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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210 and 250

Donation of Foods for Use in the United States, its Territories and Possessions and Areas Under its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Food Distribution Program Regulations (7 CFR Part 250) and the National School Lunch Program Regulations (7 CFR Part 210). This amendment will implement those provisions of Pub. L. 100–237 that relate to: (1) Dissemination of summaries of product specifications to recipient agencies; (2) semiannual collection of commodity acceptability information from recipient agencies (including a change in the submission dates for State Food Distribution Advisory Council Reports); (3) purchase of domestically-produced products; (4) testing and monitoring of processed commodities; (5) allocation procedures; (6) establishing commodity values; and (7) offering the per meal value of commodities to school food authorities. These changes will improve the manner in which commodities are distributed.

DATES: The provisions contained in this rule are effective in accordance with the following chart. *Comments* must be received on or before October 19, 1988.

Section	Description	Effective date
210.27(c)	State food distribution advisory council repor submission dates.	Upon publication.
250.3	Definition of "food product produced in the U.S."	Jan. 8, 1988.
250.13(a)(4)	Allocation procedures.	Upon publication.
250.13(a)(5)	Commodity value	Jan. 8, 1988.
250.13(j)	Commodity specifications.	May 7, 1988.
250.13(k)	Commodity acceptability information.	Do.
250.17(d)	Commodity acceptability report.	Do.
250.23	"Buy American"	Jan. 8, 1988.
250.30(b)(1)	Processing acceptability testing.	Oct. 4, 1988.
250.47(a)	Food distribution program on Indian reservations.	May 7, 1988.
250.48(c)	Offering the per meal value.	Jan. 8, 1988.

ADDRESS: Comments should be sent to: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

Comments in response to these rules may be inspected at 3101 Park Center Drive, Room 506, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5:00 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, at (703) 756–3660.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three identified under the Executive Order. Compliance with the provisions in this rule will neither have an annual effect on the economy of more than $100 million or more nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule implements a number of provisions contained in Pub. L. 100–237. The law requires that those provisions relative to the purchase of domestically-produced products, the establishment and use of commodity value information and offering the national per meal commodity value take effect upon the date of enactment of the Act. Thus, these provisions are being made effective without prior public comment retroactive to January 8, 1988.

The statute also requires that the Secretary implement those provisions relative to the collection of commodity acceptability information and the dissemination of summaries of product specifications within 120 days of enactment of the Act. Thus, in order to implement these provisions within the timeframes established in the law, those provisions of the rule are being made effective without prior public comment retroactive to May 7, 1988.

Pub. L. 100–237 requires the Secretary to establish Departmental allocation procedures in the regulations within 270 days of enactment. The regulatory provision regarding the allocation of commodities to States reflects current standard Departmental operations. Since this provision merely codifies existing procedures which would remain in effect during any period of public comment, it is being made effective upon publication with a request for public comment.

With regard to those provisions that relate to the testing and monitoring of processed end products, the Department is implementing these provisions by restating the requirements exactly as set forth in the law. Thus, they are being adopted without prior public comment.

The provision regarding the submission of the State Food Distribution Advisory Council Report is to extend the current submission dates. Since this amendment will provide additional time to submit the report it is being implemented without prior public comment upon publication of this interim rule.

For the reasons stated above, Anna Kondratas, Administrator of the Food and Nutrition Service (FNS) has found, in accordance with 5 U.S.C. 553(b), that prior notice and comment is impracticable, unnecessary and contrary to public interest, good cause exists for publishing this rule without prior public notice and comment. For these same

reasons, the Administrator has found, in accordance with 5 U.S.C. 553(d), that good cause exists for making the noted provisions of this rule effective less than 30 days after publication. However, since the Department believes that an opportunity for public comment could result in improved and simplified administration of the rule, it is being published as an interim rule with a 90-day comment period.

This action has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. 601–612). Anna Kondratas, Administrator of FNS, has certified that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520), additional recordkeeping and reporting requirements contained in §§ 250.13(k) and 250.17(d) of this interim rule are subject to review and approval by the Office of Management and Budget (OMB). Current reporting and recordkeeping requirements for Part 250 were approved by OMB under Control Number 0584–0007.

This program is listed in the Catalog of Federal Domestic Assistance under 10.550 and is subject to the provisions of Executive Order 12472 which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V and the final rule related notice published at 48 FR 29114, June 24, 1983).

Background

The regulations governing the Food Distribution Program (7 CFR Part 250) outline the responsibilities of FNS and distributing agencies with regard to the distribution and use of federally-donated foods. The current regulations provide for the distribution of donated foods to a variety of domestic outlets, including entities participating in the Child Nutrition Programs, Nutrition Programs for the Elderly and Charitable Institutions.

On January 8, 1988, President Reagan signed the Commodity Distribution Reform Act and WIC Amendments of 1987 (Pub. L. 100–237). The purpose of the law is to improve the manner in which agricultural commodities are distributed to recipient agencies, to improve the quality of the commodities that are distributed and to increase the degree to which the distribution responds to the needs of recipient agencies while still carrying out the Department's responsibilities to support agricultural prices and remove surpluses from the market. Some of the provisions contained in the law which are nondiscretionary or for which legislated timeframes for implementation are extremely limited are being implemented through this interim rule. In addition, provisions which were effective upon enactment of the legislation are included.

For further information concerning the Department's action to date in implementation of Pub. L. 100–237, see the **Federal Register** "Notice of Implementation of Pub. L. 100–237" which was published on April 19, 1988 (53 FR 12794) and the interim rule published on June 16, 1988 (53 FR 22466). The notice advises interested parties of how the Department has implemented or intends to implement all provisions of this law and the interim rule implements some of the requirements of the law.

State Food Distribution Advisory Council Report

Section 3(f)(2) of the new law requires that the Secretary establish procedures to ensure that information is received from recipient agencies at least semiannually about the types and forms of commodities that are most useful to persons participating in programs operated by recipient agencies. FNS currently receives information annually through the State Food Distribution Advisory Council Reports, a survey of school food authorities. To minimize the paperwork and recordkeeping burdens of this new statutory provision, the Department has decided that this report could serve as one of the two commodity acceptability reports required under § 250.13(k) of this rule.

However, to coordinate timing of the council report and the semiannual timeframes for data collection and reporting, it is necessary to extend the date for the submission of the Council Report. Under the current § 210.27(c), the Council report is due to the State educational agency no later than February 15; this interim rule changes the due date to March 30. A corresponding change has been made to the date by which the State educational agency must report Council recommendations to FNSRO. This date has been changed from March 15 to April 30. The extension will also allow Councils more time to collect information and to make specific recommendations on the acceptability of donated foods distributed in the same reporting school year. The selection of submission dates for the commodity acceptability information are discussed in the following section of the preamble.

Commodity Acceptability Information

As discussed in the preamble section regarding State Food Distribution Council Reports, section 3(f)(2) of the new law requires that the Secretary establish procedures to ensure that information is received from recipient agencies, at least semiannually, about the types and forms of commodities that are most useful to persons participating in programs operated by recipient agencies. Furthermore, the new law requires the Secretary to use the information in the semiannual reports in determining the specifications for the types and forms of commodities and products to be provided to recipient agencies (Section 3(a)(1)) and in implementing a system to provide recipient agencies with options on package sizes and forms (section 3(b)(1)(A)).

Section 250.13(k) of this interim rule establishes minimum information collection requirements necessary to meet these needs. Therefore, the reports submitted to FNS shall reflect, at a minimum, the following (1) the types and forms of commodities that are most useful to persons participating in programs operated by recipient agencies, (2) commodity specification recommendations and (3) requests for options regarding package sizes and forms of commodities.

Section 250.13(k) of this interim rule requires that distributing agencies obtain this information from a sample of at least 10 percent or 100, whichever is less, of recipient agencies from each distinct program category. Individual program categories must be established for schools, the Child Care Food Program, the Summer Food Service Program, the Nutrition Program for the Elderly, the Commodity Supplemental Food Program, charitable institutions, summer camps, the Food Distribution Program on Indian Reservations, and the Temporary Emergency Food Assistance Program (TEFAP). Since § 251.4(a) of the TEFAP regulations provides that TEFAP commodities are made available in accordance with the terms and conditions of Part 250, to the extent that they are not inconsistent with the TEFAP regulations, the TEFAP State agency will be responsible for the collection of the TEFAP information. Distributing agencies must obtain this commodity information at least semiannually except for summer camps and the Summer Food Service Program. Since summer camps and the Summer Food Service Program are only in operation for a few months each year, it is not feasible for commodity acceptability information to be obtained semiannually. Thus, distributing agencies are required to obtain the information from recipient agencies

participating in these programs annually

In selecting the sample, distributing agencies must also consider the size and geographic location of the recipient agencies to ensure that each sample is representative of all agencies participating in a particular program. In addition, the regulation requires distributing agencies to alternate among recipient agencies so that over the course of several years each recipient agency is provided an opportunity to express its views.

Distributing agencies may use information which has been obtained from the State Food Distribution Advisory Council, under Part 210; and from the Food Distribution Program on Indian Reservations program's food preference reports, under Part 253, to represent one of the required acceptability reports for the respective program categories.

The procedures contained in this section provide for the collection of information in a manner which ensures representation of recipient agencies' needs by program. At the same time, the information is collected on a sample basis, rather than from each recipient agency twice a year. This relieves State and local agencies of an unnecessarily burdensome paperwork requirement. These procedures are being implemented under this interim rule because the law requires that the Secretary establish procedures for the collection of commodity acceptability information within 120 days of enactment of the law.

Section 250.13(k) and 250.17(d) require distributing agencies to submit commodity acceptability information from recipient agencies, with the exception of summer camps and the Summer Food Service Program, to the appropriate FNSRO by April 30 and November 30 of each year. Distributing agencies must submit the information for summer camps and the Summer Food Service Program to the appropriate FNSRO by November 30 of each year. Information received beyond the required dates will not be considered.

The April 30 submission date results in collecting data from recipient agencies near the end of the school year which will allow the Department to receive feedback on the types and forms of commodities distributed throughout that reporting year. This date also coincides with the revised requirement for submitting the State Food Distribution Advisory Council report in § 210.27 which is being amended by this interim rule. The Department selected the second submission date of November 30 taking the school year calendar into consideration. Clearly, data collection and reporting between May and September would not be appropriate given school food authorities' schedules and workload.

The second data collection should include, but is not limited to, follow-up information to confirm trends previously noted by the State and to provide responses to USDA requests for specific information. The time between each submission of this information will provide the Department with ample time to review this information, to request follow-up information and to make changes to commodity specifications as warranted for the upcoming school or fiscal year. The Department is, however, specifically soliciting comments on the feasibility of collecting commodity acceptability information within these timeframes.

Food Distribution Program on Indian Reservations

Paragraph (a) of § 250.47 of this interim rule is being revised to require that distributing agencies that operate food distribution program on Indian reservations also comply with the commodity acceptability reporting requirement contained in paragraph (d) of § 250.17.

Buy American

Section 3(h) of the new law requires that recipient agencies purchase, whenever possible, only food products that are produced in the United States (U.S.). Recipient agencies in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands are exempt from this requirement. The law also permits the Secretary to grant waivers for: (1) Those recipient agencies that have unusual or ethnic preferences in food products; or (2) such other circumstances as the Secretary considers appropriate.

In order to incorporate these provisions into the regulations, § 250.23 has been added under this interim rule to require that, when ever possible, recipient agencies, with the exception of those in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, purchase only food products that are produced in the U.S. as defined in § 250.3.

However, the interim regulations limit the applicability of the "Buy American" provision to purchases of food products with Federal funds. The Department believes that absent any clear statement to the contrary, the "Buy American" provision should be interpreted so as to avoid intrusion by the Federal Government into local purchasing decisions. This interpretation is further supported by a statement made by Congressman Ford, author of the "Buy American" provision, before the House of Representatives on December 17, 1987 (133 Cong. Rec. H11654 (daily ed., Dec. 17, 1987). In that statement, Congressman Ford states that the provision applies only to food purchases made from Federal funds and not those from State or local sources. However, while the requirements of § 250.23 are limited to purchases made with Federal funds, the Department continues to encourage schools and other outlets to purchase food of domestic origin regardless of the funding source.

Several options were considered in defining what foods would be classified as "food products produced in the United States." The definition is clearcut for unmanufactured products—these must be of U.S. origin. For manufactured products, defining what a "food product produced in the U.S." is more difficult. The Department considered requiring that manufactured products primarily contain ingredients of U.S. origin and be manufactured by a company located in the U.S. However, many manufactured products that are labeled and canned in the U.S. may have some or all foreign ingredients. It would be extremely difficult and costly to determine which ingredients were exclusively or primarily of U.S. origin. Further, recipient agencies would not have a means to verify that the ingredients in the manufactured products they are buying came from U.S. markets. Therefore, § 250.3 of the interim rule defines "food product produced in the U.S." as an unmanufactured food product produced in the U.S. or a food product manufactured in the U.S. Defining food products produced in the U.S. in this manner eliminates the need for recipient agencies to determine if the ingredients in a product were produced in the U.S. In addition, purchases of processed food products can be monitored to ensure compliance since section 304 of the Tariff Act of 1930 (19 U.S.C. 1304) requires imported articles to be marked with the country of origin.

The law also permits the Secretary to grant waivers of the "Buy American" requirement for those recipient agencies that have unusual or ethnic preferences in food products or such other circumstances as the Secretary considers appropriate. In accordance with the legislation, § 250.23 permits recipient agencies to purchase food products which are not produced in the U.S. when recipient agencies have

unusual or ethnic food preferences which can only be met through purchases of food products not produced in the U.S. The Department has identified two other situations which warrant a waiver. First, a foreign product may be purchased if the product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality. Second, if competitive bids reveal the cost of a U.S. product is unreasonable compared to a foreign product, the foreign product may be purchased. These objective criteria will allow recipient agencies to continue purchases of items like bananas and to buy foreign goods when the price compared to U.S. goods varies widely. Recipient agencies must keep records of how they implement this provision to demonstrate that U.S. products have been purchased whenever possible.

As required by section 14 of the law, the "Buy American" requirement tool effect upon enactment (January 8, 1988) and therefore, the provisions contained in § 250.23 are effective retroactive to January 8, 1988.

Allocation Procedures

Section 3(e)(1)(C) of Pub. L. 100–237 requires the Secretary to provide for, by regulation, procedures for allocating commodities among States. Presently, when a commodity is available in limited quantities, the Department uses allocation percentages, based on program participation data, to ensure States are allocated their pro rata share of such commodity. Allocation percentages are based on the most recent participation data available, by program designated to receive the commodity, at the time the commodity is offered to States. The Department is revising § 250.13(a)(4) (as recently amended by the interim rule published on June 16, 1988, (53 FR 22466)) to codify the Department's current method of allocating commodities among States.

Commodity Value

Section (3)(b)(7) of Pub. L. 100–237 requires the Secretary to establish a value for all donated commodities (i.e. cost per pound) to be used by distributing agencies when allocating or charging commodities to recipient agencies. The established commodity values are also to be used by States in determining the value of commodities offered to recipient agencies to meet commodity assistance levels. Currently, when a commodity is offered or made available to States to order but is not yet actually purchased, FNS provides distributing agencies with an estimated cost per pound. Once a product is purchased, an actual cost per pound (which includes the USDA cost of acquisition, transportation and other related purchase costs) is established and used to charge a State's entitlement. The cost per pound charged to a State's entitlement appears on the Entitlement Food Order Report (FNS Report No. 08) which is routinely provided to distributing agencies. An entitlement is the per meal value of donated foods the Department must provide to States for specific food assistance programs as established by law. Further explanation of entitlements follows in the section regarding offering the per meal value to school food authorities.

Current regulations do not require States to consistently value commodities when offering a commodity to recipient agencies or when determining the level of commodity assistance provided to recipient agencies. In accordance with the law, § 250.13(a)(5) of this interim rule has been revised to require that States use either the estimated cost per pound data or actual cost per pound data provided by USDA to value commodities offered to recipient agencies and to credit recipient agencies' planned assistance levels.

When States offer and charge commodities to recipient agencies, the distributing agency may use either the estimated or actual cost data provided by FNS, as long as the data chosen is used consistently throughout the State to value the commodities. Estimated cost data for grain, dairy, peanut and oil products (i.e. Group B commodities) shall be defined as the April 10 and October 10 costs listed in the USDA commodity file which are provided by the FNS regional offices to the distributing agencies. Estimated cost data for meat, fish, poultry, fruit and vegetable products (i.e. Group A commodities) shall be defined as the cost provided by USDA on commodity survey memorandum offering commodities to distributing agencies. Distributing agencies shall advise recipient agencies of the value of individual commodities at the time an offer is made. In instances where cost data used to allocate or credit commodity assistance levels differs from the cost data used to offer a commodity, distributing agencies shall advise recipient agencies of the cost used to allocate or credit a commodity.

Use of these criteria to value commodities will ensure that distributing agencies value commodities on the same basis for all recipient agencies throughout the State. The requirement that distributing agencies provide commodity values to recipient agencies conforms with the voluntary performance standards developed by FNS last year in consultation with the American School Food Service Association (ASFSA) and the National Association of State Agencies for Food Distribution (NASAFD). This standard recognized that dissemination of commodity values to recipient agencies is necessary for informed participation in the Food Distribution Program.

In § 250.13, paragraph (a) has been revised and restructured to include the provisions regarding allocation procedures and commodity value. As required by section 14 of the Act, the statutory provisions regarding commodity value took effect upon enactment (January 8, 1988) and therefore, the new provisions contained in § 250.13(a)(5) are effective retroactive to January 8, 1988.

Commodity Specifications

Commodity specifications precisely identify the product characteristics required in end products purchased by USDA. Lengthy and highly technical commodity specification documents are provided to vendors to ensure that end products meet USDA standards. Depending on the food product, components of a specification may include: (1) The name of the product; (2) quality or official grade; (3) kind, style, and/or variety; (4) product composition; (5) special instructions; (6) conditions that affect acceptability after the product has been inspected; (7) the size of the product; and (8) information about how the product is to be packaged.

Because of the length and technical nature of commodity specifications, it is difficult for those without a food technology background to understand or effectively use complete specifications. However, specifications do contain essential information about the commodities that is of value to recipient agencies. Therefore, the Department has developed summaries of commodity specifications which contain the most relevant information on the composition of commodities. The main requirements and standards listed in a commodity specification are contained in each summary, thus making it easier for meal service providers to find the information they need to accept, store and use commodities.

The FNS Instruction 716–1 contains the summaries of commodity specifications. In October 1987, the Department distributed this FNS Instruction to distributing agencies for further distribution to all school food authorities. Additional copies will be provided to all distributing agencies so

that they can be made available to other recipient agencies upon request.

Section 3(b)(3)(B) of Pub. L. 100–237 requires the dissemination of the summaries of commodity specifications by distributing agencies to recipient agencies upon request. The law requires implementation of this provision within 120 days of enactment of the bill. In accordance with Pub. L. 100–237, § 250.13 of this interim rule requires distributing agencies to make summaries of commodity specifications available to recipient agencies upon request.

Testing and Monitoring Processed End Products

Section 3(d)(5) of the law requires each distributing agency that enters into a processing contract for recipient agencies to test the product to determine the acceptability of the product prior to entering into a contract. The law also requires distributing agencies to develop a system to monitor product acceptability.

Under current regulations, distributing agencies may enter into processing contracts on behalf of recipient agencies. In addition, in an effort to ensure that recipient agencies are benefiting from the use of processed end products to the fullest extent possible, the Department revised the regulations in July 1986 to require that distributing agencies permit recipient agencies to enter into processing contracts.

The Department believes that the current regulatory provisions, coupled with this requirement to test and monitor the acceptability of processed end products, will result in recipient agencies receiving the most desirable end products. Section 250.30(b)(1) of this interim rule requires each distributing agency to test products with the recipient agencies eligible to receive them prior to entering into a processing contract and to develop a system to monitor product acceptability. However, the Department is not, at this time, establishing specific, detailed procedures for distributing agencies to use in testing and monitoring the acceptability of products. The Department is, however, soliciting comments from all interested parties about establishing specific procedures for testing and monitoring processed end products. Comments should include a description of any proposed system to be used for testing products and a description of the system to be used for monitoring product acceptability. Although this provision is not effective until October 7, 1988, the Department encourages distributing agencies to begin testing and monitoring end products as soon as possible. Based on the comments, the Department will be developing further guidance.

Offering the Per Meal Value of Donated Foods

Section (6)(e) of the National School Lunch Act requires that the Department provide commodity assistance to States for use by schools participating in the School Lunch Program. The level of assistance to be provided is determined by multiplying the appropriate national average value established under that section (i.e. per meal value) by the number of meals served in the current school year. Section (3)(j) of Pub. L. 100–237 amends section (6)(e) to require States to offer school food authorities the per meal value which is not less than the national average value of donated foods. The law also requires that offers include the full range of such commodities and products that are made available by the Secretary to the extent that quantities requested are sufficient to allow efficient delivery to and within the State.

Congress directed USDA to establish a consistent value for offering school food authorities commodity assistance so that school food authorities can claim their fair share of commodities. This provision is intended to prevent discriminatory distribution practices which may occur within a State. There is no evidence, however, of any intent to cause States to operate distribution systems inefficiently or to increase USDA's expenditures for commodities.

Current regulations do not define the value of commodities which States must offer individual school food authorities. Department policy and voluntary performance standards, however, set forth that States should establish planned assistance levels for school food authorities and allocate commodities equitably among school food authorities based on participation data. Section 250.48(c) of this interim rule is being revised to establish how States must determine the total value of commodities to offer school food authorities, to require an annual update of the commodity offer value and to specify the variety of commodities to offer and the type of commodities which count towards the per meal value that must be offered.

Commodity Offer Value. Section 250.48(c)(1) of this interim rule requires distributing agencies to offer school food authorities no less than the national average per meal value of donated foods established on July 1 of each school year by the Department in accordance with section (6)(e) of the National School Lunch Act. The total value of donated foods which must be offered to school food authorities shall be calculated by multiplying the per meal value of donated foods times the estimated number of eligible meals to be served by the school food authorities during the school year. This method was selected so that the States' determined value of commodities offered to school food authorities is consistent with the Department's determined value of commodities offered to States. States shall be required to maintain records of the value of commodities offered and refused in the event that these amounts must be substantiated in the future.

Section 250.48(c)(1) of this interim rule is also being revised to specify that distributing agencies shall be responsible for establishing the estimated number of meals to be served. This number shall be based on eligible meal count data submitted by school food authorities to the State education agency.

Update Requirement. Section 250.48(c)(2) requires, at a minimum, that the total value of commodities which must be offered to school food authorities shall be adjusted once annually to reflect significant changes in meals served. This rule is consistent with the voluntary distributing agency performance standards developed last year. During the development of these standards, State distributing agencies, recipient agencies and the Department agreed that significant changes in average daily participation must be recognized to ensure an equitable commodity offering, ordering and allocation system.

As required by §250.48(c)(2), distributing agencies shall establish and communicate to school food authorities and FNS regional offices the following: (1) The method to be used for establishing the number of meals to be served; (2) procedures for updating the commodity offer value; and (3) timeframes for updating the commodity offer value information. As noted earlier regarding per meal value, the requirement to communicate information about commodity offers to school food authorities is consistent with the voluntary performance standard objective that school food authorities should have all information necessary for informed participation in the Food Distribution Program.

The Department considered specifying which meal count data (i.e. previous year's or actual to date) must be used to determine the commodity offer value and the timeframes for updating these data. However, a review of existing State commodity offering procedures revealed that many States use a variety

of equitable and accurate methods, based on various types of meal count data, to ensure that school food authorities have the opportunity to claim their fair share of commodities. Most methods allowed for updates, either monthly, quarterly or yearly, and take significant changes in participation into account. Several States have developed sophisticated computer systems to calculate and to monitor commodity offerings to ensure an equitable offering of the full range of available commodities to school food authorities. The Department has determined, however, that the States do not have any system in place for consistently offering a full range of commodities to school food authorities. Therefore, the Department has decided to set general guidelines for establishing the commodity offer value and minimum update requirements. Thus, those States without such a system will be required to establish one and those States with existing systems may continue to use them without disruption.

Commodity Variety Offered. Section 250.48(c)(3) of this interim rule requires distributing agencies to offer each school food authorities the full range of commodities to the extent that quantities requested or made available are sufficient to make statewide distribution and to allow for efficient delivery to and within the State. This regulation is to ensure that school food authorities have an opportunity to receive a wide variety of commodities in the various forms made available by the Department.

As recognized in the law, consideration must be given to the practical considerations necessary for the cost effective distribution of commodities. For cost effective purchasing, USDA requires distributing agencies to order commodities in full truck load quantities (approximately 40,000 pounds). Further, for cost effective shipping there is a limit to the number of destinations (i.e. stop-offs) to which this amount can be delivered. School food authorities should be aware of these constraints and work with each other and their distributing agency in order to receive as wide of a variety of commodities as possible.

The requirement that distributing agencies offer each school food authority the rull range of commodities would also mean that distributing agencies must equitably and consistently offer commodities from the Group A and Group B category of entitlement commodities. An explanation of these two categories follows. States are provided an overall entitlement value which is then separated into a Group A and a Group B category. The Group A category includes meat, fish, poultry, fruit and vegetable products which are designated as surplus-removal type commodities. These commodities are purchased by the Agricultural Marketing Service and are offered to States on a pro rata basis. Group B entitlement commodities may include grain, dairy, peanut and oil products which are acquired by the Agricultural Stabilization and Conservation Service under price-support authority or through direct purchases. Group B entitlement commodities are not allocated to States, but are made available to States in accordance with the procedures which follow.

For the past few years, States have been provided with the option of receiving from 15 to 20 percent of their overall entitlement in Group B foods. The percentage range of Group B foods offered to States depends on which commodities are designated for the Group B entitlement category. Therefore, a State's Group A and B portion of entitlement may vary from year to year depending on the precentage of Group B commodities that the distributing agency may elect to receive. Each year States notify the Department of the percentage of Group B entitlement selected for the upcoming school year. Within the established limits available to the State for Group B foods, distributing agencies have discretion over the kinds and quantities of commodities to order. The Department provides States with a list of available Group B foods and ordering options. Distributing agencies determine the types, package size, quantities and shipping periods in which to order this category of commodities.

A review of existing State systems for offering commodities revealed that some school food authorities were not provided with an opportunity to accept or reject their share of either category of commodities. The Department intends for distributing agencies to fairly offer both categories of commodities. Further, within each category, States should pass on ordering options and make as wide a variety of commodities available as possible to all school food authorities. The provisions of this paragraph are not, however, intended to require school food authorities to accept the full range of commodities offered. Further, these requirements are not intended to prevent school food authorities from receiving additional quantities that have been rejected by other school food authorities.

In the event that the amount of any commodity received from the Department is not sufficient to equitably distribute to all school food authorities, this section requires distributing agencies to develop and disseminate annually to school food authorities procedures for the allocation of such commodities. The procedures should result in the equitable distribution of commodities in limited supply.

Bonus Commodities. Section 250.48 (c)(4) of this interim rule specifies that the value of bonus commodities offered shall not be included as a part of the per meal value of donated foods which must be offered to school food authorities and that States shall equitably distribute bonus commodities among school food authorities. Bonus commodities are donated by the Department to States and are not charged against a State's entitlement. A review of various State systems revealed that some States do not clearly distinguish between bonus and entitlement commodities distributed. Therefore, bonus commodities must be identified and should not be counted as a part of the value which States must offer school food authorities. Discrepancies from State to State in the per meal value provided to school food authorities in the past may be partially attributed to the fact that some States identify and credit bonus commodities differently.

As required by section 14 of the Act the offering of the per meal value requirement took effect upon enactment (January 8, 1988) and therefore, the provisions in § 250.48(c) are effective retroactive to January 8, 1988.

List of subjects

7 CFR Part 210

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

7 CFR Part 250

Aged, agricultural commodities, Business and Industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR Parts 210 and 250 are amended to read as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

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

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

2. In § 210.27, paragraph (c) is revised to read as follows:

§ 210.27 State Food Distribution Advisory Council

* * * * *

(c) *Council timeframe.* The council shall meet at least once a year and shall report to the State educational agency and State distributing agency, if it is a different entity, no later than March 30 of each year, recommendations concerning the manner of selection and distribution of commodity assistance for the next school year. The State educational agency shall inform FNSRO of the Council's recommendations no later than April 30, of each year.

* * * * *

PART 250—DONATIONS OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for Part 250 is revised to read as follows:

Authority: Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79–396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91–665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 nt); sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5180); sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C.1762a); sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304a, Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c nt); sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 1561, Pub. L. 99–198, 99 Stat. 1589 (7 U.S.C. 612c); (5 U.S.C. 301), unless otherwise noted; Pub. L. 100–237, 101 Stat. 1733 (7 U.S.C. 612 note).

2. Section 250.3 is amended by adding the definition of "Food products produced in the U.S." in alphabetical order to read as follows:

§ 250.3 Definitions.

* * * * *

"Food products produced in the U.S." means an unmanufactured food product produced in the U.S. or a food product that is manufactured in the U.S.

* * * * *

3. In § 250.13:

a. Paragraph (a) is revised.

b. Paragraphs (j) and (k) are added.

The revision and additions read as follows:

§ 250.12 Distribution and Control of Donated Foods.

(a) *Availability and use of donated foods.*—(1) *Availability and use.* Donated foods shall be available only for distribution and use in accordance with the provisions of this Part and, with respect to distribution to households on all or part of an Indian reservation, of Part 253 and 254 of this chapter. Donated foods not so distributed or used (for any reason) shall not be sold, exchanged or otherwise disposed of without the approval of the Department. Donated foods which are provided as part of an approved food package or authorized program level of assistance may be transferred between like recipient agencies with only prior authorization of the distributing agency. Donated foods which are provided in addition to the State's authorized program level of assistance may be transferred between recipient agencies which are eligible to receive such foods with the prior authorization of the distributing agency. However, the transfer of donated foods between unlike recipient agencies (schools to charitable institutions), which have been provided as part of an approved food package or authorized program level of assistance, must be approved by the appropriate FNSRO. Food donated under section 32 of Pub. L.74–320 (7 U.S.C. 612c) may also be transferred by recipient agencies to emergency feeding organizations which are distributing donated foods under 7 CFR Part 251. A transfer between recipient agencies and emergency feeding organizations may be made only with the prior approval of the distributing agency and the State agency responsible for administering TEFAP. All transfers of donated foods shall be documented. Such documentation shall be maintained in accordance with the recordkeeping requirements in §§ 250.16 and 251.10(a).

(2) *Quantities.* (i) The quantity of donated foods to be made available for donation under this Part shall be determined in accordance with the pertinent legislation and the program obligations of the Department, and shall be such as can be effectively distributed to further the objectives of the pertinent legislation. (ii) Donated foods shall be requested and distributed only in quantities which can be consumed without waste in providing food assistance for persons eligible under this part. Distributing agencies shall impose similar restrictions on recipient agencies.

(3) *Minimum donations.* Foods shall be donated only in such quantities as will protect the lower carload freight rate, except as deemed in the best interest of the program as determined by the Department.

(4) *Allocations.* As foods become available for donation, FNS shall notify distributing agencies regarding the donated foods, the class or classes of recipient agencies or recipients eligible to receive them, and any special terms and conditions of donation and distribution which attach to a particular donated food in addition to the general terms and conditions set forth herein. When a commodity is available in limited quantities the Department shall allocate such commodities among the States using allocation percentages which are based on the most recent participation data available for the program designated to receive the commodity.

(5) *Commodity Value.* To value a commodity offered to a recipient agency and to credit a commodity towards a recipient agency's commodity assistance level, distributing agencies shall use either actual cost per pound data used to charge a State's program entitlement or estimated cost per pound data provided by the Department, as long as the data chosen is used consistently throughout the State to value commodities. Actual cost data shall be defined as the cost per pound for an individual commodity charged to a State's entitlement on the Entitlement Food Order Report, which is based on the USDA purchase cost. Estimated cost data for grain, dairy, peanut and oil products (i.e. Group B commodities) shall be defined as the April 10 and October 10 costs listed in the USDA commodity file. Estimated cost data for meat, fish, poultry, fruit and vegetable products (i.e. Group A commodities) shall be defined as the cost provided by USDA on commodity survey memoranda. Distributing agencies shall notify recipient agencies of the cost per pound used to value commodities at the time a commodity is offered to recipient agencies. If the cost used to credit a commodity differs from the cost used to offer a commodity, distributing agencies shall advise recipient agencies of the cost used to credit a commodity.

(6) *Delivery of commodities.* The Department shall, to the extent practicable, make every effort to arrange deliveries based on information obtained from distributing agencies. However, the Department shall not be held fiscally responsible for any delay in

delivering or for nondelivery of donated foods due to any cause. To avoid untimely deliveries to recipient agencies, distributing agencies shall notify recipient agencies of: (i) Anticipated Department purchases and estimated shipping periods as such information becomes available; (ii) anticipated State delivery schedules at least quarterly; and (iii) changes in delivery schedules as they become known. In addition, distributing agencies shall maintain distribution schedules which are equitable and reliable, recognize hours of operation, holidays and vacations and other special needs of recipient agencies, and make donated foods available at least monthly.

(7) *Demonstrations and tests.* Notwithstanding any other provision of this part, a quantity of any food donated for use by any recipient agency or recipient may be transferred by the distributing agency or by the recipient agency to bona fide experimental or testing agencies, or for use in workshops, or for demonstrations or tests relating to the utilization of such donated food by the recipient agency or recipient. No such transfer by any recipient agency shall be made without the approval of the appropriate distributing agency.

