1			4.0-6.0	8.2-12.3		5.2-7.8	
Deposit deadline [2]	0900			0001	0130		1300	
Oklahoma City:								
Return Letter Fee ($) [1]	1.00/2.00			1.00/2.00	1.00/2.00		1.00/2.00	
Item Fee Range (cents/item)	3.2-4.8			4.0-6.0	6.6-9.9		4.4-6.6	
Deposit deadline [2]	0900			0400	0500		0001	
Omaha:								
Return Letter Fee ($) [1]	1.00/2.00			1.00/2.00	1.00/2.00		1.00/2.00	
Item Fee Range (cents/item)	3.6-5.4			4.4-6.6	6.4-9.6		6.0-9.0	
Deposit deadline [2]	0900			0030	0130		1500	
11 Dallas:								
Return Letter Fee ($) [1]	1.00/2.00			1.00/2.00	1.00/2.00	1.00/2.00	1.00/2.00	1.00/2.00
Item Fee Range (cents/item)	3.2-4.8			4.2-6.3	6.4-9.6	5.0-7.5	5.2-7.8	4.2-6.3
Deposit deadline [2]	0900			0001	0115	0330	2000	2000
Houston:								
Return Letter Fee ($) [1]	1.00/2.00		1.00/2.00	1.00/2.00	1.00/2.00	1.00/2.00		
Item Fee Range (cents/item)	3.2-4.8		2.4-3.6	4.2-6.3	6.4-9.6	3.6-5.4		
Deposit deadline [2]	0915		1100	0001	0030	0200		
San Antonio:								
Return Letter Fee ($) [1]	1.00/2.00			1.00/2.00				
Item Fee Range (cents/item)	3.2-4.8			4.2-6.3				
Deposit deadline [2]	0930			0200				
El Paso:								
Return Letter Fee ($) [1]	1.00/2.00			1.00/2.00	1.00/2.00			
Item Fee Range (cents/item)	3.2-4.8			5.8-8.7	8.6-12.9			
Deposit deadline [2]	0915			0001	0030			

District/Office	City			RCPC			Country	
	Unsorted		Group Sort	Unsorted		Group Sort	Unsorted Regular	Group Sort
	Regular	Premium		Regular	Premium			
12 San Francisco:								
Return Letter Fee ($) [1]	1.00/2.00			1.00/2.00	1.00/2.00		1.00/2.00	
Item Fee Range (cents/item)	4.0–6.0			4.5–6.8	7.7–11.6		5.0–7.5	
Deposit deadline [2]	0730			0001	0200		0001	
Los Angeles:								
Return Letter Fee ($) [1]	1.00/2.00			1.00/2.00	1.00/2.00		1.00/2.00	
Item Fee Range (cents/item)	4.0–6.0			4.5–6.8	7.7–11.6		5.0–7.5	
Deposit deadline [2]	0800			0001	0200		0001	
Portland:								
Return Letter Fee ($) [1]	1.00/2.00			1.00/2.00	1.00/2.00			
Item Fee Range (cents/item)	4.0–6.0			4.5–6.8	7.7–11.6			
Deposit deadline [2]	0900			0001	0200			
Salt Lake City:								
Return Letter Fee ($) [1]	1.00/2.00			1.00/2.00	1.00/2.00			
Item Fee Range (cents/item)	4.0–6.0			4.5–6.8	7.7–11.6			
Deposit deadline [2]	0930			0001	0200			
Seattle:								
Return Letter Fee ($) [1]	1.00			1.00	1.00			
Item Fee Range (cents/item)	4.0–6.0			4.5–6.8	7.7–11.6			
Deposit deadline [2]	0900			0001	0200			

[1] This is a fixed charge that applies to each return letter. The first fee applies to local depositors; the second applies to out-of-zone depositors.
[2] Deadlines reported in military time i.e. 12:01 a.m. is shown as 0001, 9:00 a.m. is shown as 0900, 9:00 p.m. is shown as 2100.

Section B Open to Local Depositors Only

1. Mixed Qualified Return Deposits

District/Office	Deposit Deadline [2]	Item FEE Range by Component (cents)					Return Letter Fee (dollars) [1]
		City	RCPC	Country	Local	Other FED	
1 Boston	2100				5.6 to 8.4	12.0 to 18.0	1.00
	0001				5.6 to 8.4	12.0 to 18.0	1.00
	0700				5.6 to 8.4	12.0 to 18.0	1.00
Lewiston	2100				5.6 to 8.4	12.0 to 18.0	1.00
	0001				5.6 to 8.4	12.0 to 18.0	1.00
Windsor Locks	2100				5.6 to 8.4	12.0 to 18.0	1.00
	0001				5.6 to 8.4	12.0 to 18.0	1.00
2 New York:							
Buffalo	0001	4.4 to 6.6	4.8 to 7.5		5.6 to 8.4	10.2 to 15.3	0.50
	0200	4.4 to 6.6	9.4 to 14.1		5.6 to 8.4	10.2 to 15.3	0.50
Jericho	2200	4.6 to 6.9	4.8 to 7.5		5.6 to 8.4	10.2 to 15.3	0.50
	0001	4.6 to 6.9	4.8 to 7.5		5.6 to 8.4	10.2 to 15.3	0.50
Cranford	2200	4.6 to 6.9	4.8 to 7.5		5.6 to 8.4	10.2 to 15.3	0.50
	0001	4.6 to 6.9	4.8 to 7.5		5.6 to 8.4	10.2 to 15.3	0.50
Utica	2200	4.6 to 6.9	4.8 to 7.5		5.6 to 8.4	10.2 to 15.3	0.50
	0001	4.6 to 6.9	4.8 to 7.5		5.6 to 8.4	10.2 to 15.3	0.50
	0130	4.6 to 6.9	9.4 to 14.1		5.6 to 8.4	10.2 to 15.3	0.50
3 Philadelphia	2100				4.6 to 6.9	10.0 to 15.0	2.25
	2300				4.6 to 6.9	10.0 to 15.0	2.25
4 Cleveland	1900	4.5 to 5.1	6.0 to 6.6			11.4 to 21.0	1.75
	2100	4.5 to 5.1	6.0 to 6.6			11.4 to 21.0	1.75
	2200	4.5 to 5.1	6.0 to 6.6			11.4 to 21.0	1.75
	0001	4.5 to 5.1	6.0 to 6.6			11.4 to 21.0	1.75
Cincinnati	2000	4.5 to 5.1	6.0 to 6.6			11.4 to 21.0	1.75
	2230	4.5 to 5.1	6.0 to 6.6			11.4 to 21.0	1.75
	0001	4.5 to 5.1	6.0 to 6.6			11.4 to 21.0	1.75
Pittsburgh	1600	4.5 to 5.1	6.0 to 6.6			11.4 to 21.0	1.75
	2130	4.5 to 5.1	6.0 to 6.6			11.4 to 21.0	1.75
	0001	4.5 to 5.1	6.0 to 6.6			11.4 to 21.0	1.75
Columbus	1800	4.5 to 5.1	6.0 to 6.6			11.4 to 21.0	1.75
	0001	4.5 to 5.1	6.0 to 6.6			11.4 to 21.0	1.75
5 Richmond	2115	3.2 to 4.8	4.2 to 6.3			10.2 to 15.3	2.00
Baltimore	2030	3.4 to 5.1	4.4 to 6.6			10.4 to 15.4	2.25
	2330	3.4 to 5.1	4.4 to 6.6			10.4 to 15.4	2.25
	1300	3.4 to 5.1	4.4 to 6.6			10.4 to 15.4	2.25
Charlotte	2130	3.2 to 4.8	4.0 to 6.0			10.2 to 15.3	1.50
Columbia	2200	3.4 to 5.1	4.0 to 6.0			10.4 to 15.4	1.75
Charleston	2115	3.6 to 5.4	4.2 to 6.3			11.0 to 16.5	2.00
6 Atlanta	2130	2.4 to 3.6	3.8 to 5.7			8.8 to 13.2	0.50
	1430 (Bat)	2.4 to 3.6	3.8 to 5.7			8.8 to 13.2	0.50
Birmingham	2130	2.6 to 3.9	3.8 to 5.7			9.2 to 13.8	0.50
Jacksonville	2100	2.4 to 3.6	3.6 to 5.4			8.4 to 12.6	0.50
Nashville	2230	2.8 to 4.2	3.8 to 5.7			9.8 to 14.7	0.10
New Orleans	0001	2.4 to 3.6	4.0 to 6.0			8.4 to 12.6	0.50
Miami	1900	2.4 to 3.6	3.6 to 5.4			8.4 to 12.6	0.50

1. Mixed Qualified Return Deposits—Continued

District/Office	Deposit Deadline [2]	Item FEE Range by Component (cents)					Return Letter Fee (dollars) [1]
		City	RCPC	Country	Local	Other FED	
7 Chicago	1830	4.4 to 6.6	6.6 to 9.9			11.2 16.8	1.00
	2100	4.4 to 6.6	6.6 to 9.9			11.2 16.8	1.00
	2300	4.6 to 6.8	6.8 to 10.2			11.4 to 17.1	1.00
Detroit	2000				4.2 to 6.3	10.4 to 15.6	1.00
	2315				4.2 to 6.3	10.4 to 15.6	1.00
	0001				4.2 to 6.3	10.4 to 15.6	1.00
Des Moines	2000	3.2 to 4.8	3.6 to 6.0			10.4 to 15.6	1.00
	2300	3.2 to 4.8	3.6 to 6.0			10.4 to 15.6	1.00
Indianapolis	2100	3.0 to 4.5	3.4 to 5.1			9.6 to 14.4	1.00
	2300	3.0 to 4.5	3.4 to 5.1			9.6 to 14.4	1.00
Milwaukee	2130	3.0 to 5.0	3.2 to 5.3			8.7 to 14.5	1.00
	2330	3.0 to 5.0	3.2 to 5.3			8.7 to 14.5	1.00
	0001	3.0 to 5.0	3.2 to 5.3			8.7 to 14.5	1.00
8 St. Louis	1700				4.6 to 6.9	10.4 to 15.6	1.50
	2000				4.6 to 6.9	10.4 to 15.6	1.50
	0130				4.6 to 6.9	10.4 to 15.6	1.50
	0800				4.6 to 6.9	10.4 to 15.6	1.50
Little Rock	1730				5.0 to 7.5	11.4 to 17.1	0.50
	2030				5.0 to 7.5	11.4 to 17.1	0.50
	0001				5.0 to 7.5	11.4 to 17.1	0.50
	0900				5.0 to 7.5	11.4 to 17.1	0.50
Louisville	0001				4.2 to 6.3	10.0 to 15.0	0.50
	0815				4.2 to 6.3	10.0 to 15.0	0.50
Memphis	2200				4.6 to 6.9	9.6 to 14.4	1.75
	0001				4.6 to 6.9	9.6 to 14.4	1.75
	0800				4.6 to 6.9	9.6 to 14.4	1.75
9 Minneapolis	1230				7.5 to 9.0	15.5 to 18.6	1.00
	1830				7.5 to 9.0	15.5 to 18.6	1.00
	2200				7.5 to 9.0	15.5 to 18.6	1.00
	0001				7.5 to 9.0	15.5 to 18.6	1.00
	0800				7.5 to 9.0	15.5 to 18.6	1.00
Helena	1900	3.9 to 5.8	5.5 to 8.2	5.9 to 8.8		11.7 to 17.5	1.00
	0001	3.9 to 5.8	5.5 to 8.2	5.9 to 8.8		11.7 to 17.5	1.00
	0830	3.9 to 5.8	5.5 to 8.2	5.9 to 8.8		11.7 to 17.5	1.00
10 Kansas City	1530	3.6 to 5.4		6.2 to 9.3		11.0 to 16.5	1.00
	1900 (M–Th)	3.6 to 5.4		6.2 to 9.3		11.0 to 16.5	1.00
	2130 (M–Th)	3.6 to 5.4		6.2 to 9.3		11.0 to 16.5	1.00
	0001	3.6 to 5.4		6.2 to 9.3		11.0 to 16.5	1.00
	0830	3.6 to 5.4		6.2 to 9.3		11.0 to 16.5	1.00
	1330 (Sat)	3.6 to 5.4		6.2 to 9.3		11.0 to 16.5	1.00
Denver	1300	3.6 to 5.4	4.2 to 6.3	5.4 to 8.1		10.2 to 15.3	0.75
	1430	3.6 to 5.4	4.2 to 6.3	5.4 to 8.1		10.2 to 15.3	0.75
	0001	3.6 to 5.4	4.2 to 6.3	5.4 to 8.1		10.2 to 15.3	0.75
	2030	3.6 to 5.4	4.2 to 6.3	5.4 to 8.1		10.2 to 15.3	0.75
	0900	3.6 to 5.4	4.2 to 6.3	5.4 to 8.1		10.2 to 15.3	0.75
Oklahoma City	2000	3.4 to 5.1	4.2 to 6.3	4.6 to 6.9		12.6 to 18.9	1.00
	0001	3.4 to 5.1	4.2 to 6.3	4.6 to 6.9		12.6 to 18.9	1.00
	0400	3.4 to 5.1	4.2 to 6.3	4.6 to 6.9		12.6 to 18.9	1.00
	0900	3.4 to 5.1	4.2 to 6.3	4.6 to 6.9		12.6 to 18.9	1.00
Omaha	1500	3.8 to 5.6	4.6 to 6.8	6.2 to 9.3		12.6 to 18.8	1.00
	2000	3.8 to 5.6	4.6 to 6.8	6.2 to 9.3		12.6 to 18.8	1.00
	0030	3.8 to 5.6	4.6 to 6.8	6.2 to 9.3		12.6 to 18.8	1.00
	0900	3.8 to 5.6	4.6 to 6.8	6.2 to 9.3		12.6 to 18.8	1.00
11 Dallas	1400	3.5 to 5.2	4.5 to 6.7	5.5 to 8.2		12.3 to 18.4	1.00
	1900	3.5 to 5.2	4.5 to 6.7	5.5 to 8.2		12.3 to 18.4	1.00
	0001	3.5 to 5.2	4.5 to 6.7	5.5 to 8.2		12.3 to 18.4	1.00
	0900	3.5 to 5.2	4.5 to 6.7	5.5 to 8.2		12.3 to 18.4	1.00
Houston	1200	3.5 to 5.2	4.5 to 6.7			12.3 to 18.4	1.00
	1900	3.5 to 5.2	4.5 to 6.7			12.3 to 18.4	1.00
	0001	3.5 to 5.2	4.5 to 6.7			12.3 to 18.4	1.00
	0900	3.5 to 5.2	4.5 to 6.7			12.3 to 18.4	1.00
San Antonio	1200	3.5 to 5.2	4.5 to 6.7			12.3 to 18.4	1.00
	1900	3.5 to 5.2	4.5 to 6.7			12.3 to 18.4	1.00
	0001	3.5 to 5.2	4.5 to 6.7			12.3 to 18.4	1.00
	0930	3.5 to 5.2	4.5 to 6.7			12.3 to 18.4	1.00
El Paso	1200	3.5 to 5.2	6.1 to 9.1			12.3 to 18.4	1.00
	0001	3.5 to 5.2	6.1 to 9.1			12.3 to 18.4	1.00
	0915	3.5 to 5.2	6.1 to 9.1			12.3 to 18.4	1.00
12 San Francisco	0001				5.0 to 7.5	11.5 to 17.5	1.00
Los Angeles	0001				5.0 to 7.5	11.5 to 17.5	1.00
Portland	0001				5.0 to 7.5	9.5 to 14.0	1.00
Salt Lake City	0001				5.0 to 7.5	9.5 to 14.0	1.00
Seattle	0001				5.0 to 7.5	9.5 to 14.0	1.00

[1] This is a fixed charge that applies to each return letter.