* * * * *

(j) *Commodity specifications.* Distributing agencies shall make summaries of commodity specifications available to recipient agencies upon request.

(k) *Commodity acceptability information.*—(1) *Information collection.* Distributing agencies shall obtain information from recipient agencies which reflects: (i) The types and forms of donated foods that are most useful to program participants; (ii) commodity specification recommendations; and (iii) requests for options regarding package sizes and forms of commodities.

(2) *Samples and Representation* shall be selected from each distinct program category, i.e. schools, the Child Care Food Program, the Summer Food Service Program, the Nutrition Program for the Elderly, the Commodity Supplemental Food Program, charitable institutions, summer camps, and the Food Distribution Program on Indian Reservations, and the Temporary Emergency Food Assistance Program. At a minimum, distributing agencies shall obtain this information from a sample of at least 10 percent or 100 recipient agencies, whichever is less. To ensure that the sample is representative of all recipient agencies, distributing agencies shall consider the size and geographic location of all recipient agencies within the State and alternate among them so that over time each recipient agency is provided an opportunity to express its views. Distributing agencies may use information which is already being obtained from the State Food Distribution Advisory Council in accordance with Part 210 and the Indian tribes in accordance with Part 253 to represent one of the required commodity acceptability reports for the respective program categories.

(3) *Timeframes for submission.* Distributing agencies shall obtain commodity acceptability information from each program category at least semiannually except for summer camps and the Summer Food Service Program. Distributing agencies shall obtain commodity acceptability information from summer camps and the Summer Food Service Program annually. Distributing agencies shall submit commodity acceptability information from recipient agencies, with the exception of summer camps and the Summer Food Service Program, by individual program category to the appropriate FNSRO by April 30 and November 30 of each year. Distributing agencies shall submit commodity acceptability information from summer camps and the Summer Food Service Program to the appropriate FNSRO by November 30 of each year.

4. In § 250.17:

a. Paragraph (d) is redesignated as paragraph (e).

b. A new paragraph (d) is added to read as follows.

c. The OMB statement at the end of the section is amended by changing the reference to "paragraph (d)" to "paragraph (e)."

§ 250.17 Reports.

* * * * *

(d) *Commodity acceptability reports.* Distributing agencies shall submit to the FNSRO reports relative to the types and forms of donated foods which are most useful to recipient agencies in accordance with § 250.13(k) of this part.

* * * * *

5. Subpart B is amended by adding § 250.23 to read as follows:

§ 250.23 Buy American.

(a) *Purchase requirements.* When purchasing food products with Federal funds recipient agencies shall, whenever possible, purchase only food products that are produced in the United States as defined in § 250.3 of this part.

(b) *Exceptions.* The purchase requirements described in paragraph (a) of this section shall not apply in instances when the recipient agency determines: (1) Recipients have unusual or ethnic food preferences which can only be met through purchases of products not produced in the U.S.; (2) the product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; (3) the cost of U.S. produced food products is significantly higher than foreign products, or (4) the recipient agency is located in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands.

6. In § 250.30 a new sentence is added to the end of paragraph (b)(1) to read as follows:

§ 250.30 State processing of donated foods.

* * * * *

(b) *Permissible contractual arrangements.*—(1) * * * Distributing agencies shall assure that the acceptability of processed end products is tested with recipient agencies eligible to receive them prior to entering into a processing contract and shall develop a system for monitoring product acceptability.

* * * * *

7. In § 250.47, paragraph (a) is revised to read as follows:

§ 250.47 Food Distribution Program on Indian Reservations.

(a) *Distribution.* Distributing agencies which operate a food distribution program on Indian reservations shall comply with the provisions set forth in §§ 250.1, 250.2, 250.3, 250.10, 250.11, 250.12, 250.13 (with the exception of paragraph (d)(2)), § 250.14, §§ 250.15 and 250.17(d) to the extent that these provisions are not inconsistent with the regulations cited in paragraph (b) of this section.

* * * * *

8. In § 250.48, paragraphs (c), (d), (e) and (f) are redesignated as (d), (e), (f) and (g) respectively and new paragraph (c) is added to read as follows:

§ 250.48 School Food Authorities.

* * * * *

(c) *Offering the Per Meal Value of Donated Foods.*—(1) *Commodity offer value.* Distributing agencies shall offer each school food authority no less than the national average per meal value of donated foods established by the Department on July 1 of each year in accordance with § 250.48(b)(2) of this part. Distributing agencies shall document commodity offerings and refusals in order to verify that the per meal value of commodities was offered to all school food authorities. The total

value of donated foods which must be offered to school food authorities shall be calculated by multiplying the per meal value of donated foods times the number of estimated meals to be served by the school food authority during the school year. This value shall be referred to as the commodity offer value. Distributing agencies shall be responsible for establishing the number of estimated meals to be served.

(2) *Update requirement.* Meal count data used to determine the commodity offer value shall be updated at a minimum annually. Distributing agencies shall communicate to school food authorities and FNS regional offices the method for establishing estimated meals to be served, procedures for updating the commodity offer value and timeframes for updates. Commodity offer values shall be adjusted to reflect significant changes in meal data.

(3) *Commodity variety offered.* Distributing agencies shall offer each school food authority the full range of all commodities equitably and consistently to the extent that quantities requested or made available are sufficient to make a statewide distribution and allow for efficient delivery to and within the State. Distributing agencies shall develop and disseminate to school food authorities at least annually a procedure for the allocation of commodities when the amount received from the Department is not sufficient to make a statewide distribution to all school food authorities.

(4) *Bonus commodities.* Bonus commodities offered shall be distinguished from entitlement commodities and shall not be included as a part of the per meal value of donated foods which must be offered to school food authorities.

* * * * *

Date: July 15, 1988.

Anna Kondratas,

Administrator.

[FR Doc. 16449 Filed 7-20-88; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 1230

[No. LS-88-014]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Pork Promotion, Research, and Consumer Information Act of 1985 and the Order issued thereunder, this final rule increases the amount of the assessment per pound due on imported pork and pork products to reflect an increase in the 1987 seven market average price for domestic barrows and gilts and to bring the equivalent market value of the live animals from which such imported pork and pork products were derived in line with the market values of domestic porcine animals.

DATE: Effective August 22, 1988.

ADDRESS: Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA, Room 2610-S; P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Ralph Tapp, Chief, Marketing Programs and Procurement Branch (202) 447-2650.

SUPPLEMENTARY INFORMATION: This action was reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and is hereby classified as a nonmajor rule under the criteria contained therein.

This action also was reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The effect of the Order upon small entities was discussed in the September 5, 1986, issue of the **Federal Register** (51 FR 31898), and it was determined that the Order would not have a significant effect upon a substantial number of small entities. Many importers may be classified as small entities. This final rule increases the assessments per pound on 2 of the 13 imported pork and pork products subject to assessment by an amount of one-hundredths of a cent per pound. Adjusting the rate of assessments on imported pork and pork products will result in an estimated $30,000 more in assessments over a 12-month period. While the final rule will result in an increase in assessments, any additional costs will be outweighed by the benefits derived from the operations of the pork promotion, research, and consumer information program. Accordingly, the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected at 51 FR 36383) and assessments began on November 1, 1986. The Order requires importers of porcine animals to pay to the U.S. Customs Service (USCS), upon importation, the assessment of 0.25 percent of the animal's declared value and importers of pork and pork products to pay to the USCS, upon importation, the assessment of 0.25 percent of the market value of the live porcine animals from which such pork and pork products were produced. As a matter of practicality, the assessment on imported pork and pork products is expressed in dollars per pound for each type of such products.

This rule increases the per-pound assessments on specified imported pork and pork products. This increase is consistent with increases in the annual average price of domestic barrows and gilts at the seven markets for calendar year 1987 as reported by the USDA, AMS, Livestock and Grain Market News Branch (LGMN). This increase in cents-per-pound assessments will make the equivalent market value of the live porcine animal from which the imported pork and pork products were derived reflect the recent increase in the market value of domestic porcine animals, thereby promoting comparability between importer and domestic assessments. This final rule will not change the current assessment rate of 0.25 percent of the market value.

The methodology for determining the per-pound amounts for imported pork and pork products was described in the supplementary information accompanying the Order and published in the September 5, 1986, **Federal Register** at 51 FR 31901. The weight of imported pork and pork products is converted to a carcass weight equivalent by utilizing conversion factors which are published in the USDA Statistical Bulletin No. 616 "Conversion Factors and Weights and Measures." These conversion factors take into account the removal of bone, weight lost in cooking or other processing, and the nonpork components of pork products. Secondly, the carcass weight equivalent is converted to a live animal equivalent weight by dividing the carcass weight equivalent by 70 percent, which is the average dressing percentage of porcine animals in the United States. Thirdly,

the equivalent value of the live porcine animal is determined by multiplying the live animal equivalent weight by an annual average seven market price for barrows and gilts as reported by the USDA, AMS, LGMN Branch. This average price is published on a yearly basis during the month of January in the LGMN Branch's publication "Livestock, Meat, and Wool Weekly Summary and Statistics." Finally, the equivalent value is multiplied by the applicable assessment amount due on imported pork or pork products. The end result is expressed in an amount per pound for each type of pork or pork product.

The formula in the preamble for the order at 51 FR 31901 contemplated that it would be necessary to recalculate the equivalent live animal value of imported pork and pork products to reflect changes in the annual average price of domestic barrows and gilts to maintain equity of assessments between domestic porcine animals and imported pork and pork products.

In 1987, the average annual seven market price rose to $51.04, an increase of about 1 percent over the 1986 per hundredweight price, which results in an increase in assessments for two TSUS categories 107.3525, in an amount equal to one-hundredth of a cent per pound. These two TSUS categories are for cooked, canned, boneless hams and shoulders. Based upon the conversion formula described above and the average seven market price of $51.04, the remaining 11 TSUS categories would not require an increase in assessments. Based on Department of Commerce, Bureau of Census data on the volume of imported pork and pork products for 1987, the increase in the per-pound assessments would result in an estimated $30,000 in additional assessments over a 12-month period.

On May 3, 1988, AMS published in the **Federal Register** (53 FR 15700) a proposed rule which would increase the per-pound assessments on imported pork and pork products consistent with increases in the 1987 average price of domestic barrows and gilts to provide comparability between importer and domestic assessments. The proposed rule was published with a request for comments by June 2, 1988. Thirteen comments were received—one from the National Pork Board; one from a national pork producer organization; one from a State farm organization, and 10 from State pork producer associations. All comments were in favor of the proposed increase in the assessments on imported pork and pork products. Most commentors expressed the opinion that the increase would promote comparability between assessments on domestic hogs and imported pork and pork products and that it was fair and equitable. Accordingly, this final rule establishes the per-pound assessment on imported pork and pork products as proposed.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR Part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. Amend Subpart B—Rules and Regulations by revising § 1230.110 to read as follows:

§ 1230.110 Assessments on imported pork and pork products.

Pork and pork products (U.S. Tariff Schedule No.)	Assessment (dollars per pound)
106.4020	0.0018
106.4040	.0018
106.8000	.0018
106.8500	.0018
107.1000	.0025
107.1500	.0025
107.3020	.0018
107.3040	.0019
107.3060	.0021
107.3515	.0028
107.3525	.0028
107.3540	.0019
107.3560	.0025

Done at Washington, DC, on: July 18, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88–16414 Filed 7–20–88; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–ASW–22; Amdt. No. 39–5976]

Airworthiness Directives; Bell Helicopter Textron, Inc., Models 206A, 206B, 206L, 206L–1, and 206L–3 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Bell Helicopter Textron, Inc., Models 206A, 206B, 206L, 206L–1 and 206L–3 helicopters by individual letters. The AD requires the removal and replacement of certain main rotor masts, which may be metallurgically defective, in order to prevent failures of the main rotor mast which could result in loss of the helicopter.

EFFECTIVE DATE: August 8, 1988, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD No. 87–10–11, issued May 19, 1987, which contained this amendment.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletins may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Commercial Publications Distribution, or may be examined in the Regional Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, Helicopter Certification Branch, ASW–170, Federal Aviation Administration, Fort Worth, Texas 76193–0170, telephone (817) 624–5177.

SUPPLEMENTARY INFORMATION: On May 19, 1987, Priority Letter AD No. 87–10–11 was issued and made effective immediately as to all known U.S. owners and operators of Bell Helicopter Textron, Inc., Models 206A, 206B, 206L, 206L–1, and 206L–3 helicopters. The AD required the removal and replacement of certain main rotor masts which may have been fabricated of material contaminated by sulfide stringer type inclusions which could degrade the fatigue properties of the mast. The AD action was necessary to prevent a possible premature main rotor mast failure.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual letters issued May 19, 1987, to all known U.S. owners and operators of Bell Helicopter Textron, Inc., Models 206A, 206B, 206L, 206L–1, and 206L–3 helicopters. These conditions still exist

and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations to make it effective as to all persons.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive 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/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the Regulatory Docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 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 airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI): Applies to the following helicopters certificated in any category (Airworthiness Docket No. 87–ASW–22).

(a) Model 206A and 206B helicopters equipped with the following mast assemblies, P/N 206–010–332–121: Serial Numbers FAJF–58340 thru 58353, 58395 thru 58398, 58400, 58402 thru 58408, 58421 and 58423 thru 58434.

Note: The following model 206B serial numbered helicopters were delivered with the affected masts: 3933, 3934, 3937 thru 3940, 3942, 3944 thru 3946, 3953 thru 3955, and 3958.

(b) Model 206L, 206L–1, and 206L–3 helicopters equipped with the following mast assemblies, P/N 206–040–535–105: Serial Numbers NJF–935 thru 973, 1000, 1003, 1004, 1006 thru 1012, 1014 thru 1019, 1022 thru 1024, 1026, 1040 thru 1042, 1046, 1050 thru 1057, 1059, 1066, 1068, 1073, 1079, 1086, 1087, 1089 thru 1097, 1099, 1101, 1102, 1123, 1124, 1129, 1135, 1141, 1143, 1145, 1146, 1149, 1151, 1153, 1156, 1157, 1161, 1162, 1165, 1167, and 1169 thru 1172.

Note: The following Model 206L–3 serial numbered helicopters were delivered with the affected masts: 51173 thru 51175, 51178, 51179, 51181, 51183 thru 51185, 51187 thru 51191, 51194 thru 51205, and 51208 thru 51211.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the main rotor mast, accomplish the following:

(a) Before further flight, determine if an affected serial number main rotor mast is installed on the helicopter.

(b) Within the next 25 hours' time in service after receipt of this AD but no later than May 31, 1987, remove the affected serial number main rotor mast from service and replace it with an airworthy part.

(c) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety, may be used when approved by the Manager, Helicopter Certification Branch, Aircraft Certification Division, FAA, Southwest Region, Fort Worth, Texas 76193–0170.

Note: Bell Helicopter Alert Service Bulletin Nos. 206–87–37, dated 4/23/87 and 206–44, dated 4/23/87 pertain to this AD.

This amendment becomes effective August 8, 1988, as to all persons except those persons to whom it was made immediately effective by Priority Letter AD No. 87–10–11, issued May 19, 1987 which contained this amendment.

Issued in Washington, DC, on July 15, 1988.

Daniel P. Salvano,

Acting Director, Office of Airworthiness.

[FR Doc. 88–16361 Filed 7–20–88; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 88–NM–15–AD; Amdt. 39–5983]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires inspection of the body station (BS) 1241 bulkhead splice strap and forging for cracks, and repairs, if necessary. This action requires that airplanes on which the strap replacement modification was incorporated in accordance with Boeing Service Bulletin 747–53–2219 be subjected to more frequent repetitive inspections. This action also requires that factory-modified airplanes be inspected. This action is prompted by reports indicating that modified airplanes are still subject to cracking. This condition, if not corrected, could lead to failure of the bulkhead forging, which could lead to loss of cabin pressure or the inability to withstand fail-safe loads.

EFFECTIVE DATES: August 28, 1988.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Airframe Branch, ANM–120S; telephone (206) 431–1925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 84–18–01, Amendment 39–4905 (49 FR 35621; September 11, 1984), was published in the **Federal Register** on March 18, 1988 (53 FR 8927). This new AD affects additional airplanes previously modified by the manufacturer and increases the frequency of inspections performed on certain airplanes already affected. This action is necessary because service experience with the preventative modification indicated that it had a greater propensity for cracking than had been expected.

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

The airplane manufacturer commented that paragraphs A.2. and D.2. of the proposed rule should be revised to clarify that inspections at the forward hole are to be initiated if a crack is found on the aft edge of the bulkhead splice strap or at the aft hole.

The words "on the aft edge of the bulkhead splice strap" were not included in the proposed rule. The FAA concurs with this comment and the final rule has been revised accordingly. This change is for clarification purposes only and does not increase the scope of the rule.

The airplane manufacturer also commented that an ultrasonic inspection procedure would be an acceptable substitute for the eddy current inspection procedure which was proposed in the NPRM. The manufacturer, however, has not yet published its ultrasonic inspection procedures. Therefore, the final rule is adopted as proposed, in this regard. Paragraph E. of the AD provides for interested parties to request FAA approval for substituting ultrasonic inspections for eddy current inspections as an alternate means of compliance with the AD.

The final rule has been revised to remove certain references to the use of "later FAA-approved revisions" of the applicable service bulletin, in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden on any operator, nor will it increase the scope of the AD, since later revisons of the service bulletin may be approved as an alternate means of compliance with this AD, as provided by Paragraph E.

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

It is estimated that 40 additional airplanes of U.S. registry will be affected by this AD, that it will take approximately 110 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $176,000.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) 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 superseding AD 84–18–01, Amendment 39–4905 (49 FR 35621; September 11, 1984), with the following new airworthiness directive:

Boeing: Applies to Groups 1, 2, and 3 Model 747 series airplanes, certificated in any category, listed in Boeing Service Bulletin 747–53–2283, dated December 17, 1987. Compliance required as indicated, unless previously accomplished.

To prevent failure of the body station (BS) 1241 bulkhead forging, accomplish the following:

A. For Group 1 airplanes on which the initial inspection requirements of airworthiness directive (AD) 84–18–01 have not been conducted as of the effective date of this AD, and which have not been modified by incorporation of a replacement strap in accordance with Boeing Service Bulletin 747–53–2219, dated February 19, 1982, or later revision:

1. Prior to the accumulation of 10,000 landings (13,000 landings for Model 747–100SR), perform an eddy current inspection of the BS 1241 bulkhead frame splice strap at the aft hole and visually inspect the aft edge of he strap, in accordance with Boeing Service Bulletin 747–53–2283, dated December 17, 1987. If no cracks are found inspect thereafter at intervals not to exceed 7,000 landings (10,500 landings for Model 747–100SR).

2. If a crack is found on the aft edge of the bulkhead splice strap or at the aft hole, prior to further flight, perform an eddy current inspection for cracks in the bulkhead frame splice strap and forging at the adjacent forward hole, in accordance with Boeing Service Bulletin 747–53–2283, dated December 17, 1987. If no cracks are found or if cracks are found only in the bulkhead splice strap when inspecting at the foward hole, then repeat the inspection at the forward hole at intervals not to exceed 3,000 landings (4,500 landings for Model 747–100SR).

3. If cracks are found at the forward hole in the bulkhead forging, repair as follows:

a. If the cracks found in the forging do not exceed the forward hole rework limits specified in Boeing Service Bulletin 747–53–2283, dated December 17, 1987, and the hole coldwork has not been previously accomplished, repair prior to further flight, in accordance with the service bulletin and then continue to inspect in accordance with paragraph A.2. of this AD.

b. If the cracks found in the forging exceed the forward hole rework limits, or if the hole coldwork has been previously accomplished, repair in accordance with an FAA-approved procedure prior to further flight.

B. For Group 1 airplanes on which the initial inspection requirements of AD 84–18–01 have been conducted as of the effective date of this AD, and which have not been modified by incorporation of a replacement strap in accordance with Boeing Service Bulletin 747–53–2219, dated February 19, 1982, or later revisions: Continue to perform the repetitive inspections, and to make repairs, if necessary, as described in paragraph A. of this AD.

C. For Group 1 airplanes that have been modified by incorporation of a replacement strap in accordance with Boeing Service Bulletin 747–53–2219, dated February 19, 1982, or later revisions: Perform inspections and repairs, if necessary, as described in paragraph A. of this AD, except that the initial inspections must be conducted within 1,000 landings (1,500 landings for Model 747–100SR) after the effective date of this AD or prior to the accumulation of 10,000 landings since the time of modification (13,500 landings for Model 747–100SR), whichever occur later.

D. For Group 2 and 3 airplanes:

1. Within the next 1,000 landings (1,500 landings for Model 747–100SR) after the effective date of this AD or prior to the accumulation of 10,000 landings (13,000 landings for Model 747–100SR) total time-in-service, whichever occurs later, perform an eddy current inspection of the BS 1241 bulkhead splice strap at the aft hole and visually inspect the aft edge of the strap, in accordance with Boeing Service Bulletin 747–53–2283, dated December 17, 1987. If no cracks are found, repeat the inspections thereafter at intervals not to exceed 7,000 landings (10,500 landings for Model 747–100SR).

2. If a crack is found on the aft edge of the bulkhead splice strap or at the aft hole, prior to further flight perform an eddy current inspection for cracks in the bulkhead frame splice strap and forging at the adjacent forward hole, in accordance with Boeing Service Bulletin 747–53–2283, dated December 17, 1987. If not cracks are found or if cracks are found only in the bulkhead splice strap when inspecting at the forward hole, repeat the inspections at the forward hole at

intervals not to exceed 3,000 landings (4,500 landings for Model 747–100SR).

3. If cracks are found at the forward hole in the bulkhead forging, repair in accordance with an FAA-approved procedure prior to further flight.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington, 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment supersedes AD 84–18–01, Amendment 39–4905.

This amendment becomes effective August 28, 1988.

Issued in Washington, DC, on July 14, 1988.

Daniel P. Salvano,

Acting Director, Office of Airworthiness.

[FR Doc. 88–16362 Filed 7–20–88; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket Number 88–ACE–05]

Alteration of Transition Area; Milford, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: This action corrects the legal description and effective date for the Milford, Iowa, transition area (53 FR 23220, June 21, 1988). Subsequent to the issuance of this final rule, a typographical error was discovered in the latitude coordinate for the Fuller Municipal Airport transition area as well as an incorrectly cited effective date.

EFFECTIVE DATE: 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE–540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 426–3408.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of the Rule altering the transition area at Milford, Iowa, it has been determined that the latitude coordinate for the Fuller Municipal Airport, Milford, Iowa, was incorrectly cited as "43°19'17" W." instead of 43°19'57" N." In addition, the effective date was in error. It should be August 25, 1988, rather than October 22, 1988. (53 FR 23220; June 21, 1988). Action is taken herein to make these corrections. Since these changes are editorial in nature, notice and public procedure thereon are not considered necessary and are contrary to the public interest.

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 88–13862 on page 23220 of the **Federal Register** on Tuesday, June 21, 1988, is corrected to read as follows:

Fuller Municipal Airport, Milford, Iowa [Corrected]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended to read as follows:

That airspace extending upward from 700 ft. above the surface within a five (5) mile radius of the Fuller Municipal Airport (Lat. 43°19'57" N., Long. 95°09'29" W.) and within 1.75 mile each side of the 190° bearing from the Fuller Municipal Airport extending from the five (5) mile radius to 5.5 miles south of the airport.

This amendment becomes effective at 0901 u.t.c. August 25, 1988.

Issued in Kansas City, Missouri, on July 11, 1988.

Clarence E. Newbern,

Manager, Air Traffic Division.

[FR Doc. 88–16364 Filed 7–20–88; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1261

Processing of Monetary Claims (General)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Policy statement.

SUMMARY: NASA is amending 14 CFR Part 1261 by adding § 1261.316 and § 1261.317. The National Aeronautics and Space Act of 1958, as amended (Pub. L. 85–568, 72 Stat. 426), grants the Administrator of NASA broad powers with regard to the settlement of civil claims arising out of activities of the agency. In addition, NASA, like other Federal agencies, can settle claims under the Federal Tort Claims Act, as amended. See 28 U.S.C. 2671–2680. However, there currently exists no clear statement of policy regarding the Administrator's ability to use agency funds to indemnify employees who become liable for money judgments or personal damage claims as a result of official acts. This policy statement, which will amend current agency regulations regarding the procedures for handling claims against employees, clarifies the situations where such indemnification may be granted. This policy statement is similar to one recently adopted by the Department of Justice. See 51 FR 27021–27023 dated July 23, 1986.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Frankle, Deputy General Counsel, Code G, National Aeronautics and Space Administration, Washington, DC 20546, 202–453–8608.

SUPPLEMENTARY INFORMATION: Existing NASA regulations do not address the issue of indemnification of agency employees who are sued in their individual capacity and who suffer an adverse judgment or other monetary consequences as a result of conduct taken within the scope of their employment. Lawsuits against Federal employees in their personal capacity have proliferated since the Supreme Court's decision in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). As reported by the Department of Justice, since 1971 over 12,000 claims have been filed against Federal employees; nearly 3,000 actions are now pending.

While NASA's workforce is well-disciplined, the risk of personal liability and the burden of defending a suit as a result of performing one's employment duties can have a significant effect on NASA operations. An adverse judgment against any Federal employee has detrimental consequences for both the individual and the Government. The potential for being found personally liable and the uncertainty as to what actions may culminate in a lawsuit intimidate all employees, discouraging initiative and decisiveness. As Professor Kenneth Culp Davis has stated:

> The public suffers whenever a government employee resolves doubts in order to protect his own pocketbook instead of resolving doubts in order to protect the public interest—courageous action of public employees is often essential, and it should not be discouraged by the threat of a lawsuit against the employee personally.
>
> K. Davis, Constitutional Torts 25, 28 (1984).

On a broader scale, this fear of personal liability affects government operation, decision-making, and policy determination.

NASA believes that the potential of significant judgments or other monetary consequences flowing from lawsuits against Federal employees in their personal capacity can seriously hinder effective functioning. A clarification in agency policy to recognize NASA's inherent ability to indemnify its employees would help alleviate this problem and afford NASA employees the same protection now given to other Federal officials. As noted previously, the Department of Justice has recently enacted a similar amendment to its housekeeping regulation allowing for indemnification of Department of Justice employees. See 28 CFR 50.15. In this amendment, the Department of Justice specifically recognized the inherent authority of all Executive Branch agencies to indemnify employees for liability resulting from official acts. *Id.*

The clarification in NASA policy published today does not mandate that the agency indemnify any employee who suffers an adverse judgment, verdict, or monetary award. To merit indemnification, the actions which give rise to the claim or judgment must fall within the individual's current or past scope of employment and indemnification must be in the interest of the National Aeronautics and Space Administration as determined by the Administrator or designee. In rare administrative instances, where the Administrator deems it appropriate, an individual damage claim may be settled with agency funds prior to entry of judgment. Absent exceptional circumstances, however, NASA will not agree to indemnify an employee or settle a claim before entry of an adverse determination. This provision is designed to discourage claims brought against agency employees solely in order to pressure the agency into settlement. Denial of dispositive motions or delay in deciding such motions ordinarily will not lead to settlement before trial and judgment.

In addition, the statement also reaffirms that agency attorneys participating in the process by which the agency seeks representation for present or former employees sued, subpoenaed, or charged in their individual capacity undertake a full attorney-client relationship with those employees with all attendant protections.

This policy statement will not have a significant economic impact on substantial numbers of small entities within the meaning of 5 U.S.C. 605(b). Moreover, as a matter relating to NASA management and internal personnel policy, this statement is not required to be published pursuant to the procedural requirements of 5 U.S.C. 553 *et seq.*

The National Aeronautics and Space Administration has determined that:

1. This policy statement is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, since it will not exert a significant economic impact on a substantial number of small entities.

2. This policy statement is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1261

Claims, Tort claims.

For reasons set forth in the Preamble, 14 CFR Part 1261 is amended as follows:

PART 1261—[AMENDED]

1. The authority citation for 14 CFR Part 1261 Subpart 1261.3 continues to read as follows:

Authority: 28 U.S.C. 2671–2680, 42 U.S.C. 2473(c)(13), and 28 CFR Part 14.

2. Section 1261.316 and Section 1261.317 are added to read as follows:

§ 1261.316 Policy.

(a) The National Aeronautics and Space Administration may indemnify a present or former NASA employee, who is personally named as a defendant in any civil suit in state or federal court, or in an arbitration proceeding or other proceeding seeking damages against that employee personally, for any verdict, judgment, appeal bond, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, appeal bond, or award was taken within the scope of his or her employment and that such indemnification is in the interest of the National Aeronautics and Space Administration, as determined by the Administration or designee.

(b) The National Aeronautics and Space Administration may settle or compromise a personal damage claim against a present or former NASA employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the employee's scope of employment and that such settlement or compromise is in the interest of the National Aeronautics and Space Administration, as determined by the Administrator or designee.

(c) Absent exceptional circumstances as determined by the Administrator or designee, the agency will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment, or award.

(d) A present or past NASA employee may request indemnification to satisfy a verdict, judgment, or award entered against that employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, appeal bond, award, or settlement proposal to the General Counsel, who shall make a recommended disposition of the request. Where appropriate, the agency shall

seek the views of the Department of Justice. The General Counsel shall forward the request, the accompanying documentation, and the General Counsel's recommendation to the Administrator for decision.

(e) Any payment under this section either to indemnify a National Aeronautics and Space Administration employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the National Aeronautics and Space Administration.

§ 1261.317 Attorney-client privilege.

(a) Attorneys employed by the National Aeronautics and Space Administration participate in the process utilized for the purpose of determining whether the agency should request the Department of Justice to provide representation to a present or former agency employee sued, subpoenaed, or charged in his/her individual capacity, and attorneys employed by the National Aeronautics and Space Administration provide assistance in obtaining representation of such an agency employee. In these roles, agency attorneys undertake a full and traditional attorney-client relationship with the employee with respect to application of the attorney-client privilege. If representation is authorized, National Aeronautics and Space Administration attorneys who assist in the representation of a present or former employee also undertake a full and traditional attorney-client relationship with that employee with respect to the attorney-client privilege.

(b) Any adverse information communicated by the client-employee to an agency attorney during the course of such attorney-client relationship shall not be disclosed to anyone, either inside or outside the National Aeronautics and Space Administration, other than attorneys resonsible for representation of the employee, unless such disclosure is authorized by the employee. Such adverse information shall continue to be fully protected whether or not representation is provided and even though representation may be denied or discontinued.

July 11, 1988.

James C. Fletcher,

Administrator.

[FR Doc. 88-16421 Filed 7-20-88; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM87-35-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

July 15, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee the Director, Office of Economic Policy, issues the update to the "advisory" benchmark rate of return on common equity applicable to rate filings made during the period August through October 1988. This benchmark rate is set at 12.36 percent.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8283.

SUPPLEMENTARY INFORMATION: On January 27, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule which readopted the quarterly indexing procedure for establishing and updating the benchmark rate of return on common equity applicable to electric rate filings.[1] Based on this procedure, the Commission, by its designee, the Director of the Office of Economic Policy, determines that the benchmark rate of return on common equity applicable to rate filings made during the period August 1 through October 31, 1988, is 12.36 percent.

Section 37.9 of the Commission's regulations [2] requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 99 utilities.[3] The average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate:

$k_t = 1.02\ Y_t + 4.36$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the 99-company sample of utilities for the first and second quarters of 1988 are 7.76 and 7.91 percent, respectively. The average yield for those two quarters is 7.84 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 12.36 percent.

This notice supplements the generic rate of return rule announced in Order No. 489, issued January 29, 1988 and effective on February 1, 1988.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 37, Chapter I, Title 18 of the Code of Federal Regulations as set forth below, effective August 1, 1988.

Douglas R. Bohi,

Director, Office of Economic Policy.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982).

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly Indexing Procedure

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.*

The following table presents the quarterly benchmark rates of return on common equity:

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 489, 53 FR 3342 (Feb. 5, 1988), III FERC Stats. & Regs. ¶ 30,795 (Jan. 29, 1988).

[2] 18 CFR 37.9 (1987).

[3] As a result of the acquisition of Savannah Electric & Power Company by the Southern Company, the Commission has reduced the number of companies in the sample for the most recent quarter to 99. It has made this change in accordance with the criteria for inclusion in the sample specified in 18 CFR 37.9(c) (1987).