[2] Deadlines reported in military time, i.e. 12:01 a.m. is shown as 0001, 9:00 a.m. is shown as 0900, 9:00 p.m. is shown as 2100. Deposit deadlines are Monday through Friday unless otherwise noted. Availability differs by deadline.

2. Other FED Qualified Return Deposits

District/Office	Deposit Deadline [2]	Item Fee Range (cents)	Return Letter Fee (dollars) [1]
1. Boston	0001	12.0 to 16.0	1.00
Lewiston	0001	12.0 to 16.0	1.00
Windsor Locks	0001	12.0 to 16.0	1.00
2. New York:			
Buffalo	1600	10.2 to 15.3	0.50
	1000	10.2 to 15.3	0.50
Jericho	0001	10.2 to 15.3	0.50
Cranford	2000	9.8 to 14.7	0.50
	2200	11.2 to 16.8	0.50
	0001	10.2 to 15.3	0.50
Utica	0001	10.2 to 15.3	0.50
3. Philadelphia	1400	10.0 to 15.0	2.25
	2300	10.0 to 15.0	2.25
4. Cleveland	1900	11.4 to 21.0	1.75
	2100	11.4 to 21.0	1.75
	2200	11.4 to 21.0	1.75
	0001	11.4 to 21.0	1.75
Cincinnati	2000	11.4 to 21.0	1.75
	2230	11.4 to 21.0	1.75
Pittsburgh	1600	11.4 to 21.0	1.75
	2130	11.4 to 21.0	1.75
	2230	11.4 to 21.0	1.75
	0001	11.4 to 21.0	1.75
Columbus	1800	11.4 to 21.0	1.75
	2200	11.4 to 21.0	1.75
	0001	11.4 to 21.0	1.75
5. Richmond	2000	10.2 to 15.3	2.25
	2300	10.2 to 15.3	2.25
Baltimore	1300	10.4 to 15.4	2.75
	2030	10.4 to 15.4	2.75
	2330	10.4 to 15.4	2.75
Charlotte	2130	10.2 to 15.3	2.25
	2400	10.2 to 15.3	2.25
Columbia	2230	10.4 to 15.4	2.50
	2400	10.4 to 15.4	2.50
Charleston	2115	11.0 to 16.5	2.00
	2400	11.0 to 16.5	2.00
6. Atlanta	2200 (M–Th)	8.4 to 12.6	0.50
	1430 (Sat)	8.4 to 12.6	0.50
Birmingham	1900 (M–Th)	8.8 to 13.2	0.50
	1000 (Sat)	8.8 to 13.2	0.50
Jacksonville	2300 (M–Th)	8.2 to 12.3	0.50
	1200 (Sat)	8.2 to 12.3	0.50
Nashville	2230 (M–Th)	9.4 to 14.1	0.50
	1200 (Sat)	9.4 to 14.1	0.50
New Orleans	2230 (M–Th)	7.4 to 11.1	0.50
	1615 (Fri)	7.4 to 11.1	0.50
	1400 (Sat)	7.4 to 11.1	0.50
Miami	1915 (M–Th)	8.2 to 12.3	0.50
	1500 (Sat)	8.2 to 12.3	0.50
7. Chicago	1630	11.2 to 16.8	1.00
	2100	11.2 to 16.8	1.00
	2300	11.2 to 16.8	1.00
	0001	11.2 to 16.8	1.00
Detroit	2000	10.2 to 15.3	1.00
	2315	10.2 to 15.3	1.00
	0001	10.2 to 15.3	1.00
Des Moines	2000	9.8 to 14.7	1.00
	2200	9.8 to 14.7	1.00
	0001	10.2 to 15.3	1.00
Indianapolis	2100	9.4 to 14.1	1.00
	2300	9.4 to 14.1	1.00
Milwaukee	2130	11.4 to 17.1	1.00
	2330	11.4 to 17.1	1.00
	0001	11.4 to 17.1	1.00
8 St. Louis	1700	10.4 to 15.6	1.50
	2000	10.4 to 15.6	1.50
Little Rock	1730	11.4 to 17.1	0.50
	2030	11.4 to 17.1	0.50
Louisville	0001	10.0 to 15.0	0.50
Memphis	2200	9.6 to 14.4	1.75
9. Minneapolis	1830	15.5 to 18.6	1.00
	2200	15.5 to 18.6	1.00
	1230	15.5 to 18.6	1.00
Helena	1900	11.6 to 17.4	1.00
	0830	11.6 to 17.4	1.00
10. Kansas City	1530 (M–Th)	10.8 to 16.2	1.00
	1900 (M–Th)	1.8 to 16.2	1.00

2. OTHER FED QUALIFIED RETURN DEPOSITS—Continued

District/Office	Deposit Deadline [2]	Item Fee Range (cents)	Return Letter Fee (dollars) [1]
	2130 (M-Th)	10.8 to 16.2	1.00
	1330 (Sat)	10.8 to 16.2	1.00
Denver	1430	10.0 to 15.0	0.75
	2030	10.0 to 15.0	0.75
Oklahoma City	2000	12.4 to 18.6	1.00
Omaha	2000	12.4 to 18.6	1.00
11. Dallas	1400	10.8 to 15.8	1.00
	1900	10.8 to 15.8	1.00
Houston	12.00	10.8 to 15.8	1.00
	1900	10.8 to 15.8	1.00
San Antonio	1200	10.8 to 15.8	1.00
	1900	10.8 to 15.8	1.00
El Paso	1200	10.8 to 15.8	1.00
12. San Francisco	1400	10.0 to 15.0	1.00
Los Angeles	1400	10.0 to 15.0	1.00
Portland	1200	8.5 to 12.5	1.00
Salt Lake City	2030	8.5 to 12.5	1.00
Seattle	1200	8.5 to 12.5	1.00

[1] This is a fixed charge that applies to each return letter.
[2] Deadlines reported in military time, i.e. 12:01 a.m. is shown as 0001, 9:00 a.m. is shown as 0900, 9:00 p.m. is shown as 2100. Deposit deadlines are Monday through Friday unless otherwise noted. Availability differs by deadline.

By order of the Board of Governors of the Federal Reserve System, April 5, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88-7790 Filed 4-8-88; 8:45 am]

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Federal Register

Monday
April 11, 1988

Part IV

Department of Health and Human Services

Alcohol, Drug Abuse, and Mental Health Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs; Final Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Final Guidelines.

SUMMARY: The Department of Health and Human Services (DHHS) adopts scientific and technical guidelines for Federal drug testing programs and establishes standards for certification of laboratories engaged in urine drug testing for Federal agencies.

EFFECTIVE DATE: April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Maureen Sullivan (301) 443-6780.

SUPPLEMENTARY INFORMATION: These Final Guidelines, titled "Mandatory Guidelines for Federal Workplace Drug Testing Programs" were developed in accordance with Executive Order No. 12564 dated September 15, 1986, and section 503 of Pub. L. 100-71, the Supplemental Appropriations Act for fiscal year 1987 dated July 11, 1987. The statute specifically requires that notice of proposed mandatory guidelines be published in the **Federal Register**; that interested persons be given not less than 60 days to submit written comments; and that after review and consideration of written comments, final guidelines be published which:

I. Establish comprehensive standards for all aspects of laboratory drug testing and laboratory procedures to be applied in carrying out Executive Order No. 12564, including standards which require the use of the best available technology for ensuring the full reliability and accuracy of drug tests and strict procedures governing the chain of custody of specimens collected for drug testing;

II. Specify the drugs for which Federal employees may be tested; and

III. Establish appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform drug testing in carrying out Executive Order No. 12564.

Subpart A of this document contains general provisions. Subpart B, titled "Scientific and Technical Requirements," responds to the mandates in items I and II above. Subpart C, titled "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," responds to item III.

In substance, these Final Guidelines are very similar to those in the Notice of Proposed Guidelines published on August 14, 1987 (52 FR 30638). However, significant editorial and format changes have been made. The Guidelines have been edited as a single, integrated document organized in a more traditional format with subparts, numbered sections, and consistent paragraph designators. Definitions have been grouped together in Subpart A. Rather than repeat identical material, the document contains internal cross-references, particularly from Subpart C to Subpart B. This new organizational approach should add clarity to presentation of the material and aid the cross-referencing and citation of individual sections and paragraphs.

Prior to addressing comments on the specifics of the scientific and technical requirements and the certification program, it is worth noting that a number of commentors perceived the laboratory standards in these Guidelines as redundant, viewing existing regulations, guidelines, and certification/licensure mechanisms of the Medicare and Clinical Laboratory Improvement Act of 1967 (CLIA) interstate licensure program—also administered by DHHS—as sufficient to provide quality assurance for urine drug testing laboratories.

The Medicare and CLIA certification requirements apply to laboratories conducting a wide range of medical tests, having been designed for any medical testing laboratory receiving Medicare/Medicaid reimbursement or performing testing on specimens in interstate commerce, respectively.

The laboratory portion of the President's Drug-Free Federal Workplace Program can be distinguished from the Medicare/CLIA programs by important differences in policies, procedures, and personnel arising from standards appropriate to the application of analytical forensic toxicology for this program. Unique distinguishing features include:

- Rigorous chain of custody procedures for collection of specimens and for handling specimens during testing and storage.
- Stringent standards for making the drug testing site secure, for restricting access to all but authorized personnel, and providing an escort for any others who are authorized to be on the premises;
- Precise requirements for quality assurance and performance testing specific to urine assays for the presence of illegal drugs; and
- Specific educational and experience requirements for laboratory personnel to ensure their competence and credibility as experts on forensic urine drug testing, particularly to qualify them as witnesses in legal proceedings which challenge the finding of the laboratory.

Medicare and CLIA laboratory certification procedures do not provide for quality assurance and performance testing specific to urine drug testing laboratories. With few exceptions, the Medicare and CLIA certification programs do not have employees specifically trained in toxicology to perform the on-site surveys and evaluations of the laboratories and the technologies employed in the laboratories. The Medicare and CLIA standards do not address issues such as cutoff limits for drug detection, grading criteria for the performance testing programs, blind performance testing requirements, specifications for the analytical techniques to be employed, types of drugs to be detected (including metabolites), and detailed outcome measures of performance such as requiring assays of quality control samples and a large number of performance test samples as an initial and ongoing requirement for certification.

The need to assure the protection of individual rights within the context of a drug testing program—linked to both employee assistance programs and the management potential for taking adverse action against an employee—makes essential the development of a separate laboratory certification program to respond to the unique requirements of the program mandated by the President and the Congress. These Guidelines set standards for such a certification program.

The Final Guidelines make clear that they do not apply to drug testing under any legal authority other than E.O. 12564, including testing of persons under the jurisdiction of the criminal justice system, such as arrestees, detainees, probationers, incarcerated persons, or parolees (see § 1.1(e)). The testing of persons in the criminal justice system is different than testing under E.O. 12564 for several reasons: (1) The overriding purpose of the criminal justice system is to protect community safety through the apprehension, adjudication, and punishment of law violators; (2) the incidence of drug use among those under the jurisdiction of the criminal justice system is high; and (3) the legal interests at issue in the criminal justice system, including liberty, privacy, and property interests, are different and, therefore, are subject to established practices, constitutional protections, and evidentiary rules specific to the criminal

justice system. The Guidelines also do not apply to military testing of service personnel or applicants to the military.

Response to Comments

Written comments to the Notice of Proposed Guidelines published August 14, 1987, were received from approximately 150 individuals, organizations, and Federal agencies. All written comments were reviewed and taken into consideration in the preparation of the Final Guidelines. This section summarizes major comments and the Department's response to them. Similar comments are considered together.

1. Several commenters requested that the Guidelines require a split sample technique in which a second sample or a portion of a sample could be saved for further testing. Although this possibility was considered, it is viewed as a cumbersome and expensive process involving the collection of two separate sets of samples and the retention of one for an indefinite period of time in some type of secured long term refrigerated storage. The use of a split sample was suggested as a mechanism to overcome perceived problems arising out of situations such as sample mixups, erroneous identification of samples, and lost samples. The Department does not agree that split or additional sample proposal would have any scientific advantage over the current system nor would they increase reliability. In fact, such a system could increase the risk of administrative error by doubling the labeling, initialing, storage, and accountability requirements. Furthermore, the Guidelines already include sufficient safeguards to eliminate the problems the use of split or additional samples are thought to address; e.g., detailed safeguards for labeling and chain of custody of the urine sample. Accordingly, we do not project any real scientific, chain of custody, or reliability benefits sufficient to justify placing the added requirement of collection and storage of split samples of Federal agencies and have rejected the split sample requirement. Furthermore, these Guidelines specifically reject allowing the tested employee or anyone else from presenting to the Medical Review Officer a split sample or private sample that does not fully comply with these Guidelines.

2. A number of commentors said that specific educational and experience requirements for laboratory directors and supervisors were too restrictive and that specific board certifications, experience, and degree requirements were also too restrictive and did not provide any additional quality assurance. In many cases these individuals recommended that the current Medicare and CLIA personnel standards be used in place of the standards proposed in the Guidelines. Other individuals and organizations stated that the proposed personnel standards in the Guidelines were not stringent enough. Some recommended that specific standards also be adopted for the personnel performing the tests.

The Department carefully considered the comments about the personnel standards proposed in the Guidelines—most of which came from employees of clinical laboratories or organizations representing those employees—from the perspective of the intent of the Guidelines. It is not possible to reconcile the divergent viewpoint represented in the comments. In this connection it should be noted that credentialing standards for laboratory personnel have been an issue for a number of years in other laboratory programs administered by DHHS, as well as among those who commented on the Notice proposing these Guidelines.

The laboratory personnel requirements in the Guidelines are designated to assure that any individual responsible for test-review and result-reporting is qualified to perform the function and could appear as an expert witness in a court challenge of the results. This requires familiarity with a wide range of material related to test selection, quality assurance, interferences with various tests, maintenance of chain of custody, documentation of findings, interpretation of test results, validation and verfication of test results, and the ability to testify as an expert in legal proceedings. The Guidelines set personnel requirements for the individuals responsible for day-to-day management and operation of laboratories engaged in urine drug testing for Federal agencies aimed at ensuring those competencies.

While a consultant may be able to carry out some of these specialized functions, it is essential that comprehensive oversight and control of the responsibilities cited above be exercised by those who are directly responsible on a day-to-day basis for the laboratory, who are accountable for the test results, and who may be called on to consult with the agency for which testing is performed as well as to appear at any legal proceeding to defend the quality of testing in the laboratory. Therefore, the Guidelines set functional employee qualification standards which are essential to the mission of a drug testing laboratory and require that laboratory employees meet those standards. For the purpose of meeting laboratory personnel requirements, no provision is made for the use of consultants who are not involved in the day-to-day management or operation of the laboratory.

The Final Guidelines set functional requirements for individuals engaged in the day-to-day management and operation of laboratories engaged in urine drug testing for Federal agencies. They do not specify requirements for other personnel, including employees who perform the assays, but rather depend on the ability of those responsible individuals to select and oversee properly qualified employees in each specific laboratory, and they depend on outcome measures of laboratory performance such as performance testing. The individual responsible for day-to-day laboratory management is responsible for determining staffing needs and types of personnel required to perform particular functions in a specific facility. The individual responsible for day-to-day laboratory operations is responsible for supervision of analysts performing drug tests and related duties. Outcome measures will provide the responsible individual with feedback on the performance of laboratory employees. Within this framework, the Guidelines do not establish qualifications for additional laboratory positions.

The individuals who perform the tests are a vital part of any laboratory operation, and there is no intent to minimize their importance by omitting qualifications for them. However, by holding the appropriate laboratory officials responsible for review and certification of all test results before they are sent forward and by relying on various quality control and quality assurance measures, performance testing and on-site evaluations to provide direct measures of the quality of testing, the Department expects to ensure a standard of excellence in drug testing without setting additional personnel requirements. This reliance on the qualifications of the individuals responsible for the day-to-day management and operation of urine drug testing laboratories does not prohibit the laboratories themselves from setting additional employees standards which may include specific credentials, certifications, licenses, registries, etc., for specific functions.

However, once a laboratory is certified in accordance with these Guidelines, laboratory employees whose functions are prescribed by these

Guidelines are deemed qualified. These Guidelines establish the exclusive standards for qualifying or certifying these employees involved in urainalysis testing. Certification of a laboratory under these Guidelines shall be a determination that all appropriate qualification requirements have been met. Agencies may not establish or negotiate additional requirements for these laboratory personnel.

Some commentors felt that references to director, supervisor of analysts, certifying officials, and other analysts did not clearly distinguish between those positions. Other commentors criticized the establishment of specific position titles. We have clarified laboratory employee functions and dropped the use of specific position titles in 2.3 Laboratory Personnel. A laboratory engaged in urine drug testing for Federal agencies must have personnel to perform the following functions:

- Be responsible for the day-to-day management and for the scientific and technical performance of the drug testing laboratory (even where another individual has overall responsibility for an entire multispeciality laboratory).
- Attest to the validity of the laboratory's test reports. This individual may be any employee who is qualified to be responsible for the day-to-day management or operation of the drug testing laboratory.
- Be responsible for the day-to-day operation of the drug testing laboratory and for the direct supervision of analysts performing drug tests and related duties.

In response to those commentors who were concerned about the proposed requirement for a Ph.D. to qualify as a laboratory director, the Final Guidelines provide that the individual responsible for the day-to-day drug testing laboratory management may have education and experience in lieu of a Ph.D. to demonstrate an individual's scientific qualifications in analytical forensic toxicology (see 2.3(a)(2)(iii)). Together with the specific analytical forensic toxicology experience required in 2.3(a)(2)(iv), scientific qualifications may be demonstrated by showing "training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree and in addition have training and laboratory or research experience in biology, chemistry, and pharmacology or toxicology." This Ph.D. comparability provision eliminates the utility of the "grandfather" clause in the proposed guidelines, a clause which would have qualified incumbent laboratory directors who have a graduate degee in the natural sciences followed by extensive experience (6 years postgraduate), in analytical forensic toxicology. Thus, the Final Guidelines omit the "Grandfather" clause.

The Ph.D comparability provision, while not requiring specific research experience, recognizes research as one mechanism for demonstrating scientific competency to be responsible for day-to-day laboratory management. Lack of research experience does not disqualify an individual for that function if he or she has other appropriate training or experience. The Ph.D. comparability provision also makes explicit that a medical degree is an acceptable alternative to the Ph.D. for this purpose, provided, of course, that the M.D. has the other requisite training and experience.

The Final Guidelines do not require specific board certification for any laboratory employees. Some commentors were concerned particularly that individuals who supervise analysts would have to be on the registry of the American Society for Clinical Pathologists (ASCP). The proposed guidelines cited the ASCP registry, but only as an example of the type of experience and education that would qualify an individual to oversee the day-to-day operations of a urine drug testing laboratory, including the supervision of analysts. The important factors associated with day-to-day operation and supervision of analysts in a forensic toxicology laboratory are captured in 2.3(c). Therefore, the Final Guidelines omit any reference to a registry as a factor in qualifying an individual for this function. Likewise, the Guidelines do not refer to a registry for the individual responsible for day-to-day laboratory management or the individual responsible for attesting to the validity of the laboratory's test reports, but rely instead on education and experience qualifications set out in 2.3 (a) and (b), respectively.

Consistent with editorial revisions throughout the Final Guidelines, editorial changes in the personnel provisions are intended to clarify specific education, training, and experience requirements for individuals to carrying out vital laboratory functions, to simplify by adopting consistent terminology, and to eliminate the need to compare similar provisions by using identical provisions when appropriate. In this regard, the personnel provisions in Subpart B, which sets out the scientific and technical requirements, and in Subpart C, which sets out the standards for certification of laboratories, are identical: Subpart C simply cross-references the personnel provisions in Subpart B.

3. A number of commentors said that it was unnecessarily restrictive to require that the screening and confirmation tests be performed at the same site. They believed that the majority of tests would be negative and that would reduce the number of samples that must be shipped to another site and would, in turn, prevent sample mixup and loss.

After having carefully reviewed this issue, the Department has determined that both screening and confirmatory testing must be performed at the same time (3.5). Although use of separate screening and confirmation laboratories may produce adequate results, Pub. L. 100–71 mandates that the Secretary set standards which "require * * * strict procedures governing the chain of custody of specimens collected for drug testing." Same-site screening and confirmation is the best method for maintaining such strict control in the chain of custody.

Requiring the two tests to be performed in the same laboratory will reduce problems inherent in having two test sites, such as problems maintaining chain of custody forms at two test sites; need for having two separate laboratory forms; possible mix-ups and loss of samples in transit between sites; potential delays in reporting results; and potential for having results reported only on the basis of an initial screening test.

Several commentors indicated that if screening were done on-site this would reduce the number of subsequent requirements for rescreening and result in fewer samples being sent to another site. The Federal work force testing program does not envision performing initial tests at the collection site. Therefore, considerations concerning on-site initial screening tests are not relevant to the current Federal testing program.

4. Several commenters indicated that a number of terms were not defined or that there was no single section defining terms used in the Notice of Proposed Guidelines. The Final Guidelines include a section to centralize the definitions that appeared in the proposed document and add definitions to several previously undefined terms (1.2). The term "proficiency testing" has been edited throughout to read "performance testing" as a more precise reflection of the nature of the testing with which these Guidelines are concerned.

5. A number of commenters said that the cutoff limits for the reporting of positive results should be higher or

lower than those proposed (see 52 FR 30641). There also were commentors who believed that the cutoff limits for the screening and confirmation tests should be set at the same level.

The initial immunoassay test cutoff is established at levels generally similar to those used by the Department of Defense and available with commercial immunoassays. These levels are consistent with detection of recent drug use.

The second set of cutoff levels is for the gas chromatography/mass spectrometry (GC/MS) confirmatory test, chosen so that the specimens determined to be positive by the first technique (screening technique) could be confirmed at a reasonable level of analytical accuracy.

The Final Guidelines retain all the proposed initial test cutoff values (2.4(e)). Confirmation for marijuana is changed by 5 ng/ml in accordance with DOD experience. Likewise, confirmation for amphetamines reflects the cutoff intended for the notice of proposed guidelines consistent with DOD levels. Cutoffs for specific opiates (morphine and codeine) and amphetamines (amphetamine and methamphetamine) are delineated for clarity (2.4(f)).

In finalizing both screening and confirmation cutoffs, among the matters considered were prevalence rate; cross-reactivity; state of the art in drug detection; and the experience of the Department of Defense and other groups in large-volume drug testing programs.

6. Several commentors indicated that alcohol should be included among the substances to be tested. The Department acknowledges the significance of alcohol and its use as well as its potential impact on performance in the workplace. In any event, alcohol is not an illegal substance, and Executive Order 12564, which these Guidelines implement, only authorizes testing for illicit drugs listed in Schdule I and Schedule II of the Controlled Substances Act. However, nothing in these Guidelines restricts the authority of agencies to test for alcohol under authorities other than E.O. 12564.

7. Several commentors indicated that photo identifications should be required at the testing site to ensure that the tested individual is properly identified. We concur that proper identification should be provided by the individuals at the test site to assure that the correct individual will be tested. Since most Federal agencies already issue photo identification cards to their employees and most employees have a driver's license with photo identification, it is not unreasonable to require this form of identification for individuals presenting themselves for testing. In cases where the individual does not have a proper photo identification, the collection site person must get the employee's supervisor, coordinator of the drug testing program, or any other agency official who knows the employee to provide a positive identification (2.2(f)(2)).

8. Several commentors suggested that toilets, water faucets, and other sources of water which could be used as adulterants should be taped shut or sealed to prevent adulteration of the sample at the collection site. The Department acknowledges that sources of water should not be available which would enable an individual to adulterate the sample. However, there are also needs, such as hand washing, for a relatively convenient source of water. These Guidelines cannot anticipate the needs at each collection site and the hardship which would be imposed by sealing all sources of water at the site. However, the proposed and Final Guidelines do include in 2.2 precautions in specimen collection procedures to ensure the integrity and identity of the specimen. Because we have taken reasonable steps to ensure that specimens are not adulterated at the collection site and because there are practical reasons for having a convenient source of water, the Final Guidelines do not require that all sources of water be taped or sealed shut but rather require that precautions be taken to ensure that unadulterated specimens are obtained. Among the precautions included in 2.2(f) to ensure unadulterated specimens is a requirement to use a bluing agent so that the water in the toilet tank and bowl are colored blue and that there be no other source of water in the enclosure where the sampe is given.

9. Several commentors requested more specific guidelines to define "unusual behavior" at the urine collection site which would give reason to believe a particular individual may alter or substitute the specimen to be provided which, in turn, would trigger the requirement to obtain a second specimen under direct observation of a same gender collection site person (see 2.2(f)(16)). The guidelines focus on whether there is "reason to believe" (see 1.2 for definition) that a sample is adulterated. Observations of unusual behavior may bear on whether there is a "reason to believe" and for that reason the Guidelines require such observations to be documented in the permanent record book. While it may be desirable to provide specific descriptions of or guidelines to identify "unusual behavior," the Department cannot foresee or define every contingency which might occur. Thus, "unusual behavior" is not further defined in the Guidelines.

It should be noted, however, that other indicia of "reason to believe" are set out in 2.2(f). For example, 2.2(f)(12) and (13) require a temperature reading upon collection of the specimen and indicate those temperatures which would give rise to a reason to believe that a specimen may be altered or substituted. Elsewhere the Guidelines require the collection site person to inspect the sample for unusual color or other signs of contaminants (2.2(f)(14)). Likewise, if a collection site person sees unusual behavior which causes him or her to question the integrity of the sample such that it leads to a reason to believe that a particular individual may alter or substitute the specimen to be provided, the Guidelines require that such an observation be noted in writing in the permanent record book (2.2(f)(8)). The Final Guidelines also add a requirement that any "reason to believe" observation be concurred in by a higher level supervisor of the collection site person (2.2(f)(23).

With regard to reason to believe that a particular individual may alter or substitute the specimen based on the specimen's temperature falling outside the acceptable range, the Final Guidelines permit an individual to volunteer to have an oral temperature reading to provide evidence that the temperature of the specimen was consistent with the individual's body temperature, i.e., an individual's fever could cause an elevation in the temperature of the specimen (2.2(f)(13)).