Benchmark applicability period (t)	Dividend increase adjustment factor (a)	Expected growth adjustment factor (b)	Current dividend yield (Y_t)	Cost of common equity (k_t)	Benchmark rate of return
2/1/86–4/30/86	1.02	4.54	9.03	13.75	13.75
5/1/86–7/31/86	1.02	4.54	8.37	13.08	13.25
8/1/86–10/31/86	1.02	4.54	7.49	12.18	12.75
11/1/86–1/31/87	1.02	4.54	6.75	11.43	12.25
2/1/87–4/30/87	1.02	4.63	6.44	11.20	11.20
5/1/87–7/31/87	1.02	4.64	6.54	11.30	11.30
8/1/87–10/31/87	1.02	4.63	6.97	11.74	11.74
11/1/87–1/31/88	1.02	4.63	7.49	12.27	12.27
2/1/88–4/30/88	1.02	4.36	7.90	12.42	12.42
5/1/88–7/31/88	1.02	4.36	7.99	12.51	12.51
8/1/88–10/31/88	1.02	4.36	7.84	12.36	12.36

Note.—The Appendix will not be published in Code of Federal Regulations

Appendix

Exhibit No. and Title

1 Initial sample of utilities
2 Utilities excluded from the sample for the indicated quarter due to either zero dividends or a cut in dividends for this quarter or the prior three quarters
3 Annualized dividend yields for the indicated quarter for utilities retained in the sample

Source of Data

Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

BILLING CODE 6717-01-M

EXHIBIT 1

SAMPLE OF UTILITIES

UTILITY	TICKER SYMBOL	INDUSTRY CODE
ALLEGHENY POWER SYSTEM	AYP	4911
AMERICAN ELECTRIC POWER	AEP	4911
ATLANTIC ENERGY INC	ATE	4911
BALTIMORE GAS & ELECTRIC	BGE	4931
BLACK HILLS CORP	BKH	4911
BOSTON EDISON CO	BSE	4911
CAROLINA POWER & LIGHT	CPL	4911
CENTERIOR ENERGY CORP	CX	4911
CENTRAL & SOUTH WEST CORP	CSR	4911
CENTRAL HUDSON GAS & ELEC	CNH	4931
CENTRAL ILL PUBLIC SERVICE	CIP	4931
CENTRAL LOUISIANA ELECTRIC	CNL	4911
CENTRAL MAINE POWER CO	CTP	4911
CENTRAL VERMONT PUB SERV	CV	4911
CILCORP INC	CER	4931
CINCINNATI GAS & ELECTRIC	CIN	4931
CMS ENERGY CORP	CMS	4931
COMMONWEALTH EDISON	CWE	4911
COMMONWEALTH ENERGY SYSTEM	CES	4931
CONSOLIDATED EDISON OF NY	ED	4931
DELMARVA POWER & LIGHT	DEW	4931
DETROIT EDISON CO	DTE	4911
DOMINION RESOURCES INC-VA	D	4931
DPL INC	DPL	4931
DUKE POWER CO	DUK	4911
DUQUESNE LIGHT CO	DQU	4911
EASTERN UTILITIES ASSOC	EUA	4911
EMPIRE DISTRICT ELECTRIC CO	EDE	4911
FITCHBURG GAS & ELEC LIGHT	FGE	4931
FLORIDA PROGRESS CORP	FPC	4911
FPL GROUP INC	FPL	4911
GENERAL PUBLIC UTILITIES	GPU	4911
GREEN MOUNTAIN POWER CORP	GMP	4911
GULF STATES UTILITIES CO	GSU	4911
HAWAIIAN ELECTRIC INDS	HE	4911
HOUSTON INDUSTRIES INC	HOU	4911
I E INDUSTRIES INC	IEL	4931
IDAHO POWER CO	IDA	4911
ILLINOIS POWER CO	IPC	4931
INTERSTATE POWER CO	IPW	4931
IOWA RESOURCES INC	IOR	4911
IOWA-ILLINOIS GAS & ELEC	IWG	4931
IPALCO ENTERPRISES INC	IPL	4911
KANSAS CITY POWER & LIGHT	KLT	4911
KANSAS GAS & ELECTRIC	KGE	4911
KANSAS POWER & LIGHT	KAN	4931
KENTUCKY UTILITIES CO	KU	4911
LONG ISLAND LIGHTING	LIL	4931
LOUISVILLE GAS & ELECTRIC	LOU	4931
MAINE PUBLIC SERVICE	MAP	4911
MIDDLE SOUTH UTILITIES	MSU	4911
MIDWEST ENERGY CO	MWE	4931
MINNESOTA POWER & LIGHT	MPL	4911
MONTANA POWER CO	MTP	4931
NECO ENTERPRISES INC	NPT	4911
NEVADA POWER CO	NVP	4911
NEW ENGLAND ELECTRIC SYSTEM	NES	4911
NEW YORK STATE ELEC & GAS	NGE	4931
NIAGARA MOHAWK POWER	NMK	4931
NIPSCO INDUSTRIES INC	NI	4931
NORTHEAST UTILITIES	NU	4911
NORTHERN STATES POWER-MN	NSP	4931
OHIO EDISON CO	OEC	4911
OKLAHOMA GAS & ELECTRIC	OGE	4911
ORANGE & ROCKLAND UTILITIES	ORU	4931
PACIFIC GAS & ELECTRIC	PCG	4931
PACIFICORP	PPW	4931
PENNSYLVANIA POWER & LIGHT	PPL	4911
PHILADELPHIA ELECTRIC CO	PE	4931
PINNACLE WEST CAPITAL CORP	PNW	4911
PORTLAND GENERAL CORP	PGN	4911
POTOMAC ELECTRIC POWER	POM	4911
PSI HOLDINGS INC	PIN	4911
PUBLIC SERVICE CO OF COLO	PSR	4931
PUBLIC SERVICE CO OF N H	PNH	4911
PUBLIC SERVICE CO OF N MEX	PNM	4931
PUBLIC SERVICE ENTERPRISE GP	PEG	4931
PUGET SOUND POWER & LIGHT	PSD	4911
ROCHESTER GAS & ELECTRIC	RGS	4931
SAN DIEGO GAS & ELECTRIC	SDO	4931
SCANA CORP	SCG	4931
SIERRA PACIFIC RESOURCES	SRP	4931
SOUTHERN CALIF EDISON CO	SCE	4911
SOUTHERN CO	SO	4911
SOUTHERN INDIANA GAS & ELEC	SIG	4931
ST JOSEPH LIGHT & POWER	SAJ	4931
TECO ENERGY INC	TE	4911
TEXAS UTILITIES CO	TXU	4911
TNP ENTERPRISES INC	TNP	4911
TUCSON ELECTRIC POWER CO	TEP	4911
UNION ELECTRIC CO	UEP	4911
UNITED ILLUMINATING CO	UIL	4911
UNITIL CORP	UTL	4911
UTAH POWER & LIGHT	UTP	4911
UTILICORP UNITED INC	UCU	4931
WASHINGTON WATER POWER	WWP	4931
WISCONSIN ENERGY CORP	WEC	4931
WISCONSIN PUBLIC SERVICE	WPS	4931
WPL HOLDINGS INC	WPH	4931

N = 99

EXHIBIT 2

UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER
DUE TO EITHER ZERO DIVIDENDS OR A CUT IN DIVIDENDS FOR
THIS QUARTER OR THE PRIOR THREE QUARTERS

YEAR=88 QUARTER=2

TICKER SYMBOL	UTILITY	REASON FOR EXCLUSION
CMS	CMS ENERGY CORP	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 06/30/88
CNH	CENTRAL HUDSON GAS & ELEC	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 03/31/88
CX	CENTERIOR ENERGY CORP	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 06/30/88
GSU	GULF STATES UTILITIES CO	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 06/30/88
LIL	LONG ISLAND LIGHTING	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 06/30/88
MSU	MIDDLE SOUTH UTILITIES	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 06/30/88
NGE	NEW YORK STATE ELEC & GAS	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 03/31/88
NI	NIPSCO INDUSTRIES INC	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 09/30/87
NMK	NIAGARA MOHAWK POWER	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 09/30/87
PIN	PSI HOLDINGS INC	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 06/30/88
PNH	PUBLIC SERVICE CO OF N H	DIVIDEND RATE WAS ZERO FOR THE QUARTER ENDING 06/30/88
PNM	PUBLIC SERVICE CO OF N MEX	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 06/30/88
RGS	ROCHESTER GAS & ELECTRIC	DIVIDEND RATE REDUCED IN THE QUARTER ENDING 09/30/87

N= 13

EXHIBIT 3

ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

YEAR=88 QUARTER=2

TICKER SYMBOL	PRICE, 1ST MONTH OF QRTR-HIGH	PRICE, 1ST MONTH OF QRTR-LOW	PRICE, 2ND MONTH OF QRTR-HIGH	PRICE, 2ND MONTH OF QRTR-LOW	PRICE, 3RD MONTH OF QRTR-HIGH	PRICE, 3RD MONTH OF QRTR-LOW	AVERAGE PRICE	DIVIDENDS: ANNUAL RATE	ANNUALIZED DIVIDEND YIELD
AEP	28.375	26.125	28.625	25.875	29.250	27.500	27.625	2.260	8.181
ATE	33.750	31.500	33.750	32.000	35.000	32.625	33.104	2.760	8.337
AYP	38.375	35.875	39.125	36.000	40.375	36.875	37.771	3.000	7.943
BGE	32.125	30.000	32.750	30.625	33.750	31.125	31.729	2.000	6.303
BKH	27.375	25.250	26.500	25.000	28.125	25.750	26.333	1.400	5.316
BSE	16.500	15.375	15.625	12.500	15.875	13.500	14.896	1.820	12.218
CER	32.750	30.250	32.875	31.500	34.500	32.125	32.333	2.400	7.423
CES	30.000	27.500	28.500	26.500	31.000	28.250	28.625	2.800	9.782
CIN	26.625	25.125	27.000	25.375	29.000	27.000	26.688	2.240	8.393
CIP	21.625	20.250	21.750	20.000	22.000	21.250	21.146	1.760	8.323
CNL	33.875	32.250	33.250	31.625	33.875	32.625	32.917	2.320	7.048
CPL	34.625	31.875	34.875	32.625	35.250	34.125	33.896	2.760	8.143
CSR	32.125	30.000	32.500	30.500	33.875	31.625	31.771	2.440	7.680
CTP	17.375	15.875	17.375	16.375	18.000	17.125	17.021	1.480	8.695
CV	23.500	22.375	24.500	22.875	25.375	23.625	23.708	1.900	8.014
CWE	27.250	22.750	24.375	23.375	28.875	24.250	25.146	3.000	11.930
D	43.500	40.875	43.500	41.375	44.500	42.500	42.708	3.080	7.212
DEW	18.000	16.875	17.500	16.500	19.000	17.125	17.500	1.460	8.343
DPL	26.125	23.750	26.875	24.000	27.625	26.250	25.771	2.160	8.382
DQU	14.875	14.375	14.875	14.125	15.125	14.625	14.667	1.200	8.182
DTE	13.875	13.125	13.750	12.000	14.125	13.000	13.313	1.680	12.620
DUK	45.500	42.500	45.500	42.250	47.875	44.625	44.708	2.800	6.263
ED	44.375	42.000	44.000	40.875	45.375	43.375	43.333	3.200	7.385
EDE	30.625	30.000	30.500	29.250	30.500	29.250	30.021	2.120	7.062
EUA	25.250	22.875	24.000	21.125	25.125	23.000	23.563	2.400	10.186
FGE	29.000	26.750	27.500	25.750	27.375	26.125	27.083	1.720	6.351
FPC	34.750	32.000	34.625	33.625	35.625	34.500	34.188	2.480	7.254
FPL	30.000	27.750	30.625	28.500	31.375	30.000	29.708	2.200	7.405
GMP	25.125	23.500	23.875	22.125	24.375	22.750	23.625	1.860	7.873
GPU	33.500	31.250	34.625	32.125	35.250	33.375	33.354	1.200	3.598
HE	33.625	31.125	32.250	30.500	31.750	30.500	31.625	1.920	6.071
HOU	31.750	29.375	31.375	29.375	32.500	30.375	30.792	2.960	9.613
IDA	24.750	22.125	22.875	20.875	22.750	21.125	22.417	1.800	8.030
IEL	24.250	23.000	23.750	22.500	24.000	22.750	23.375	2.020	8.642
IOR	20.750	17.000	17.375	15.875	18.000	15.250	17.375	1.660	9.554
IPC	22.500	17.375	17.875	16.500	19.750	17.250	18.542	2.640	14.238
IPL	23.375	21.750	23.375	22.125	24.250	22.625	22.917	1.640	7.156
IPW	22.250	20.875	21.625	19.875	22.500	20.375	21.250	1.960	9.224
IWG	39.625	35.625	37.250	33.750	38.000	36.000	36.708	3.180	8.663
KAN	25.125	23.125	24.625	23.625	25.125	24.000	24.271	1.720	7.087
KGE	20.250	18.625	20.375	18.625	20.875	19.000	19.625	1.480	7.541
KLT	27.625	26.125	28.625	27.375	29.500	28.750	28.000	2.240	8.000
KU	19.750	18.125	18.875	17.625	19.000	18.250	18.604	1.340	7.203
LOU	32.625	31.500	33.750	31.750	35.625	33.625	33.146	2.660	8.025
MAP	28.500	26.000	29.625	28.625	30.500	29.000	28.708	2.000	6.967
MPL	24.625	22.000	25.750	23.375	26.000	24.125	24.313	1.720	7.075
MTP	35.000	32.125	35.000	33.000	35.875	34.500	34.250	2.680	7.825
MWE	20.000	18.125	19.250	17.750	19.375	18.000	18.750	1.520	8.107
NES	22.125	20.000	21.750	20.000	24.000	21.375	21.542	2.040	9.470
NPT	21.750	20.125	20.500	19.750	19.875	19.250	20.208	1.500	7.423
NSP	31.500	29.500	31.250	29.250	33.000	30.250	30.792	2.120	6.885

EXHIBIT 3 Continued

ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

YEAR=88 QUARTER=2

TICKER SYMBOL	PRICE, 1ST MONTH OF QRTR-HIGH	PRICE, 1ST MONTH OF QRTR-LOW	PRICE, 2ND MONTH OF QRTR-HIGH	PRICE, 2ND MONTH OF QRTR-LOW	PRICE, 3RD MONTH OF QRTR-HIGH	PRICE, 3RD MONTH OF QRTR-LOW	AVERAGE PRICE	DIVIDENDS: ANNUAL RATE	ANNUALIZED DIVIDEND YIELD
NU	20.250	18.875	19.875	18.500	20.375	18.875	19.458	1.760	9.045
NVP	22.000	20.000	21.125	19.750	21.500	20.125	20.750	1.480	7.133
OEC	19.250	17.250	18.875	17.625	19.000	17.875	18.313	1.960	10.703
OGE	31.125	29.125	32.000	30.125	32.750	31.750	31.146	2.280	7.320
ORU	30.125	28.000	29.375	28.125	31.250	28.750	29.271	2.220	7.584
PCG	16.000	14.250	15.875	14.000	16.125	15.125	15.229	1.920	12.607
PE	19.125	16.875	18.375	16.875	19.000	17.500	17.958	2.200	12.251
PEG	24.000	22.000	23.875	22.000	25.000	23.500	23.396	2.000	8.549
PGN	22.625	21.250	23.500	22.125	24.125	22.250	22.646	1.960	8.655
PNW	28.000	25.000	25.125	22.750	24.875	23.000	24.792	2.800	11.294
POM	22.375	20.875	22.500	20.125	23.125	21.375	21.729	1.380	6.351
PPL	35.375	33.625	36.875	34.500	37.500	35.375	35.542	2.760	7.766
PPW	35.250	33.250	35.375	33.500	37.000	35.000	34.896	2.640	7.565
PSD	19.750	18.250	19.250	18.125	19.750	18.625	18.958	1.760	9.284
PSR	21.750	20.500	22.000	21.250	23.125	21.625	21.708	2.000	9.213
SAJ	24.500	21.750	22.000	20.125	22.750	20.250	21.896	1.400	6.394
SCE	32.000	30.000	33.625	30.500	37.250	32.500	32.646	2.380	7.290
SCG	31.625	30.000	32.875	30.625	33.750	31.625	31.750	2.400	7.559
SDO	32.500	30.625	33.625	30.625	33.875	31.875	32.188	2.600	8.078
SIG	27.250	26.000	28.750	26.250	29.250	27.000	27.417	1.700	6.201
SO	23.375	21.750	23.375	21.750	23.750	22.750	22.792	2.140	9.389
SRP	22.875	21.500	22.125	21.000	23.500	21.875	22.146	1.760	7.947
TE	23.250	21.375	22.500	21.250	24.000	22.625	22.500	1.420	6.311
TEP	58.250	54.750	57.250	54.875	58.625	55.500	56.542	3.900	6.898
TNP	19.000	18.125	19.250	18.500	19.875	19.125	18.979	1.470	7.745
TXU	26.250	24.750	25.875	25.000	27.125	25.125	25.688	2.880	11.212
UCU	19.363	17.770	20.098	18.000	19.375	18.000	18.768	1.040	5.541
UEP	23.875	21.875	23.750	21.750	24.375	22.625	23.042	1.920	8.333
UIL	20.500	19.750	21.750	19.125	23.000	19.500	20.604	2.320	11.260
UTL	30.125	29.250	29.875	28.750	29.250	27.875	29.188	2.040	6.989
UTP	30.750	29.375	31.000	29.875	30.875	27.500	29.896	2.320	7.760
WEC	25.375	23.750	26.250	24.625	27.375	26.000	25.563	1.540	6.024
WPH	45.500	42.625	44.625	43.000	47.125	44.625	44.583	3.240	7.267
WPS	21.875	21.000	22.000	20.625	22.750	21.875	21.688	1.540	7.101
WWP	26.375	24.375	26.875	25.500	28.250	26.375	26.292	2.480	9.433

N= 86

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[FR Doc. 88–16474 Filed 7–20–88; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8216]

Income Taxes; Definition of a Controlled Foreign Corporation and Foreign Personal Holding Company Income of a Controlled Foreign Corporation After December 31, 1986

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary and final regulations.

SUMMARY: This document contains temporary Income Tax Regulations relating to the definition of a controlled foreign corporation and the definitions of foreign base company income and foreign personal holding company income of a controlled foreign corporation for taxable years of the foreign corporation beginning after December 31, 1986. These regulations are necessary because of the changes made to the prior law by the Tax Reform Act of 1986. The regulations will provide the public with the guidance needed to comply with that act and would affect United States shareholders of controlled foreign corporations. The temporary regulations set forth in this document also serve as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

DATES: Effective January 1, 1987.

The temporary regulations apply to the definition of a controlled foreign corporation and the definitions of foreign base company income and foreign personal holding company income of a controlled foreign corporation for taxable years of the foreign corporation beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Riea M. Lainoff of the Office of Associate Chief Counsel (International), within the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention CC:LR:T (INTL–953–86). Telephone (202) 566–6645 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1068. The estimated average burden associated with the collection of information in this regulation is one hour per respondent.

For further information concerning this collection of information, and where to submit comments on this collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register.**

Background

This document contains temporary regulations amending the Income Tax Regulations (26 CFR Part 1) under sections 954(b), 954(c) and 957(a) of the Internal Revenue Code. Sections 954 and 957 were amended by sections 1201, 1221, 1222 and 1223 of the Tax Reform Act of 1986 (Pub. L. 99–514). These regulations are issued under authority contained in section 7805 of the Internal Revenue Code of 1986.

Discussion

Statutory Provisions

A U.S. shareholder of a controlled foreign corporation is subject to current U.S. taxation on the subpart F income of the foreign corporation. Subpart F income is defined under section 952 and consists of several categories of income. One of the principal categories of subpart F income is foreign base company income, as defined under section 954. Foreign base company income, in turn, consists of several categories of income, also defined under section 954. These categories include foreign personal holding company income, foreign base company sales income, foreign base company services income, foreign base company shipping income, and foreign base company oil related income. In general, foreign personal holding company income consists of several types of passive, financial, or otherwise moveable types of income. These include, for example, interest, dividends, rents, royalties, annuities, and gains from various property transactions. The foreign base company sales and services income categories generally include income from activities that are routed through a controlled foreign corporation organized outside the country in which the economic activities occur.

The gross amounts of foreign base company income are subject to several special rules and exceptions under section 954. These include an exception for de minimis amounts of foreign base company income, a full inclusion rule for large amounts of foreign base company income, and an exception for income subject to high foreign taxes. The definition of foreign personal holding company income also includes several exceptions and special rules. These include certain exceptions applicable to transactions engaged in by dealers and commodity merchants, an exception for certain transactions related to the business needs of a controlled foreign corporation, and an exception from certain export financing transactions. Additional exceptions apply to certain active rents and royalties and certain income received from related persons created or organized in the same foreign country as the foreign corporation.

Section 957 defines the term controlled foreign corporation. In general, a foreign corporation is a controlled foreign corporation if more than fifty percent of the total combined voting power or value of its outstanding shares is held by ten percent or greater U.S. shareholders.

1986 Act Changes

Although the provisions of subpart F were first enacted in 1962, the Tax Reform Act of 1986 made significant changes to those provisions. In general, the Act narrowed the exceptions to subpart F income, and added to it certain other types of income that Congress judged to be particularly susceptible to manipulation. New Types of income added to foreign personal holding company income include net gains on sales of property that do not generate active income, net commodities gains, and net foreign currency exchange gains. The prior law exception for certain payments between related persons has been limited by a look-through rule intended to prevent avoidance of subpart F when the related payor itself earned subpart F income. The Act repealed the prior law's exceptions from foreign personal holding company income for interest, dividends, and securities gains of banks and insurance companies.

Due in part to these expansions of Subpart F income, the Act placed increased reliance on the exception that excludes income that is subject to high foreign taxes from subpart F income. This rule is intended to distinguish cases in which a foreign corporation (instead of a U.S. corporation) is utilized for business reasons from those cases in which one is utilized for tax avoidance purposes. The Act therefore replaced the

subjective "significant purpose" test that applied under prior law with an objective test to detemine whether income that has been earned through a foreign corporation has in fact been subject to less tax than if it had been earned through a U.S. corporation.

Finally, the definition of a controlled foreign corporation under section 957 was modified by adding to the prior law's voting control test the additional stock-value test. This modification was based on Congress' concern that taxpayers could manipulate the prior test to avoid the provisions of subpart F by sharing voting stock evenly with non-U.S. shareholders while retaining the majority of the value of the foreign corporation in the form of preferred stock or other securities. Congress also considered but did not adopt a reduction of the "more than 50 percent" definition of control to "50 percent or more." Congress' retention of prior law in this regard is said to have been based in part on its understanding that under the provisions of § 1.957–1(b) a foreign corporation effectively controlled by U.S. shareholders will be treated as a controlled foreign corporation.

Summary of Regulation

Because of the substantial modification of the provisions of Subpart F by the Tax Reform Act of 1986, the regulations under section 954 relating to the general definition of foreign base company income and to the definition of foreign personal holding company income have been redrafted in their entirety, and are hereby adopted as temporary regulations §§ 1.954–1T and 1.954–2T, applicable with respect to taxable years of controlled foreign corporations beginning after December 31, 1986. The existing final regulations under section 954 are retained (although redesignated as §§ 1.954A–1 and 1.954A–2) because they remain applicable with respect to taxable years of controlled foreign corporations beginning before January 1, 1987. Similarly, several modifications in the form of temporary regulations are made to the final regulations under section 957.

Section 1.954–1T provides rules concerning the definition and computation of foreign base company income. The regulations first specify the order in which various special rules and exceptions must be applied by providing rules for computing gross, adjusted gross, net, and adjusted net foreign base company income, which is the amount ultimately includible under subpart F. (Certain of these provisions also apply for purposes of computing insurance income under section 953, another category of subpart F income.) In connection with these computational rules, § 1.954–1T(b) provides specific guidance on the application of the de minimis and full inclusion rules of section 954(b)(3) in computing adjusted gross foreign base company income, including an anti-base rule to prevent manipulation of the rules through the use of multiple controlled foreign corporations.

Section 1.954–1T(c) provides rules for allocating and apportioning expenses among various types of adjusted gross foreign base company income and non-foreign base company income in order to compute net foreign base company income. In general, that paragraph references rules in regulations under section 904(d) relating to separate limitations and the foreign tax credit. Section 1.954–1T(c) provides, however, that each category of foreign base company income is not reduced below zero in allocating and apportioning expenses, so that the positive categories of foreign base company income are not effectively reduced by losses in negative categories of foreign base company income. No inference should be drawn from this provision regarding either the application of section 952(c), which limits a controlled foreign corporation's subpart F income by its current earnings and profits, or the apportionment of deductions between Subpart F and other income of a controlled foreign corporation.

Section 1.954–1T(d) provides specific guidance on the application of the high tax exception of section 954(b)(4) in computing adjusted net foreign base company income. To minimize the additional administrative burdens imposed by these rules, they rely to the greatest extent possible on calculations already required for purposes of the foreign tax credit limitation under section 904. Finally, § 1.954–1T(e) provides rules for characterizing income of a controlled foreign corporation, since the categories of income received by a foreign corporation will significantly affect the calculation of its subpart F income, and also provides coordination rules among the various categories of foreign base company income.

Section 1.954–2T provides detailed rules on the calculation of foreign personal holding company income under section 954(c). Rules of general application are set forth in § 1.954–2T(a), including coordination rules among the various categories of foreign personal holding company income, and relevant definitions. Section 1.954–2T(b) provides for the inclusion in foreign personal holding company income of dividends, interest, rents, royalties, and annuities, and provides guidance on the export financing and same country related person exceptions applicable to certain types of such income. Several of these rules are based upon the old regulations, but they have been modified in several ways. In addition, a special rule preserves the character of tax exempt interest received by a controlled foreign corporation, ensuring that such income is exempt from income tax in the hands of a U.S. shareholder (but potentially subject to the alternative minimum tax). Rents received in the active conduct of a trade or business may be excluded from foreign personal holding company income pursuant to the rules set forth in § 1.954–2T(c). Similarly, § 1.954–2T(d) permits the exclusion of royalties received in the active conduct of a trade or business. In both cases the rules provided are based upon the old regulations under section 954, but have been modified in significant ways.

Section 1.954–2T(e) provides guidance concerning the new category of foreign personal holding company income arising from dispositions of property that either produces passive income or does not produce income. Since the amount included in foreign personal holding company income is specifically limited under the Code to the excess of gains over losses, any excess of losses over gains (i.e. a net loss in the category) is definitionally excluded from the computation of foreign personal holding company income and may not reduce any such income in another category. Special rules address the treatment of property that gives rise to more than one type of income, and specify the classification of gain or loss from dispositions of debt instruments and options.

Commodities transactions, another new category of foreign personal holding company income, are addressed by § 1.954–2T(f). The section provides definitions of relevant terms and detailed guidance on the exceptions applicable to certain active business sales and hedging transactions. In general, these exceptions are only available to an active producer, processor, merchant or handler of the commodity in question. Again, because the statutory provisions reaches only the excess of gains over losses, a net loss in this category is not taken into account in computing foreign personal holding company income.

Section 1.954–2T(g) provides rules concerning the new category of gains from foreign currency transactions. Rules are provided concerning the exception for transactions related to the

business needs of the controlled foreign corporation. In addition, the regulations provide a simplified alternative to the business needs rule, which permits an election to include in foreign personal holding company income a foreign corporation's net foreign currency gain or loss. This procedure is intended to reduce the administrative burden imposed on corporations that tend to hedge their foreign currency exposures resulting in negligible net gain or loss. Although the definitional limitation generally prevents the inclusion of a net currency loss, pursuant to the regulatory net inclusion election a net currency loss may be taken into account for purposes of computing foreign personal holding company income. Finally, a special rule is provided for qualified business units using the dollar approximate separate transactions method under § 1.985–3T.

Section 1.954–2T(h) provides guidance on the new category of income equivalent to interest. General guidance on the definition of such income is provided, together with specific rules concerning income from factoring receivables, and several examples are set forth. In addition, the regulation specifically excludes income from sales of property from its definition of income equivalent to interest. Finally, rules similar to those of sections 483 and 1274 apply to income from the performance of services where payment is delayed beyond 120 days. Although the legislative history of this provision provides relatively little guidance, the regulation seeks to define the term in a common-sense manner by comparing the income from the transactions in issue with income earned by lending money. Thus, for example, if a foreign corporation buys a note receivable from one person for $95 and 60 days later collects $100 from the obligor, its income would appear to be economically equivalent to the interest income it could have earned by advancing $95 to another person in the form of a loan, to be repaid in 60 days with $5 of interest. In both such cases the foreign corporation has advanced funds to another party, and received in return income attributable to the time value of money and the assumption of the risk of non-payment (and possibly the performance of a collection function). Such transactions are therefore included in income equivalent to interest, together with all transactions that yield a similar flow of income.

Section 1.957–1T modifies paragraph (a) of final regulations § 1.957–1 to conform its provisions to the changes made by the Tax Reform Act of 1986, and specifically to take into account the new stock-value definition of control. The provisions of final regulations § 1.957–1(b) remain unchanged, but two additional examples are added by these temporary regulations to final regulations § 1.957–1(c).

Special Analyses

It has been determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). There is a need for immediate guidance with respect to the provisions contained in this Treasury decision because the provisions of the Internal Revenue Code concerning the definition of a controlled foreign corporation and foreign personal holding company income (sections 954(b), 954(c), and 957(a)) are applicable with respect to United States shareholders of controlled foreign corporations, foreign base company income and foreign personal holding company income of controlled foreign corporations for taxable years of the controlled foreign corporation beginning after December 31, 1986. For this reason, it is found impracticable to issue the regulations with notice and public procedure under subsection (b) of the section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Drafting Information

The principal author of this regulation is David L. Paul, formerly of the Office of the Associate Chief Counsel (International), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of substance and style.

List of Subjects in 26 CFR Parts 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended to read as follows:

Income Tax Regulations

PART 1—[AMENDED]

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

Authority: 26 U.S.C. 7805. * * * Sections 1.954–0T, 1.954–1T, 1.954–2T, and 1.957–1T also issued respectively under 26 U.S.C. 954(b), 954(c), and 957(a). * * *

Par. 2. The following new section is added immediately after § 1.953–6.

§ 1.954–0T Introduction (temporary).

(a) *Effective date.* (1) The provisions of §§ 1.954–1T and 1.954–2T apply to taxable years of a controlled foreign corporation beginning after December 31, 1986. Consequently, any gain or loss (including foreign currency gain or loss as defined in section 988(b)) recognized during such taxable years of a controlled foreign corporation is subject to these provisions.

(2) The provisions of §§ 1.954A–1 and 1.954A–2 apply to taxable years of a controlled foreign corporation beginning before January 1, 1987. All references therein to sections of the Code are to the Internal Revenue Code of 1954 prior to the amendments made by the Tax Reform Act of 1986.

(b) *Outline of regulation provisions for sections 954(b)(3), 954(b)(4), 954(b)(5) and 954(c) for taxable years of a controlled foreign corporation beginning after December 31, 1986.*

(I) *§ 1.954–0T Introduction.*
(a) Effective dates.
(b) Outline.
(II) *§ 1.954–1T Foreign base company income.*
(a) In general.
(1) Purpose and scope.
(2) Definition of gross foreign base company income.
(3) Definition of adjusted gross foreign base company income.
(4) Definition of net foreign base company income.
(5) Definition of adjusted net foreign base company income.
(6) Insurance income definitions.
(7) Additional items of adjusted net foreign base company income or adjusted net insurance income by reason of section 952(c).
(8) Illustration.
(b) Computation of adjusted gross foreign base company income and adjusted gross insurance income.
(1) De minimus rule and full inclusion rule.
(i) In general.
(ii) Five percent de minimus test.
(iii) Seventy percent full inclusion test.
(2) Character of items of adjusted gross foreign base company income.
(3) Coordination with section 952(c).
(4) Anti-abuse rule.
(i) In general.

(ii) Presumption.
(iii) Definition of related person.
(iv) Illustration.
(5) Illustration.
(c) Computation of net foreign base company income.
(d) Computation of adjusted net foreign base company income or adjusted net insurance income.
(1) Application of high tax exception.
(2) Effective rate at which taxes are imposed.
(3) Taxes paid or accrued with respect to an item of income.
(i) Income other than foreign personal holding company income.
(ii) Foreign personal holding company income.
(4) Definition of an item of income.
(i) Income other than foreign personal holding company income.
(ii) Foreign personal holding company income.
(A) In general.
(B) Consistency rule.
(5) Procedure.
(6) Illustrations.
(e) Character of an item of income.
(1) Substance of the transaction.
(2) Separable character.
(3) Predominant character.
(4) Coordination of categories of gross foreign base company income or gross insurance income.
(III) *§ 1.954–2T Foreign Personal Holding Company Income.*
(a) Computation of foreign personal holding company income.
(1) In general.
(2) Coordination of overlapping definitions.
(3) Changes in use or purpose with which property is held.
(i) In general.
(ii) Illustrations.
(4) Definitions.
(i) Interest.
(ii) Inventory and similar property.
(iii) Regular dealer.
(iv) Dealer property.
(v) Debt instrument.
(b) Dividends, etc.
(1) In general.
(2) Exclusion of certain export financing.
(i) In general.
(ii) Conduct of a banking business.
(iii) Illustration.
(3) Exclusion of dividends and interest from related persons.
(i) Excluded dividends and interest.
(ii) Interest paid out of adjusted foreign base company income or insurance income.
(iii) Dividends paid out of prior years' earnings.
(iv) Fifty percent substantial assets test.
(v) Value of assets.
(vi) Location of tangible property used in a trade or business.
(A) In general.
(B) Exception.
(vii) Location of intangible property used in a trade or business.
(A) In general.
(B) Property located in part in the payor's country of incorporation and in part in other countries.
(viii) Location of property held for sale to customers.
(A) In general.
(B) Inventory located in part in the payor's country of incorporation and in part in other countries.
(ix) Location of debt instruments.
(x) Treatment of certain stock interests.
(xi) Determination of period during which property is used in a trade or business.
(xii) Treatment of banks and insurance companies [Reserved]
(4) Exclusion of rents and royalties derived from related persons.
(i) In general.
(ii) Rents or royalties paid out of adjusted foreign base company income or insurance income.
(5) Exclusion of rents and royalties derived in the active conduct of a trade or business.
(6) Treatment of tax exempt interest.
(c) Excluded rents.
(1) Trade or business cases.
(2) Special rules.
(i) Adding substantial value.
(ii) Substantiality of foreign organization.
(iii) Definition of active leasing expense.
(iv) Adjusted leasing profits.
(3) Illustrations.
(d) Excluded royalties.
(1) Trade or business cases.
(2) Special rules.
(i) Adding substantial value.
(ii) Substantiality of foreign organization.
(iii) Definition of active licensing expense.
(iv) Definition of adjusted licensing profit.
(3) Illustrations.
(e) Certain property transactions.
(1) In general.
(i) Inclusion of FPHC income.
(ii) Dual character property.
(2) Property that gives rise to certain income.
(i) In general.
(ii) Exception.
(3) Property that does not give rise to income.
(4) Classification of gain or loss from the disposition of a debt instrument or on a deferred payment sale.
(i) Gain.
(ii) Loss.
(5) Classification of options and other rights to acquire or transfer property.
(6) Classification of certain interests in pass-through entities.
[Reserved]
(f) Commodities transactions.
(1) In general.
(2) Definitions.
(i) Commodity.
(ii) Commodities transaction.
(3) Definition of the term "qualified active sales".
(i) In general.
(ii) Sale of commodities.
(iii) Active conduct of a commodities business.
(iv) Definition of the term "substantially all."
(4) Definition of the term "qualified hedging transaction".
(g) Foreign currency gain.
(1) In general.
(2) Exceptions.
(i) Qualified business units using the dollar approximate separate transactions method.
(ii) Tracing to exclude foreign currency gain or loss from qualified business and hedging transactions.
(iii) Election out of tracing.
(3) Definition of the term "qualified business transaction".
(i) In general.
(ii) Specific section 988 transactions attributable to the sale of goods or services.
(A) Acquisition of debt instruments.
(B) Becoming the obligor under debt instruments.
(C) Accrual of any item of gross income.
(D) Accrual of any item of expense.
(E) Entering into forward contracts, futures contracts, options, and similar instruments.
(F) Disposition of nonfunctional currency.
(4) Definition of the term "qualified hedging transaction".
(i) In general.
(ii) Change in purpose of hedging transaction.
(5) Election out of tracing.
(i) In general.
(ii) Exception.
(iii) Procedure.
(A) In general.
(B) Time and manner.
(C) Termination.
(h) Income equivalent to interest.
(1) In general.
(2) Illustrations.
(3) Income equivalent to interest from factoring.
(i) General rule.
(ii) Exceptions.
(iii) Factored receivable.
(iv) Illustrations.
(4) Determination of sales income.
(5) Receivables arising from performance of services.