10. Several commentors said that if the first specimen is subject to a reason to believe that the particular individual may alter or substitute the specimen which would require a second specimen to be collected, the second specimen should be collected immediately. The Department concurs that the second specimen should be collected as soon as the need for it is established. Therefore, the Guidelines provide that the second specimen shall be collected as soon as possible whenever there is reason to believe that the particular individual may alter or substitute the specimen. (2.2(f)(16)).

11. Several commentors wanted to know the basis for the choice of cocaine and marijuana as the drugs required to be screened by all agencies. The requirement that all agencies screen for cocaine and marijuana was based on the incidence and prevalence of their abuse in the general population and the experiences of the Department of

Defense and the Department of Transportation in screening their work forces. The choice of cocaine and marijuana as the only substances for which all agencies must test takes into account that the predictive value of any positive diagnostic test is a function of prevalence in the tested population. Agencies have also been authorized to test for phencyclidine, amphetamines, and opiates because their high incidence and prevalence in the general population may warrant testing of particular agency work forces for these illegal substances (2.1(a)).

Federal agency requests for screening drugs other than the five authorized in these Guidelines must be made in writing to the Secretary. The Secretary will review the requests on a case-by-case basis and make a determination of the acceptability of the plans, cutoff limits, and testing protocols. The Secretary's determination shall be limited to the use of appropriate science and technology and shall not otherwise restrict agency authority to test for drugs included in schedules I and II of the Controlled Substances Act (2.1(b)).

12. Several commentors wanted clarification of the procedures for the Medical Review Officer's (MRO's) protocols for performing the review function. They also wanted to know if individual employees would have an opportunity to discuss the Medical Review Officer's findings with him or her. Procedures for the conduct of the medical review function, including a handbook to cover the activities of the MRO, will be disseminated to all Federal agencies. While there is agreement that there should be an opportunity for some type of medical interview between the medical review officer and the employee prior to the MRO's final decision concerning a positive test result, a face-to-face interview may not always be feasible or possible. For example, they may be in widely distant geographic areas, and it may be more practical to arrange a telephone or teleconference interview than a direct meeting. Therefore, we have provided for flexibility in the mechanism for this communication and have stated at 2.7(c) that prior to making a final decision to verify a positive result, the MRO shall give the individual employee an opportunity to discuss the test result with him or her. The Medical Review Officer shall not, however, consider the results of urine samples that are not obtained or processed in accordance with these Guidelines.

13. Several commentors indicated that color blindness measurements for laboratory workers were not necessary since none of the currently approved methodologies involved the use of visual color measurements. The requirement that laboratories maintain files which include information on employee color vision was originally proposed because some immunoassay systems have color-coded components and the reliable manipulation of such systems requires good color vision. In view of the methodologies currently approved in the Guidelines, we agree that an across-the-board requirement to maintain files on color blindness is not warranted. However, the Department has a more general concern that laboratories employ individuals who have the ability to perform any necessary test procedures. Therefore, the Guidelines generally provide at 2.3(f) that laboratory personnel files shall include results of any tests which establish employee competency for the position he or she holds and provide, as a specific example, a test for color blindness if the employee will be using color coded analytical systems. Similarly, the final Guidelines do not require that laboratories maintain any other medical data about employees unless that data would be necessary to show the employee's competency to perform a specific job function.

While these Guidelines do not require laboratories to maintain general health or medical information in employee files, they do not preclude a laboratory from maintaining such files. What 2.3(f) is intended to do is require laboratories to maintain sufficient files to show employee competency for the position he or she holds.

14. One commentor requested that the laboratory notify agency management officials of a positive result at the same time the Medical Review Officer is notified, so that individuals in sensitive positions or in positions where they could pose a hazard to other individuals or the public could be temporarily removed from these positions, with no punitive action, until after the Medical Review Officer had completed the review process. After considering both the safety implications and the employee rights in this type of notification, the Department has determined that it would be inappropriate to report a result before the Medical Review Officer has the opportunity to review the facts and circumstances and make a decision on the meaning of the test results. In instances where an agency determines that it has a need for immediate action or might have such a need based on its mission, the agency should develop a mechanism to expedite the review process or allow the Medical Review Officer to require review of the individual's general fitness to continue performing a specific function. Circumventing the review system would abridge necessary protections for employees and could result in prejudging an individual employee's case (2.7).

15. Several commentors called for a medical review board instead of a single Medical Review Officer. A primary purpose of the Medical Review Officer position is to provide for the privacy and confidentiality of the employee's personal medical history during the course of reviewing positive test results. To call together a board which would be privy to that private information would increase the exposure of the employee's medical history to several other individuals. Furthermore, the Department views the physician in the Medical Review Officer's role in retaining overall responsibility for reviewing and interpreting positive test results. There is no restriction on the Medical Review Officer's seeking advice on an ad hoc or a continuous basis from an individual or group if he or she does not breach employee confidentiality during the course of the review and interpretation of the employee's test results. Because the Department is vitally concerned with maintaining confidentiality and privacy and because the Medical Review Officer is not now limited in seeking advice from persons who might have served on the proposed medical review board (e.g., the drug program coordinator, employee assistance program officials, or any other agency employee), the Guidelines will continue to call for review by a single medical officer rather than a board (2.7).

16. Several commentors requested that the term "inexpensive immunoassay" to describe the initial test be eliminated since cost should be left to the agency and the laboratory and techniques other than immunoassay should be used to test for certain drugs. The term "inexpensive" was not intended to set specifications for price; that is a matter for negotiation between the laboratory and the contracting Federal agency. It was meant to serve as part of a generic description of the procedure and purpose of a screening assay. The term "initial test" has been revised in 1.2 and does not use the word "inexpensive".

17. Several commentors indicated that more specific guidelines should be issued to assure the security of test results whether sent by mail or by electronic means. The Guidelines clarify

that the laboratory must ensure the security of data transmission and limit access to any data transmission, storage, and retrieval system (2.4(g)(4)).

18. Several commentors stated that individuals should have access to all records, data, and documents relating to their test results and the certification of the laboratory which performed the urine drug test. Section 503 of Pub. L. 100–71 provides that any Federal employee who is the subject of a drug test shall, upon written request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings. In response to this comment the provisions of the statute have been set out in a new paragraph at 2.9. The Department anticipates that individuals will be able to obtain information about their own test results from the agency's Medical Review Officer, employee assistance program, or other staff person designated by the agency. Any other relevant information will be made available in accordance with the statute.

19. Several laboratories indicated that the monthly statistical summary required of the testing laboratories would be costly and an excessive burden. The Department views the monthly data as necessary for several purposes including evaluating the laboratory testing program, gathering statistical data to evaluate the drug testing program's effectiveness, and providing demographic data on drug use by the Federal work force. The information will assist in making decisions concerning changes in policy or program implementation and identifying specific programs for attention. The Department anticipates that the cost of providing the data will be built into the contract the laboratory signs with each agency. Therefore, provision of the data will be a function for which the laboratory is duly compensated, not an undue cost or burden (2.4(g)(6)).

20. One commentor indicated that samples for which the initials on the specimen bottle and in the permanent record book do not match should not be rejected automatically, since that would provide an opportunity for individuals to attempt to have their specimens rejected when they knew the specimens would test positive. We have considered the fact that individuals might deliberately alter their initials in an attempt to have their samples rejected. However, we do not anticipate that samples should be thrown out solely on the basis of unmatched initials on the specimen bottle and in the permanent record book. If unmatched initials provide reason to believe that a particular individual may have altered or substituted the specimen, both the proposed and the Final Guidelines provide that the specimen be forwarded for testing along with a second sample obtained as soon as possible after reason to believe the individual may have altered or substituted the specimen is established (2.2(f) (15) and (16)). The Final Guidelines ensure the identification of the person from whom the specimen is collected through the requirement for photo identification (see 2.2(f)(2)). In addition, a principal responsibility of the collection site person is to gather and verify information on site and to detect any problems with the identification of the specimen. Until experience in the program indicates that misidentified samples arising out of unmatched initials is a significant problem, the Guidelines will require that the individual initial the specimen bottle and sign the permanent record book to certify that the identified sample is the one collected from the individual.

21. One commentor asked if the Guidelines apply to Federal contract employees. The Guidelines do not apply to Federal contract employees; however, any agency may require a contractor to test its own employees following the procedures in the Guidelines by making the requirement a term or condition of the contract.

22. One commentor indicated that the proposed requirement for signing a procedure manual on an annual basis was in conflict with current DHHS efforts in the Medicare and CLIA programs to delete the annual signing requirement and replace it with a requirement that the manual be signed initially and whenever changes are made. We concur with the comment that the important factor is that the manual be signed by the responsible individual whenever a procedure is instituted or changed or whenever a new individual becomes responsible for the day-to-day management of the drug testing laboratory. The Guidelines do not require annual signing of the procedure manual.

The on-site review of the laboratory together with the assignment to an individual of the overall responsibility for the testing will assure that the procedures in the manual are current and followed. If the procedures in the manual are not current or followed, it is an indication that the responsible individual is not performing the oversight function appropriate to the management of the laboratory.

We have also clarified that the individual responsible for the day-to-day management of the drug testing laboratory is the individual responsible for signing the manual (2.3(a)(5)). It is not appropriate for the individual who is responsible for day-to-day operations and supervision of analysts or for any other individual to be delegated this responsibility since the manual is the vehicle for selection of methodologies, and the approval of methodologies is a principal reason for requiring the individual responsible for day-to-day management of the drug testing laboratory to possess detailed knowledge in the area of toxicology.

23. One commentor indicated that laboratories should be notified when they may discard samples. We have reviewed the comment and concur that the agency should be able to notify the laboratory in writing if it determines that samples no longer need to be retained because no further action is pending which will require the samples. Both 2.4(g)(8) and 2.4(h) permit the agency to instruct or authorize storage for less than the period for which there is a storage requirement.

24. Several commentors indicated a discrepancy in the periods for maintenance of frozen samples in storage—1 year in the proposed guidelines and 6 months in Appendix B to the proposed guidelines. The time interval in the appendix was in error. The Final Guidelines consistently call for frozen storage of confirmed positive samples for 1 year (2.4(h)). Note that the Appendix has been omitted, although pertinent provisions from it are integrated in the Final Guidelines.

25. In response to concern that specimens may be misused to test for physiological states other than drug abuse (e.g., pregnancy), a provision has been added to the Final Guidelines to prohibit the specimens collected for urine drug testing from being used for any other types of analyses unless otherwise authorized by law. It is important to the integrity and goals of the President's program to achieve a drug-free work place that any specimens collected for that purpose not be analyzed or used for inappropriate purposes. To ensure that outcome, a paragraph has been added at 2.1(c) stating that specimens may be used only to test for those drugs included in the agency drug-free workplace plan and may not be used to conduct any other analysis or test unless the agency is authorized by law to perform other analyses.

26. One commentor indicated that the individuals permitted in the "secure test area" should include routine service and maintenance personnel and that these individuals should not require escorts. While providing escorts for all employees, including service and maintenance personnel, may cause considerable inconvenience, unless the facilities are secured at night and all materials locked away with no possible access, there is always the potential for tampering with the specimens or test results. The Guidelines make no provision for routine service and maintenance personnel to enter the secure test area without an escort (2.4(a)).

27. One commentor suggested that collection personnel be provided with gloves or other protective garments to prevent contamination of the personnel from the urine. The Department encourages a protected work environment for collection site personnel, including any necessary protective garments. Various State and Federal guidelines provide for the health and safety of employees. Collection agents are expected to be aware of and to comply with such provisions to safeguard their own health and the health and safety of employees. However, no requirement was added to the Guidelines to require provision of protective garments to collection personnel.

28. One commentor recommended that DHHS use its own personnel to investigate any quality assurance problems which arise with a particular laboratory instead of requiring each agency to have its own investigative staff. Other commentors viewed agencies as lacking the in-house expertise to perform this analysis, and it was not clear to them who in each agency should carry out such an investigation. The Final Guidelines reflect a decision that the Secretary (which might include a DHHS contractor or DHHS recognized certification program) shall assume this investigative responsibility and carry out the related coordinating activities. A coordinating mechanism within the National Institute on Drug Abuse (NIDA) will ensure that all agencies are aware of problems with any given laboratory. Conducting investigations and coordinating findings through DHHS will eliminate the need to provide a more complex mechanism for agencies to notify each other about laboratory performance (2.5(d)(4)).

29. Several commentors said that the format for reporting employee drug test results was not sufficiently clear and that while there was a discussion of the mechanism for reporting performance test results, there was no comparable discussion on reporting employee test results. 2.4(g), Reporting Results, clarifies that laboratories will not report quantitation on test results but will report whether a result is positive or negative and that this is indicative of a result being above or below a particular cutoff limit. A negative report does not signify the absence of a particular drug or metabolite but only that the particular drugs or metabolites screened for were not detected at a specified concentration (i.e., cutoff level).

Quantitation will not be reported to the agency for confirmed positive reports in order to provide for identical reporting by the laboratory of performance test specimens and employee specimens. However, quantitation may be obtained by the Medical Review Officer on request from the laboratory. In the case of the opiates, we have indicated that the particular opiate to be reported will depend on the amounts of morphine and codeine detected by the confirmation test. We have included the reporting scheme in the scientific and technical requirements as well as in the revision of the requirements for reporting performance test results (2.4(g), 3.11 which cross-references 2.4(g), and 3.17(f)).

30. The Final Guidelines attempt to clarify the purpose of the certification program, since the comments reflect uncertainty as to what certification implies and what would be surveyed in the process of certifying a laboratory. Subpart C permits DHHS to recognize certification programs run by other organizations. These programs may be private accrediting organizations that are recognized by the Secretary to determine whether laboratories meet the Guideline requirements. Any laboratory accredited by these organizations in accordance with these Guidelines is deemed to be a certified laboratory, thus making it eligible to perform urine drug testing for Federal agencies. DHHS is contemplating publishing standards for recognition of private accrediting organizations in the near future.

The provisions of Subpart C apply to any laboratory which has or seeks a contract to perform, or otherwise performs urine drug testing for Federal agencies under a drug testing program conducted under E.O. 12564. Only certified laboratories will be authorized to perform urine drug testing for Federal agencies. However, in order to create a pool of qualified laboratories to bid on agency contracts to perform such testing, the Secretary may certify laboratories as contract eligible that meet the requirements of Subpart C. This pool of qualified laboratories will lead to competitive pricing and better services for Federal agencies.