§ 1.954–1 [Redesignated as § 1.954A–1]

Par. 3. Section 1.954–1 is redesignated as § 1.954A–1.

Par. 4. The following new section is added:

§ 1.954–1T Foreign base company income; taxable years beginning after December 31, 1986 (temporary).

(a) *In general*—(1) *Purpose and scope.* Section 954 (b) through (g) and §§ 1.954–1T and 1.954–2T provide rules for computing the foreign base company income of a controlled foreign corporation. Foreign base company income is included in the subpart F income of a controlled foreign corporation under the rules of section 952 and the regulations thereunder. Subpart F income is included in the gross income of a United States shareholder of a controlled foreign corporation under the rules of section 951 and the regulations thereunder, and thus is subject to current taxation under section 1 or 11 of the Code. The determination of whether a foreign corporation is a controlled foreign corporation, the subpart F income of which is included currently in the gross

income of its United States shareholders, is made under the rules of section 957 and the regulations thereunder.

(2) *Gross foreign base company income.* For taxable years of a controlled foreign corporation beginning after December 31, 1986, the gross foreign base company income of a controlled foreign corporation consists of the following categories of gross income:

(i) Its foreign personal holding company income, as defined in section 954(c) and § 1.954–2T,

(ii) Its foreign base company sales income, as defined in section 954(d) and the regulations thereunder,

(iii) Its foreign base company services income, as defined in section 954(e) and the regulations thereunder,

(iv) Its foreign base company shipping income, as defined in section 954(f) and the regulations thereunder, and

(v) Its foreign base company oil related income, as defined in section 954(g) and the regulations thereunder.

(3) *Adjusted gross foreign base company income.* The term "adjusted gross foreign base company income" means the gross foreign base company income of a controlled foreign corporation as adjusted by the de minimis and full inclusion rules of paragraph (b) of this section.

(4) *Net foreign base company income.* The term "net foreign base company income" means the adjusted gross foreign base company income of a controlled foreign corporation reduced so as to take account of deductions properly allocable to such income under the rules of section 954(b)(5) and paragraph (c) of this section. In computing net foreign base company income, foreign personal holding company income is reduced (but not below zero) by related person interest expense before allocating and apportioning other expenses in accordance with the rules of paragraph (c) of this section and § 1.904(d)–5(c)(2).

(5) *Adjusted net foreign base company income.* The term "adjusted net foreign base company income" means the net foreign base company income of a controlled foreign corporation reduced by any items of net foreign base company income for which the high tax exception of paragraph (d) of this section is elected. The term "foreign base company income" as used in the Code and elsewhere in the regulations generally means adjusted net foreign base company income.

(6) *Insurance income definitions.* The term "gross insurance income" includes any item of gross income taken into account in determining insurance income under section 953 and the regulations thereunder. The term "adjusted gross insurance income" means gross insurance income as adjusted by the de minimis and full inclusion rules of paragraph (b) of this section. The term "net insurance income" means adjusted gross insurance income reduced under section 953 and the regulations thereunder so as to take into account deductions properly allocable or apportionable to such income. The term "adjusted net insurance income" means net insurance income reduced by any items of net insurance income for which the high tax exception of paragraph (d) of this section is elected.

(7) *Additional items of adjusted net foreign base company income or adjusted net insurance income by reason of section 952(c).* Earnings and profits of the controlled foreign corporation that are recharacterized as foreign base company income or insurance income under section 952(c) are items of adjusted net foreign base company income or adjusted net insurance income. Thus, they are not included in the gross foreign base company income or gross insurance income of the controlled foreign corporation in computing adjusted gross foreign base company income or adjusted gross insurance income (for purposes of applying the de minimis and full inclusion tests of paragraph (b) of this section).

(8) *Illustration.* The order of computation is illustrated by the following example. Computations in this paragraph (a)(8) and in paragraph (b)(5) of this section involving the operation of section 952(c) are included for purposes of illustration only and do not provide substantive rules concerning the operation of that section.

Example. (i) *Gross income. CFC,* a controlled foreign corporation, has gross income of $1000 for the current taxable year. Of that $1000 of income, $100 is interest income that is included in the definition of foreign personal holding company income under section 954(c)(1)(A) and § 1.954–2T(b)(1)(ii), is not income from a trade or service receivable described in section 864(d)(1) or (6), and is not excluded from foreign personal holding company income under any provision of section 954(c) and § 1.954–2T. Another $50 is foreign base company sales income under section 954(d) and the regulations thereunder. The remaining $850 of gross income is not included in the definition of foreign base company income or insurance income under sections 954(c), (d), (e), (f), (g), or 953 and the regulations thereunder, and is foreign source general limitation income described in section 904(d)(1)(I) and the regulations thereunder.

(ii) *Expenses. CFC* has expenses for the current taxable year of $500. Of that $500, $8 is from interest paid to a related person and is allocable to foreign personal holding company income along with $2 of other expense. Another $20 of expense is allocable to foreign base company sales. The remaining $470 of expense is allocable to income other than foreign base company income or insurance income.

(iii) *Earnings and deficits. CFC* has earnings and profits for the current taxable year of $500. In the prior taxable year, *CFC* had losses with respect to income other than gross foreign base company income or gross insurance income. By reason of the limitation provided under section 952(c)(1)(A) and the regulations thereunder, those losses reduced the Subpart F income (consisting entirely of foreign source general limitation income) of *CFC* by $600 for the prior taxable year.

(iv) *Taxes.* Foreign tax of $30 is considered imposed on the interest income under the rules of section 954(b)(4) and paragraph (d) of this section. Foreign tax of $14 is considered imposed on the foreign base company sales income under the rules of section 954(b)(4) and paragraph (d) of this section. Foreign tax of $177 is considered imposed on the remaining foreign source general limitation income under the rules of section 954(b)(4) and paragraph (d) of this section. For the taxable year of the foreign corporation, the maximum U.S. rate of taxation under section 11 is 34 percent.

(v) *Conclusion.* Based on these facts, if *CFC* elects to exclude all items of income subject to a high foreign tax under section 954(b)(4) and paragraph (d), it will have $500 of subpart F income as defined in section 952(a) (consisting entirely of foreign source general limitation income) determined as follows. The following steps do not illustrate the computation of the subpart F income of a controlled foreign corporation that has income from a trade or service receivable treated as interest under section 864(d)(1) or interest described in section 864(d)(6).

Step 1—Determine gross income:

(1) Gross income.....$1000

Step 2—Determine gross foreign base company income and gross insurance income:

(2) Interest income included in foreign personal holding company income under section 954 (c).....100

(3) Foreign base company sales income under section 954(d).....50

(4) Total gross foreign base company income gross insurance income as defined in sections 954(c), (d), (e), (f) and (g) and 953 and the regulations thereunder (line (3) plus line (4)).....150

Step 3—Determine adjusted gross foreign base company income and adjusted gross insurance income:

(5) Five percent of gross income (.05 × line (1)).....50

(6) Seventy percent of gross income (.70 × line (1)).....700

(7) Adjusted gross foreign base company income and adjusted

gross insurance income after the application of the de minimis test of paragraph (b) (line (4), or zero if line (4) is less than the lesser of line (5) or $1,000,000).....150
(8) Adjusted gross foreign base company income and adjusted gross insurance income after the application of the full inclusion test of paragraph (b) (line (4), or line (1) if line (4) is greater than line (6)).....150

Step 4—Compute net foreign base company income:

(9) Related person interest expense and other expense allocable and apportionable to foreign personal holding company income.....10
(10) Deductions allocable and apportionable to foreign base company sales income.....20
(11) Foreign personal holding company income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (the lesser of line (2) or line (7), reduced (but not below zero) by line (9)).....90
(12) Foreign base company sales income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (the lesser of line (3) or line (7), reduced (but not below zero) by line (10)).....30
(13) Total net foreign base company income after allocating deductions under section 954(b)(5) and paragraph (c) (line (11) plus line (12)).....120

Step 5—Compute net insurance income:

(14) Net insurance income under section 953 and the regulations thereunder.....0

Step 6—Compute adjusted net foreign base company income:

(15) Foreign tax imposed on foreign personal holding company income (as determined under paragraph (d)).....30
(16) Foreign tax imposed on foreign base company sales income (as determined under paragraph (d)).....14
(17) Ninety percent of the maximum U.S. corporate tax rate.....30.6
(18) Effective rate of foreign tax imposed on foreign personal holding company income (interest) under section 954(b)(4) and paragraph (d) (line (15) divided by line (11)).....33
(19) Effective rate of foreign tax imposed on $40 of foreign base company sales income under section 954(b)(4) and paragraph (d) (line (16) divided by line (12)).....47
(20) Foreign personal holding company income subject to a high foreign tax under section 954(b)(4) and paragraph (d) (zero, or line (11) if line (18) is greater than line (17)).....90
(21) Foreign base company sales income subject to a high foreign tax under section 954(b)(4) and paragraph (d) (zero, or line (12) if line (19) is greater than line (17)).....30
(22) Adjusted net foreign base company income after applying section 954(b)(4) and paragraph (d) (line (13), reduced by the sum of line (20) and line (21)).....0

Step 7—Compute adjusted net insurance income:

(23) Adjusted net insurance income.....0

Step 8—Additions to or reduction of adjusted net foreign base company income by reason of section 952(c):

(24) Earnings and profits for the current year.....500
(25) The excess in earnings and profits over subpart F income subject to being recharacterized as adjusted net foreign base company income under section 952(c)(2) (excess of line (24) over the sum of lines (22) and (23); if there is a deficit, then the limitation of section 952(c)(1) may apply for the current year).....500
(26) Amount of reduction in subpart F income for prior taxable years by reason of the limitation of section 952(c)(1) and the regulations thereunder.....600
(27) Subpart F income as defined in section 952(a), assuming section 952(a) (3), (4), or (5) does not apply (the sum of line (22), line (23), and the lesser of line (25) or line (26)).....500

(b) *Computation of adjusted gross foreign base company income and adjusted gross insurance income*—(1) *De minimis rule, etc.*—(i) *In general.* If the de minimis rule of paragraph (b)(1)(ii) of this section applies, then adjusted gross foreign base company income and adjusted gross insurance income are each equal to zero. If the full inclusion rule of paragraph (b)(1)(iii) of this section applies, then adjusted gross foreign base company income consists of all items of gross income of the controlled foreign corporation other than gross insurance income, and adjusted gross insurance income consists of all items of gross insurance income. Otherwise, the adjusted gross foreign base company income of a controlled foreign corporation consists of the gross foreign base company income of the controlled foreign corporation, and the adjusted gross insurance income of a controlled foreign corporation consists of the gross insurance income of the controlled foreign corporation.

(ii) *Five percent de minimis test*—(A) *In general.* The de minimis rule of this paragraph (b)(1)(ii) applies if the sum of the gross foreign base company income and the gross insurance income of a controlled foreign corporation is less than the lesser of—

(*1*) 5 percent of gross income, or

(*2*) $1,000,000.

Controlled foreign corporations having a functional currency other than the U.S. dollar shall translate the $1,000,000 threshold using the exchange rate provided under section 989(b)(3) and the regulations thereunder for amounts included in income under section 951(a).

(B) *Coordination with section 864(d).* Gross foreign base company income or gross insurance income of a controlled foreign corporation always includes items of income from trade or service receivables described in section 864(d)(1) or (6), even if the de minimis rule of this paragraph (b)(1)(ii) is otherwise applicable. In that case, adjusted gross foreign base company income consists only of the items of income from trade or service receivables described in section 864(d)(1) or (6) that are included in gross foreign base company income, and adjusted gross insurance income consists only of the items of income from trade or service receivables described in section 864(d)(1) or (6) that are included in gross insurance income.

(iii) *Seventy percent full inclusion test.* The full inclusion rule of this paragraph (b)(1)(iii) applies if the sum of the foreign base company income and the gross insurance income for the taxable year exceeds 70 percent of gross income.

(2) *Character of items of gross income included in adjusted gross foreign base company income.* The items of gross income included in the adjusted gross foreign base company income of a controlled foreign corporation retain their character as foreign personal holding company income, foreign base company sales income, foreign base company services income, foreign base company shipping income, or foreign base company oil related income. Items of gross income included in adjusted gross income because the full inclusion test of paragraph (b)(1)(iii) of this section is met are termed "full inclusion foreign base company income," and constitute a separate category of adjusted gross foreign base company income for purposes of allocating and apportioning deductions under paragraph (c) of this section.

(3) *Coordination with section 952(c).* Items of gross foreign base company income or gross insurance income that are excluded from adjusted foreign base company income or adjusted gross insurance income because the de minimis test of paragraph (b)(1)(ii) of this section is met are potentially subject to recharacterization as adjusted net foreign base company income or adjusted net insurance income (or other categories of income included in the computation of Subpart F income under section 952 and the regulations thereunder) for the taxable year under the rules of section 952(c). Items of full

inclusion foreign base company income that are included in adjusted gross foreign base company income because the full inclusion test of paragraph (b)(1)(iii) of this section is met, and are included in Subpart F income under section 952 and the regulations thereunder, do not reduce amounts that, under section 952(c), are subject to recharacterization in later years on account of deficits in prior years.

(4) *Anti-abuse rule*—(i) *In general.* For purposes of applying the de minimis and full inclusion tests of paragraph (b)(1) of this section, the income of two or more controlled foreign corporations shall be aggregated and treated as the income of a single corporation if one principal purpose for separately organizing, acquiring, or maintaining such multiple corporations is to avoid the application of the de minimis or full inclusion requirements of paragraph (b)(1) of this section. For purposes of this paragraph (b), a principal purpose need not be the purpose of first importance.

(ii) *Presumption.* Two or more controlled foreign corporations are presumed to have been organized, acquired or maintained to avoid the effect of the de minimis and full inclusion requirements of paragraph (b)(1) of this section if the corporations are related persons as defined in subdivision (iii) of this paragraph (b)(4) and the corporations are described in subdivision (A), (B), or (C). This presumption may be rebutted by proof to the contrary.

(A) The activities now carried on by the controlled foreign corporations, or the assets used in those activities, are substantially the same activities that were carried on, or assets that were previously held by a single controlled foreign corporation, and the United States shareholders of the controlled foreign corporations or related persons (as determined under subdivision (iii) of this paragraph (b)(4)) are substantially the same as the United States shareholders of the one controlled foreign corporation in that prior taxable year. A presumption made in connection with the requirements of this subdivision (A) of paragraph (b)(4)(ii) may be rebutted by proof that the activities carried on by each controlled foreign corporation would constitute a separate branch under the principles of § 1.367(a)–6T(g) if carried on directly by a United States person.

(B) The controlled foreign corporations carry on a business, financial operation, or venture as partners directly or indirectly in a partnership (as defined in section 7701(a)(2) and § 301.7701–3) that is a related person (as defined in subdivision (iii) of this paragraph (b)(4)) with respect to each such controlled foreign corporation.

(C) The activities carried on by the controlled foreign corporations would constitute a single branch operation under § 1.367(a)–6T(g)(2) if carried on directly by the United States person.

(iii) *Related persons.* For purposes of this paragraph (b), two or more persons are related persons if they are in a relationship described in section 267(b). In determining for purposes of this paragraph (b) whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned with the application of section 1563(e)(1), and stock owned with the application of section 267(c). In determining for purposes of this paragraph (b) whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned with the application of section 267(e)(3).

(iv) *Illustration.* The following example illustrates the application of this paragraph (b)(4).

Example. USP is the sole United States shareholder of three controlled foreign corporations: *CFC1, CFC2* and *CFC3.* The three controlled foreign corporations all have the same taxable year. The three controlled foreign corporations are partners in *FP,* a foreign entity classified as a partnership under section 7701(a)(2) and § 301.7701–3 of the regulations. For their current taxable years, each of the controlled foreign corporations derives all of its income other than foreign base company income from activities conducted through *FP,* and its foreign base company income from activities conducted both jointly through *FP* and separately without *FP.* Based on the facts in the table below, for their current taxable years, the foreign base company income derived by each controlled foreign corporation, including income derived from *FP,* is less than five percent of the gross income of each controlled foreign corporation and is less than $1,000,000:

	CFC1	CFC2	CFC3
Gross income	$4,000,000	$8,000,000	$12,000,000
Five percent of gross income	200,000	400,000	600,000
Foreign base company income	199,000	398,000	597,000

Thus, without the application of the anti-abuse rule of this subparagraph (5), each controlled foreign corporation would be treated as having no foreign base company income after the application of the de minimis rule of section 954(b)(3)(A) and § 1.954–1T(b)(1).

However, under these facts the requirements of subdivision (i) of this paragraph (b)(4) are presumed to be met. The sum of the foreign base company income of the controlled foreign corporations is $1,194,000. Thus, the amount of adjusted gross foreign base company income will not be less than the amount of gross foreign base company income by reason of the de minimis rule of section 954(b)(3)(A) and this paragraph (b).

(5) *Illustration.* The following example illustrates computations required by sections 952 and 954 and this § 1.954–1T if the full inclusion test of paragraph (b)(1)(iii) is met (see paragraph (a)(8) for an example illustrating computations required if the de minimis test of paragraph (b)(1)(ii) is met):

Example. (i) *Gross Income. CFC,* a controlled foreign corporation, has gross income of $1,000 for the current taxable year. Of that $1,000 of income, $720 is interest income that is included in the definition of foreign personal holding company income under section 954(c)(1)(A) and § 1.954–2T(b)(ii), is not income from trade or service receivables described in section 864(d) (1) or (6), and is not excluded from foreign personal holding company income under any provisions of section 954(c) and § 1.954–2T. The remaining $280 is services income that is not included in the definition of foreign base company income or insurance income under sections 954(c), (d), (e), (f), (g) or 953 and the regulations thereunder, and is foreign source general limitation income for purposes of section 904(d)(1)(I).

(ii) *Expenses. CFC* has expenses for the current taxable year of $650. Of that $650, $350 is from interest paid to related persons that is allocable to foreign personal holding company income along with $50 of other expense. The remaining $250 of expense is allocable to services income other than foreign base company income or insurance income.

(iii) *Earnings and deficits. CFC* has earnings and profits for the current taxable year of $350. In the prior taxable year, *CFC* had losses with respect to income other than foreign base company income or insurance income. By reason of the limitation provided under section 952(c)(1)(A) and the regulations thereunder, those losses reduced the subpart F income of *CFC* (consisting entirely of foreign source general limitation income) by $600 for the prior taxable year.

(iv) *Taxes.* A foreign tax of $120 is considered imposed on the $720 of interest income under the rules of section 954(b)(4) and paragraph (d) of this section, and a foreign tax of $2 is considered imposed on the services income under the rules of section 954(b)(4) and paragraph (d) of this section. For the taxable year of the foreign corporation, the maximum U.S. rate of taxation under section 11 is 34 percent.

(v) *Conclusion.* Based on these facts, if *CFC* elects to exclude all items of income subject to a high foreign tax under section 954(b)(4) and paragraph (d), it will have $350 of subpart F income as defined in section 952(a) determined as follows:

Step 1—Determine gross income:

(1) Gross income.....$1000

Step 2—Compute gross foreign base company income and gross insurance income:

(2) Gross foreign base company income and insurance income as defined in sections 954(c), (d), (e), (f), (g) and 953 and the regulations thereunder (interest income).....720

Step 3—Compute adjusted gross foreign base company income:

(3) Seventy percent of gross income (.70 × line (1)).....700
(4) Adjusted gross foreign base company income or insurance income after the application of the full inclusion rule of this paragraph (b)(1) (line (2), or line (1) if line (2) is greater than line (3)).....1000
(5) Full inclusion foreign base company income under paragraph (a)(2)(vi) (line (4) minus line (2)).....280

Step 4—Compute net foreign base company income:

(6) Related person interest expense and other deductions allocable and apportionable to foreign personal holding company income under section 954(b)(5) and paragraph (c).....400
(7) Deductions allocable and apportionable to full inclusion foreign base company income under section 954(b)(5) and paragraph (c).....250
(8) Foreign personal holding company income after allocating deductions under section 954(b)(5) and paragraph (c) of this section (line (2) reduced (but not below zero) by line (6)).....320
(9) Full inclusion foreign base company income after allocating deductions under section 954(b)(5) paragraph (c) of this section (line (5) reduced (but not below zero) by line (7)).....30
(10) Total gross foreign base company income after allocating deductions under section 954(b)(5) and paragraph (c) (line (8) plus line (9)).....350

Step 5—Compute net insurance income:

(11) Net insurance income under section 953 and the regulations thereunder.....0

Step 6—Compute adjusted net foreign base company income:

(12) Foreign tax imposed on foreign personal holding company income (interest).....120
(13) Foreign tax imposed on full inclusion foreign base company income.....2
(14) Ninety percent of the maximum U.S. corporate tax rate.....30.6
(15) Effective rate of foreign tax imposed on $320 of foreign personal holding company income under section 954(b)(4) and paragraph (d) (line (12) divided by line (8)).....38
(16) Effective rate of foreign tax imposed of $30 of full inclusion foreign base company income under section 954(b)(4) and paragraph (d) (line (13) divided by line (9)).....7
(17) Foreign personal holding company income subject to a high foreign tax under section 954(b)(4) and paragraph (d) (zero, or line (8) if line (15) is greater than line (14)).....320
(18) Full inclusion foreign base company income subject to a high foreign tax under section 954(b)(4) and paragraph (d) (zero, or line (9) if line (16) is greater than line (14)).....0
(19) Adjusted net foreign base company income after applying section 954(b)(4) and paragraph (d) (line (10), reduced by the sum of line (17) and line (18)).....30

Step 7—Compute adjusted net insurance income:

(20) Adjusted net insurance income.....0

Step 8—Additions to or reduction of adjusted net foreign base company income by reason of section 952(c):

(21) Earnings and profits for the current year.....350
(22) The excess in earnings and profits over subpart F income, which is subject to being recharacterized as adjusted net foreign base company income under section 952(c)(2) (excess of line (21) over the sum of line (19) and line (20)); if there is a deficit, then the limitation of 952(c)(1) may apply for the current year.....320
(23) Amount of reduction in subpart F income for prior taxable years by reason of the limitation of section 952(c)(1) and the regulations thereunder.....600
(24) Subpart F income as defined in section 952(a), assuming section 952(a) (3), (4), or (5) does not apply (the sum of line (19) and line (20) plus the lesser of line (22) or line (23)).....350
(25) Amount of prior years' deficit remaining to be recharacterized as subpart F income in later years under section 952(c) (excess of line (23) over line (22)).....280

(c) *Computation of net foreign base company income*—The net foreign base company income of a controlled foreign corporation is computed by reducing (but not below zero) the amount of gross income in each of the categories of adjusted gross foreign base company income described in paragraph (b)(2) of this section, so as to take into account deductions allocable and apportionable to such income. For purposes of section 954 and this section, expenses must be allocated and apportioned consistent with the allocation and apportionment of expenses for purposes of section 904(d). For purposes of this § 1.954–1T, an item of net foreign base company income must be categorized according to the category of adjusted gross foreign base company income from which it is derived. Thus, an item of net foreign base company income must be categorized as a net item of—

(1) Foreign personal holding company income,

(2) Foreign base company sales income,

(3) Foreign base company services income,

(4) Foreign base company shipping income,

(5) Foreign base company oil related income, or

(6) Full inclusion foreign base company income.

(d) *Computation of adjusted net foreign base company income or adjusted net insurance income*—(1) *Application of high tax exception.* Adjusted net foreign base company income (or adjusted net insurance income) equals the net foreign base company income (or net insurance income) of a controlled foreign corporation, reduced by any item of such income (other than foreign base company oil related income as defined in section 954(g)) subject to the high tax exception provided by section 954(b)(4) and this paragraph (d). An item of income is subject to the high tax exception only if—

(i) It is established that the income was subject to creditable income taxes imposed by a foreign country or countries at an effective rate that is greater than 90 percent of the maximum rate of tax specified in section 11 or 15 for the taxable year of the controlled foreign corporation; and

(ii) An election is made under section 954(b)(4) and paragraph (d)(5) of this section to exclude the income from the computation of subpart F income.

See paragraph (d)(4) of this section for the definition of the term "item of income." For rules concerning the treatment for foreign tax credit purposes of amounts excluded from subpart F under section 954(b)(4), see § 904–1.4(c)(1).

(2) *Effective rate at which taxes are imposed.* For purposes of this paragraph (d), the effective rate at which taxes are imposed on an item of income is—

(i) The amount of income taxes paid or accrued (or deemed paid or accrued) with respect to the item of income,

determined under paragraph (d)(3) of this section, divided by

(ii) The item of net foreign base company income or net insurance income, determined under paragraph (d)(4) of this section (including the appropriate amount of income taxes referred to in subdivision (i) of this paragraph (d)(2), immediately above).

(3) *Taxes paid or accrued with respect to an item of income*—(i) *Income other than passive foreign personal holding company income.* The amount of income taxes paid or accrued with respect to an item of income (other than an item of foreign personal holding company income that is passive income) for purposes of section 954(b)(4) and this paragraph (d) is the amount of foreign income taxes that would be deemed paid under section 960 with respect to that item if that item were included in the gross income of a U.S. shareholder under section 951(a)(1)(A). For this purpose, the amounts that would be deemed paid under section 960 shall be determined separately with respect to each controlled foreign corporation and without regard to the limitation applicable under section 904(a).

(ii) *Passive foreign personal holding company income.* The amount of income taxes paid or accrued with respect to an item of foreign personal holding company income that is passive income for purposes of section 954(b)(4) and this paragraph (d) is the amount of foreign income taxes paid or accrued or deemed paid by the foreign corporation that would be taken into account for purposes of applying the provisions of § 1.904–4(c) with respect to that item of income.

(4) *Item of income*—(i) *Income other than passive foreign personal holding company income.* The high tax exception applies (when elected) to all income that constitutes a single item under this paragraph (d)(4). A single item of net foreign base company income or net insurance income is an amount of net foreign base company income (other than foreign personal holding company income that is passive income) or net insurance income that:

(A) Falls within a single category of net foreign base company income, as defined in paragraph (c) of this section, or net insurance income, and

(B) Also falls within a single separate limitation category for purposes of sections 904(d) and 960 and the regulations thereunder.

(ii) *Passive foreign personal holding company income*—(A) *In general.* For purposes of this paragraph (d) a single item of net foreign personal holding company income that is passive income is an amount of such income that falls within a single group of passive income under the grouping rules of § 1.904–4(c)(3), (4), and (5).

(B) *Consistency rule.* An election to exclude income from subpart F must be consistently made with respect to all items of passive foreign personal holding company income eligible to be excluded. Thus, high-taxed passive foreign personal holding company income of a controlled foreign corporation must be excluded in its entirety, or remain subject to subpart F.

(5) *Procedure.* The election provided by this paragraph (d) must be made—

(i) By controlling United States shareholders, as defined in § 1.964–1(c)(5), by attaching a statement to such effect with their original or amended income tax returns, and including any additional information required by subsequent administrative pronouncements, or

(ii) In such other manner as may be prescribed in subsequent administrative pronouncements.

An election made under the procedure provided by this paragraph (d)(5) is binding on all United States shareholders of the controlled foreign corporation.

(6) *Illustrations.* The rules of this paragraph (d) are illustrated by the following examples.

Example (1). (i) *Items of income.* During its 1987 taxable year, controlled foreign corporation CFC receives from outside its country of operation portfolio dividend income of $100 and interest income of $100 (consisting of a gross payment of $150 reduced by a third-country withholding tax of $50). For purposes of illustration, assume that the CFC incurs no expenses. None of the income is taxed in CFC's country of operation. The dividend income was not subject to their-country withholding taxes. The interest income was subject to withholding taxes equal to $50, and is therefore high withholding tax interest for purposes of section 960 (pursuant to the operation of section 904). The dividend income is passive income for purposes of section 960. Accordingly, pursuant to paragraph (d)(4) of this section, CFC has two items of income: (1) $100 of FPHC/passive income (the dividends) and (2) $100 of FPHC/high withholding tax income (the interest). The election under paragraph (d)(5) of this section to exclude high-taxed income from the operation of subpart F is potentially applicable to each such item in its entirety.

(ii) *Effective rates of tax.* No foreign tax would be deemed paid under section 960 with respect to item (1). Therefore, the effective rate of foreign tax is 0, and the item may not be excluded from subpart F under the rules of this paragraph (d). Foreign tax of $50 would be deemed paid under section 960 with respect to item (2). Therefore, the effective rate of foreign tax is 33 percent ($50 of creditable taxes paid, divided by $150, consisting of the item of net foreign base company income ($100) plus creditable taxes paid thereon ($50). The highest rate of tax specified in section 11 for the 1987 taxable year is 34 percent. Accordingly, item (2) may be excluded from subpart F pursuant to an election under paragraph (d)(5) of this section, since it is subject to foreign tax at an effective rate that is greater than 30.6 percent (90 percent of 34 percent). However, it remains high withholding tax interest when included.

Example (2). The facts are the same as in Example (1), except that CFC's country of operation imposes a tax of $50 with respect to CFC's dividend income. The interest income is still high withholding tax interest. The dividend income is still passive income (without regard to the possible applicability of the high tax exception of section 904(d)(2)). Accordingly, CFC has two items of income for purposes of this paragraph (d): (1) $100 of FPHC/high withholding tax interest income, and (2) $50 of FPHC/passive income (net of the $50 foreign tax). Both items are taxed at an effective rate greater than 31.6 percent. Item 1: Foreign tax ($50) divided by sum ($150) of income item ($100) plus creditable tax thereon ($50) equals 33 percent. Item 2: Foreign tax ($50) divided by sum ($100) of income item ($50) plus creditable tax thereon ($50) equals 50 percent. Accordingly, an election may be made under paragraph (d)(5) of this section to exclude either, both, or neither of items 1 and 2 from subpart F.

Example (3). The facts are the same as in Example (1), except that the $100 of portfolio dividend income is subject to a third-country withholding tax of $50, and the $150 of interest income is from sources within CFC's country of operation, is subject to a $10 income tax therein, and is not subject to a withholding tax. Although the interest income and the dividend income are both passive income, under paragraph (d)(4)(ii)(A) of this section they constitute separate items of income pursuant to the application of the grouping rules of § 1.904–4(c). Accordingly, CFC has two items of income for purposes of this paragraph (d): (1) $50 (net of tax) of FPHC/non-country of operation/greater than 15 percent withholding tax income; and (2) $140 (net of $10 tax) of FPHC/country of operation income. Item 1 is taxed at an effective rate greater than 30.6 percent, but Item 2 is not. Item 1: Foreign tax ($50) divided by sum ($100) of income item ($50) plus creditable tax thereon ($50) equals 50 percent. Item 2: Foreign tax ($10) divided by sum ($150) of income item ($140) plus creditable tax thereon ($10) equals 6.67 percent. Therefore, an election may be made under paragraph (d)(5) of this section to exclude Item 1 but not Item 2 from subpart F.