The certification process will be limited to the five classes of drugs (2.1)(a) (1) and (2)) and the methods (2.4 (e) and (f)) specified in these Guidelines. The laboratory will be surveyed and performance tested only for these methods and drugs. Certification of a laboratory indicates that any test result reported by the laboratory for the Federal Government meets the standards in these Guidelines for the five classes of drugs using the methods specified herein. The Guidelines require that a certified laboratory must inform its non-Federal clientele when testing procedures are to be those specified by these Guidelines. Non-Federal purchasers are free to bargain with a certified laboratory for any standards they may deem appropriate.

31. The Guidelines delete the checklist in Appendix B of the proposed certification standards. The checklist was initially intended to provide a tool for the inspectors of laboratories to use in conducting their on-site inspections and to enumerate the standards contained in the section on the certification program published in the **Federal Register**. However, there was confusion regarding whether the checklist represented an additional or different set of requirements. Relevant portions of the checklist have been integrated in the Guidelines. The checklist itself will be revised to correspond to the requirements in the Guidelines and will be made available to laboratories by the DHHS-recognized certification program(s).

32. Several commentors asked that the specific criteria used by the group(s) who will perform the certification function for the Department be detailed in these Guidelines. In response, the Guidelines include a new section explaining how performance testing will be evaluated for initial certification as well as for previously certified laboratories (3.19 (a) and (b)). All major aspects of the certification program, including personnel and quality assurance and quality control requirements, are included in Subpart C of these Guidelines. With the addition of 3.19 (a) and (b), we believe the Guidelines are appropriately specific and there is no need to include additional detail in the Guidelines concerning the certification process.

33. Some commentors indicated that the number of blind performance test samples required to be run by the

laboratories (i.e., 1,000) for initial certification and (i.e., 250 per quarter) for continuing certification was excessive and would be too costly. The commentors also indicated that it was not clear whether the laboratory or the submitting organization would bear the cost of the samples and if it were necessary for each submitting organization to submit this number of samples to each laboratory. In response to the comments, we have revised this section to indicate that each agency shall submit blind performance test specimens to each laboratory it contracts with in the amount of at least 50 percent of the total number of samples submitted (up to a maximum of 500 samples) during the initial 90-day period of program implementation and a minimum of 10 percent of all samples (to a maximum of 250) submitted per quarter thereafter. The Final Guidelines also clarify that approximately 80 percent of the blind performance test samples are to be blank (i.e., certified to be drug free) and the remaining samples are to be positives (2.52(d)(3) and 3.7). The cost of the blind performance test samples will be borne by the submitting agency.

34. Several commentors requested corrective action and reanalysis of previously run specimens in the case of discovered laboratory administrative error. They also requested that the union and all employees who tested positive be notified of the error in writing. The recommendation was to notify all employees with positive results who were tested between the time of resolution of the error and the preceding cycle of correct results. In the case of an administrative error, there are no plans to automatically have all specimens retested. The decision on whether to retest will be dependent on the type and extent of the error. For example, if a single employee's test results were transcribed incorrectly, nothing would be gained from rerunning all the specimens in a given timeframe since it would not change the values attributed to the specimens. If an error occurred such that it was not clear whose specimen was being tested and which results belonged to which specimen, this would require retesting of the group for which the values where uncertain and for those analytes for which the values were uncertain. However, it would be unproductive to require the automatic retesting of all specimens for any error.

Agency policy under which individuals are notified of errors will depend on the circumstances. If the error is corrected before the results are reported to any employee, it is unnecessary to notify each employee that an error was discovered and subsequently corrected. If a discovered error affects an employee after results have been reported, the Medical Review Officer will be notified and the affected employee will also be notified through the appropriate mechanisms established by each agency.

35. Several commentors indicated that the laboratory contract should be suspended if the laboratory committed the same administrative error twice and that the designated reviewing official's discretion to continue a laboratory in the program should be more limited or more clearly defined. The Department has reviewed the comments concerning the point at which a contract should be suspended because of an administrative error and submits that the current policy allows sufficient flexibility and protection to the employee and the laboratory and that it should not be changed. There are no circumstances under which administrative or human error can be entirely eliminated. The major assurance of accuracy in the overall program is the series of checks to assure that such errors are detected and corrected. The reviewing official has been given the necessary flexibility and definition of authority to make the appropriate technical and program judgments concerning the status of each facility and to assure that reasonable and responsible decisions are made. Nevertheless, the Final Guidelines add several features to put greater responsibility on the individual responsible for the day-to-day management of the drug testing laboratory for the quality assurance program and ensuring that quality assurance procedures are followed. These Guidelines also more clearly describe what constitutes a quality assurance and quality control program to detect and correct errors (2.5) and a program of performance testing (3.17–3.19).

We have chosen not to include a formal definition of administrative or clerical error in the Guidelines as was suggested. Among the errors to which either term refers are incorrect transcription of test results or errors in recording specimen identities, i.e., errors that are not due to the analysis of the specimens with regard to analytical accuracy, precision, interpretation of test results, or calibration of equipment. Clearly analytical errors are not considered "administrative." While it is not possible to write guidelines that cover every possibility, at no place in these Guidelines are incorrect analyses considered administrative error but rather are consistently treated as a basis for prompt action against the laboratory by the responsible officials.

36. Several commentors indicated that laboratory inspections should be conducted unannounced and that union representatives should be permitted to accompany the inspection teams. The Guidelines neither require nor prohibit unannounced inspections. They contemplate that agencies will, through their contract with a certified laboratory, specify the terms and conditions of inspections in accordance with the requirements in the Guidelines. If individuals other than members of the inspection team were entitled to accompany the inspectors, it would significantly complicate coordination and conduct of the inspections. More importantly, we see additional participants in the inspection as inhibiting the laboratory's freedom to provide complete cooperation out of concern for protecting proprietary information. While some laboratories may be willing to provide escorted tours to union officials to illustrate the quality of their processes, the Guidelines do not establish a right for union officials to participate in inspections incident to certification of laboratories under these Guidelines (2.4(1) and 3.20).

37. One commentor indicated that any of the five general factors indicated in 3.13(b) as a possible basis for revocation in the certification requirements should inevitably lead to revocation without any further determination that the revocation is "necessary." The issue of how many potential grounds for revocation are necessary to determine that revocation of a laboratory is necessary was considered when the list of grounds was developed. The Department views the nature and seriousness of the facts concerning the grounds for revocation as factors to be weighed in deciding to revoke a certification. It is difficult and would not contribute to the maintenance of high quality testing standards to develop *a priori* statements about the magnitude of an offense or a combination of violations and to formulate necessary actions in response to each possible violation of the provisions of 3.13. All five factors listed are considered serious violations of these certification criteria, and it is not necessary for more than one factor to be violated to take action against a laboratory. However, the Guidelines retain the flexibility for the Secretary to determine that revocation is necessary to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results (3.13(b)).

38. Several commentors indicated that when a laboratory fails a performance test it would be inordinately expensive (especially in high volume laboratories) to retest all samples since the last performance test the laboratory passed and to test for all analytes rather than for the one analyte for which the laboratory had failed performance testing. The reason for retesting all positive samples since the last successful performance test is that the quality of the test results has been called into question. In order to verify test results for the period between a successful performance testing and the failed testing, it will be necessary to retest all specimens tested positive for which an incorrect analysis may have been performed. It is not routinely necessary to retest for all analytes but only for those on which the laboratory failed its performance testing. However, the laboratory may be required to test for other analytes if the performance test failure reflects broader problems (3.19(b)(1)(v)).

39. Several commentors indicated that performance testing every other month is excessive and that quarterly testing would be sufficient to assure the quality of the testing. Others indicated that fewer challenges per shipment would be adequate to determine the quality of the laboratory. Still other individuals stated that the limits for acceptable performance on performance tests were too high in terms of the concentrations used. Others said that the grading criterion of failure based on one false positive was too strict. We have reviewed the concerns that bimonthly performance testing is excessive and maintain that the use of performance tests is a valid outcome measure of performance and will assist in the evaluation of quality of the laboratory performance. If future experience with the program indicates that a lesser frequency will assure the quality of the testing, we will revise the frequency and the number of specimens accordingly. Relatively frequent performance testing reduces the time period for which samples may have to be rerun in case of performance test failure (3.17).

To the extent that the Guidelines amended the cutoff limits for drugs for which employees may be tested for consistency with those currently used by the Department of Defense, it was necessary to modify the values of the various performance test samples correspondingly. We have clarified that a laboratory must achieve an overall grade of 90 percent on the first three cumulative shipments of performance tests and that if such a poor grade is obtained on the first or second challenge that a laboratory cannot achieve an overall grade of 90 percent on the three successive performance test challenges, then the laboratory will fail at that point. Laboratories already in the program must achieve a grade of 90 percent on each shipment of performance testing. It was unclear in the proposed notice whether the grade of 90 percent referred only to the positive samples. We intend that the 90 percent refer only to positive samples, since any negative sample giving rise to a false positive would be the basis for automatic disqualification for initial certification. It also was unclear whether the 90 percent referred to performance on all drugs in the shipment, not on each drug tested. We have clarified the Guidelines in both these areas. We adopted a strategy requiring 90 percent for all drugs because it is not always feasible to have a sufficient number of challenges for each drug in each shipment to avoid a single failure on a drug leading to a failing grade of less than 90 percent (3.19(b)(2)).

40. Some commentors thought laboratories should be required to notify all users if their certification was revoked. Since the requirements in these Guidelines only apply to certification for Federal drug testing programs, it would be inappropriate to require laboratories to notify non-Federal users of revocation or suspension.

41. We have not adopted the recommendations that any changes in the Guidelines be accomplished by publication of a notice, review of comments, and then publication of final changes. (Section 503 of Pub. L. 100–71 required such steps for initial development of these Guidelines.) The time required for this process would not permit rapid adjustment to changes in technology. Accordingly, the Guidelines retain the provision permitting final revision of these Guidelines by publication of a notice in the **Federal Register** (1.3).

42. One commentor suggested that only positive tests be certified as to accuracy and validity before reporting. Although this practice would reduce paperwork, it does not reflect the potential impact on public safety of false negative results. The Guidelines continue to require that negative results be reviewed carefully and attested to by the proper officials in the same way as positive results (2.4(g)).

43. One commentor wanted us to specify the time the individual responsible for day-to-day management must spend in the laboratory. No change has been made in the Guidelines. The critical factor here is the quality of the work and not the absolute number of hours spent. The Department views the use of outcome measures of performance for the laboratory as more effective in assuring accurate and reliable test results than attempting to set hours for the responsible individual particularly in view of the qualifications which the Guidelines set for the individual responsible for day-to-day management of the drug testing laboratory.

44. The criterion for retesting specimens (i.e., those being challenged) was clarified to indicate that in performing a retest the laboratory must confirm the presence of the substance but does not have to confirm that it is present above the cutoff level. Since the drug levels may deteriorate with time, it is only necessary to show that the drug (or its metabolite) is present to reconfirm its presence during retesting (2.4(i)).

45. A provision has been added to the Guidelines requiring that laboratories be capable of testing for at least the five classes of drugs specified in the Guidelines. The laboratories are being required to possess the flexibility to test for all the specified classes of drugs in order to assure that they have a sufficient range of capabilities to respond to the agencies' testing protocols, including testing for reasonable suspicion (3.4).

46. Several Federal agencies commenting on the proposed guidelines sought waivers of particular provisions in reliance on the original Scientific and Technical Guidelines issued February 13, 1987, which provided that, "Agencies may not deviate from the provisions of these Guidelines without the written approval of the Secretary, Health and Human Services or his designee." This waiver statement, which was not explicit in the proposed guidelines, is included at 1.1(f). Absent such a waiver, these Guidelines represent the exclusive standard for urinalysis testing and agencies may not deviate from these established procedures.

In order to clarify that the laboratory certification standards apply to laboratories which have or seek certification to perform urine drug testing for Federal agencies, a paragraph was added to the applicability section, 1.1(c), stating that Subpart C of the Guidelines applies to any laboratory which has or seeks such certification and that certification is required to perform urine drug testing for Federal agencies.

Section 4(d) of E.O. 12564 states that "agencies shall conduct their drug testing programs in accordance with * * * [scientific and technical] guidelines" promulgated by the Secretary of Health and Human Services. Since the Guidelines impose mandatory requirements on a Government-wide basis, they are exempt from the duty to bargain under section 7117(a)(1) of the Federal Service Labor-Management Relations Statute.

Information Collection Requirements

Information collection and recordkeeping requirements which would be imposed on laboratories engaged in urine drug testing for Federal agencies concern quality assurance and quality control; security and chain of custody; documentation; reports; performance testing; and inspections as set out in 3.7, 3.8, 3.10, 3.11, 3.17, and 3.20. To facilitate ease of use and uniform reporting, standard forms have been developed for chain of custody records and the permanent record books as referenced in 2.2(c) and (f).

The information collection and recordkeeping requirements contained in these Final Guidelines have been approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980 and have been assigned control number 09300130, approved through April 30, 1989.

Date: April 1, 1988.

Robert E. Windom,

Assistant Secretary for Health.

Date: April 1, 1988.

Otis R. Bowen,

Secretary.

These Final Mandatory Guidelines are hereby adopted in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71 as set forth below:

MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS

Subpart A—General

1.1 Applicability.
1.2 Definitions.
1.3 Future Revisions.

Subpart B—Scientific and Technical Requirements

2.1 The Drugs.
2.2 Specimen Collection Procedures.
2.3 Laboratory Personnel.
2.4 Laboratory Analysis Procedures.
2.5 Quality Assurance and Quality Control.
2.6 Interim Certification Procedures.
2.7 Reporting and Review of Results.
2.8 Protection of Employee Records.
2.9 Individual Access to Test and Laboratory Certification Results.

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

3.1 Introduction.
3.2 Goals and Objectives of Certification.
3.3 General Certification Requirements.
3.4 Capability to Test for Five Classes of Drugs.
3.5 Initial and Confirmatory Capability at Same Site.
3.6 Personnel.
3.7 Quality Assurance and Quality Control.
3.8 Security and Chain of Custody.
3.9 One-Year Storage for Confirmed Positives.
3.10 Documentation.
3.11 Reports.
3.12 Certification.
3.13 Revocation.
3.14 Suspension.
3.15 Notice; Opportunity for Review.
3.16 Recertification.
3.17 Performance Test Requirement for Certification.
3.18 Performance Test Specimen Composition.
3.19 Evaluation of Performance Testing.
3.20 Inspections.
3.21 Results of Inadequate Performance.

Authority: E.O. 12564 and sec. 503 of Pub. L. 100–71.

Subpart A—General

1.1 Applicability.

(a) These mandatory guidelines apply to:

(1) Executive Agencies as defined in 5 U.S.C. 105;

(2) The Uniformed Services, as defined in 5 U.S.C. 2101 (3) (but excluding the Armed Forces as defined in 5 U.S.C. 2101(2));

(3) And any other employing unit or authority of the Federal Government except the United States Postal Service, the Postal Rate Commission, and employing units or authorities in the Judicial and Legislative Branches.

(b) Any agency or component of an agency with a drug testing program in existence as of September 15, 1986, and the Departments of Transportation and Energy shall take such action as may be necessary to ensure that the agency is brought into compliance with these Guidelines no later than 90 days after they take effect, except that any judicial challenge that affects these Guidelines shall not affect drug testing programs subject to this paragraph.

(c) Except as provided in 2.6, Subpart C of these Guidelines (which establishes laboratory certification standards) applies to any laboratory which has or seeks certification to perform urine drug testing for Federal agencies under a drug testing program conducted under E.O. 12564. Only laboratories certified under these standards are authorized to perform urine drug testing for Federal agencies.

(d) The Intelligence Community, as defined by Executive Order No. 12333, shall be subject to these Guidelines only to the extent agreed to by the head of the affected agency.

(e) These Guidelines do not apply to drug testing conducted under legal authority other than E.O. 12564, including testing of persons in the criminal justice system, such as arrestees, detainees, probationers, incarcerated persons, or parolees.

(f) Agencies may not deviate from the provisions of these Guidelines without the written approval of the Secretary. In requesting approval for a deviation, an agency must petition the Secretary in writing and describe the specific provision or provisions for which a deviation is sought and the rationale therefor. The Secretary may approve the request upon a finding of good cause as determined by the Secretary.

1.2 Definitions.

For purposes of these Guidelines the following definitions are adopted:

Aliquot A portion of a specimen used for testing.

Chain of Custody Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an approved agency chain of custody form be used from time of collection to receipt by the laboratory and that upon receipt of the laboratory an appropriate laboratory chain of custody form(s) account for the sample or sample aliquots within the laboratory. Chain of custody forms shall, at a minimum, include an entry documenting date and purpose each time a specimen or aliquot is handled or transferred and identifying every individual in the chain of custody.

Collection Site A place designated by the agency where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection Site Person A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals. A collection site person shall have successfully completed training to carry out this function.

Confirmatory Test A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the intitial test in order to ensure reliability

and accuracy. (At this time gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

Initial Test (also known as Screening Test) An immunossay screen to eliminate "negative" urine specimens from further consideration.

Medical Review Officer A licensed physician responsible for receiving laboratory results generated by an agency's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

Permanent Record Book A permanently bound book in which identifying data on each specimen collected at a collection site are permanently recorded in the sequence of collection.

Reason to Believe Reason to believe that a particular individual may alter or substitute the urine specimen as provided in section 4(c) of E.O. 12564.

Secretary The Secretary of Health and Human Services or the Secretary's designee. The Secretary's designee may be contractor or other recognized organization which acts on behalf of the Secretary in implementing these Guidelines.

1.3 Future Revisions.

In order to ensure the full reliability and accuracy of drug assays, the accurate reporting of test results, and the integrity and efficacy of Federal drug testing programs, the Secretary may make changes to these Guidelines to reflect improvements in the available science and technology. These changes will be published in final as a notice in the **Federal Register**.

Subpart B—Scientific and Technical Requirements

2.1 The Drugs.

(a) The President's Executive Order 12564 defines "illegal drugs" as those included in Schedule I or II of the Controlled Substances Act (CSA), but not when used pursuant to a valid prescription or when used as otherwise authorized by law. Hundreds of drugs are covered under Schedule I and II and while it is not feasible to test routinely for all of them, Federal drug testing programs shall test for drugs as follows:

(1) Federal agency applicant and random drug testing programs shall at a minimum test for marijuana and cocaine;

(2) Federal agency applicant and random drug testing programs are also authorized to test for opiates, amphetamines, and phencyclidine; and

(3) When conducting reasonable suspicion, accident, or unsafe practice testing, a Federal agency may test for any drug listed in Schedule I or II of the CSA.

(b) Any agency covered by these guidelines shall petition the Secretary in writing for approval to include in its testing protocols any drugs (or classes of drugs) not listed for Federal agency testing in paragraph (a) of this section. Such approval shall be limited to the use of the appropriate science and technology and shall not otherwise limit agency discretion to test for any drugs covered under Schedule I or II of the CSA.

(c) Urine specimens collected pursuant to Executive Order 12564, Pub. L. 100–71, and these Guidelines shall be used only to test for those drugs included in agency drug-free workplace plans and may not be used to conduct any other analysis or test unless otherwise authorized by law.

(d) These Guidelines are not intended to limit any agency which is specifically authorized by law to include additional categories of drugs in the drug testing of its own employees or employees in its regulated industries.

2.2 Specimen Collection Procedures.

(a) Designation of Collection Site. Each agency drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory.

(b) Security Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

(c) Chain of Custody. Chain of custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

(d) Access to Authorized Personnel Only. No unauthorized personnel shall be permitted in any part of the designated collection site when urine specimens are collected or stored.

(e) Privacy. Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.

(f) Integrity and Identity of Specimen. Agencies shall take precautions to ensure that a urine specimen not be adulterated or diluted during the collection procedure and that information on the urine bottle and in the record book can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:

(1) To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. There shall be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs.

(2) When an individual arrives at the collection site, the collection site person shall request the individual to present photo identification. If the individual does not have proper photo identification, the collection site person shall contact the supervisor of the individual, the coordinator of the drug testing program, or any other agency official who can positively identify the individual. If the individual's identity cannot be established, the collection site person shall not proceed with the collection.

(3) If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet.

(5) The individual shall be instructed to wash and dry his or her hands prior to urination.

(6) After washing hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or

any other materials which could be used to adulterate the specimen.

(7) The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.

(8) The collection site person shall note any unusual behavior or appearance in the permanent record book.

(9) In the exceptional event that an agency-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., an accident investigation), a public rest room may be used according to the following procedures: A collection site person of the same gender as the individual shall accompany the individual into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the individual not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.

(10) Upon receiving the specimen from the individual, the collection site person shall determine that it contains at least 60 milliliters of urine. If there is less than 60 milliliters of urine in the container, additional urine shall be collected in a separate container to reach a total of 60 milliliters. (The temperature of the partial specimen in each separate container shall be measured in accordance with paragraph (f)(12) of this section, and the partial specimens shall be combined in one container.) The individual may be given a reasonable amount of liquid to drink for this purpose (e.g., a glass of water). If the individual fails for any reason to provide 60 milliliters of urine, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(11) After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.

(12) Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measurement is critical and in no case shall exceed 4 minutes.

(13) If the temperature of a specimen is outside the range of 32.5°–37.7°C/90.5°–99.8°F, that is a reason to believe that the individual may have altered or substituted the specimen, and another specimen shall be collected under direct observation of a same gender collection site person and both specimens shall be forwarded to the laboratory for testing. An individual may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen caused by the specimen's temperature falling outside the prescribed range.

(14) Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted in the permanent record book.

(15) All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.

(16) Whenever there is reason to believe that a particular individual may alter or substitute the specimen to be provided, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.

(17) Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.

(18) The collection site person and the individual shall be present at the same time during procedures outlined in paragraphs (f)((19)–(f)(22) of this section.

(19) The collection site person shall place securely on the bottle an identification label which contains the date, the individual's specimen number, and any other identifying information provided or required by the agency.

(20) The individual shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.

(21) The collection site person shall enter in the permanent record book all information identifying the specimen. The collection site person shall sign the permanent record book next to the identifying information.

(22) The individual shall be asked to read and sign a statement in the permanent record book certifying that the specimen identified as having been collected from him or her is in fact that specimen he or she provided.

(23) A higher level supervisor shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based on a reason to believe that the individual may alter or substitute the specimen to be provided.

(24) The collection site person shall complete the chain of custody form.

(25) The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, it shall be appropriately safeguarded during temporary storage.

(26) While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work station momentarily, the specimen and custody form shall be taken with him or her or shall be secured. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, the specimen shall be packaged for mailing before he or she leaves the site.

(g) Collection Control. To the maximum extent possible, collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected, it shall be properly sealed and labeled. An approved chain of custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on an approved chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

(h) Transportation to Laboratory. Collection site personnel shall arrange to ship the collected specimens to the drug testing laboratory. The specimens shall be placed in containers designed to minimize the possibility of damage during shipment, for example, specimen boxes or padded mailers; and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the

container, the collection site supervisor shall sign and enter the date specimens were sealed in the containers for shipment. The collection site personnel shall ensure that the chain of custody documentation is attached to each container sealed for shipment to the drug testing laboratory.

2.3 Laboratory Personnel.

(a) Day-to-Day Management.

(1) The laboratory shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the laboratory's urine drug testing facility.

(2) This individual shall have documented scientific qualifications in analytical forensic toxicology. Minimum qualifications are:

(i) Certification as a laboratory director by the State in forensic or clinical laboratory toxicology; or

(ii) A Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology, or

(iii) Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and

(iv) In addition to the requirements in (i), (ii), and (iii) above, minimum qualifications also require:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse, and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

(3) This individual shall be engaged in and responsible for the day-to-day management of the drug testing laboratory even where another individual has overall responsibility for an entire multispecialty laboratory.

(4) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she shall assure the continued competency of laboratory personnel by documenting their inservice training, reviewing their work performance, and verifying their skills.

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by this responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the drug testing laboratory. Copies of all procedures and dates on which they are in effect shall be maintained. (Specific contents of the procedure manual are described in 2.4(n)(1).)

(6) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control testing; and for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(7) This individual shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual shall ensure that sample results are not reported until all corrective actions have been taken and he or she can assure that the tests results provided are accurate and reliable.

(b) Test Validation. The laboratory's urine drug testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate more than one person to perform this function. This individual(s) may be any employee who is qualified to be responsible for day-to-day management or operation of the drug testing laboratory.

(c) Day-to-Day Operations and Supervision of Analysts. The laboratory's urine drug testing facility shall have an individual to be responsible for day-to-day operations and to supervise the technical analysts. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) Other Personnel. Other technicians or nontechnical staff shall have the necessary training and skills for the tasks assigned.

(e) Training. The laboratory's urine drug testing program shall make available continuing education programs to meet the needs of laboratory personnel.

(f) Files. Laboratory personnel files shall include: resume of training and experience; certification or license, if any; references; job descriptions; records of performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate.

2.4 Laboratory Analysis Procedures.

(a) Security and Chain of Custody. (1) Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or to areas where records are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of Federal agencies for which the laboratory is engaged in urine testing or on behalf of the Secretary, all authorized visitors and maintenance and service personnel shall be escorted at all times. Documentation of individuals accessing these areas, dates, and time of entry and purpose of entry must be maintained.

(2) Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred, and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.

(b) Receiving. (1) When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the agency's chain of custody forms attached to the shipment shall be immediately reported to the agency and shall be noted on the laboratory's chain of custody form which shall accompany the specimens while they are in the laboratory's possession.

(2) Specimen bottles will normally be retained within the laboratory's accession area until all analyses have been completed. Aliquots and the laboratory's chain of custody forms shall be used by laboratory personnel for conducting initial and confirmatory tests.

(c) Short-Term Refrigerated Storage. Specimens that do not receive an initial test within 7 days of arrival at the laboratory shall be placed in secure refrigeration units. Temperatures shall not exceed 6°C. Emergency power equipment shall be available in case of prolonged power failure.

(d) Specimen Processing. Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts.

(e) Initial Test. (1) The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

	Initial test level (ng/ml)
Marijuana metabolites	100
Cocaine metabolites	300
Opiate metabolites	[1] 300
Phencyclidine	25
Amphetamines	1,000

[1] 25ng/ml if immunoassay specific for free morphine.

(2) These test levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations. Initial test methods and testing levels for other drugs shall be submitted in writing by the agency for the written approval of the Secretary.

(f) Confirmatory Test. (1) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff values listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

	Confirmatory test level (ng/ml)
Marijuana metabolite [1]	15
Cocaine metabolite [2]	150
Opiates:	
Morphine	* 300
Codeine	* 300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine	500

[1] Delta-9-tetrahydrocannabinol-9-carboxylic acid.
[2] Benzoylecgonine.

(2) These test levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations. Confirmatory test methods and testing levels for other drugs shall be submitted in writing by the agency for the written approval of the Secretary.

(g) Reporting Results. (1) The laboratory shall report test results to the agency's Medical Review Officer within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, and the cutoff for each, the specimen number assigned by the agency, and the drug testing laboratory specimen identification number. The results (positive and negative) for all specimens submitted at the same time to the laboratory shall be reported back to the Medical Review Officer at the same time.

(2) The laboratory *shall report as negative* all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.

(3) The Medical Review Officer may request from the laboratory and the laboratory shall provide quantitation of test results. The Medical Review Officer may not disclose quantitation of test results to the agency but shall report only whether the test was positive or negative.

(4) The laboratory may transmit results to the Medical Review Officer by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the Medical Review Officer a certified copy of the original chain of custody form signed by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports.