Example (4). The facts are the same as in Example (3), except that the $150 of interest income is subject to an income tax of $50 in CFC's country of operation. Accordingly, CFC has two items of income, as in Example (4), but both items are taxed at an effective rate greater than 30.6 percent. Item 1: Foreign tax ($50) divided by sum ($100) of income item ($50) plus creditable tax thereon ($50) equals 50 percent. Item 2: Foreign tax ($50) divided by sum ($150) if income item ($100) plus creditable tax thereon ($50) equals 33

percent. Pursuant to the consistency rule of paragraph (d)(4)(ii)(B) of this section, CFC's shareholders must consistently elect or not elect to exclude from subpart F all items of FPHC income that are eligible to be excluded. Therefore, an election may be made to exclude both Item 1 and Item 2 from subpart F, or neither may be excluded.

(e) *Character of an item of income*—(1) *Substance of the transaction.* For purposes of section 954 and the regulations thereunder, items of income shall be characterized in accordance with the substance of the transaction, and not in accordance with the designation applied by the parties to the transaction. For example, an amount received as "rent" which actually constitutes income from the sale of property, royalties, or income from services shall not be characterized as "rent" but shall be characterized as income from the sale of property, royalties or income from services, respectively. Local law shall not be controlling in characterizing an item of income.

(2) *Separable character.* To the extent one of the definitional provisions of section 953 or 954 describes a portion of the income or gain derived from a transaction, that portion of income or gain is so characterized. Thus, a single transaction may give rise to income in more than one category of foreign base company income described in paragraph (a)(2) of this section. For example, if a controlled foreign corporation, in its business of purchasing and selling personal property, receives interest (including imputed interest and market discount) on an account receivable arising from a sale, a portion of the income derived from the transaction by the controlled foreign corporation will be interest, and another portion will be gain (or loss) from the sale of personal property. If the sale is denominated in a currency other than a functional currency as defined in section 985 and the regulations thereunder, the controlled foreign corporation may have additional income in the form of foreign currency gain as defined in section 988.

(3) *Predominant character.* The portion of income derived from a transaction that meets the definition of foreign personal holding company income is always separately determinable, and thus must always be segregated from other income and separately classified under paragraph (2) of this paragraph (e). However, the portion of income derived from a transaction that would meet a particular definitional provision under section 954 or 953 and the regulations thereunder (other than the definition of foreign personal holding company income) in unusual circumstances may be indeterminable. If such portion is indeterminable, it must be classified in accordance with the predominant character of the transaction. For example, if a controlled foreign corporation engineers, fabricates, and installs a fixed offshore drilling platform as part of an integrated transaction, and the portion of income that relates to services is not accounted for separately from the portion that relates to sales, and is otherwise indeterminable, then the classification of income from the transaction shall be made in accordance with the predominant character of the particular integrated arrangement.

(4) *Coordination of categories of gross foreign base company income or gross insurance income.* The definitions of gross foreign base company income and gross insurance income are limited by the following rules (to be applied in numerical order):

(i) If an item of income is included in Subpart F income under section 952(a)(1) and the regulations thereunder as insurance income, it is by definition excluded from any other category of subpart F income.

(ii) If an item of income is included in the foreign base company oil related income of a controlled foreign corporation, it is by definition excluded from any other category of foreign base company income, other than as provided in subdivision (i) of this paragraph (e)(4).

(iii) If an item of income is included in the foreign base company shipping income of a controlled foreign corporation, it is by definition excluded from any other category of foreign base company income, other than as provided in subdivisions (i) and (ii) of this paragraph (e)(4).

(iv) If an item of income is included in foreign personal holding company income of a controlled foreign corporation, it is by definition not included in any other category of foreign base company income, other than as provided in subdivisions (i), (ii), and (iii) of this paragraph (e)(4).

An item of income shall not be excluded from the definition of a category of gross foreign base company income or gross insurance income under this paragraph (e)(4) by reason of being included in the general definition of another category of gross foreign base company income or gross insurance income, if the item of income is excluded from that other category by a more specific provision of section 953 or 954 and the regulations thereunder. For example, income derived from a commodity transaction that is excluded from foreign personal holding company income under § 1.954–2T(f) as income from qualified active sales may be included in gross foreign base company income if it also meets the definition of foreign base company sales income. See § 1.954–2T(a)(2) for the coordination of overlapping categories within the definition of foreign personal holding company income.

§ 1.954–2 [Redesignated as § 1.954A–2]

Par. 5. Section 1.954–2 is redesignated as § 1.954A–2.

Par. 6. The following new section is added:

§ 1.954–2T Foreign Personal Holding Company Income; taxable years beginning after December 31, 1986 (temporary).

(a) *Computation of foreign personal holding company income*—(1) *In general.* Foreign personal holding company income consists of the following categories of income:

(i) Dividends, interest, rents, royalties, and annuities as defined in paragraph (b) of this section;

(ii) Gain from certain property transactions as defined in paragraph (e) of this section;

(iii) Gain from commodities transactions as defined in paragraph (f) of this section;

(iv) Foreign currency gain as defined in paragraph (g) of this section; and

(v) Income equivalent to interest as defined in paragraph (h) of this section.

Paragraph (a)(3) of this section provides rules for determining the use or purpose for which property is held, if a change in use or purpose would affect the computation of foreign personal holding company income under paragraphs (e), (f), and (g) of this section. Paragraphs (c) and (d) of this section provide rules for determining certain rents and royalties that are excluded from foreign personal holding company income under paragraph (b) of this section.

(2) *Coordination of overlapping definitions.* If a particular portion of income from a transaction in substance falls within more than one of the definitional rules of section 954(c) and this section, its character is determined under the rules of subdivision (i) through (iii) of this paragraph (a)(2). The character of loss from a transaction must be similarly determined under the rules of this paragraph (a)(2).

(i) If a portion of the income from a transaction falls within the definition of income equivalent to interest under paragraph (h) of this section and the definition of gain from certain property transactions under paragraph (e) of this section, gain from a commodities transaction under paragraph (f) of this

section (whether or not derived from a qualified hedging transaction or qualified active sales), or foreign currency gain under paragraph (g) of this section (whether or not derived from a qualified business transaction or a qualified hedging transaction), that portion of income is treated as income equivalent to interest for purposes of section 954(c) and this section.

(ii) If a portion of the income from a transaction falls within the definition of foreign currency gain under paragraph (g) of this section (whether or not derived from a qualified business transaction or a qualified hedging transaction) and the definition of gain from certain property transactions under paragraph (e) of this section, or gain from a commodities transaction under paragraph (f) of this section (whether or not derived from a qualified hedging transaction or qualified active sales), that portion of income is treated as foreign currency gain for purposes of section 954(c) and this section.

(iii) If a portion of the income from a transaction falls within the definition of gain from a commodities transaction under paragraph (f) of this section (whether or not derived from a qualified hedging transaction or qualified active sales) and the definition of gain from certain property transactions under paragraph (e) of this section, that portion of income is treated as gain from a commodities transaction for purposes of section 954(c) and this section.

(3) *Changes in the use or purpose with which property is held*—(i) *In general.* Under paragraphs (e), (f), and (g) of this section, transactions in certain property give rise to gain or loss included in the computation of foreign personal holding company income if the controlled foreign corporation holds that property for a particular use or purpose. For purposes of this section, in determining the purpose or use for which property is held, the period shortly before disposition is the most significant period. However, if a controlled foreign corporation held property with a purpose that would have caused its disposition to give rise to gain or loss included in the computation of foreign personal holding company income under this section, and prior to disposition the controlled foreign corporation changed the purpose or use for which it held the property to one that would cause its disposition to give rise to gain or loss excluded from the computation of foreign personal holding company income, then the later purpose or use shall be ignored unless it was continuously present for a predominant portion of the period during which the controlled foreign corporation held the property. Under paragraph (g)(4)(iii) of this section, a currency hedging transaction may be treated as two or more separate hedging transactions, such that each portion is separately considered in applying this paragraph (a)(3).

(ii) *Illustrations.* The following examples illustrate the application of this paragraph (a)(3).

Example (1). At the beginning of taxable year 1, *CFC*, a controlled foreign corporation, purchases a building for investment. During taxable years 1 and 2, *CFC* derives rents from this building that are included in the computation of foreign personal holding company income under paragraph (b)(1)(iii) of this section. At the beginning of taxable year 3, *CFC* changes the use of the building by terminating all leases, and using it in an active trade or business. At the beginning of taxable year 4, *CFC* sells the building at a gain. For purposes of paragraph (e) of this section (gains from the sale or exchange of certain property) the building is considered to be property that gives rise to rents, as described in paragraph (e)(2). Because there was a change of use at the beginning of year 3 that would cause the disposition of the building to give rise to gain or loss excluded from the computation of foreign personal holding company income, the characterization of the gain derived at the beginning of year 4 is determined according to the property's use during the predominant portion of the period from purchase to date of sale. Therefore, gain from the sale of that building is included in the computation of foreign personal holding company income under paragraph (e) of this section.

Example (2). For taxable years 1, 2, and 3, *CFC*, a controlled foreign corporation, is engaged in the active conduct of a commodity business as a handler of gold, as defined in paragraph (f)(e)(iii), and substantially all of its business is as an active handler of gold, as defined in paragraph (f)(3)(iv). At the beginning of taxable year 1, *CFC* purchases 1000 ounces of gold for investment. At the beginning of taxable year 3, *CFC* begins holding that gold in physical form for sale to customers. During taxable year 3, *CFC* sells the entire 1000 ounces of gold in transactions described in paragraph (f)(3)(ii) at a gain. For purposes of paragraph (f), *CFC* is considered to hold the gold for investment, and not in its capacity as an active handler of gold. Thus, under paragraph (f)(3)(i), the gold is not considered to be sold in the active trade or business of the *CFC* as a handler of gold, and gain from the sale is included in the computation of foreign personal holding company income under paragraph (f) of this section.

Example (3). *CFC*, a controlled foreign corporation, is a regular dealer in unimproved land. The functional currency (as defined in section 985 and the regulations thereunder) of *CFC* is country X currency. On day 1 of its current taxable year, *CFC* enters into an agreement with A to pay $100 for certain real property to be held by *CFC* for investment. On day 10, under its method of accounting, *CFC* accrues the value of $100 in country X currency, but payment will not be made until the first day of the next taxable year (day 366). On day 190, *CFC* determines to hold the property for sale to customers in a transaction that would be a qualified business transaction under paragraph (g)(3) of this section. For purposes of this section, the land is considered to be held for investment, and the foreign currency gain attributable to that transaction is included in the computation of foreign personal holding company income under paragraph (g) of this section.

Example (4). *CFC*, a controlled foreign corporation, is a regular dealer in widgets. The functional currency (as defined in section 985 and the regulations thereunder) of *CFC* is country X currency. On day 1 of its current taxable year, *CFC* sells widgets held in inventory to A for delivery on day 60. The sales price is denominated in U.S. dollars, and payment is to be made by A on the same day the widgets are to be delivered to A. The remaining facts and circumstances are such that this sale would meet the definition of a qualified business transaction under paragraph (g)(4), the foreign currency gain from which would be excluded from the computation of foreign personal holding company income under paragraph (g). On day 1, *CFC* sells U.S. dollars forward for delivery in 60 days in a transaction that would be a qualified hedging transaction under paragraph (g)(5). On day 25 the sale of widgets to A is cancelled in a transaction that does not result in *CFC* realizing any foreign currency gain or loss with respect to the sale of widgets. However, *CFC* holds the dollar forward contract to maturity. Because the forward contract does not hedge a qualified business transaction during the period shortly before its maturity, it is not to be considered a qualified hedging transaction under paragraph (g), and any foreign currency gain or loss recognized therefrom is included in the computation of foreign personal holding company income under paragraph (g). However, if *CFC* identifies the portion of the foreign currency gain or loss derived from the forward contract that is attributable to days 1 through 25, and the portion that is attributable to days 25 through 60, the forward contract may be considered two separate transactions in accordance with the rules provided by paragraph (g)(4)(ii) of this section. Thus, the forward sale may be separately considered a qualified hedging transaction for day 1 through day 25, and the foreign currency gain or loss attributable to day 1 through day 25 may be excluded from the computation of foreign personal holding company income under paragraph (g) of this section.

Example (5). *CFC*, a controlled foreign corporation, has country X currency as its functional currency under section 985 and the regulations thereunder. On day 1 of the current taxable year, *CFC*, speculating on exchange rates, sells dollars forward for delivery in 120 days. On day 65, *CFC* sells widgets held in inventory at a price denominated in dollars to be paid on day 120 in a transaction that is a qualified business transaction. *CFC* had not made any other

dollar sales between day 1 and day 65 and does not anticipate making any other dollar sales during the taxable year. On day 65, *CFC* accrues the value of $100 in country X currency. On day 120, *CFC* receives $100 payment for the widgets and recognizes foreign currency loss pursuant to that transaction. On day 120 *CFC* also delivers dollars in connection with the forward sale, and recognizes foreign currency gain pursuant to the delivery. Under this paragraph (a)(3) the currency transaction is considered to have been entered into for speculation, and any currency gain recognized by *CFC* on the forward sale of dollars must be included in the computation of foreign personal holding company income under paragraph (g). However, if *CFC* identifies the portion of the forward sale, and the foreign currency gain or therefrom, that is attributable to day 1 through day 64, and the portion that is attributable to day 65 through day 120, the forward sale may be considered two separate transactions in accordance with the rules provided by paragraph (g)(4)(ii) of this section. Thus, the transaction for day 65 through day 120 may be considered a separate transaction that is a qualified hedging transaction, and the foreign currency gain attributable to day 65 through day 120 may be excluded from the computation of foreign personal holding company income under this paragraph (g) if all the other requirements for treatment as a qualified hedging transaction under paragraph (g) are met.

(4) *Definitions.* The following definitions apply for purposes of computing foreign personal holding company income under this section.

(i) *Interest.* The term "interest" includes amounts that are treated as ordinary income, original issue discount or interest income (including original issue discount and interest on a tax-exempt obligation) by reason of sections 482, 483, 864(d), 1273, 1274, 1276, 1281, 1286, 1288, 7872 and the regulations thereunder, or as interest or original issue discount income by reason of any other provision of law. For special rules concerning interest exempt from U.S. tax pursuant to section 103, see paragraph (b)(6) of this section.

(ii) *Inventory and similar property.* The term "inventory and similar property" (or "inventory or similar property") means property that is stock in trade of the controlled foreign corporation or other property of a kind which would properly be included in the inventory of the controlled corporation if on hand at the close of the taxable year (were the controlled foreign corporation a domestic corporation), or property held by the controlled foreign corporation primarily for sale to customers in the ordinary course of its trade or business. Rights to property held in bona fide hedging transactions that reduce the risk of price changes in the cost of "inventory and similar property" are included in the definition of that term if they are an integral part of the system by which a controlled foreign corporation purchases such property, and they are so identified by the close of the fifth day after the day on which the hedging transaction is entered into.

(iii) *Regular dealer.* The term "regular dealer" means a merchant with an established place of business that—

(A) Regularly and actively engages as a merchant in purchasing property and selling it to customers in the ordinary course of business with a view to the gains and profits that may be derived therefrom, or

(B) Makes a market in derivative financial products of property (such as forward contracts to buy or sell property, option contracts to buy or sell property, interest rate and currency swap contracts or other notional principal contracts) by regularly and actively offering to enter into positions in such products to the public in the ordinary course of business.

Purchasing and selling property through a regulated exchange or established off-exchange market (for example, engaging in futures transactions) is not actively engaging as a merchant for purposes of this section.

(iv) *Dealer property.* Property held by a controlled foreign corporation is "dealer property" if—

(A) The controlled foreign corporation is a regular dealer in property of such kind, and

(B) The property is held by the controlled foreign corporation in its capacity as a dealer.

Property which is held by the controlled foreign corporation for investment or speculation is not such property.

(v) *Debt instrument.* The term "debt instrument" includes bonds, debentures, notes, certificates, accounts receivable, and other evidences of indebtedness.

(b) *Dividends, etc.*—(1) *In general.* Foreign personal holding company includes:

(i) Dividends, except certain dividends from related persons as described in paragraph (b)(3) of this section and distributions of previously taxed income under section 959(b) and the regulations thereunder;

(ii) Interest, except export financing interest as defined in paragraph (b)(2) of this section and certain interest received from related persons as described in paragraph (b)(3) of this section;

(iii) Rents and royalties, except certain rents and royalties received from related persons as described in (b)(4) of this section and rents and royalties derived in the active conduct of a trade or business as defined in paragraph (b)(5); and

(iv) Annuities.

(2) *Exclusion of certain export financing*—(i) *In general.* Pursuant to section 954(c)(2)(B), foreign personal holding company income computed under section 954(c)(1)(A) and this paragraph (b) does not include interest that is export financing interest. For purposes of section 954(c)(2)(B) and this section, the term "export financing interest" means interest that is derived in the conduct of a banking business and is export financing interest as defined in section 904(d)(2)(G) and the regulations thereunder. Pursuant to section 864(d)(5)(A)(iii), it does not include income from related party factoring that is treated as interest under section 864(d)(1) or interest described in section 864(d)(6).

(ii) *Conduct of a banking business.* For purposes of this section, export financing interest as defined in section 904(d)(2)(G) and the regulations thereunder is considered derived in the conduct of a banking business if, in connection with the financing from which the interest is derived, the corporation, through its own officers or staff of employees, engages in all the activities in which banks customarily engage in issuing and servicing a loan.

(iii) *Illustration.* The following example illustrates the application of this provision:

Example. DS, a domestic corporation, manufactures property in the United States. In addition to selling inventory (property described in section 1221(1)), *DS* occasionally sells depreciable equipment it manufactures for use in its trade or business, which is property described in section 1221(2). Less than 50 percent of the fair market value, determined in accordance with section 904(d)(2)(G) and the regulations thereunder, of each item of inventory or equipment sold by *DS* is attributable to products imported into the United States. *CFC*, a controlled foreign corporation related (as defined in section 954(d)) to *DS*, provides loans for the purchase of property from *DS*, if the property is purchased exclusively for use of consumption outside the United States.

If, in issuing and servicing loans made with respect to purchases from *DS* of depreciable equipment used in its trade or business, which is property described in section 1221(2) in the hands of *DS*, *CFC* engages in all the activities in which banks customarily engage in issuing and servicing loans, the interest accrued from these loans would be export financing interest meeting the requirements of paragraph (b)(2) of this section, which would not be included in foreign personal holding company income under section 954(c) and paragraph (b)(1)(ii) of this section. However, interest from the loans made with respect to purchases from *DS* of property which is inventory in the hands of *DS* cannot

be export financing interest because it is treated as income from a trade or service receivable under section 864(d)(6) and the regulations thereunder, and thus is included in foreign personal holding company income under paragraph (b)(1)(ii) of this section. See § 1.864–8T(d) for rules concerning certain income from trade and service receivables qualifying under the same country exception of section 864(d)(7).

(3) *Exclusion of dividends and interest from related persons*—(i) *Excluded dividends and interest.* Foreign personal holding company income does not include dividends and interest if—

(A) The payor is a corporation that is a related person as defined in section 954(a)(3),

(B) The payor is created or organized ("incorporated") under the laws of the same foreign country as the controlled foreign corporation, and

(C) A substantial part of the payor's assets are used in a trade or business in the payor's country of incorporation as determined under subdivision (iv) of this paragraph (b)(3).

Except as otherwise provided under this paragraph (b)(3), the principles of section 367(a) and regulations thereunder shall apply in determining whether the payor has a trade or business in its country of incorporation, and whether its assets are used in that trade or business.

(ii) *Interest paid out of adjusted foreign base company income or insurance income.* Interest may not be excluded from the foreign personal holding company income of the recipient under this paragrpah (b)(3) to the extent that the deduction for the interest is allocated under § 1.954–1T(c) to the payor's adjusted gross foreign base company income (as defined in § 1.954–1T(a)(3)), adjusted gross insurance income (as defined in § 1.954–1T(a)(6)), or other categories of income included in the computation of subpart F income under section 952(a), for purposes of computing the payor's net foreign base company income (as defined in § 1.954–1T(a)(4), net insurance income (as defined in § 1.954–1T(a)(6)), or income described in sections 952(a) (3), (4), and (5).

(iii) *Dividends paid out of prior years' earnings.* Dividends are excluded from foreign personal holding company income under this paragraph (b)(3) only to the extent they are paid out of earnings and profits which were earned or accumulated during a period in which the requirements of subdivision (i) of this paragraph (b)(3) were satisfied or, to the extent earned or accumulated during a taxable year of the related foreign corporation ending on or before December 31, 1962, during a period in which the payor was a related corporation as to be controlled foreign corporation and the other requirements of subdivision (i) of this paragraph (b)(3) are substantially satisfied.

(iv) *Fifty percent substantial assets test.* A substantial part of the assets of the payor will be considered used in a trade or business located in its country of incorporation only if, for each quarter during such taxable year, the average value (as of the beginning and end of the quarter) of its assets which are used in the trade or business and are located in such country constitutes over 50 percent of the average value (as of the beginning and end of the quarter) of all the assets of the payor (including assets not used in a trade or business). For such purposes the value of assets shall be determined under subdivision (v) of this paragraph (b)(3), and the location of assets used in a trade or business of the payor shall be determined under subdivisions (vi) through (xi) of this paragraph (b)(3).

(v) *Value of assets.* For purposes of determining whether a substantial part of the assets of the payor are used in a trade or business in its country of incorporation, the value of assets shall be their actual value (not reduced by liabilities), which, in the absence of affirmative evidence to the contrary, shall be deemed to be their adjusted basis.

(vi) *Location of tangible property used in a trade or business*—(A) *In general.* Tangible property (other than inventory and similar property) used in a trade or business is considered located in the country in which it is physically located.

(B) *Exception.* If tangible personal property used in a trade or business is intended for use in the payor's country of incorporation, but is temporarily located elsewhere, it will be considered located within payor's country of incorporation if the reason for its location elsewhere is for inspection or repair, and it is not currently in service in a country other than the payor's country of incorporation and is not to be placed in service in a country other than the payor's country of incorporation following the inspection or repair.

(vii) *Location of intangible property used in a trade or business*—(A) *In general.* The location of intangible property (other than inventory or similar property and debt instruments) used in a trade or business is determined based on the site of the activities conducted by the payor during the current year in connection with using or exploiting that property. An item of intangible property is located in the payor's country of incorporation during each quarter of the current taxable year if the activities connected with its use or exploitation are conducted during the entire current taxable year by the payor in its country of incorporation. For this purpose, the determination of the country in which services are performed shall be made under the principles of section 954(e) and § 1.954–4(c).

(B) *Property located in part in the payor's country of incorporation and in part in other countries.* If the activities connected with the use or exploitation of an item of intangible property are conducted during the current taxable year by the payor in the payor's country of incorporation and in other countries, then a percentage of the intangible (measured by the average value of the item as of the beginning and end of the quarter) is considered located in the payor's country of incorporation during each quarter. That percentage equals the ratio that the expenses of the payor incurred during the entire taxable year by reason of such activities that are conducted in the payor's country of incorporation bear to the expenses of the payor incurred during the entire taxable year by reason of all such activities worldwide. Expenses incurred in connection with the use or exploitation of an item of intangible property are included in the computation provided by this paragraph (b)(3) if they are deductible under section 162 or includible in inventory costs or the costs of goods sold (were the payor a domestic corporation).

(viii) *Location of property held for sale to customers*—(A) *In general.* Inventory or similar property is considered located in the payor's country of incorporation during each quarter of the taxable year if the activities of the payor in connection with the production and sale, or purchase and release, of such property and conducted in the payor's country of incorporation during the entire taxable year. If the payor conducts such activities through an independent contractor, then the location of such activities shall be the place in which they are conducted by the independent contractor.

(B) *Inventory located in part in the payor's country of incorporation and in part in other countries.* If the activities connected with the production and sales, or purchase and resale, of inventory or similar property are conducted by the payor in the payor's country of incorporation and other countries, then a percentage of the inventory or similar property (measured by the average value of the item as of the beginning and end of the quarter) is

considered located in the payor's country of incorporation each quarter. That percentage equals the ratio that the costs of the payor incurred during the entire taxable year by reason of such activities that are conducted in the payor's country of incorporation bear to all such costs incurred by reason of such activities worldwide. A cost incurred in connection with the production and sale or purchase and resale of inventory or similar property is included in this computation if it—

(*1*) Must be included in inventory costs or otherwise capitalized with respect to inventory or similar property under section 61, 263A, 471, or 472 and the regulations thereunder (whichever would be applicable were the payor a domestic corporation), or

(*2*) Would be deductible under section 162 (were the payor a domestic corporation) and is definitely related to gross income derived from such property (but not to all classes of gross income derived by the payor) under the principles of § 1.861–8.

(ix) *Location of debt instruments.* For purposes of this paragraph (b)(3), debt instruments are considered to be used in a trade or business only if they arise from the sale of inventory or similar property by the payor or from the rendition of services by the payor in the ordinary course of a trade or business of the payor, but only until such time as interest is required to be charged under section 482 and the regulations thereunder. Debt instruments that arise from the sale of inventory or similar property are treated as having the same location, proportionately, as inventory or similar property that is held during the same calendar quarter. Debt instruments arising from the rendition of services in the ordinary course of a trade or business are considered located on a proportionate basis in the countries in which the services to which they relate are performed.

(x) *Treatment of certain stock interests.* For the purpose of determining the value of assets used in a trade or business in the country of incorporation, stock directly or indirectly owned by the payor within the meaning of section 958(a) in a controlled foreign corporation ("lower-tier corporation"), which is incorporated in the same country as the payor, shall be considered located in the country of incorporation and used in a trade or business of the payor in proportion to the value of the assets of the lower-tier corporation that are used in a trade or business in the country of incorporation. The location of assets used in a trade or business of the lower-tier corporation shall be determined under the rules of this paragraph (b)(3).

(xi) *Determination of period during which property is used in a trade or business.* Property purchased or produced for use in a trade or business shall not be considered used in a trade or business until it is placed in service, and shall cease to be considered used in a trade or business when it is retired from service. The dates during which depreciable property is determined to be in use must be consistent with the determination of depreciation under sections 167 and 168 and the regulations thereunder.

(xii) *Treatment of banks and insurance companies.* [Reserved.]

(4) *Exclusion of rents and royalties derived from related persons*—(i) *In general.* Foreign personal holding company income does not include rents or royalties if—

(A) The payor is a corporation that is a related person as defined in section 954(d)(3), and

(B) The rents or royalties are for the use of, or the privilege of using, property within the country under the laws of which the recipient of the payments is created or organized.

If the property is used both within and without the country under the laws of which the controlled foreign corporation is created or organized, the part of the rent or royalty attributable to the use of, or the privilege of using, the property outside such country of incorporation is, unless otherwise provided, foreign personal holding company income under this paragraph (b).

(ii) *Rents or royalties paid out of adjusted foreign base company income or insurance income.* Rents or royalties may not be excluded from the foreign personal holding company income of the recipient under this paragraph (b)(4) to the extent that deductions for the payments are allocated under section 954(b)(5) and § 1.954–1T(a)(4) to the payor's adjusted gross foreign base company income (as defined in § 1.954–1T(a)(3)), adjusted gross insurance income (as defined in § 1.954–1T(a)(6), or other categories of income included in the computation of subpart F income under section 952(a), for purposes of computing the payor's net foreign base company income (as defined in § 1.954–1T(a)(4)), net insurance income (as defined in § 1.954–1T(a)(6)), or income described in section 952(a) (3), (4), or (5).

(5) *Exclusion of rents and royalties derived in the active conduct of a trade or business.* Foreign personal holding company income shall not include rents or royalties which are derived in the active conduct of a trade or business and which are received from a person other than a related person within the meaning of section 954(d)(3). Whether or not rents or royalties are derived in the active conduct of a trade or business is to be determined from the facts and circumstances of each case; but see paragraph (c) or (d) of this section for specific cases in which rents or royalties will be considered for purposes of this paragraph to be derived in the active conduct of a trade or business. The frequency with which a foreign corporation enters into transactions from which rents or royalties are derived will not of itself establish the fact that such rents or royalties are derived in the active conduct of a trade or business.

(6) *Treatment of tax exempt interest.* Foreign personal holding company income includes all interest income, including interest that is exempt from U.S. tax pursuant to section 103 ("tax-exempt interest"). However, that net foreign base company income of a controlled foreign corporation that is attributable to such tax-exempt interest shall be treated as tax-exempt interest in the hands of the U.S. shareholders of the foreign corporation. Accordingly, any net foreign base company income that is included in the Subpart F income of a U.S. shareholder and that is attributable to such tax-exempt interest shall remain exempt from the regular income tax, but potentially subject to the alternative minimum tax, in the hands of the U.S. shareholder.

(c) *Excluded rents*—(1) *Trade or business cases.* Rents will be considered for purposes of paragraph (b)(5) of this section to be derived in the active conduct of a trade or business if such rents are derived by the controlled foreign corporation ("lessor") from leasing—

(i) Property which the lessor has manufactured or produced, or has acquired and added substantial value to, but only if the lessor is regularly engaged in the manufacture or production of, or in the acquisition and addition of substantial value to, property of such kind,

(ii) Real property with respect to which the lessor, through its own officers or staff of employees, regularly performs active and substantial management and operational functions while the property is leased,

(iii) Personal property ordinarily used by the lessor in the active conduct of a trade or business, leased during a temporary period when the property would, but for such leasing, be idle, or

(iv) Property which is leased as a result of the performance of marketing

functions by such lessor if the lessor, through its own officers or staff of employees located in a foreign country, maintains and operates an organization in such country which is regularly engaged in the business of marketing, or of marketing and servicing, the leased property and which is substantial in relation to the amount of rents derived from the leasing of such property.

(2) *Special rules*—(i) *Adding substantial value.* For purposes of paragraph (c)(1)(i) of this section, the performance of marketing functions will not be considered to add substantial value to property.

(ii) *Substantiality of foreign organization.* An organization in a foreign country will be considered substantial in relation to the amount of rents, for purposes of paragraph (c)(1)(iv) of this section, if active leasing expenses, as defined in paragraph (c)(2)(iii), equal or exceed 25 percent of the adjusted leasing profit, as defined in paragraph (c)(2)(iv) of this section.

(iii) *Active leasing expenses* The term "active leasing expenses" means the deductions incurred by an organization of the lessor in a foreign country which are properly allocable to rental income and which would be allowable under section 162 to the lessor (were the lessor a domestic corporation) other than—

(A) Deductions for compensation for personal services rendered by shareholders of, or related persons with respect to, the lessor,

(B) Deductions for rents paid or accrued,

(C) Deductions which, although generally allowable under section 162, would be specifically allowable to the lessor (were the lessor a domestic corporation) under sections other than section 162 (such as sections 167 and 168), and

(D) Deductions for payments made to independent contractors with respect to the leased property.

(iv) *Adjusted leasing profit.* The term "adjusted leasing profit" means the gross income of the lessor from rents, reduced by the sum of—

(A) The rents paid or incurred by the controlled foreign corporation with respect to such gross rental income,

(B) The amounts which would be allowable to such lessor (were the lessor a domestic corporation) as deductions under section 167 or 168 with respect to such rental income, and

(C) The amounts paid to independent contractors with respect to such rental income.

(3) *Illustrations.* The application of this paragraph (c) is illustrated by the following examples.

Example (1). Controlled foreign corporation *A* is regularly engaged in the production of office machines which it sells or leases to others and services. Under paragraph (c)(1)(i) of this section, the rental income of *A* Corporation from the leases is derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example (2). Controlled foreign corporation *D* purchases motor vehicles which it leases to others. In the conduct of its short-term leasing of such vehicles in foreign country X, Corporation *D* owns a large number of motor vehicles in country X which it services and repairs, leases motor vehicles to customers on an hourly, daily, or weekly basis, maintains offices and service facilities in country X from which to lease and service such vehicles, and maintains therein a sizable staff of its own administrative, sales, and service personnel. Corporation *D* also leases in country X on a long-term basis, generally for a term of one year, motor vehicles which it owns. Under the terms of the long-term leases, Corporation *D* is required to repair and service, during the term of the lease, the leased motor vehicles without cost to the lessee. By the maintenance in country X of office, sales, and service facilities and its complete staff of administrative, sales, and service personnel, Corporation *D* maintains and operates an organization therein which is regularly engaged in the business of marketing and servicing the motor vehicles which are leased. The deductions incurred by such organization satisfy the 25-percent test of paragraph (c)(2)(ii) of this section; thus, such organization is substantial in relation to the rents Corporation *D* receives from leasing the motor vehicles. Therefore, under paragraph (c)(1)(iv) of this section, such rents are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example (4). Controlled foreign corporation *E* owns a complex of apartment buildings which it has acquired by purchase. Corporation *E* engages a real estate management firm to lease the apartments, manage the buildings and pay over the net rents to the owner. The rental income of *E* Corporation from such leases is not derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example (5). Controlled foreign corporation *F* acquired by purchase a twenty-story office building in a foreign country, three floors of which it occupies and the rest of which it leases. Corporation *F* acts as rental agent for the leasing of offices in the building and employs a substantial staff to perform other management and maintenance functions. Under paragraph (c)(1)(ii) of this section, the rents received by Corporation *F* from such leasing operations are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example (6). Controlled foreign corporation *G* owns equipment which it ordinarily uses to perform contracts in foreign countries to drill oil wells. For occasional brief and irregular periods it is unable to obtain contracts requiring immediate performance sufficient to employ all such equipment. During such a period it sometimes leases such idle equipment temporarily. After the expiration of such temporary leasing of the property, Corporation *G* continues the use of such equipment in the performance of its own drilling contracts. Under paragraph (c)(1)(iii) of this section, rents *G* receives from such leasing of idle equipment are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

(d) *Excluded royalties*—(1) *Trade or business cases.* Royalties will be considered for purposes of paragarph (b)(5) of this section to be derived in the active conduct of a trade or business if such royalties are derived by the controlled foreign corporation ("licensor") from licensing— (i) Property which the licensor has developed, created, or produced, or has acquired and added substantial value to, but only so long as the licensor is regularly engaged in the development, creation, or production of, or in the acquisition of and addition of substantial value to, property of such kind, or

(ii) Property which is licensed as a result of the performance of marketing functions by such licensor and the licensor, through its own staff of employees located in a foreign country, maintains and operates an organization in such country which is regularly engaged in the business of marketing, or of marketing and servicing, the licensed property and which is substantial in relation to the amount of royalties derived from the licensing of such property.

(2) *Special rules*—(i) *Adding substantial value.* For purposes of paragraph (d)(1)(i), the performance of marketing functions will not be considered to add substantial value to property.

(ii) *Substantiality of foreign organization.* An organization in a foreign country will be considered substantial in relation to the amount of royalties, for purposes of paragraph (d)(1)(ii) of this section, if the active licensing expenses, as defined in paragraph (d)(2)(iii) of this section, equal or exceed 25 percent of the adjusted licensing profit, as defined in paragraph (d)(2)(iv) of this section.

(iii) *Active licensing expenses.* The term "active licensing expenses" means the deductions incurred by an organization of the licensor which are properly allocable to royalty income and which would be allowable under section 162 to the licensor (were the licensor a domestic corporation) other than—

(A) Deductions for compensation for personal services rendered by shareholders of, or related persons with respect to, the licensor,

(B) Deductions for royalties paid or incurred,

(C) Deductions which, although generally allowable under section 162, would be specifically allowable to the licensor (were the controlled foreign corporation a domestic corporation) under sections other than section 162 (such as section 167), and

(D) Deductions for payments made to independent contractors with respect to the licensed property.

(iv) *Adjusted licensing profit.* The term "adjusted licensing profit" means the gross income of the licensor from royalties, reduced by the sum of—

(A) The royalties paid or incurred by the controlled foreign corporation with respect to such gross royalty income,

(B) The amounts which would be allowable to such licensor as deductions under section 167 (were the licensor a domestic corporation) with respect to such royalty income, and

(C) The amounts paid to independent contractors with respect to such royalty income.

(3) *Illustrations.* The application of this paragraph (d) is illustrated by the following examples.

Example (1). Controlled foreign corporation *A*, through its own staff of employees, owns and operates a research facility in foreign country X. At the research facility employees of Corporation A who are full time scientists, engineers, and technicians regularly perform experiments, tests, and other technical activities, which ultimately result in the issuance of patents that it sells or licenses. Under paragraph (d)(1)(i) of this section, royalties received by Corporation *A* for the privilege of using patented rights which it develops as a result of such research activity are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example (2). Assume that Corporation *A* in example (1), in addition to receiving royalties for the use of patents which it develops, receives royalties for the use of patents which it acquires by purchase and licenses to others without adding any value thereto. Corporation *A* generally consummates royalty agreements on such purchased patents as the result of inquiries received by it from prospective licensees when the fact becomes known in the business community, as a result of the filing of a patent, advertisements in trade journals, announcements, and contacts by employees of Corporation *A*, that Corporation *A* has acquired rights under a patent and is interested in licensing its rights. Corporation *A* does not, however, maintain and operate an organization in a foreign country which is regularly engaged in the business of marketing the purchased patents. The royalties received by Corporation *A* for the use of the purchased patents are not derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example (3). Controlled foreign corporation *B* receives royalties for the use of patents which it acquires by purchase. The primary business of Corporation *B*, operated on a regular basis, consists of licensing patents which it has purchased "raw" from inventors and, through the efforts of a substantial staff of employees consisting of scientists, engineers, and technicians, made susceptible to commercial application. For example, Corporation *B*, after purchasing patent rights covering a chemical process, designs specialized production equipment required for the commercial adaptation of the process and, by so doing, substantially increases the value of the patent. Under paragraph (d)(1)(i) of this section, royalties received by Corporation *B* from the use of such patent are derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

Example (4). Controlled foreign corporation *D* finances independent persons in the development of patented items in return for an ownership interest in such items from which it derives a percentage of royalty income, if any, subsequently derived from the use by others of the protected right. Corporation *D* also attempts to increase its royalty income from such patents by contacting prospective licensees and rendering to licensees advice which is intended to promote the use of the patented property. Corporation *D* does not, however, maintain and operate an organization in a foreign country which is regularly engaged in the business of marketing the patents. Royalties received by Corporation *D* for the use of such patents are not derived in the active conduct of a trade or business for purposes of section 954(c)(2)(A).

(e) *Certain property transactions*—(1) *In general*—(i) *Inclusion in FPHC income.* Foreign personal holding company income includes the excess of gains over losses from the sale or exchange of—

(A) Property which gives rise to dividends, interest, rents, royalties or annuities as described in paragraph (e)(2) of this section, and

(B) Property which does not give rise to income, as described in paragraph (e)(3) of this section.

If losses from the sale or exchange of such property exceed gains, the net loss is not within the definition of foreign personal holding company income under this paragraph (e), and may not be allocated to, or otherwise reduce, other foreign personal holding company income under section 954(b)(5) and § 1.954–1T(c). Gain or loss from a transaction that is treated as capital gain or loss under section 988(a)(1)(B) is not foreign currency gain or loss as defined in paragraph (g), but is gain or loss from the sale or exchange of property which is included in the computation of foreign personal holding company income under this paragraph (e)(1). Paragraphs (e) (4) and (5) of this section provide specific rules for determining whether gain or loss from dispositions of debt instruments and dispositions of options or similar property must be included in the computation of foreign personal holding company income under this paragraph (e)(1). A loss that is deferred or that otherwise may not be taken into account under any provision of the Code may not be taken into account for purposes of determining foreign personal holding company income under any provision of this paragraph (e).

(ii) *Dual character property.* Property may only in part constitute property that gives rise to certain income as described in paragraph (e)(2) of this section or property that does not give rise to any income as described in paragraph (e)(3) of this section. In such cases, the property must be treated as two separate properties for purposes of this paragraph (e). Accordingly, the sale or exchange of such dual character property will give rise to gain or loss that in part must be included in the computation of foreign personal holding company income under this paragraph (e), and in part is excluded from such computation. Gain or loss from the disposition of dual character property must be bifurcated for purposes of this paragraph (e)(1)(i) pursuant to the method that most reasonably reflects the relative uses of the property. Reasonable methods may include comparisons in terms of gross income generated or the physical division of the property. In the case of real property, the physical division of the property will in most cases be the most reasonable method available. For example, if a controlled foreign corporation owns an office building, uses 60 percent of the building in its business, and rents out the other 40 percent, then 40 percent of the gain recognized on the disposition of the property would reasonably be treated as gain which is included in the computation of foreign personal holding company income under this paragraph (e)(1). This paragraph (e)(1)(ii) addresses the contemporaneous use of property for dual purposes; for rules concerning changes in the use of property affecting its classification for purposes of this paragraph (e), see paragraph (a)(3) of this section.

(2) *Property that gives rise to certain income*—(i) *In general.* Property the sale or exchange of which gives rise to foreign personal holding company income under this paragraph (e)(2) includes property that gives rise to dividends, interest, rents, royalties and annuities described in paragraph (b) of this section, except for rents and royalties derived from unrelated persons in the active conduct of a trade or business under paragraph (b)(5) of this section. The property described by this paragraph (e)(2) includes property which gives rise to export financing interest

described in paragraph (b)(2) of this section and property which gives rise to income from related persons described in paragraphs (b)(3) and (b)(4) of this section.

(ii) *Exception.* Property described in this paragraph (e)(2) does not include—

(A) Dealer property (as defined in paragraph (a)(4)(iv) of this section), and

(B) Inventory and similar property (as defined in paragraph (a)(4)(ii) of this section) other than securities.

(3) *Property that does not give rise to income.* The term "property that does not give rise to income" for purposes of this section includes all rights and interests in property (whether or not a capital asset) except—

(i) Property that gives rise to dividends, interest, rents, royalties and annuities described in paragraph (e)(2) of this section and property that gives rise to rents and royalties derived in the active conduct of a trade or business under paragraph (b)(5) of this section;

(ii) Dealer property (as defined in paragraph (a)(4)(iv) of this section);

(iii) Inventory and similar property (as defined in paragraph (a)(4)(ii)) other than securities;

(iv) Property (other than real property) used in the controlled foreign corporation's trade or business that is of a character which would be subject to the allowance for depreciation under section 167 or 168 and the regulations thereunder (including tangible property described in § 1.167(a)–2 and intangibles described in § 1.167(a)–3);

(v) Real property that does not give rise to rental or similar income, to the extent used in the controlled foreign corporation's trade or business; and

(vi) Intangible property as defined in section 936(h)(3)(B) and goodwill that is not subject to the allowance for depreciation under section 167 and the regulations thereunder to the extent used in the controlled foreign corporation's trade or business and disposed of in connection with the sale of a trade or business of the controlled foreign corporation.

(4) *Classification of gain or loss from the disposition of a debt instrument or on a deferred payment sale*—(i) *Gain.* Gain from the sale, exchange, or retirement of a debt instrument is included in the computation of foreign personal holding company income under this paragraph (e) unless—

(A) It is treated as interest income (as defined in paragraph (a)(4)(i) of this section); or

(B) It is treated as income equivalent to interest under paragraph (h) of this section.

(ii) *Loss.* Loss from the sale, exchange, or retirement of a debt instrument is included in the computation of foreign personal holding company income under this paragraph (e) unless—

(A) It is directly allocated to interest income (as defined in paragraph (a)(4)(i) of this section) or income equivalent to interest (as defined in paragraph (h) of this section) under any provision of the Code or regulations thereunder;

(B) It is required to be apportioned in the same manner as interest expense under section 864(e) or any other provision of the Code or regulations thereunder; or

(C) The debt instrument was taken in consideration for the sale or exchange of property (or the provision of services) by the controlled foreign corporation and gain or loss from that sale or exchange (or income from the provision of services) is not includible in foreign base company income under this section.

(5) *Classification of options and other rights to acquire or transfer property.* Subject to the exceptions provided in paragraphs (e)(3) (ii) and (iii) of this section (relating to certain dealer property and inventory property), rights to acquire or transfer property, including property that gives rise to income, are classified as property that does not give rise to income under paragraph (e)(3) of this section. These rights include options, warrants, futures contracts, options on a futures contract, forward contracts, and options on an index relating to stocks, securities or interest rates.

(6) *Classification of certain interests in pass through entities.* [Reserved.]

(f) *Commodities transactions*—(1) *In general.* Except as otherwise provided in this paragraph (f), foreign personal holding company income includes the excess of gains over losses from commodities transactions. If losses from commodities transactions exceed gains, the net loss is not within the definition of foreign personal holding company income under this paragraph (f), and may not be allocated to, or otherwise reduce, foreign personal holding company income under section 954(b)(5) and § 1.954–1T(a)(4). The terms "commodity" and "commodities transactions" are defined in paragraph (f)(2) of this section. Gains and losses from qualified active sales and qualified hedging transactions are excluded from the computation of foreign personal holding company income under this paragraph (f). The term "qualified active sales" is defined in paragraph (f)(3). The term "qualified hedging transaction" is defined in paragraph (f)(4) of this section. An election is provided under paragraph (g)(5) of this section to include all gains and losses from section 1256 foreign currency transactions, which would otherwise be commodities transactions, in the computation of foreign personal holding company income under paragraph (g) instead of this paragraph (f). A loss that is deferred or that otherwise may not be taken into account under any provision of the Code may not be taken into account for purposes of determining foreign personal holding company income under any provision of this paragraph (f).

(2) *Definitions*—(i) *Commodity.* For purposes of this section, the term "commodity" means:

(A) Tangible personal property of a kind which is actively traded or with respect to which contractual interests are actively traded, and

(B) Nonfunctional currency (as defined under section 988 and the regulations thereunder).

(ii) *Commodities transaction.* A commodities transaction means the purchase or sale of a commodity for immediate (spot) delivery, or deferred (forward) delivery, or the right to purchase, sell, receive, or transfer a commodity, or any other right or obligation with respect to a commodity, accomplished through a cash or off-exchange market, an interbank market, an organized exchange or board of trade, an over-the-counter market, or in a transaction effected between private parties outside of any market. Commodities transactions include, but are not limited to:

(A) A futures or forward contract in a commodity,

(B) A leverage contract in a commodity purchased from leverage transaction merchants,

(C) An exchange of futures for physical transaction,

(D) A transaction in which the income or loss to the parties is measured by reference to the price of a commodity, a pool of commodities, or an index of commodities,

(E) The purchase or sale of an option or other right to acquire or transfer a commodity, a futures contract in a commodity, or an index of commodities, and

(F) The delivery of one commodity in exchange for the delivery of another commodity, the same commodity at another time, cash, or nonfunctional currency.

(3) *Definition of the term "qualified active sales"*—(i) *In general.* The term "qualified active sales" means the sale of commodities in the active conduct of a commodity business as a producer, processor, merchant, or handler of commodities if substantially all of the controlled foreign corporation's business

is as an active producer, processor, merchant, or handler of commodities of like kind. The sale of commodities held by a controlled foreign corporation other than in its capacity as an active producer, processor, merchant or handler of commodities of like kind is not a qualified active sale.

(ii) *Sale of commodities.* The term "sale of commodities" means any transaction in which the controlled foreign corporation intends to deliver to a purchaser a commodity held by the controlled foreign corporation in physical form.

(iii) *Active conduct of a commodities business.* For purposes of this paragraph, a controlled foreign corporation is engaged in the active conduct of a commodities business as a producer, processor, merchant, or handler of commodities only if—

(A) It holds commodities as inventory or similar property (as defined in paragraph (a)(4)(ii)); and

(B) It incurs substantial expenses in the ordinary course of a commodities business from engaging in one of the following activities directly, and not through an independent contractor:

(*1*) Substantial activities in the production of commodities, including planting, tending or harvesting crops, raising or slaughtering livestock, or extracting minerals.

(*2*) Substantial processing activities prior to the sale of commodities including concentrating, refining, mixing, crushing, aerating, or milling; or

(*3*) Significant activities relating to the physical movement, handling and storage of commodities including preparation of contracts and invoices; arranging freight, insurance and credit; arranging for receipt, transfer or negotiation of shipping documents; arranging storage or warehousing, and dealing with quality claims; owning and operating facilities for storage or warehousing or owning or chartering vessels or vehicles for the transportation of commodities.

For purposes of this paragraph (f), a corporation is not engaged in a commodities business as a producer, processor, merchant, or handler of commodities if its business is primarily financial. In general, the business of a controlled foreign corporation is financial if it primarily engages in commodities transactions for investment or speculation, or if it primarily provides products or services to customers for investment or speculation.

(iv) *Substantially all.* Substantially all of the controlled foreign corporation's business is as an active producer, processor, merchant, or handler of commodities if the activities described in paragraph (f)(3)(iii) give rise to 85 percent of the taxable income of the controlled foreign corporation (computed as though the corporation were a domestic corporation). For this purpose, gains or losses from qualified hedging transactions, as defined in paragraph (f)(4), are considered derived from the qualified active sales to which they relate or are expected to relate.

(4) *Definition of the term "qualified hedging transaction."* The term "qualified hedging transaction" means a bona fide hedging transaction that:

(i) Is reasonably necessary to the conduct of business as a producer, processor, merchant or handler of a commodity in the manner in which such business is customarily and usually conducted by others;

(ii) Is entered into primarily to reduce the risk of price change (but not the risk of currency fluctuations) with respect to commodities sold or to be sold in qualified active sales described in paragraph (f)(3) of this paragraph; and

(iii) Is clearly identified on the controlled foreign corporation's records before the close of the fifth day after the day during which the hedging transaction is entered into and at a time when there is a reasonable risk of loss; however, if the controlled foreign corporation does not at such time specifically and properly identify the qualified active sales (or category of such sales) to which a hedging transaction relates, the district director in his sole discretion may determine which hedging transactions (if any) are related to qualified active sales.

(g) *Foreign currency gain*—(1) *In general.* Except as provided in paragraph (g)(2), foreign personal holding company income includes the excess of foreign currency gains over losses (as defined in section 988(b)) attributable to any section 988 transactions. If foreign currency losses exceed gains, the net loss is not within the definition of foreign personal holding company income under this paragraph (g), and may not be allocated to, or otherwise reduce, foreign personal holding company income under section 954(b)(5) and § 1.954–1T(a)(4). To the extent the gain or loss from a transaction is treated as interest income or expense under sections 988(a)(2) or 988(d) and the regulations thereunder, it is not included in the computation of foreign personal holding company income under this paragraph (g). (For other rules concerning income described in more than one category of foreign personal holding company income, see § 1.954–2(a)(2).) A loss that is deferred or that otherwise may not be taken into account under any provision of the Code may not be taken into account for purposes of determining foreign personal holding company income under any provision of this paragraph (g).

(2) *Exceptions*—(i) *Qualified business units using the dollar approximate separate transactions method.* Currency gain or loss determined under the dollar approximate separate transactions method ("DASTM gain or loss") provided by § 1.985–3T is foreign currency gain or loss attributable to a section 988 transaction for purposes of computing foreign personal holding company income under this paragraph (g). For purposes of section 1.954–1T, DASTM gain or loss shall be included in or reduce the category of foreign base company and insurance income to the extent allocated to such income under the rules of this paragraph (g)(2)(i). DASTM gain or loss shall first be allocated pro rata to foreign source gross income in each separate category described in § 1.904–5(a)(1) (section 904(d) category) under the rules of § 1.904–4(j). The amount of DASTM gain or loss that is allocated to each separate 904(d) category shall then be further allocated pro rata to gross foreign source income in each of the following groups within a section 904(d) category:

(A) Foreign base company income (including foreign currency gain or loss other than DASTM gain or loss);

(B) Insurance income;

(C) Other income.

For purposes of § 1.954–1T and this section, the amount of DASTM gain or loss that, under the rules of this paragraph (g)(2)(i), is allocable to foreign base company income within a section 904(d) category shall next be allocated pro rata to foreign source gross income in the categories described in § 1.954–1T(a)(2) that are within the section 904(d) category. Currency gain or loss determined under DASTM does not include currency gain or loss attributable to any transaction involving a third country currency (as described in § 1.985–3T(c)(7)(ii)). Foreign currency gains or losses attributable to third country currency transactions are subject to the treatment provided in paragraph (g)(1) and subdivisions (ii) and (iii) of this paragraph (g)(2).

(ii) *Tracing to exclude foreign currency gain or loss from qualified business and hedging transactions.* A foreign currency gain or loss is excluded from the computation of foreign personal holding company income under this paragraph (g) if it is clearly identified on the records of the controlled foreign corporation as being derived from a qualified business

transaction or a qualified hedging transaction. The term "qualified business transaction" is defined in paragraph (g)(3) of this section. The term "qualified hedging transaction" is defined paragraph (g)(4) of this section. However, currency gain or loss of a qualified business unit included in the computation of currency gain or loss under subdivision (i) of this paragraph (g)(2) may not be excluded from foreign personal holding company income under the tracing rule of this paragraph (g)(2)(ii). Furthermore, the tracing rule of this paragraph (g)(2)(ii) will not apply if a controlled foreign corporation makes the election provided by paragraph (g)(2)(iii) of this section.

(iii) *Election out of tracing.* A controlled foreign corporation may elect a method of accounting under which all foreign currency gains or losses attributable to section 988 transactions are included in foreign personal holding company income. The scope and requirements for this election are provided in paragraph (g)(5) of this section. This election does not apply to foreign currency gains or losses of a qualified business unit included in the computation of gain or loss under paragraph (g)(2)(i) of this section.

(3) *Definition of the term "qualified business transaction"*—(i) *In general.* The term "qualified business transaction" means a transaction (other than a "qualified hedging transaction" as described in paragraph (g)(4) of this section) that:

(A) Does not have investment or speculation as a significant purpose;

(B) Is not attributable to property or an activity of the kind that gives rise to subpart F income (other than foreign currency gain under this paragraph (g)), or could reasonably be expected to give rise to subpart F income (including upon disposition); for example, the transaction may not be attributable to stock or debt of another corporation (including related corporations organized and operating in the same country), or property likely to give rise to foreign base company sales or services income; and

(C) Is attributable to business transactions described in subdivision (ii) of this paragraph (g)(3).

A qualified business transaction includes the disposition of a debt instrument that constitutes inventory property under paragraph (a)(4)(ii) or dealer property under paragraph (a)(4)(iv) of this section. The provisions of this paragraph (g)(3) do not apply to the foreign currency gain or loss of a qualified business unit (as determined under § 1.985–3T(d)(2)) included in the computation of gain or loss under paragraph (g)(2)(i) of this section. The provisions of this paragraph (g)(3) do, however, apply to other currency transactions of a qualified business unit that elects (or is deemed to elect) the U.S. dollar as its functional currency under section 985(b)(3) and § 1.985–2T. Qualified business transactions and the amount of foreign currency gain or loss derived therefrom must be clearly identified on its records by the controlled foreign corporation. If the controlled foreign corporation is unable to specifically identify the qualified business transactions and the foreign currency gain or loss derived therefrom, the district director in his sole discretion may determine which transactions of the corporation giving rise to the foreign currency gains or losses are attributable to qualified business transactions.

(ii) *Specific business transactions.* A transaction of a controlled foreign corporation must meet the requirements of any of subdivisions (A) through (F) of this paragraph (g)(3)(ii) to be a qualified business transaction under this paragraph (g)(3).

(A) *Acquisition of debt instruments.* If the transaction is the acquisition of a debt instrument described in section 988(c)(1)(B)(i) and the regulations thereunder, the debt must be derived from—

(*1*) The sale of inventory and similar property to customers by the controlled foreign corporation in the ordinary course of regular business operations, or

(*2*) The rendition of services by the corporation in the ordinary course of regular business operations.

For purposes of this paragraph (g)(3)(ii)(A), a debt instrument will not be considered derived in the ordinary course of regular business operations unless the instrument matures, and is reasonably expected to be satisfied, within the period for which interest need not be charged under section 482 and the regulations thereunder.

(B) *Becoming the obligor under debt instruments.* If the transaction is becoming the obligor under a debt instrument described in section 988(c)(1)(B)(i) and the regulations thereunder, the debt must be incurred for:

(*1*) Payment of expenses that are includible by the controlled foreign corporation in the cost of goods sold under § 1.61–3 for property held primarily for sale to customers in the ordinary course of regular business operations, are inventoriable costs under section 471 and the regulations thereunder, or are allocable or apportionable under the rules of § 1.861–8 to gross income derived from inventory and similar property,

(*2*) Payment of expenses that are allocable or apportionable under the rules of § 1.861–8 to gross income derived from services provided by the controlled foreign corporation in the ordinary course of regular business operations,

(*3*) Acquisition of an asset that does not give rise to Subpart F income during the current taxable year (other than by application of section 952(c)) and is not reasonably expected to give rise to Subpart F income in subsequent taxable years, or

(*4*) Acquisition of dealer property as defined in paragraph (a)(4)(iv) of this section.

The identification requirements of subdivision (i) of this paragraph (g)(3) will not be met with respect to a borrowing if the controlled foreign corporation fails to clearly identify the debt and the expenses (or categories of expenses) to which it relates before the close of the fifth day after the day on which the expenses are incurred.

(C) *Accrual of any item of gross income.* If the transaction is the accrual (or otherwise taking into account) of any item of gross income or receipts as described in section 988(c)(1)(B)(ii) and the regulations thereunder, the item of gross income or receipts must be derived from:

(*1*) The sale of inventory and similar property in the ordinary course of regular business operations, or

(*2*) The provision of services by the controlled foreign corporation to customers in the ordinary course of regular business operations.

(D) *Accrual of any item of expense.* If the transaction is the accrual (or otherwise taking into account) of any item of expense as described in section 988(c)(1)(B)(ii) and the regulations thereunder, the item of expense must be:

(*1*) An expense that is includible by the controlled foreign corporation in the cost of goods sold under § 1.61–3 for property held primarily for sale to customers in the ordinary course of regular business operations, is an inventoriable cost under section 471 and the regulations thereunder, or is allocable or apportionable under the rules of § 1.861–8 to gross income derived from inventory and similar property, or

(*2*) An expense that is allocable or apportionable under the rules of § 1.861–8 to gross income derived from services provided by the controlled foreign corporation in the ordinary course of regular business operations.

(E) *Entering into forward contracts, futures contracts, options and similar instruments.* If the transaction is entering into any forward contract, futures contract, option or similar financial instrument and if such contract or instrument is not marked to market at the close of the taxable year under section 1256, as described in section 988(c)(1)(B)(iii) and the regulations thereunder, then the contract or instrument must be property held as dealer property as defined in paragraph (a)(4)(ii) of this section.

(F) *Disposition of nonfunctional currency.* If the transaction is the disposition of nonfunctional currency, as described in section 988(c)(1)(C) and the regulations thereunder, then the transaction must be for a purpose described in paragraph (g)(3)(ii)(B), for the payment of taxes not attributable to subpart F income, or must be the disposition of property held as dealer property as defined in paragraph (a)(4)(iv) of this section.

(G) *Transactions in business assets.* The acquisition or disposition of an asset that is used or held for use in the active conduct of a trade or business.

(4) *Definition of the term "qualified hedging transaction"*—(i) *In general.* The term "qualified hedging transaction" means a bona fide hedging transaction meeting all the requirements of subdivisions (A) through (D) of this paragraph (g)(4)(i):

(A) The transaction must be reasonably necessary to the conduct of regular business operations in the manner in which such business operations are customarily and usually conducted by others.

(B) The transaction must be entered into primarily to reduce the risk of currency fluctuations with respect to property or services sold or to be sold or expenses incurred or to be incurred in transactions that are qualified business transactions under paragraph (g)(3) of this section.

(C) The hedging transaction and the property or expense (or category of property or expense) to which it relates must be clearly identified on the records of the controlled foreign corporation before the close of the fifth day after the day during which the hedging transaction is entered into and at a time during which there is a reasonable risk of currency loss.

(D) The amount of foreign currency gain or loss that is attributable to a specific hedging transaction must be clearly identifiable on the records of the controlled foreign corporation or its controlling shareholder (as defined in § 1.964–1(c)(5)).

The provisions of this paragraph (g)(4) do not apply to transactions of a qualified business unit included in the computation of gain or loss under paragraph (g)(2)(i). The provisions of this paragraph (g)(4) do apply, however, to other currency transactions of a qualified business unit that elects (or is deemed to elect) the U.S. dollar as its functional currency under section 985(b)(3) and § 1.985–3T. If the controlled foreign corporation does not specifically identify the qualified business transactions (or category of qualified business transactions) to which a hedging transaction relates or is unable to specifically identify the amount of foreign currency gain or loss derived from the hedging transactions, the district director in his sole discretion may make the identifications required of the controlled foreign corporation and determine which hedging transactions (if any) are related to qualified business transactions, and the amount of foreign currency gain or loss attributable to the qualified hedging transactions.

(ii) *Change in purpose of hedging transaction.* If a hedging transaction is entered into for one purpose, and the purpose for that transaction subsequently changes, the transaction may be treated as two separate hedging transactions for purposes of this paragraph (g)(4). In such a case, the portion of the transaction that relates to a qualified business transaction is considered a qualified hedging transaction if it separately meets all the other requirements of this paragraph (g)(4) for treatment as a qualified hedging transaction. For purposes of paragraph (g)(4)(i)(C), the foreign corporation must identify on its records the portion of the transaction that relates to a qualified business transaction by the close of the fifth day after the day on which the hedge becomes so related (*i.e.*, either the day on which the hedge is first entered into or on the day on which it first relates to a qualified business transaction due to a change in its purpose). The foreign corporation must identify on its records the portion of the transaction that does not relate to a qualified business transaction by the close of the fifth day after the day on which the purpose for the hedging transaction changes.

(5) *Election out of tracing*—(i) *In general.* A controlled foreign corporation may elect to account for currency gains and losses under section 988 and gains and losses from section 1256 currency contracts by including in the computation of foreign personal holding company income under this paragraph (g) all foreign currency gains or losses attributable to section 988 transactions, and all gains or losses from section 1256 foreign currency contracts. Separate elections for section 1256 foreign currency contracts and section 988 transactions are not permitted. If a controlled foreign corporation makes the election described in this paragraph (g)(5)(i), the election is effective for all related persons as defined in section 954(d)(3) and the regulations thereunder.

(ii) *Exception.* The election provided by this paragraph (g)(5) does not apply to foreign currency gain or loss of a qualified business unit determined under § 1.985–3T(d)(2). It does, however, apply to other foreign currency gains or losses of a qualified business unit that elects (or is deemed to elect) the U.S. dollar as its functional currency.

(iii) *Procedure*—(A) *In general.* The election provided by this paragraph (g)(5) shall be made in the manner prescribed in this paragraph and in subsequent administrative pronouncements.

(B) *Time and manner.* The controlled foreign corporation may make the election by filing a statement with its original or amended information return for the taxable year for which the election is made. The controlling United States shareholders, as defined in § 1.964–1(c)(5), may make the election on behalf of the controlled foreign corporation and related corporations by filing a statement to such effect with their original or amended income tax returns for the taxable year during which the taxable year of the controlled foreign corporation for which the election is made ends. The election is effective for the taxable year of the controlled foreign corporation for which the election is made, for the taxable years of all related controlled foreign corporations ending within such taxable year, and for all subsequent years of such corporations. The statement shall include the following information:

(*1*) The name, address, taxpayer identification number, and taxable year of each United States shareholder;

(*2*) The name, address, and taxable year of each controlled foreign corporation for which the election is effective; and

(*3*) Any additional information to be required by the Secretary by administrative pronouncement.

Each United States shareholder or controlled foreign corporation filing the election must provide copies of the election to all controlled foreign corporations for which the election is effective, and all United States shareholders of such corporations. However, failure to provide such copies

will not void (or cause to be voidable) an election under this paragraph (g)(5).

(C) *Termination.* The election provided by this paragraph (g)(5) may be terminated only with the consent of the Commissioner: Attn.: CC:INTL.

(h) *Income equivalent to interest*—(1) *In general.* Foreign personal holding company income includes income that is equivalent to interest. Income equivalent to interest includes, but is not limited to, income derived from the following categories of transactions:

(i) An investment, or series of integrated transactions which include an investment, in which the payments, net payments, cash flows, or return predominantly reflect the time value of money, and

(ii) Transactions in which the payments or a predominant portion thereof are in substance for the use or forebearance of money, but are not generally treated as interest.

However, amounts treated as interest under section 954(c)(1)(A) and paragraph (b) of this section are not income equivalent to interest under this paragraph (h). Income from the sale of property will not be treated as income equivalent to interest for purposes of this paragraph (h), subject to the rule of paragraph (h)(4) of this section, unless the sale is part of an integrated transaction that gives rise to interest or income equivalent to interest. See sections 482, 483 and 1274 for the extent to which such income may be characterized as interest income subject to paragraph (b) of this section. Income equivalent to interest for purposes of this paragraph (h) includes all income attributable to a transfer of securities subject to section 1058. Income equivalent to interest also includes a portion of certain deferred payments received for the purpose of services, in accordance with the provisions of paragraph (h)(5) of this section. Income equivalent to interest does not include income attributable to notional principal contracts such as interest rate swaps, currency swaps, interest rate floor agreements, or similar contracts except to the extent that such contracts are part of an integrated transaction that gives rise to income equivalent to interest. Income derived from notional contracts by a person acting in its capacity as a regular dealer in such contracts will be presumed not to be integrated with an investment.

(2) *Illustrations.* The following examples illustrate the application of this paragraph (h):

Example (1). *CFC*, a controlled foreign corporation, promises that *A*, an unrelated person, may borrow up to $500 in principal for one year beginning at any time during the next three months at an interest rate of 10 percent. In exchange, *A* pays *CFC* a commitment fee of $2.00. Pursuant to this loan commitment, *CFC* lends $80 to *A*. As a result, the entire $2.00 fee is included in the computation of foreign personal holding company income under this paragraph (h)(1)(ii).

Example (2). (i) At the beginning of its current taxable year, *CFC*, a controlled foreign corporation, purchases at face value a one-year debt instrument issued by *A* having a $100 principal amount and bearing a floating rate of interest set at the London Interbank Offered Rate ("LIBOR") plus one percentage point. Contemporaneously, *CFC* borrows $100 from *B* for one year at a fixed interest rate of 10 percent, using the debt instrument as security.

(ii) During its current taxable year, *CFC* accrues $11 of interest from *A* on the bond. That interest is foreign personal holding company income under section 954(c)(1) and § 1.954-2T(b), and thus is not income equivalent to interest. During its current taxable year, *CFC* incurs $10 of interest expense with respect to the borrowing from *B*. That expense is allocated and apportioned to, and reduces, foreign base company income or insurance income to the extent provided in sections 954(b)(5), 863(e), and 864(e) and the regulations thereunder.

Example (3). (i) At the beginning of its 1988 taxable year, *CFC*, a controlled foreign corporation, purchases at face value a one-year debt instrument issued by *A* having a $100 principal amount and bearing a floating rate of interest set at the London Interbank Offered Rate ("LIBOR") plus one percentage point payable on the last day of *CFC*'s current taxable year. *CFC* subsequently determines that it would prefer receiving interest at a fixed rate, and, on January 1, 1989, enters into an agreement with *B*, an unrelated person, whereby *B* promises to pay *CFC* on the last day of *CFC*'s 1989 taxable year an amount equal to 10 percent on a notional principal amount of $100. In exchange, *CFC* promises to pay *B* on the last day of *CFC*'s 1989 taxable year an amount equal to LIBOR plus one percentage point on the notional principal amount.