(6) The laboratory shall provide to the agency official responsible for coordination of the drug-free workplace program a monthly statistical summary of urinalysis testing of Federal employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information:

(i) Initial Testing:

(A) Number of specimens received;

(B) Number of specimens reported out; and

(C) Number of specimens screened positive for:

Marijuana metabolites
Cocaine metabolites
Opiate metabolites
Phencyclidine
Amphetamines

(ii) Confirmatory Testing:

(A) Number of specimens received for confirmation;

(B) Number of specimens confirmed positive for:

Marijuana metabolite

Cocaine metabolite
Morphine, codeine
Phencyclidine
Amphetamine
Methamphetamine

(7) The laboratory shall make available copies of all analytical results for Federal drug testing programs when requested by DHHS or any Federal agency for which the laboratory is performing drug testing services.

(8) Unless otherwise instructed by the agency in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

(h) Long-Term Storage. Long-term frozen storage (−20 °C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Unless otherwise authorized in writing by the agency, drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive. Within this 1-year period an agency may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens under legal challenge for an indefinite period.

(i) Retesting Specimens. Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

(j) Subcontracting. Drug testing laboratories shall not subcontract and shall perform all work with their own personnel and equipment unless otherwise authorized by the agency. The laboratory must be capable of performing testing for the five classes of drugs (marijuana, cocaine, opiates, phencyclidine, and amphetamines) using the initial immunoassay and confirmatory GC/MS methods specified in these Guidelines.

(k) Laboratory Facilities. (1) Laboratory facilities shall comply with applicable provisions of any State licensure requirements.

(2) Laboratories certified in accordance with Subpart C of these Guidelines shall have the capability, at the same laboratory premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

(l) Inspections. The Secretary, any Federal agency utilizing the laboratory, or any organization performing laboratory certification on behalf of the Secretary shall reserve the right to inspect the laboratory at any time. Agency contracts with laboratories for drug testing, as well as contracts for collection site services, shall permit the agency to conduct unannounced inspections. In addition, prior to the award of a contract the agency shall carry out preaward inspections and evaluation of the procedural aspects of the laboratory's drug testing operation.

(m) Documentation. The drug testing laboratories shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2-year period may be extended upon written notification by DHHS or by any Federal agency for which laboratory services are being provided. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall be required to maintain documents for any specimen under legal challenge for an indefinite period.

(n) Additional Requirements for Certified Laboratories.—(1) Procedure Manual. Each laboratory shall have a procedure manual which includes the principles of each test, preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of the methods, cutoff values, mechanisms for reporting results, controls, criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual.

(2) Standards and Controls. Laboratory standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards shall be labeled with the following dates: when received; when prepared or opened; when placed in services; and expiration date.

(3) Instruments and Equipment. (i) Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors shall be checked for accuracy and reproducibility before being placed in service and checked periodically thereafter.

(ii) There shall be written procedures for instrument set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks and instructions for major trouble shooting and repair. Records shall be available on preventive maintenance.

(4) Remedial Actions. There shall be written procedures for the actions to be taken when systems are out of accceptable limits or errors are detected. There shall be documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

(5) Personnel Available To Testify at Proceedings. A laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against a Federal employee when that proceeding is based on positive urinalysis results reported by the laboratory.

2.5 Quality Assurance and Quality Control.

(a) General. Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs.

(b) Laboratory Quality Control Requirements for Initial Tests. Each analytical run of specimens to be screened shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the threshold (cutoff).

In addition, with each batch of samples a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known standards, those values will be used to calculate sample data. Implementation of procedures to ensure that carryover does not contaminate the

testing of an individual's specimen shall be documented. A minimum of 10 percent of all test samples shall be quality control specimens. Laboratory quality control samples, prepared from spiked urine samples of determined concentration shall be included in the run and should appear as normal samples to laboratory analysts. One percent of each run, with a minimum of at least one sample, shall be the laboratory's own quality control samples.

(c) Laboratory Quality Control Requirements for Confirmation Tests. Each analytical run of specimens to be confirmed shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the threshold (cutoff).

The linearity and precision of the method shall be periodically documented. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall also be documented.

(d) Agency Blind Performance Test Procedures. (1) Agencies shall purchase drug testing services only from laboratories certified by DHHS or a DHHS-Recognized certification program in accordance with these Guidelines. Laboratory participation is encouraged in other performance testing surveys by which the laboratory's performance is compared with peers and reference laboratories.

(2) During the initial 90-day period of any new drug testing program, each agency shall submit blind performance test specimens to each laboratory it contracts with in the amount of at least 50 percent of the total number of samples submitted (up to a maximum of 500 samples) and thereafter a minimum of 10 percent of all samples (to a maximum of 250) submitted per quarter.

(3) Approximately 80 percent of the blind performance test samples shall be blank (i.e., certified to contain no drug) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the agency is testing.

(4) The Secretary shall investigate any unsatisfactory performance testing result and, based on this investigation, the laboratory shall take action to correct the cause of the unsatisfactory performance test result. A record shall be make of the Secretary's investigative findings and the corrective action taken by the laboratory, and that record shall be dated and signed by the individuals responsible for the day-to-day management and operation of the drug testing laboratory. Then the Secretary shall send the document to the agency contracting officer as a report of the unsatisfactory performance testing incident. The Secretary shall ensure notification of the finding to all other Federal agencies for which the laboratory is engaged in urine drug testing and coordinate any necessary action.

(5) Should a false positive error occur on a blind performance test specimen and the error is determined to be an administrative error (clerical, sample mixup, etc.), the Secretary shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future; and, if there is reason to believe the error could have been systematic, the Secretary may also require review and reanalysis of previously run specimens.

(6) Should a false positive error occur on a blind performance test specimen and the error is determined to be a technical or methodological error, the laboratory shall submit all quality control data from the batch of specimens which included the false positive specimen. In addition, the laboratory shall retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for day-to-day management of the laboratory's urine drug testing. The Secretary may require an on-site review of the laboratory which may be conducted unannounced during any hours of operations of the laboratory. The Secretary has the option of revoking (3.13) or suspending (3.14) the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

2.6 Interim Certification Procedures.

During the interim certification period as determined under paragraph (c), agencies shall ensure laboratory competence by one of the following methods:

(a) Agencies may use agency or contract laboratories that have been certified for urinalysis testing by the Department of Defense; or

(b) Agencies may develop interim self-certification procedures by establishing preaward inspections and performance testing plans approved by DHHS.

(c) The period during which these interim certification procedures will apply shall be determined by the Secretary. Upon noticed by the Secretary that these interim certification procedures are no longer available, all Federal agencies subject to these Guidelines shall only use laboratories that have been certified in accordance with Subpart C of these Guidelines and all laboratories approved for interim certification under paragraphs (a) and (b) of this section shall become certified in accordance with Subpart C within 120 days of the date of this notice.

2.7 Reporting and Review of Results.

(a) Medical Review Officer Shall Review Results. An essential part of the drug testing program is the final review of results. A positive test result does not automatically identify an employee/applicant as an illegal drug user. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer prior to the transmission of results to agency administrative officials.

(b) Medical Review Officer—Qualifications and Responsibilities. The Medical Review Officer shall be a licensed physician with knowledge of substance abuse disorders and may be an agency or contract employee. The role of the Medical Review Officer is to review and interpret positive test results obtained through the agency's testing program. In carrying out this responsibility, the Medical Review Officer shall examine alternate medical explanations for any positive test result. This action could include conducting a medical interview with the individual, review of the individual's medical history, or review of any other relevant biomedical factors. The Medical Review Officer shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The Medical Review Officer shall not, however, consider the results of urine samples that are not obtained or processed in accordance with these Guidelines.

(c) Positive Test Result. Prior to making a final decision to verify a positive test result, the Medical Review Officer shall give the individual an opportunity to discuss the test result

with him or her. Following verification of a positive test result, the Medical Review Officer shall refer the case to the agency Employee Assistance Program and to the management official empowered to recommend or take administrative action.

(d) Verification for opiates; review for prescription mediation. Before the Medical Review Officer verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence—in addition to the urine test—of illegal use of any opium, opiate, or opium derivative (e.g., morphine/codeine) listed in Schedule I or II of the Controlled Substances Act. (This requirement does not apply if the agency's GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine.)

(e) Reanalysis Authorized. Should any question arise as to the accuracy or validity of a positive test result, only the Medical Review Officer is authorized to order a reanalysis of the original sample and such retests are authorized only at laboratories certified under these Guidelines.

(f) Result Consistent with Legal Drug Use. If the Medical Review Officer determines there is a legitimate medical explanation for the positive test result, he or she shall determine that the result is consistent with legal drug use and take no further action.

(g) Result Scientifically Insufficient. Additionally, the Medical Review Officer, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation the Medical Review Officer may request reanalysis of the original sample before making this decision. (The Medical Review Officer may request that reanalysis be performed by the same laboratory or, as provided in 2.7(e), that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory which is certified in accordance with these Guidelines.) The laboratory shall assist in this review process as requested by the Medical Review Officer by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who has equivalent forensic experience in urine drug testing, to provide specific consultation as required by the agency. The Medical Review Officer shall report to the Secretary all negative findings based on scientific insufficiency but shall not include any personal identifying information in such reports.

2.8 Protection of Employee Records.

Consistent with 5 U.S.C. 522a(m) and 48 CFR 24.101–24.104, all laboratory contracts shall require that the contractor comply with the Privacy Act, 5 U.S.C. 552a. In addition, laboratory contracts shall require compliance with the patient access and confidentiality provisions of section 503 of Pub. L. 100–71. The agency shall establish a Privacy Act System of Records or modify an existing system, or use any applicable Government-wide system of records to cover both the agency's and the laboratory's records of employee urinalysis results. The contract and the Privacy Act System shall specifically require that employee records be maintained and used with the highest regard for employee privacy.

2.9 Individual Access to Test and Laboratory Certification Results.

In accordance with section 503 of Pub. L. 100–71, any Federal employee who is the subject of a drug test shall, upon written request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.

Subpart C—Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies

3.1 Introduction.

Urine drug testing is a critical component of efforts to combat drug abuse in our society. Many laboratories are familiar with good laboratory practices but may be unfamiliar with the special procedures required when drug test results are used in the employment context. Accordingly, the following are minimum standards to certify laboratories engaged in urine drug testing for Federal agencies. Certification, even at the highest level, does not guarantee accuracy of each result reported by a laboratory conducting urine drug testing for Federal agencies. Therefore, results from laboratories certified under these Guidelines must be interpreted with a complete understanding of the total collection, analysis, and reporting process before a final conclusion is made.

3.2 Goals and Objectives of Certification.

(a) Uses of Urine Drug Testing. Urine drug testing is an important tool to identify drug users in a variety of settings. In the proper context, urine drug testing can be used to deter drug abuse in general. To be a useful tool, the testing procedure must be capable of detecting drugs or their metabolites at concentrations indicated in 2.4 (e) and (f).

(b) Need to Set Standards; Inspections. Reliable discrimination between the presence, or absence, of specific drugs or their metabolites is critical, not only to achieve the goals of the testing program but to protect the rights of the Federal employees being tested. Thus, standards have been set which laboratories engaged in Federal employee urine drug testing must meet in order to achieve maximum accuracy of test results. These laboratories will be evaluated by the Secretary or the Secretary's designee as defined in 1.2 in accordance with these Guidelines. The qualifying evaluation will involve three rounds of performance testing plus on-site inspection. Maintenance of certification requires participation in an every-other-month performance testing program plus periodic, on-site inspections. One inspection following successful completion of a performance testing regimen is required for initial certification. This must be followed by a second inspection within 3 months, after which biannual inspections will be required to maintain certification.

(c) Urine Drug Testing Applies Analytical Forensic Toxicology. The possible impact of a positive test result on an individual's livelihood or rights, together with the possibility of a legal challenge of the result, sets this type of test apart from most clinical laboratory testing. In fact, urine drug testing should be considered a special application of analytical forensic toxicology. That is, in addition to the application of appropriate analytical methodology, the specimen must be treated as evidence, and all aspects of the testing procedure must be documented and available for possible court testimony. Laboratories engaged in urine drug testing for Federal agencies will require the services and advice of a qualified forensic toxicologist, or individual with equivalent qualifications (both training and experience) to address the specific needs of the Federal drug testing program, including the demands of chain of custody of specimens, security, property documentation of all records, storage of positive specimens for later or independent testing, presentation of evidence in court, and expert witness testimony.

3.3 General Certification Requirements.

A laboratory must meet all the pertinent provisions of these Guidelines in order to qualify for certification under these standards.

3.4 Capability to Test for Five Classes of Drugs.

To be certified, a laboratory must be capable of testing for at least the following five classes of drugs: Marijuana, cocaine, opiates, amphetamines, and phencyclidine, using the initial immunoassay and quantitative confirmatory GC/MS methods specified in these Guidelines. The certification program will be limited to the five classes of drugs (2.1(a) (1) and (2)) and the methods (2.4 (e) and (f)) specified in these Guidelines. The laboratory will be surveyed and performance tested only for these methods and drugs. Certification of a laboratory indicates that any test result reported by the laboratory for the Federal Government meets the standards in these Guidelines for the five classes of using the methods specified. Certified laboratories must clearly inform non-Federal clients when procedures followed for those clients conform to the standards specified in these Guidelines.

3.5 Initial and Confirmatory Capability at Same Site.

Certified laboratories shall have the capability, at the same laboratory site, of performing both initial immunoassays and confirmatory GC/MS tests (2.4 (e) and (f)) for marijuana, cocaine, opiates, amphetamines, and phencyclidine and for any other drug or metabolite for which agency drug testing is authorized (2.1(a) (1) and (2)). All positive initial test results shall be confirmed prior to reporting them.

3.6 Personnel.

Laboratory personnel shall meet the requirements specified in 2.3 of these Guidelines. These Guidelines establish the exclusive standards for qualifying or certifying those laboratory personnel involved in urinalysis testing whose functions are prescribed by these Guidelines. A certification of a laboratory under these Guidelines shall be a determination that these qualification requirements have been met.

3.7 Quality Assurance and Quality Control.

Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process, including but not limited to specimen acquisition, chain of custody, security and reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality control procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs as specified in 2.5 of these Guidelines.

3.8 Security and Chain of Custody.

Laboratories shall meet the security and chain of custody requirements provided in 2.4(a).