(ii) *CFC* receives a total of $10 from *B*, and pays $9 to *B*. *CFC* also receives $9 from *A*. The $9 paid to *B* is directly allocated to, or is otherwise an adjustment to, the $10 received from *B*. The transactions are considered an intergrated transaction giving rise to $9 of interest income (paid by *A*) and, under paragraph (h)(1)(i), $1 of income equivalent to interest (paid by *B*).

Example (4). The facts are the same as in Example (3), except that *CFC* does not hold any debt obligations. Since the transaction with *B* is not integrated with an investment giving rise to interest or income equivalent to interest, the net $1 of income realized by *CFC* does not constitute income equivalent to interest.

Example (5). (i) *CFC*, a controlled foreign corporation, enters into an agreement with *A* whereby *CFC* purchases commodity X from *A* at a price of $100, and *A* contemporaneously repurchases commodity X from *CFC* for payment and delivery in 3 months at a price of $104 set by the forward market.

(ii) The transaction is in substance a loan from *CFC* to *A* secured by commodity X. Thus, *CFC* accrues $4 of gross income which is included in foreign personal holding company income as interest under section 954(c)(1)(A) and paragraph (b) of this section.

Example (6). (i) *CFC* purchases commodity Y on the spot market for $100 and contemporaneously, sells commodity Y forward for delivery and payment in 3 months at a price of $104 set by the forward market.

(ii) The $100 paid on the spot purchase of commodity Y offsets any market risk on the forward sale so that the $4 of income to be derived predominantly reflects time value of money. Thus, under paragraph (h)(1)(i), the spot purchase of commodity Y and the offsetting forward sale will be treated as an integrated transaction giving rise to $4 of income equivalent to interest.

(3) *Income equivalent to interest from factoring*—(i) *General rule.* Income equivalent to interest includes factoring income. Except as provided in paragraph (h)(3)(ii) of this section, the term "factoring income" includes any income (including any discount income or service fee, but excluding any stated interest) derived from the acquisition and collection or disposition of a factored receivable. The rules of this paragraph (h)(3) apply only with respect to the tax treatment of factoring income derived from the acquisition and collection or disposition of a factored receivable and shall not affect the characterization of an expense or loss of either the person whose goods or services gave rise to a factored receivable or the obligor under a receivable. The amount of income equivalent to interest realized with respect to a factored receivable is the difference (if a positive number) between the amount paid for the receivable by the foreign corporation and the amount that it collects on the receivable (or realizes upon its sale of the receivable).

(ii) *Exceptions.* Factoring income shall not include—

(A) Income treated as interest under section 864(d)(1) or (6) and the regulations thereunder (relating to income derived from trade or service receivables of related persons), even if such income is not treated as described in section 864(d)(1) by reason of the same-country exception of section 864(d)(7);

(B) Income derived from a factored receivable if payment for the acquisition of the receivable is made on or after the date on which stated interest begins to accrue, but only if the rate of stated interest equals or exceeds 120 percent of the Federal short term rate (as defined

under section 1274) (or the equivalent rate for a currency other than the dollar) as of the date on which the receivable is acquired by the foreign corporation; or

(C) Income derived from a factored receivable if payment for the acquisition of the receivable by the foreign corporation is made only on or after the anticipated date of payment of all principal by the obligor (or the anticipated weighted average date of payment of a pool of purchased receivables).

(iii) *Factored receivable.* For purposes of this paragraph (h)(3), the term "factored receivable" includes any account receivable or other evidence of indebtedness, whether or not issued at a discount and whether or not bearing stated interest, arising out of the disposition of property or the performance of services by any person, if such account receivable or evidence of indebtedness is acquired by a person other than the person who disposed of the property or provided the services that gave rise to the account receivable or evidence of indebtedness. For purposes of this paragraph (h)(3), it is immaterial whether the person providing the property or services agrees to transfer the receivable at the time of sale (as by accepting a third-party charge or credit card) or at a later time.

(iv) *Illustrations.* The following examples illustrate the application of this paragraph (h)(3).

Example (1). DP, a domestic corporation, owns all of the outstanding stock of FS, a controlled foreign corporation. FS acquires accounts receivable arising from the sale of property by unrelated corporation X. The receivables have a face amount of $100, and after 30 days bear stated interest equal to at least 120 percent of the applicable short term Federal rate (determined as of the date the receivable is acquired). FS purchases the receivables from X for $95 on Day 1 and collects $100 from the obligor under the receivable on Day 40. Income (other than stated interest) derived by FS from the factored receivables is factoring income within the meaning or paragraph (h)(3)(i) of this section and, therefore, is income equivalent to interest.

Example (2). The facts are the same as in example (1), except that FS does not pay X for the receivables until Day 30. Income derived by FS from the factored receivables is not factoring income by reason of paragraph (h)(3)(ii)(B) of this section.

Example (3). The facts are the same as in Example (2), except that it is anticipated that all principal will be paid by the obligor of the receivables by Day 30. Income derived by FS from this "maturity factoring" of the receivables is not factoring income by reason of paragraph (h)(3)(ii)(C) of this section, and therefore does not give rise to income equivalent to interest.

Example (4). The facts are the same as in example (1), except that, rather than collecting $100 from the obligor under the factored receivable on Day 40, FS sells the receivable to controlled foreign corporation Y on Day 15 for $97. Both the income derived by FS on the factored receivable and the income derived by Y (other than stated interest) on the receivable are factoring income within the meaning of paragraph (h)(3)(i) of this section, and therefore, constitute income equivalent to interest.

Example (5). The facts are the same as in example (4), except that FS sells the factored receivable to Y for $99 on Day 45, at which time interest is accruing on the unpaid balance of $100. FS has $4 of net factoring income that is income equivalent to interest. Because interest was accruing at the time Y acquired the receivable at a rate equal to at least 120 percent of the applicable short term Federal rate, income derived by Y from the factored receivable is not factoring income by reason of pargraph (h)(3)(ii)(B).

Example (6). DP, a domestic corporation engaged in an integrated credit card business, owns all of the outstanding stock of FS, a controlled foreign corporation. On Day 1 individual A uses a credit card issued by DP to purchase shoes priced at $100 from X, a foreign corporation unrelated to DP, FS, or A. By prearrangement with DP, on Day 7, X transfers the receivable arising from A's purchase to FS in exchange for $95. FS collects $100 from A on Day 45. Income derived by FS on the factored receivable is factoring income within the meaning of paragraph (h)(3)(i) of this section and, therefore, is income equivalent to interest.

(4) *Determination of sales income.* Income equivalent to interest for purposes of this paragraph (h) does not include income from the sale of property unless the sale is part of an integrated transaction that gives rise to interest or income equivalent to interest. Income derived by a controlled foreign corporation will be treated as arising from the sale of property only if the corporation in substance carries out sales activities. Accordingly, an arrangement that is designed to lend the form of a sales transaction to a transaction that in substance constitutes and advance of funds will be disregarded. For example, if a controlled foreign corporation acquires property on 30-day payment terms from one person and sells that property to another person on 90 day payment terms and at prearranged prices and terms such that the foreign corporation bears no substantial economic risk with respect to the purchase and sale other than the risk of non-payment, the foreign corporation has not in substance derived income from the sale of property.

(5) *Receivables arising from performance of services.* If payment for services performed by a controlled foreign corporation is not made until more than 120 days after the date on which such services are performed, then the income derived by the foreign corporation constitutes income equivalent to interest to the extent that interest income would be imputed under the principles of section 483 or the original issue discount provisions (section 1271 *et seq.*), if—

(A) Such provisions applied to contracts for the performance of services,

(B) The time period referred to in sections 483(c)(1) and 1274(c)(1)(B) were 120 days rather than six months, and

(C) The time period referred to in section 483(c)(1)(A) were 120 days rather than one year.

Par. 7. In section 1.957–1, the heading and text for paragraph (a) are removed and paragraph (a) is reserved.

Par. 8. The following new section is added immediately after § 1.957–1.

§ 1.957–1T Definition of controlled foreign corporation for taxable years beginning after December 31, 1986 (temporary).

(a) *In general.* For purposes of sections 951 through 964, the term "controlled foreign corporation" means any foreign corporation of which more than 50 percent (more than 25 percent, in a case to which section 957(b) applies, and 25 percent or more in a case to which section 953(c) applies) of either—

(1) the total combined voting power of all classes of stock of the corporation entitled to vote, or

(2) the total value of the stock of the corporation,

is owned within the meaning of section 958(a), or is considered as owned by applying the rules of section 958(b) and § 1.958–2, by United States shareholders on any day during the taxable year of such foreign corporation. If the United States shareholders own the requisite percentage of total combined voting power or the requisite percentage of total value in the foreign corporation as described in this paragraph (b), the foreign corporation is a controlled foreign corporation. For definition of the term "United States shareholder," see section 951(b) and the regulations thereunder. For definition of the term "foreign corporation," see § 301.7701–5 of this chapter (Procedure and Administration Regulations). For treatment of associations as corporations, see section 7701(a)(3) and §§ 301.7701–1 and 301.7701–2 of this chapter. For definition of the term "stock," see section 958(a)(3) and 7701(a)(7). For the classification of a

member in an association, joint stock company, or insurance company as a shareholder, see section 7701(a)(8).

(b) [Reserved.]

(c) *Illustrations.* The application of this section may be illustrated by the following examples.

Example (1). [Reserved]
Example (2). [Reserved]
Example (3). [Reserved]
Example (4). [Reserved]
Example (5). [Reserved]
Example (6). [Reserved]
Example (7). [Reserved]

Example (8). For its prior taxable year, *JV*, a foreign corporation, had outstanding 1,000 shares of class A stock, which is voting common, and 1,000 shares of class B stock, which is voting nonvoting preferred. *DP*, a domestic corporation, and *FP*, a foreign corporation each owned precisely 500 shares of both class A and class B stock, and each elected 5 of the 10 members of *JV*'s board of directors. The other facts and circumstances were such that *JV* was not a controlled foreign corporation on any day of the prior taxable year. On the first day of the current taxable year, *DP* purchased one share of class B stock from *FP*. *JV* was a controlled foreign corporation on that day because over 50 percent of the total value in the corporation was held by a person that was a United States shareholder under section 951(b) and the regulations thereunder.

Example (9). X, a foreign corporation is incorporated under the laws of country *Y*. Under the laws of country *Y*, *X* is considered a mutual insurance company. *X* issues insurance policies that provide the policyholder with the right to vote for directors of the corporation, the right to a share of the assets upon liquidation in proportion to premiums paid, and the right to receive policyholder dividends in proportion to premiums paid. Only policyholders are provided with the right to vote for directors, share in assets upon liquidation, and receive distributions. United States policyholders contribute 25 percent of the premiums and have 25 percent of the outstanding rights to vote for the board of directors. Based on these facts, the United States policyholders are United States shareholders owning the requisite combined voting power and value. Thus, *X* is a controlled foreign corporation as defined in section 953(c).

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 10. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.954–1T . . . 1545–1068", "§ 1.954–2T . . . 1545–1068".

Lawrence B. Gibbs,
Commissioner of Internal Revenue.

Approved:
June 23, 1988.

Donaldson Chapoton,
Assistant Secretary of the Treasury.

[FR Doc. 88–16205 Filed 7–20–88; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 203

[DOD Instruction 6015.18]

Smoking in DOD Occupied Buildings and Facilities

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This action is taken to remove 32 CFR Part 203 in its entirety. DOD Directive 1010.10, "Health Promotion," replaced DOD Instruction 6015.18 (32 CFR Part 203). The replacement document will be printed in the **Federal Register** at a later date. Because 32 CFR Part 203 is no longer valid, this part is removed from the Code of Federal Regulations.

EFFECTIVE DATE: July 18, 1988.

FOR FURTHER INFORMATION CONTACT: Colonel Hagey, Office of the Secretary of Defense (Health Affairs) (PA&QA), Room 3D368, the Pentagon, Washington, DC 20301, telephone (202) 695–6800.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 203

Federal buildings and facilities, Smoking.

PART 203—[REMOVED]

Accordingly, Title 32, Chapter 1, is amended by removing Part 203.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 18, 1988.

[FR Doc. 88–16436 Filed 7–20–88; 8:45 am]
BILLING CODE 3810–01–M

Corps of Engineers, Department of the Army

33 CFR Parts 209 and 245

Removal of Wrecks and Other Obstructions

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps of Engineers is amending its regulations concerning removal of wrecks and other obstructions in navigable waters. The regulation describes administrative procedures to be used by the Corps, and does not impose new requirements on the public. Revision to the procedures reflects legislative changes from the Water Resources Development Act of 1986, and an interagency agreement with the Coast Guard.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Rick Kowalewski, 202–272–0281.

SUPPLEMENTARY INFORMATION:

Background

The marking and removal of wrecks is governed by sections 15, 19 and 20 of the River and Harbor Act of 1899, as amended (33 U.S.C. 409–415). Marking of wrecks is under the purview of the Coast Guard and regulated under 33 CFR Part 64, while removal is under the purview of the U.S. Army Corps of Engineers. To better coordinate federal interests in navigation, the Coast Guard and Corps of Engineers signed a Memorandum of Agreement (MOA) in October 1985, which outlined procedures for making joint determinations of hazards to navigation and for coordinating remedial actions when a hazard to navigation exists.

The Water Resources Development Act of 1986 (Pub. L. 99–662) amended the Rivers and Harbors Act of 1899, by extending jurisdiction to non-negligent sinkings, extending the obligation for marking and removal to vessel operators and lessees (in addition to owners), and providing for reimbursement to the U.S. Treasury for full costs of federal removal and disposal.

The Corps of Engineers has published, for public information, its policies and procedures for wreck removal under 33 CFR Part 209. On June 29, 1987 (52 FR 24177), a proposed rule was published in the **Federal Register**, inviting comments for a period ending July 31, 1987. The proposed rule provided updated procedures to correspond to the interagency MOA and Pub. L. 99–662. Written comments were received from two Coast Guard district offices.

The proposed rule was also reexamined by the Corps of Engineers for clarity and overall integrity. The final rule reflects the comments received, as well as a general reorganization based on internal review.

Changes from proposed rules

Paragraph (a) of § 209.170, "Violations of law protecting navigable waters; Wrecks and similar obstructions," is being deleted in its entirety. This paragraph simply restated and paraphrased the law.

The procedures are being moved from § 209.190 to a new CFR part by itself, to increase visibility and access.

Paragraphs have been reorganized in the final rule to present general policy first, followed by procedures in essentially the sequence they are executed, for improved clarity. General policy and definitions have also been rewritten for clarity. Paragraphs relating to internal Corps of Engineers reports, documentation, and funding procedures are being deleted, since these aspects of the wreck removal program have no impact on the public.

The statement of purpose in the proposed § 209.190 (new Part 245) is clarified to reflect the informational (vs. prescriptive) nature of this part.

Detailed references to marking requirements were deleted to avoid possible conflict with, or apparent preemption of, regulations published by the Coast Guard in 33 CFR Part 64. General references to marking requirements are retained, since marking of wrecks is strongly related to the Corps' wreck removal program.

The paragraph which encouraged people to report obstructions is inconsistent with the purpose of this CFR part, which is the publication of the agency's administrative procedure, and is therefore deleted.

Specific reference to the Memorandum of Agreement between the Corps of Engineers and the Coast Guard, dated October 1985, is deleted to avoid "dating" the CFR. References to interagency agreement are retained.

The paragraph which outlined priorities for removal has been deleted from the final rule. This paragraph was essentially common sense but framed in fairly rigid language, which unnecessarily constrained the District Engineer in making case-by-case judgments using the considerations outlined elsewhere in the regulation. Program priorities are further discussed under the heading "Program priorities" below.

Criteria for establishing abandonment have been rewritten for clarity and greater consistency with the wording in the law.

The final rule specifically addresses certain limits for wrecks which existed before Pub. L. 99–662. For pre-existing wrecks, reimbursement for federal removal remains limited to sinkings which were voluntary or careless, and the obligation for removal is limited to the vessel owner.

Under "Applicability," the reference to the CFR definition of "navigable waters of the U.S." has been revised to correctly reflect the regulatory jurisdiction of the Corps of Engineers as stated in 33 CFR Part 329. The proposed rule referenced a section of the CFR addressing Coast Guard jurisdiction.

Discussion of comments

Two comments were received.

Both commentors objected to the apparent restriction of scope to federal project limits, and one comment noted that the exclusion of "private wharves or canals" was too broad. The final rule removes the restrictive wording concerning priorities for removal, in favor of more balanced judgments by the local District Engineer considering all relevant factors, as outlined under "Determination of hazard to navigation" and "Determination of remedial action."

One Coast Guard district requested specific notifications whenever the District Engineer knows of any change in conditions which were originally considered, and whenever the owner's marking or removal efforts are determined to be not diligent. The Coast Guard district also requested an information copy of the notice which is sent to the owner requiring marking and removal. These comments were not incorporated in the final rule, since notifications generally have been removed from the CFR. All of these concerns will be incorporated in an internal policy directive (Engineer Regulation) instead.

One commentor objected to wording which indicated the Corps would make independent determinations of hazards to navigation and of the need for marking, in conflict with the MOA. The final rule reflects that these are joint determinations at the field level, and outlines the process for conflict resolution. The Corps of Engineers still retains the ultimate authority and responsibility for making determinations which impact its activities. The final rule indicates that independent determinations can be made only after referral to the director of Civil Works.

Program priorities

Removal of obstructions to navigation at federal expense is generally limited to cases where the safety or sustainment of general navigation is affected (not merely an obstruction to a private dock or canal, or merely aesthetically displeasing). Priority is given to wrecks located within navigation channels or shipping lanes, or endangering structures that facilitate navigation, or having a reasonably high potential for moving into any area of general navigation. The sustainment of commercial navigation is also given priority. Alternatives to removal, such as marking and charting, are also evaluated as possible remedies in lieu of federal removal if an adequate level of safety can be achieved.

The primary obligation for removal of wrecks belongs to the owner, operator or lessee. The policy of the Corps of Engineers (except in some emergency cases where impractical) is to pursue removal by these parties before undertaking removal at federal expense. This may include seeking a court judgment to require removal. If the responsible parties cannot be determined or do not take appropriate action, and a hazard to navigation exists which requires removal, the Corps may proceed with federal removal. Reimbursement is then sought from the owner, operator or lessee.

Regulatory Requirements

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, this rule may become effective less than 30 days after publication in the **Federal Register.**

List of Subjects

33 CFR Part 209

Accidents, Administrative practice and procedure, Intergovernmental relations, Law enforcement, Navigation, Waterways.

33 CFR Part 245

Accidents, Administrative practice and procedure, Intergovernmental relations, Law enforcement, Navigation, Waterways.

Dated June 30, 1988.

Robert W. Page,

Assistant Secretary of the Army (Civil Works).

For the reasons set out in the preamble, Title 33, Chapter II of the Code of Federal Regulations, is amended as follows:

PART 209—ADMINISTRATIVE PROCEDURE

1. The authority citation for Part 209 is revised to read as follows:

Authority: 5 U.S.C. 301; 33 U.S.C. 1; 10 U.S.C. 3012.

2. In § 209.170, paragraph (a) is removed and reserved.

§ 209.190 [Redesignated as Part 245 and revised]

3. Section 209.190 is redesignated as Part 245 and revised to read as follows:

PART 245—REMOVAL OF WRECKS AND OTHER OBSTRUCTIONS

Sec.
245.1 Purpose.
245.3 Applicability.
245.5 Definitions.
245.10 General Policy.
245.15 Delegation.
245.20 Determination of hazard to navigation.
245.25 Determination of remedial action.
245.30 Identification of responsible parties.
245.35 Judgments to require removal.
245.40 Removal by responsible party.
245.45 Abandonment.
245.50 Removal by Corps of Engineers.
245.55 Permit requirements.
245.60 Reimbursement for removal costs.

Authority: 5 U.S.C. 301; 33 U.S.C. 1, 409, 411–415; 10 U.S.C. 3012.

§ 245.1 Purpose.

This part describes administrative procedures and policy used by the Corps of Engineers in exercising its authority for wreck removal. Procedures are intended to insure that the impacts of obstructions are minimized, while recognizing certain rights of owners, operators and lessees.

§ 245.3 Applicability.

(a) These procedures apply to the removal of wrecks or other obstructions within the navigable waters of the United States, as defined in Part 329 of this chapter.

(b) This part does not apply to the summary removal or destruction of a vessel by the Coast Guard under authority of the Clean Water Act (33 U.S.C. 1321), or to any removal actions involving obstructive bridges which are subject to separate regulation under Part 114 of this title.

(c) For vessels which were sunk or wrecked prior to November 17, 1986, the statutory obligation to remove belongs solely to the owner (not the operator or lessee), and the owner's obligation to reimburse the U.S. Treasury for federal removal is limited to cases of voluntary or careless sinking.

§ 245.5 Definitions.

Abandonment means the surrendering of all rights to a vessel (or other obstruction) and its cargo by the owner, or owners if vessel and cargo are separately owned.

Hazard to navigation is an obstruction, usually sunken, that presents sufficient danger to navigation so as to require expeditious, affirmative action such as marking, removal, or redefinition of a designated waterway to provide for navigational safety.

Obstruction is anything that restricts, endangers or interferes with navigation.

Responsible party means the owner of a vessel and/or cargo, or an operator or lessee where the operator or lessee has substantial control of the vessel's operation.

Vessel as used in this part includes any ship, boat, barge, raft, or other water craft.

§ 245.10 General policy.

(a) *Coordination with Coast Guard.* The Corps of Engineers coordinates its wreck removal program with the Coast Guard through interagency agreement, to insure a coordinated approach to the protection of federal interests in navigation and safety. Disagreements at the field level are resolved by referral to higher authority within each agency, ultimately (within the Corps of Engineers) to the Director of Civil Works, who retains the final authority to make independent determinations where Corps responsibilities and activities are affected.

(b) *Owner responsibility.* Primary responsibility for removal of wrecks or other obstructions lies with the owner, lessee, or operator. Where an obstruction presents a hazard to navigation which warrants removal, the District Engineer will attempt to identify the owner or other responsible party and vigorously pursue removal by that party before undertaking Corps removal.

(c) *Emergency authority.* Obstructions which impede or stop navigation; or pose an immediate and significant threat to life, property, or a structure that facilitates navigation; may be removed by the Corps of Engineers under the emergency authority of section 20 of the Rivers and Harbors Act of 1899, as amended.

(d) *Non-emergency situations.* In other than emergency situations, all reported obstructions will be evaluated jointly by the District Engineer and the Coast Guard district for impact on safe navigation and for determination of a course of action, which may include the need for removal. Obstructions which are not a hazard to general navigation will not be removed by the Corps of Engineers.

(e) *Corps removal.* Where removal is warranted and the responsible party cannot be identified or does not pursue removal diligently, the District Engineer may pursue removal by the Corps of Engineers under section 19 of the Rivers and Harbors Act of 1899, as amended, following procedures outlined in this CFR part.

§ 245.15 Delegation.

District Engineers may undertake removal without prior approval of the Chief of Engineers provided the cost does not exceed $100,000. Removals estimated to cost above $100,000 require advance approval of the Director of Civil Works.

§ 245.20 Determination of hazard to navigation.

(a) Upon receiving a report of a wreck or other obstruction, District Engineers will consult with the Coast Guard district to jointly determine whether the obstruction poses a hazard to navigation.

(b) Factors to be considered, as a minimum, include:

(1) Location of the obstruction in relation to the navigable channel and other navigational traffic patterns.

(2) Navigational difficulty in the vicinity of the obstruction.

(3) Clearance or depth of water over the obstruction, fluctuation of water level, and other hydraulic characteristics in the vicinity.

(4) Type and density of commercial and recreational vessel traffic, or other marine activity, in the vicinity of the obstruction.

(5) Physical characteristics of the obstruction, including cargo, if any.

(6) Possible movement of the obstruction.

(7) Location of the obstruction in relation to existing aids to navigation.

(8) Prevailing and historical weather conditions.

(9) Length of time the obstruction has been in existence.

(10) History of vessel accidents involving the obstruction.

§ 245.25 Determination of remedial action.

(a) *Consultation with Coast Guard.* After a determination has been made that an obstruction presents a hazard to navigation, District Engineers will consult with the Coast Guard district to determine appropriate remedial action for the specific situation.

(b) *Options.* The following options, or some combination of these options, may be considered:

(1) No action.

(2) Charting.

(3) Broadcast notice to mariners and publication of navigational safety information.

(4) Marking.

(5) Redefinition of navigational area (e.g., channel, fairway, anchorage, etc.).

(6) Removal.

§ 245.30 Identification of responsible parties.

(a) *Investigation.* When marking or removal are determined to be appropriate remedial action and no emergency situation exists, the District Engineer will investigate to determine the owner or, if the owner cannot be determined, the lessee or operator. If cargo is involved, ownership will be separately determined.

(b) *Notification.* If the owner or other responsible party can be determined, the District Engineer and/or the Coast Guard will send a notice, via certified mail, advising them of their legal obligation to mark (referencing Coast Guard requirements) and to remove the obstruction, and of the legal consequences for failure to do so, with a request for prompt reply of intent.

(c) *Public notice.* If the owner or responsible party cannot be determined from investigation, the District Engineer will publish a legal advertisement in a newspaper nearest the location of the obstruction and in a newspaper of at least 25,000 circulation, addressed "To Whom It May Concern," requiring removal by the owner, lessee or operator. The advertisement will be published at least once a week for 30 days.

§ 245.35 Judgments to require removal.

When the owner or responsible party has been identified, and refuses or fails to take prompt action toward removal, the District Engineer may seek a judgment by the district court requiring removal.

§ 245.40 Removal by responsible party.

(a) *Corps monitoring.* If the owner, lessee or operator agrees to remove a hazard to navigation, the District Engineer should ascertain that:

(1) Marking is accomplished promptly and is maintained,

(2) The plan for removal and disposal is reasonable and acceptable to the District Engineer,

(3) Removal operations do not unreasonably interfere with navigation,

(4) All conditions of the Corps of Engineers permit are met, and

(5) Removal operations are pursued diligently.

(b) *Deficiencies.* If the removal actions are not proceeding satisfactorily, the District Engineer will notify the responsible party of the deficiencies and provide a reasonable time for correction. If not corrected promptly, the District Engineer may declare the wreck "abandoned" and proceed with actions toward Corps removal.

§ 245.45 Abandonment.

(a) *Establishing abandonment.* Abandonment is the surrendering of all rights to a vessel (or similar obstruction) and its cargo by the owner, or owners if vessel and cargo are separately owned. In all cases other than emergency, abandonment will be established as a precondition to Corps removal, to avoid a "taking" of private property for public purposes. Abandonment is established by either:

(1) Affirmative action on the part of the owner declaring intention to abandon, or

(2) Failure to commence immediate removal of the obstruction and prosecute such removal diligently.

(b) *Owner declaration.* The Corps of Engineers will not "accept" a notice of abandonment. Any notice of abandonment received by the Corps of Engineers will be acknowledged only, and will stand by itself as a declaration. Abandonment by the operator or lessee alone does not constitute abandonment.

(c) *Non-diligence.* The determination of whether removal is commenced immediately and prosecuted diligently will be made by the District Engineer based on the degree of hazard to navigation, the difficulty and complexity of the removal operation, and the appropriateness of the removal effort. When no removal actions are being undertaken and the District Engineer is unable to identify the owner through investigation or 30 days of public notice, abandonment is presumed.

(d) *Cargo.* If vessel and cargo are separately owned, or ownership of cargo is uncertain, abandonment of vessel and cargo will be established separately.

(e) *Later claims.* After abandonment is established, the owner may no longer undertake removal or make any claim upon the vessel (or other obstruction) or its cargo, unless expressly permitted by the District Engineer.

(f) *Continuing owner liability.* The abandonment of a wreck or other obstruction does not remove the owner's liability for the cost of removal and disposal if removal is undertaken by the Corps of Engineers, except in cases of nonnegligent sinking which occurred prior to November 17, 1986.

§ 245.50 Removal by Corps of Engineers.

(a) *Non-emergency situations.* In non-emergency situations, the District Engineer may undertake removal action (within the limits of delegation) after all of the following conditions have been met:

(1) A determination has been made, in consultation with the Coast Guard, that the obstruction is a hazard to navigation,

(2) The District Engineer and the Coast Guard agree on a course of action which includes the need for removal (or, if a conflict exists, the need for removal has been resolved at higher level),

(3) The District Engineer has made a reasonable attempt to identify the owner, operator, or lessee, and

(4) Abandonment of the wreck or obstruction has been established.

(b) *Emergency actions.* In emergency situations, the District Engineer may bypass (within the limits of delegation) any or all of the four conditions in the preceding paragraph if, in his judgment, circumstances require more immediate action, and if either one of the following conditions are met:

(1) The obstruction impedes or stops navigation, or

(2) The obstruction poses an immediate threat to life, property, or a structure that facilitates navigation.

§ 245.55 Permit requirements.

(a) *Permits for removal.* Marking and removal operations by the owner, operator or lessee are normally permitted under nationwide permits for such activities as outlined in Part 330 of this chapter. The activities must meet certain conditions as stated in those regulations, and additional permits may still be required from state or local agencies.

(b) *Special conditions.* The Corps of Engineers may add individual or regional conditions to the nationwide permit, or require an individual permit on a case-by-case basis.

§ 245.60 Reimbursement for removal costs.

The Corps of Engineers will seek reimbursement from the owner, operator, or lessee, if identified, for all removal and disposal costs in excess of the value of the recovered vessel (or other obstruction) and cargo.

[FR Doc. 88-16388 Filed 7-20-88; 8:45 am]
BILLING CODE 3710-92-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3390-8]

Approval and Promulgation of Air Quality Implementation Plans; Arkansas; Visibility Protection; Long-Term Strategy and Implementation Control Strategies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This notice approves the general plan provisions and long-term strategy for visibility in a revision to the Arkansas State Implementation Plan (SIP). This action is a result of rulemaking on November 24, 1987 (52 FR 45132), in which EPA disapproved SIPs of States which failed to comply with the provisions of 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy). Additional details are discussed in the proposed rulemaking on March 12, 1987 (52 FR 7802).

The Governor of Arkansas submitted a SIP Revision for Visibility Protection on October 9, 1987. Review of the SIP revision indicated that Arkansas has met the criteria of 40 CFR 51.302 and 51.306. Consequently, this notice also revokes the November 24, 1987, Federally promulgated plan for Arkansas.

DATES: This action will become effective on September 19, 1988, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments on this action should be addressed to Tom Diggs, Chief (6T–AN), SIP/NSR Section, Air Programs Branch, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, Dallas, Texas 75202–2733

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

Arkansas Department of Pollution Control and Ecology, Division of Air Pollution Control, 8001 National Drive, Little Rock, Arkansas 72209

FOR FURTHER INFORMATION CONTACT: Dr. John Crocker, Air Programs Branch, SIP/NSR Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, telephone (214) 655–7214 or (FTS) 255–7214. Reference Docket File Number AR–87–2.

SUPPLEMENTARY INFORMATION:

Background

A. Regulatory Requirements and Litigation Challenges

Section 169A of the Clean Air Act, 42 U.S.C. 7491, sets as a national goal "* * * the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution." Section 169A requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. "Mandatory Class I Federal areas" are certain national parks, wildernesses, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400–81.437. Section 169A specifically requires EPA to promulgate regulations requiring certain States to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 FR 80084, codified at 40 CFR 51.300 *et seq.* In broad outline, the visibility regulations require 36 States listed in § 51.300(b) to (1) coordinate SIP development with the appropriate Federal land managers (FLMs), (2) develop a program to assess and remedy visibility impairment from new and existing sources, (3) develop a long-term (10 to 15 years) strategy to assure reasonable progress toward the national goal, (4) develop a visibility monitoring strategy to collect information on visibility conditions, and (5) consider in all aspects of visibility protection any "integral vistas" identified by the end of 1985 by the FLM's as critical to the visitor's enjoyment of the Class I areas. The regulations required the States to submit to EPA their revised SIPs to satisfy those provisions by September 2, 1981. (See 45 FR 80091, codified at 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the Court stayed the litigation pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110 of the Act to promulgate visibility SIPs.

B. Settlement Agreement

A negotiated settlement agreement between EPA and EDF required EPA to promulgate visibility SIPs on a specific schedule. It required EPA to promulgate Federal Implementation Plans (FIPs) for visibility in States where SIPs are deficient with respect to the 1980 visibility regulations. Specifically, the first part of the agreement required EPA to propose and promulgate FIPs which cover the monitoring and new source review (NSR) provisions under 40 CFR 51.305 and 51.307. The EPA proposed such plan revisions for 34 States (including Arkansas) on October 23, 1984, at 49 FR 42670. Arkansas submitted its Part I Plan on July 12, 1985, and EPA approved it on February 10, 1986, at 51 FR 4910.

The second part of the settlement agreement required EPA to determine the adequacy of the SIPs to meet the remaining provisions of the visibility regulations. These provisions are the general plan provisions including implementation control strategies (40 CFR 51.302), integral vista protection (§§ 551.302 through 51.307), and long-term strategies (§ 51.306). The settlement agreement required EPA to propose and promulgate FIPs to remedy any deficiencies on a specified schedule.

On January 23, 1986, at 51 FR 3046, EPA preliminarily determined the SIPs of 32 States were deficient with respect to the remaining visibility provisions.