3.9 One-Year Storage for Confirmed Positives.

All confirmed positive specimens shall be retained in accordance with the provisions of 2.4(h) of these Guidelines.

3.10 Documentation.

The laboratory shall maintain and make available for at least 2 years documentation in accordance with the specifications in 2.4(m).

3.11 Reports.

The laboratory shall report test results in accordance with the specifications in 2.4(g).

3.12 Certification.

(a) General. The Secretary may certify any laboratory that meets the standards in these Guidelines to conduct urine drug testing. In addition, the Secretary may consider to be certified and laboratory that is certified by a DHHS-recognized certification program in accordance with these Guidelines.

(b) Criteria. In determining whether to certify a laboratory or to accept the certification of a DHHS-recognized certification program in accordance with these Guidelines, the Secretary shall consider the following criteria:

(1) The adequacy of the laboratory facilities;

(2) The expertise and experience of the laboratory personnel;

(3) The excellence of the laboratory's quality assurance/quality control program;

(4) The performance of the laboratory on any performance tests;

(5) The laboratory's compliance with standards as reflected in any laboratory inspections; and

(6) Any other factors affecting the reliability and accuracy of drug tests and reporting done by the laboratory.

3.13 Revocation.

(a) General. The Secretary shall revoke certification of any laboratory certified under these provisions or accept revocation by a DHHS-recognized certification program in accordance with these Guidelines if the Secretary determines that revocation is necessary to ensure the full reliability and accuracy of drug tests and the accurate reporting of test results.

(b) Factors to Consider. The Secretary shall consider the following factors in determining whether revocation is necessary:

(1) Unsatisfactory performance in analyzing and reporting the results of drug tests; for example, a false positive error in reporting the results of an employee's drug test;

(2) Unsatisfactory participation in performance evaluations or laboratory inspections;

(3) A material violation of a certification standard or a contract term or other condition imposed on the laboratory by a Federal agency using the laboratory's services;

(4) Conviction for any criminal offense committed as an incident to operation of the laboratory; or

(5) Any other cause which materially affects the ability of the laboratory to ensure the full reliability and accuracy of drug tests and the accurate reporting of results.

(c) Period and Terms. The period and terms of revocation shall be determined by the Secretary and shall depend upon the facts and circumstances of the revocation and the need to ensure accurate and reliable drug testing of Federal employees.

3.14 Suspension.

(a) Criteria. Whenever the Secretary has reason to believe that revocation may be required and that immediate action is necessary in order to protect the interests of the United States and its employees, the Secretary may immediately suspend a laboratory's certification to conduct urine drug testing for Federal agencies. The Secretary may also accept suspension of certification by a DHHS-recognized certification program in accordance with these Guidelines.

(b) Period and Terms. The period and terms of suspension shall be determined by the Secretary and shall depend upon the facts and circumstances of the suspension and the need to ensure accurate and reliable drug testing of Federal employees.

3.15 Notice; Opportunity for Review.

(a) Written Notice. When a laboratory is suspended or the Secretary seeks to revoke certification, the Secretary shall immediately serve the laboratory with written notice of the suspension or proposed revocation by personal service or registered or certified mail, return

receipt requested. This notice shall state the following:

(1) The reasons for the suspension or proposed revocation;

(2) The terms of the suspension or proposed revocation; and

(3) The period of suspension or proposed revocation.

(b) Opportunity for Informal Review. The written notice shall state that the laboratory will be afforded an opportunity for an informal review of the suspension or proposed revocation if it so requests in writing within 30 days of the date of mailing or service of the notice. The review shall be by a person or persons designated by the Secretary and shall be based on written submissions by the laboratory and the Department of Health and Human Services and, at the Secretary's discretion, may include an opportunity for an oral presentation. Formal rules of evidence and procedures applicable to proceedings in a court of law shall not apply. The decision of the reviewing official shall be final.

(c) Effective Date. A suspension shall be effective immediately. A proposed revocation shall be effective 30 days after written notice is given or, if review is requested, upon the reviewing official's decision to uphold the proposed revocation. If the reviewing official decides not to uphold the suspension or proposed revocation, the suspension shall terminate immediately and any proposed revocation shall not take effect.

(d) DHHS-Recognized Certification Program. The Secretary's responsibility under this section may be carried out by a DHHS-recognized certification program in accordance with these Guidelines.

3.16 Recertification.

Following the termination or expiration of any suspension or revocation, a laboratory may apply for recertification. Upon the submission of evidence satisfactory to the Secretary that the laboratory is in compliance with these Guidelines or any DHHS-recognized certification program in accordance with these Guidelines, and any other conditions imposed as part of the suspension or revocation, the Secretary may recertify the laboratory or accept the recertification of the laboratory by a DHHS-recognized certification program.

3.17 Performance Test Requirement for Certification.

(a) An Initial and Continuing Requirement. The performance testing program is a part of the initial evaluation of a laboratory seeking certification (both performance testing and laboratory inspection are required) and of the continuing assessment of laboratory performance necessary to maintain this certification.

(b) Three Initial Cycles Required. Successful participation in three cycles of testing shall be required before a laboratory is eligible to be considered for inspection and certification. These initial three cycles (and any required for recertification) can be compressed into a 3-month period (one per month).

(c) Six Challenges Per Year. After certification, laboratories shall be challenged every other month with one set of at least 10 specimens a total of six cycles per year.

(d) Laboratory Procedures Identical for Performance Test and Routine Employee Specimens. All procedures associated with the handling and testing of the performance test specimens by the laboratory shall to the greatest extent possible be carried out in a manner identical to that applied to routine laboratory specimens, unless otherwise specified.

(e) Blind Performance Test. Any certified laboratory shall be subject to blind performance testing (see 2.5(d)). Performance on blind test specimens shall be at the same level as for the open or non-blind performance testing.

(f) Reporting—Open Performance Test. The laboratory shall report results of open performance tests to the certifying organization in the same manner as specified in 2.4(g)(2) for routine laboratory specimens.

3.18 Performance Test Specimen Composition.

(a) Description of the Drugs. Performance test specimens shall contain those drugs and metabolites which each certified laboratory must be prepared to assay in concentration ranges that allow detection of the analyte by commonly used immunoassay screening techniques. These levels are generally in the range of concentrations which might be expected in the urine of recent drug users. For some drug analytes, the specimen composition will consist of the parent drug as well as major metabolites. In some cases, more than one drug class may be included in one specimen container, but generally no more than two drugs will be present in any one specimen in order to imitate the type of specimen which a laboratory normally encounters. For any particular performance testing cycle, the actual composition of kits going to different laboratories will vary but, within any annual period, all laboratories participating will have analyzed the same total set of specimens.

(b) Concentrations. Performance test specimens shall be spiked with the drug classes and their metabolites which are required for certifications: marijuana, cocaine, opiates, amphetamines, and phencyclidine, with concentration levels set at least 20 percent above the cutoff limit for either the initial assay or the confirmatory test, depending on which is to be evaluated. Some performance test specimens may be identified for GC/MS assay only. Blanks shall contain less than 2 ng/ml of any of the target drugs. These concentration and drug types may be changed periodically in response to factors such as changes in detection technology and patterns of drug use.

3.19 Evaluation of Peformance Testing.

(a) Initial Certification. (1) An applicant laboratory shall not report any false positive result during performance testing for initial certification. Any false positive will automatically disqualify a laboratory from further consideration.

(2) An applicant laboratory shall maintain an overall grade level of 90 percent for the three cycles of performance testing required for initial certification, i.e., it must correctly identify and confirm 90 percent of the total drug challenges for each shipment. Any laboratory which achieves a score on any one cycle of the initial certification such that it can no longer achieve a total grade of 90 percent over the three cycles will be immediately disqualified from further consideration.

(3) An applicant laboratory shall obtain quantitative values for at least 80 percent of the total drug challenges which are ± 20 percent or ± 2 standard deviations of the calculated reference group mean (whichever is larger). Failure to achieve 80 percent will result in disqualification.

(4) An applicant laboratory shall not obtain any quantitative values that differ by more than 50 percent from the calculated reference group mean. Any quantitative values that differ by more than 50 percent will result in disqualification.

(5) For any individual drug, an applicant laboratory shall successfully detect and quantitate in accordance with paragraphs (a)(2), (a)(3), and (a)(4) of this section at least 50 percent of the total drug challenges. Failure to successfully quantitate at least 50 percent of the challenges for any individual drug will result in disqualification.

(b) Ongoing Testing of Certified Laboratories.—(1) False Positives and Procedures for Dealing With Them. No

false drug identifications are acceptable for any drugs for which a laboratory offers service. Under some circumstances a false positive test may result in suspension or revocation of certification. The most serious false positives are by drug class, such as reporting THC in a blank specimen or reporting cocaine in a specimen known to contain only opiates. Misidentifications within a class (e.g., codeine for morphine) are also false positives which are unacceptable in an appropriately controlled laboratory, but they are clearly less serious errors than misidentification of a class. The following procedures shall be followed when dealing with a false positive:

(i) The agency detecting a false positive error shall immediately notify the laboratory and the Secretary of any such error.

(ii) The laboratory shall provide the Secretary with a written explanation of the reasons for the error within 5 working days. If required by paragraph (b)(1)(v) below, this explanation shall include the submission of all quality control data from the batch of specimens that included the false positive specimen.

(iii) The Secretary shall review the laboratory's explanation within 5 working days and decide what further action, if any, to take.

(iv) If the error is determined to be an administrative error (clerical, sample mixup, etc.), the Secretary may direct the laboratory to take corrective action to minimize the occurence of the particular error in the future and, if there is reason to believe the error could have been systematic, may require the laboratory to review and reanalyze previously run specimens.

(v) If the error is determined to be technical or methodological error, the laboratory shall submit to the Secretary all quality control data from the batch of specimens which included the false positive specimen. In addition, the laboratory shall retest all specimens analyzed positive by the laboratory from the time fo final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for the day-to-day management of the laboratory's urine drug testing. Depending on the type of error which caused the false positive, this retesting may be limited to one analyte or may include any drugs a laboratory certified under these Guidelines must be prepared to assay. The laboratory shall immediately notify the agency if any result on a retest sample must be corrected because the critieria for a positive are not satisfied. The Secretary may suspend or revoke the laboratory's certification for all drugs or for only the drug or drug class in which the error occurred. However, if the case is one of a less serious error for which effective corrections have already been made, thus reasonably assuring that the error will not occur again, the Secretary may decide to take no further action.

(vi) During the time required to resolve the error, the laboratory shall remain certified but shall have a designation indicating that a false positive result is pending resolution. If the Secretary determines that the laboratory's certification must be suspended or revoked, the laboratory's official status will become "Suspended" or "Revoked" until the suspension or revocation is lifted or any recertification process is complete.

(2) Requirement to Identify and Confirm 90 Percent of Total Drug Challenges. In order to remain certified, laboratories must successfully complete six cycles of performance testing per year. Failure of a certified laboratory to maintain a grade of 90 percent on any required performance test cycle, i.e., to identify 90 percent of the total drug challenges and to correctly confirm 90 percent of the total drug challenges, may result in suspension or revocation of certification.

(3) Requirement to Quantitate 80 Percent of Total Drug Challenges at ±20 Percent or ±2 standard deviations. Quantitative values obtained by a certified laboratory for at least 80 percent of the total drug challenges must be ±20 percent or ±2 standard deviations of the calculated reference group mean (whichever is larger).

(4) Requirement to Quantitate within 50 Percent of Calculated Reference Group Mean. No quantitative values obtained by a certified laboratory may differ by more than 50 percent from the calculated reference group mean.

(5) Requirement to Successfully Detect and Quantitate 50 Percent of the Total Drug Challenges for Any Individual Drug. For any individual drug, a certified laboratory must successfully detect and quantitate in accordance with paragraphs (b)(2), (b)(3), and (b)(4) of this section at least 50 percent of the total drug challenges.

(6) Procedures When Requirements in Paragraphs (b)(2)–(b)(5) of this Section Are Not Met. If a certified laboratory fails to maintain a grade of 90 percent per test cycle after initial certification as required by paragraph (b)(2) of this section or if it fails to successfully quantitate results as required by paragraphs (b)(3), (b)(4), or (b)(5) of this section, the laboratory shall be immediately informed that its performance fell under the 90 percent level or that it failed to successfully quantitate test results and how it failed to successfully quantitate. The laboratory shall be allowed 5 working days in which to provide any explanation for its unsuccessful performance, including administrative error or methodological error, and evidence that the source of the poor performance has been corrected. The Secretary may revoke or suspend the laboratory's certification or take no further action, depending on the seriousness of the errors and whether there is evidence that the source of the poor performance has been corrected and that current performance meets the requirements for a certified laboratory under these Guidelines. The Secretary may require that additional performance tests be carried out to determine whether the source of the poor performance has been removed. If the Secretary determines to suspend or revoke the laboratory's certification, the laboratory's official status will become "Suspended" or "Revoked" until the suspension or revocation is lifted or until any recertification process is complete.

(c) 80 Percent of Participating Laboratories Must Detect Drug. A laboratory's performance shall be evaluated for all samples for which drugs were spiked at concentrations above the specified performance test level unless the overall response from participating laboratories indicates that less than 80 percent of them were able to detect a drug.

(d) Participation Required. Failure to participate in a performance test or to participate satisfactorily may result in suspension or revocation of certification.

3.20 Inspections.

Prior to laboratory certification under these Guidelines and at least twice a year after certification, a team of three qualified inspectors, at least two of whom have been trained as laboratory inspectors, shall conduct an on-site inspection of laboratory premises. Inspections shall document the overall quality of the laboratory setting for the purposes of certification to conduct urine drug testing. Inspection reports may also contain recommendations to the laboratory to correct deficiencies noted during the inspection.

3.21 Results of Inadequate Performance.

Failure of a laboratory to comply with any aspect of these Guidelines may lead to revocation or suspension of certification as provided in 3.13 and 3.14 of these Guidelines.

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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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 Jan. 1, 1987 to Dec. 31, 1987. The CFR volume issued January 1, 1987, should be retained.

[3] 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.

[4] 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.

[5] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1987. The CFR volume issued as of July 1, 1986, should be retained.

[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.