A revised settlement agreement required EPA to propose and promulgate FIPs to address the deficiencies relating to the general plan requirements and long-term strategies and allowed EPA to defer proposing and promulgating FIPs to remedy deficiencies related to impairment which the Federal land managers (FLMs) have certified to EPA. The agreement allows EPA until August 31, 1988, to propose remedies for existing impairment (third part of the settlement agreement.)

On March 12, 1987, at 52 FR 7802, EPA proposed to disapprove the SIPs of 32 States (including Arkansas) for failing to meet the general plan and long-term strategy requirements of 40 CFR 51.302 and 51.306. There, EPA proposed that control strategies to remedy existing impairment were unnecessary in the SIPs for 28 States (including Arkansas) and deferred a decision on the necessity of best available retrofit technology (BART) in four States (Arizona, Maine, Minnesota, and Utah).

The States were given the opportunity to avoid Federal promulgation of the FIPs if they submitted SIP revisions to EPA by August 31, 1987. Three States (Georgia, Florida, and Kentucky) met this deadline. Several States (including Arkansas) have submitted draft or final SIPs after the August 31 date. The settlement agreement requires EPA to

promulgate FIPs for States which fail to meet the submittal deadline. Therefore, on November 24, 1987, at 52 FR 45132, EPA promulgated FIPs for 29 States (including Arkansas) to meet the general visibility plan requirements and long-term strategies of 40 CFR 51.302 and 51.306.

C. Today's Action

On October 9, 1987, the Governor of Arkansas submitted a Part II SIP Revision for Visibility Protection to meet the visibility general plan requirements and long-term strategies. The SIP revision is entitled "Arkansas Plan of Implementation for Air Pollution Control—Revision: Protection of Visibility in Mandatory Class I Federal Areas: Part II—Long Term Strategy, September 29, 1987." EPA has reviewed the State's submittal and developed an evaluation report.[1] The report concludes that the Arkansas SIP revision meets all of the requirements for a Part II Visibility Protection Plan as outlined in 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy). This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 office. Today's action approves the Arkansas SIP revision as meeting the Part II Visibility Protection Plan requirements of 40 CFR 51.302 and 51.306 and the criteria discussed in 52 FR 7802. Today's action also revokes the FIP promulgated for Arkansas on November 24, 1987, at 52 FR 45132.

Arkansas has two mandatory Class I areas: Upper Buffalo Wilderness in Newton County and Caney Creek Wilderness in Polk County. No other Class I areas currently exist in the State. The SIP commits the State to visibility protection consistent with the Clean Air Act to be afforded within the wilderness area boundaries. The SIP is to be reviewed every three years and revised as necessary.

Requirements

A. General Plan Requirements

The visibility regulations provide general plan requirements for the visibility SIPs. Section 51.302 sets specific State (and EPA in lieu of States) and FLM coordination requirements which must occur when developing a SIP. The general plan requirements of § 51.302(c) require that the SIPs include:

1. An assessment of visibility impairment and a discussion of how each element of the plan relates to the national goal;

2. Emission limitations, or other control measures, representing best available retrofit technology (BART) for certain sources;

3. Provisions to protect integral vistas identified pursuant to § 51.304;

4. Provisions to address any existing impairment certified by the FLM; and

5. A long-term (10–15 years) strategy for making reasonable progress toward the national goal.

(See 52 FR 7803 and 52 FR 45133 for further discussion of the general plan requirements and the process for developing control strategies to remedy existing impairment.)

The regulations require the State to adopt control strategies only to remedy impairment which has been reasonably attributed to a specific source or group of sources.

B. Long-Term Strategy

The regulations require that the long-term strategy be a 10 to 15-year plan for making reasonable progress toward the national goal. The long-term strategy must cover any existing impairment that the FLM certified and any integral vista that the FLMs have declared at least 6 months before plan submission. A long-term strategy must be developed which covers each Class I area within the State and each Class I area in another State that may be affected by sources within the State. The strategy must be coordinated with existing plans and goals for a Class I area including those of the FLMs. The strategy must state with reasonable specificity why it is adequate for making reasonable progress toward the national goal. The long-term strategy and SIP must provide for the review of the impact of new sources (see § 51.307). The State must consider as a minimum the following six factors in the long-term strategy:

1. Emission reductions due to ongoing air pollution control programs;

2. Additional emission limitations and schedules for compliance;

3. Measures to mitigate the impacts of construction activities;

4. Source retirement and replacement schedules;

5. Smoke management techniques for agricultural and forestry management purposes including such plans as currently exist within the State for these purposes; and

6. Enforcement of emission limitations and control measures.

The SIP must include a statement as to why these factors were or were not addressed in developing the long-term strategy.

The State must commit to periodic review of the SIP on a schedule not less frequent than every 3 years. A periodic report must be developed in consultation with the FLMs and must contain the following:

1. Progress achieved in remedying existing impairment;

2. The ability of the long-term strategy to achieve reasonable progress toward the national goal;

3. Any change in visibility conditions since the last report or since plan approval;

4. Additional measures, including the need for SIP revisions, that may be necessary to achieve progress toward the national goal;

5. The progress achieved in implementing BART and meeting other schedules laid out in the long-term strategy;

6. The impact of any exemption granted under § 51.303; and

7. The need for BART to remedy existing impairment in an integral vista declared since plan approval.

C. Integral Vistas

Where the FLM has adopted an integral vista under § 51.304, the regulations require the State to (1) analyze for BART any facility where impairment in an integral vista has been reasonably attributed to that facility, (2) consider any integral vistas established 12 months prior to SIP submittal in its long-term strategy, and (3) coordinate with the FLMs on any permit application under the Prevention of Significant Deterioration (PSD) program where the proposed facility or modification may affect visibility in an integral vista. The FLM identified only one integral vista, and that one is located in Maine (see 46 FR 22707). Therefore, EPA proposed to disapprove only the State of Maine's SIP for failing to provide for the protection of these vistas. Thus, the visibility protection plan requirements for integral vistas (§§ 51.302 through 51.307) are applicable only for Maine.

D. Federal Remedy

On November 24, 1987, at 52 FR 45132, EPA disapproved the SIPs of 29 States (including Arkansas) for failing to comply with the provisions in EPA's existing regulations for visibility protection in mandatory Class I Federal areas dealing with impairment which can be reasonably attributed to a source. EPA also incorporated Federal implementation plans into the SIPs of these States to meet the general visibility plan requirements and long-term strategies of 40 CFR 51.302 and

[1] Evaluation Report for the Arkansas Part II Visibility Protection Plan in Mandatory Class I Federal Areas, January 1988.

51.306. These actions were proposed on March 12, 1987, at 52 FR 7802 and are in accordance with the settlement agreement with the EDF.

State Submittal

A. General Plan Requirements/FLM Coordination

Under section 165(d) of the Clean Air Act, the FLM is given an affirmative responsibility to protect air quality related values, including visibility, in lands within Class I area. The FLM must maintain these areas consistent with congressional land use goals. The visibility regulations (40 CFR 51.302) allow the FLM the opportunity to identify visibility impairment and to recommend elements for inclusion in the long-term strategy.

The State of Arkansas has met the visibility general plan requirements of § 51.302. The State has accorded the FLM opportunities to participate and comment on its visibility SIP revision. Comments by the FLM were submitted to the State during the State's public notice period, and they were considered by the State and incorporated where applicable. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program.

The Arkansas Part II Visibility Protection Plan incorporated into the SIP revision the following: (1) A determination that there is no existing visibility impairment that is reasonably attributable to specific sources; (2) a discussion of the SIP elements and how each element of the plan relates to the national goal; and (3) a long-term (10–15 years) strategy. Since no existing reasonably attributable impairment has been identified, all elements of the plan are intended to prevent future impairment of visibility. If existing reasonably attributable impairment is later identified, the State will revise its plan to remedy the impairment. The revision consists of a narrative only, no regulatory revisions. Currently, there are no integral vistas in Arkansas.

B. Long-Term Strategy

The Arkansas visibility long-term strategy section included the following: (1) Coordination with the FLM; (2) consideration of the six required factors for a long-term strategy; (3) a provision for the review of the impact of new sources, and a discussion of current visibility monitoring efforts; and (4) provisions for periodic review (i.e., every 3 years) of the plan, which review must include consultation with the Federal land manager and a report to the public and to EPA on progress toward the national goal.

C. EPA Evaluation Summary

These provisions meet EPA criteria and EPA is approving this phase of the plan. EPA has reviewed the State's submittal and developed an evaluation report. The report shows that the Arkansas SIP revision meets all of the requirements for a Part II Visibility Protection Plan as specified in 40 CFR 51.302 (visibility implementation control strategies) and 51.306 (visibility long-term strategy).

Final Action

By this notice, EPA is approving the Arkansas SIP revision as meeting the Part II Visibility Protection Plan requirements of 40 CFR 51.302 and 51.306 and the criteria discussed in 52 FR 7802. (One should reference the March 12, 1987, 52 FR 7802, for additional information). The SIP commits to a 3 year periodic review and making any changes deemed necessary. The SIP, therefore, has established the commitment to review the visibility requirements listed in 40 CFR Part 51 Subpart P—Protection of Visibility. This SIP revision remedies the deficiencies for all the remaining visibility requirements of Subpart P (i.e., § 51.302 and § 51.306) as identified in the November 24, 1987 (52 FR 45132), Federally promulgated plan. Consequently, this notice also revokes that Federal promulgation for Arkansas.

EPA has reviewed these revisions to the Arkansas SIP and is approving them as submitted. This action is taken without prior proposal because the changes are non-controversial and EPA anticipates no adverse comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

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

Date: May 27, 1988.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

40 CFR Part 52, Subpart E, is amended as follows:

Subpart E—Arkansas

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.170 is amended by adding paragraph (c)(25) as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

(25) Part II of the Visibility Protection Plan was submitted by the Governor on October 9, 1987.

(i) Incorporation by reference.

(A) Revision entitled "Arkansas Plan of Implementation for Air Pollution Control—Revision: Protection of Visibility in Mandatory Class I Federal Areas: Part II—Long-Term Strategy, September 29, 1987". This submittal includes a visibility long-term strategy and general plan provisions as adopted by the Arkansas Commission on Pollution Control and Ecology on September 25, 1987.

(B) Arkansas Department of Pollution Control and Ecology, Minute Order No. 87–24, adopted September 25, 1987.

(ii) Additional material.

(A) None.

§ 52.183 [Removed]

3. Section 52.183 *Visibility protection* is removed.

[FR Doc. 88–12525 Filed 7–20–88; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-6

[FPMR Amdt. A-44]

Ridesharing; Reporting Requirement

AGENCY: Public Buildings Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation revises a reporting requirement for agencies that submit an annual Federal Facility Ridesharing Report to GSA. The address where the report is to be sent is changed. The objectives of the Federal Facility Ridesharing Program are to reduce traffic congestion, improve air quality, provide an economical way for Federal employees to commute to and from work, and to reduce the need for parking at Federal facilities.

EFFECTIVE DATE: This regulation is effective July 21, 1988.

FOR FURTHER INFORMATION CONTACT: For further technical information contact Mr. John H. Quigley, Director, Assignment and Utilization Policy Division (202—566–0059).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purpose 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 101–6

Government property management, Civil rights, Grant programs, Intergovernmental relations, Surplus Government property, Relocation assistance, Real property acquisition, Ridesharing.

PART 101–6—MISCELLANEOUS REGULATIONS

1. The authority citation for Subpart 101–6.3 continues to read as follows:

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

Subpart 101–6.3—Ridesharing

§ 101–6.300 [Amended]

2. Section 101–6.300 is amended by revising paragraph (c) to read as follows:

* * * * *

(c) Agencies are required to submit a Federal Facility Ridesharing Report to GSA by June 1 of each year (see § 101–6.303). The report shall contain a summary of the information provided by the facility ETC's and any other pertinent information applicable to the agency's ridesharing program.

* * * * *

§ 101–6.303 [Amended]

3. Section 101–6.303 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) Reports shall be submitted to: Federal Facility Ridesharing Program, General Services Administration (PQ) Washington, DC 20405. The telephone number for the program is FTS 566–0059 (202–566–0059).

* * * * *

Dated: June 29, 1988.

John Alderson,

Acting Administrator of General Services.

[FR Doc. 88–16381 Filed 7–20–88; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 303 and 305

Child Support Enforcement Program; Provision of Services in Interstate IV–D Cases

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule; corrections.

SUMMARY: This document makes several corrections to the Provision of Services in Interstate IV–D Cases final regulations that appeared in the **Federal Register** on February 22, 1988 (53 FR 5246).

FOR FURTHER INFORMATION CONTACT: Joyce Linder, (202) 245–1773.

List of Subjects

45 CFR Part 303

Child welfare, Grant programs, Social programs.

45 CFR Part 305

Child welfare, Grant programs, Social programs, Accounting.

PART 303—[AMENDED]

1. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

§ 303.7 [Corrected]

2. On page 5257, first column, in § 303.7(a), tenth and eleventh lines, "(6 months from publication)." should read "August 22, 1988."

3. On the same page, first column, in § 303.7(a)(4), last line, insert the word "review" after "status".

4. On the same page, same column, in § 303.7(b)(2), sixth line, "verfication" should read "verification".

5. On the same page, second column, in § 303.7(b)(3), eighth line, "Request Form package" should read "Request Forms package,".

6. On the same page, same column, in § 303.7(b)(3), the last sentence should read "The State may use computer-generated replicas in the same format and containing the same information in place of the forms."

7. On the same page, same column, in § 303.7(b)(4): eighth line, insert a comma between "form" and "or"; and tenth line, insert a comma between "information" and "and".

8. On the same page, same column, in § 303.7(b)(6): second line, "for status" should read "for a status"; and third line, "has elapsed" should read "have elapsed".

9. On the same page, third column, in § 303.7(c)(4)(ii), second line, insert a comma after "documentation".

10. On the same page, third column, in § 303.7(c)(6), second line, "different" should read "different".

11. On the same page, third column, in § 303.7(c)(7)(iv), eighth line, insert the word "refund" after the word "tax".

PART 305—[AMENDED]

12. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 603(h), 604(d), 652(a)(1) and (4), and 1302.

§ 305.20 [Corrected]

13. On the same page, same column, in §305.20(d)(5), last two lines, "(6 months from publication)" should read "August 22, 1988,".

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program.)

Dated: July 12, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information and Resource Management.

[FR Doc. 88-16468 Filed 7-20-88; 8:45 am]

BILLING CODE 4150-04-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2001

Project Recognition and Use of Logo

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Final rule.

SUMMARY: This notice announces an amendment made by the Commission on the Bicentennial of the United States Constitution regarding Project Recognition and Use of Logo which was published as a final rule on March 10, 1986 (51 FR 8300). The effect of this amendment is to ensure that the respective responsibilities and principle details of each project for which cosponsorship has been approved be set forth in a cosponsorship contract signed by all cosponsors. The amendment is a matter of internal procedure and policy and is issued as an amendment to the existing regulations.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Kemp R. Harshman, Counsel, Commission on the Bicentennial of the United States Constitution, 808 17th Street NW., Washington, DC 20006; Telephone: (202) 653-7451.

SUPPLEMENTARY INFORMATION: This amendment was adopted by the Commission on December 6, 1987 as a rule to govern procedures and policies on project recognition and use of logo so that the respective responsibilities of each cosponsor is set forth in a cosponsorship contract signed by all cosponsors.

Classification

This is not a major rule under E.O. 12291 since it has no effect on costs, prices or economic competition.

Public Comment

This amendment to existing regulations is issued as a final rule without opportunity for public comment since its purpose is merely to inform the public as to the facts and functional requirements of the Commission with respect to cosponsored projects.

Statutory Authority

This amendment to existing regulations is issued under the authority of section 5(l), Pub. L. 98-101, 97 Stat. 719, as amended.

Paperwork Reduction Act

There is no information collection requirement in this amendment.

List Of Subjects In 45 CFR Part 2001

Government contract.

Mark W. Cannon,

Staff Director.

PART 2001—[AMENDED]

1. The authority citation for 45 CFR Part 2001 continues to read as follows:

Authority: Pub. L. 98-101; 97 Stat. 719; 5 U.S.C. 552.

§ 2001.34 [Amended]

2. Part 2001 is amended by the addition of one sentence of the end of paragraph (a) of § 2001.34 to read as follows: "The Commission will require that the respective responsibilities and principal details of each project for which cosponsorship has been approved be set forth in a cosponsorship contract signed by all cosponsors."

[FR Doc. 88-16455 Filed 7-20-88; 8:45 am]

BILLING CODE 6340-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 680

[Docket No. 80471-8128]

Western Pacific Precious Corals

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

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 1 to the Fishery Management Plan for the Precious Coral Fisheries of the Western Pacific Region (FMP). Amendment 1 will (1) include the exclusive economic zone (EEZ) around the U.S. Pacific Island possessions as a combined single exploratory area with a 1,000 kg annual harvest quota for all species of precious corals combined, (2) expand the management unit species to include all precious corals in the genus *Corallium*, and (3) establish an experimental fishing permit (EFP) system under the FMP for fishing in exploratory areas. The intent of the amendment is to expand FMP management authority over precious coral resources in the EEZ and encourage domestic exploratory fishing for precious coral under controlled conditions.

EFFECTIVE DATE: Section 680.10 is effective on July 18, 1988; all other provisions become effective on August 17, 1988.

ADDRESS: A copy of the amendment may be obtained by contacting the Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1406, Honolulu, HI 96813, 808-523-1368.

FOR FURTHER INFORMATION CONTACT: Doyle E. Gates, Pacific Islands Coordinator, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822-2396, 808-955-8831.

SUPPLEMENTARY INFORMATION: The domestic and foreign fisheries for precious coral in the EEZ adjacent to the State of Hawaii and the territories of Guam and American Samoa are managed under the FMP, which was developed by the Western Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The notice of availability for Amendment 1 to the FMP was published in the **Federal Register** on March 29, 1988 (53 FR 10131). The proposed rule for Amendment 1 was published in the **Federal Register** on April 26, 1988 (53 FR 14824). The public comment period ended on June 6, 1988.

Amendment 1 implements three actions, as described in the following paragraphs.

Extension of FMP Coverage to U.S. Pacific Island Possessions

When the FMP was first approved in 1980, the planning authority of the Council, as defined by the Magnuson Act, did not extend to the EEZ around the U.S. island possessions in the western Pacific, and the FMP management area included the EEZ only around Hawaii, Guam, and American Samoa. Public Law 97-453, which was enacted in 1983, amended the Magnuson Act to extend Council authority to the EEZ around the U.S. Pacific Island possessions.

Amemdment 1 formally incorporates the EEZ around the U.S. possessions in the FMP management area and creates a new exploratory area (X-P-PI) for the U.S. possessions. This exploratory area will have a 1,000 kg annual harvest quota for all species of precious corals combined. The areas affected by this action include the EEZ around Johnston Atoll, Kingman Reef and Palmyra, Wake, Jarvis, Howland, and Baker Islands. The new management measures for the possessions are consistent with

the regulations currently in place for the other exploratory areas defined in the FMP.

Redefinition of the Management Unit Species

Amendment 1 extends the definition of precious corals covered under the FMP to include all species of precious corals in the genus *Corallium*. The managment unit defined in the current regulations cover 12 species of coral, three of which are pink (or red) coral in the genus *Corallium*. The Council determined that this definition is unecessarily restrictive in that it fails to recognize present taxonomic uncertainties that surround the recently discovered Midway deepsea coral (*Corallium* sp. nov.), and does not provide automatic FMP management authority in the event new species of *Corallium* precious corals are discovered in the EEZ. In order to manage the fishery while these taxonomic problems are being resolved, the new regulatory definition of precious coral includes all species of coral in the genus *Corallium*. Harvest quotas established for the exploratory areas remain unchanged. However, harvests of any new species of *Corallium* will count toward the established quotas.

Establishment of an Experimental Fishing Permit (EFP) System

The original goal of the FMP was to obtain optimum yield from the precious coral fishery in the EEZ by striking a balance among several objectives. These objectives included, among others, (1) encouraging development of a domestic fishery for precious coral, (2) generating new information needed for resource management, and (3) preventing overfishing and waste of the resource. the first two objectives have not been achieved.

The original FMP established a harvest quota of 1,000 kg of precious coral for each of the three exploratory areas defined in the FMP. It was believed that a 1,000 kg quota would provide sufficient incentive to stimulate exploration and discovery of new coral beds.

Rather than stimulate exploratory fishing for precious coral, the 1,000 kg quota has proven to be too low to justify the financial investments required by domestic fishermen to explore for and harvest precious coral. There has been no legal fishing for precious coral by domestic or foreign fishermen since the FMP went into effect. The absence of domestic or foreign fishing has prevented the Council and NMFS from obtaining any new information on precious coral resources which could be used to refine the current management program. Neither State nor Federal fishery research budgets currently are able to finance a research initiative focused on precious coral.

To address these problems, the Council proposed the establishment of an experimental fishing permit (EFP) system. An EFP will allow fishermen to harvest precious coral in exploratory areas above current quota levels under tightly controlled conditions to prevent overharvesting. Harvest quotas will be assigned on a case-by-case basis to each vessel fishing under an EFP at a level that will be related to the cost of undertaking an exploratory fishing venture for precious coral and that will produce scientific information needed to better manage the resource. An EFP application and review process is established which defines the application requirements, review criteria, and operating conditions which may be attached to an EFP in order to protect precious coral beds. An environmental assessment would be prepared evaluating the potential impacts of fishing under each particular EFP proposed. An opportunity for public comment on EFP applications is provided. In addition, the Council will develop guidelines for its use in evaluating EFP applications and making recommendations to the Regional Director.

The Council recognizes the need to increase harvest quotas in the exploratory areas in order to stimulate domestic fishing and generate information needed for accurate resource assessment. However, because of limited information available on the size and reproductive condition of precious coral beds in these areas, the Council was reluctant to propose, and unable to justify, a permanent increase in harvest quotas for exploratory areas. Controlled fishing under an EFP was the preferred alternative to accomplish these objectives. Information generated by vessels fishing under an EFP will allow the Council to develop future harvest quotas which are more in line with resource abundance.

Public comments

No comments were received during the public comment period.

Changes from the Proposed Rule

The outdated phrase "Fishery conservation zone" and its abbreviation "FCZ" have been replaced by "Exclusive economic zone" and "EEZ" by a technical amendment published at 53 FR 24644 on June 29, 1988.

In § 680.5, paragraph (a)(3) is deleted because it is not necessary that fishermen retain fishing logbooks for one year after a copy has been provided to NMFS.

Classification

The Director, Southwest Region, National Marine Fisheries Service determined that this FMP amendment is necessary for the conservation and management of the precious coral fisheries of the western Pacific region and that it is consistent with the Magnuson Act and other applicable law.

The Council included as environmental review as part of the amendment. An environmental assessment supplementing the environmental review was prepared on the proposal to include the EEZ around the U.S. Pacific Island possessions in the FMP management area. The Council concluded that this action would not significantly affect the quality of the environment and determined that an environmental impact statement (EIS) was not required. The action to place all species of *Corallium* within the management unit of the FMP was determined to qualify for categorical exclusion under section 5(c)(3)(a) of NOAA Directives Manual 02–10, "Environmental Review Procedures" (NOAA NEPA Guidelines), because the analysis in the EIS for the original FMP applies to other corals as well. The action to establish the EFP system under the FMP qualifies for a categorical exclusion under section 5(c)(3)(f) of the NOAA NEPA Guidelines because establishing the system in itself does not have any direct impacts on the environment. Direct impacts result from actual issuance of EFPS, and a separate EA will be prepared for each EFP considered. The Assistant Administrator for Fisheries concluded, therefore, that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment supplementing the Council's environmental review may be obtained from NMFS at the above address.

Implementation of this rule is not an action that may effect any species listed as endangered or threatened under the Endangered Species Act of 1972, or the critical habitat of those species. A section 7 consultation was conducted on the original FMP and concluded that the fishery managed by the FMP did not constitute a threat to threatened or endangered species or their habitat. The actions proposed in Amendment 1 are passive with regard to habitat and conventional fishing practices and are not likely to affect adversely any listed species. Informal consultations between the Council and the Southwest Region

were conducted dealing with the amendment generally and with the proposed extension of the management measures to the Pacific Island possessions specificaly, and it was concluded that the proposed action is not likely to have an adverse effect on any species listed as endangered or threatened, nor is it likely to affect any critical habitat for such species.

The Under Secretary of NOAA determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. A summary of this determination appears in the proposed rule (53 FR 14824, April 26, 1988) and is based on the regulatory impact review (RIR), which is included in the Amendment.

The Council prepared a regulatory impact review which concludes that this rule will have positive impact on small business entities. Current FMP regulations and harvest quotas have effectively prevented any domestic fishing for precious coral, particularly in the Hawaii exploratory area. The final rule is expected to provide new harvesting opportunities for domestice fishermen.

The General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small businesses. A summary of this determination appears in the proposed rule.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection of information requirement contained in this rule has been approved by the Office of Management and Budget under Control Number 0648–0196. The logbook collection requirement already contained in Part 680 has been approved under Control Number 0648–0198.

The Council has determined that the measures established in the FMP amendment will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Hawaii 6nd the Territories of American Samoa and Guam. Hawaii has concurred with the Council's consistency determination for Amendment 1. American Samoa and Guan did not file any objections to the Councils findings within the period provided for such comments and did not respond to the Councils request for concurrence.

This rule does not contain policies with federalism implications sufficient to warrant preparation of federalism assessment under Executive Order 12612.

Because the EFP provision of this rule relieves fishermen wishing to experimentally harvest precious coral resources from strict quota restrictions, that provision (§ 680.10) is not subject to the delayed effectiveness period required by the Administrative Procedure Act.

List of Subjects in 50 CFR Part 680

Fisheries, Reporting and recordkeeping requirements.

Dated: July 15, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR Part 680 is amended as follows:

PART 680—[AMENDED]

1. The authority citation for 50 CFR Part 680 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 680.1, paragraph (b) is revised to read as follows:

§ 680.1 Purpose and scope.

* * * * *

(b) These regulations govern fishing for precious coral by fishing vessels of the United States within the exclusive economic zone seaward of Hawaii, Guam, American Samoa and the U.S. Pacific Island possessions of Johnson Atoll, Kingman Reef, and Palmyra, Wake, Jarvis, Howland, and Baker Islands.

* * * * *

3. In § 680.2, the definition of *Management area*, the introductory text of *Permit area*, and the introductory text of *Precious coral* are revised and listed in alphabetical order; and paragraph (d)(4) is added to the definition of *Permit area*, to read as follows:

§ 680.2 Definitions.

* * * * *

Management area means the EEZ of the United States seaward of the State of Hawaii, the Territory of Guam, the Territory of American Samoa, and the U.S. Pacific Island possessions of Johnson Atoll, Kingman Reef, and Palmyra, Wake, Jarvis, Howland, and Baker Islands.

* * * * *

Permit area is used to describe each precious coral bed in the management area. Each bed is designated by a permit area code and assigned to one of the following four categories:

* * * * *

(d) * * *

(4) Permit Area X–P–PI includes all coral beds, other than established beds, conditional beds, or refugia, in the EEZ seaward of the U.S. Pacific Island possessions.

* * * * *

Precious coral means any coral of the genus *Corallium* in addition to the following species of corals:

* * * * *

4. A new § 680.10 is added to read as follows:

§ 680.10 Experimental fishing permits (EFP).

(a) *General.* The Secretary may authorize the direct or incidental harvest of precious coral managed by the FMP which would otherwise be prohibited in exploratory areas by this part. No experimental fishing may be conducted unless authorized by an experimental fishing permit (EFP) issued by the Secretary to a vessel owner for a specific vessel in accordance with the criteria and procedures specified in this section. EFPs will be issued without charge.

(b) *Application.* An application for an EFP may be submitted by the owner of a vessel or a representative of the owner. An applicant for an EFP shall submit to the Regional Director at least 60 days before the desired effective date of the EFP a written application including, but not limited to, the following information:

(1) The date of the application;

(2) The applicant's name, mailing address, and telephone number;

(3) A statement of the purposes and goals of the experiment for which an EFP is needed, including a general description of the arrangements for disposition of all species harvested under the EFP;

(4) A statement of whether the proposed experimental fishing has broader significance than the applicant's individual goals;

(5) For each vessel to be covered by the EFP:

(i) Vessel name;

(ii) Name, address, and telephone number of owner and master;

(iii) U.S. Coast Guard documentation, State license, or registration number;

(iv) Home port;

(v) Length of vessel;

(vi) Net tonnage;

(vii) Gross tonnage;

(viii) Radio call sign;

(ix) Engine horsepower; and

(x) Approximate fish hold capacity.

(6) A description of the species (directed and incidental) to be harvested under the EFP and the amount(s) of such harvest necessary to conduct the experiment;

(7) For each vessel covered by the EFP, the approximate time(s) and place(s) fishing will take place, and the type, size, and amount of gear to be used; and

(8) The signature of the applicant.

The Secretary may request from an applicant additional information necessary to make the determinations required under this section. An applicant will be notified of an incomplete application within 10 working days of receipt of the application. An incomplete application will not be considered until corrected in writing.

(c) *Issuance.* (1) If an application contains all of the required information, the Secretary will publish a notice of receipt of the application in the **Federal Register** with a brief description of the proposal, and will give interested persons an opportunity to comment. The Secretary will also forward copies of the application to the Western Pacific Fishery Management Council, the U.S. Coast Guard, and the fishery management agency of the affected State(s).

(2) At a Western Pacific Fishery Management Council meeting following receipt of a complete application, the Secretary will consult with the Council, the U.S. Coast Guard, and the Director of the affected State(s) fishery management agency concerning the permit application. The applicant will be notified in advance of the meeting at which the application will be considered, and invited to appear in support of the application if the applicant desires.

(3) Within 5 working days after the consultation in paragraph (c)(2) of this section, or as soon as practicable thereafter, the Secretary shall notify the applicant in writing of the decision to grant or deny the EFP, and, if denied, the reasons for the denial. Grounds for denial of an EFP include, but are not limited to, the following:

(i) The applicant has failed to disclose information or has made false statements as to any material fact, in connection with his or her application; or

(ii) According to the best scientific information available, the harvest to be conducted under the permit would detrimentally affect any species of fish, including precious coral, in a significant way; or

(iii) Issuance of the EFP would inequitably allocate fishing privileges among domestic fishermen or would have economic allocation as its sole purpose; or

(iv) Activities to be conducted under the EFP would be inconsistent with the intent of this section or the management objectives of the FMP; or

(v) The applicant has failed to demonstrate a valid justification for the permit; or

(vi) The activity proposed under the EFP would create a significant enforcement problem.

(4) The Secretary will publish a notice in the **Federal Register** announcing the decision to grant or deny an EFP. If the permit is granted, the **Federal Register** notice will describe the experimental fishing to be conducted under the EFP. The Secretary will attach terms and conditions to the EFP consistent with the purpose of the experiment to ensure consistency with the FMP and to ensure that the experiment does not undermine efforts to conserve and manage the resource. Terms and conditions may include, but are not limited to, the following:

(i) The maximum amount of each species which can be harvested and landed during the term of the EFP, including trip limits, where appropriate;

(ii) The number, sizes, names, and identification numbers of the vessels authorized to conduct fishing activities under the EFP;

(iii) The time(s) and place(s) where experimental fishing may be conducted;

(iv) The type, size, and amount of gear which may be used by each vessel operated under the EFP;

(v) The condition that observers be carried aboard vessels operated under an EFP;

(vi) Data reporting requirements, including a requirement to report periodically and at the termination of the permit, the amount of each species that was harvested; and

(vii) Such other conditions as may be necessary to ensure consistent with the purposes of the EFP compliance with the FMP, including the objectives to generate new information needed for resource management and to prevent overfishing and waste of the resource.

(d) *Duration.* The effective period of the permit will be specified by the Secretary in the terms of the EFP. An EFP may be renewed by following the application procedures in this section.

(e) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(f) *Transfer.* EFPs issued under this part are not transferable or assignable. An EFP is valid only for the vessel(s) for which it is issued.

(g) *Inspection.* Any EFP issued under this part must be carried aboard the vessel(s) for which it was issued. The EFP must be presented for inspection upon request of any authorized officer.

(h) *Surrender.* Upon issuance of an EFP the applicant must surrender to the Regional Director any permit to fish for precious coral that was issued under § 680.4 of this part.

(i) *Sanctions.* Failure of the holder of an EFP to comply with the terms and conditions of an EFP, the provisions of Subpart B of this part, any other applicable provision of this part, the Magnuson Act, or any other regulation promulgated under this Act, will be grounds for revocation, suspension, or modification of the EFP with respect to all persons and vessels conducting activities under the EFP. Any action taken to revoke, suspend, or modify an EFP for enforcement reasons will be governed by 15 CFR Part 904 Subpart D.

(j) *Permit modification.* Where circumstances have changed such that a permittee desires to modify any term or condition of an EFP, the permittee must submit, to the Regional Director, a written request which provides full justification and supporting information for the proposed modification. Such applications for modification are subject to the same issuance criteria as are original applications, as provided in paragraph (c) of this section. Modifications to an EFP which are of a technical nature only and do not affect the substance of the fishing activity authorized by the EFP may be approved by the Regional Director without the notice and consultation provided for in paragraphs (c) (1) and (2) of this section.

(k) *Appeals of administrative action.* (1) Except as provided in Subpart D of 15 CFR Part 904, an applicant for a permit or a permit holder may appeal the denial or conditioning of a permit under § 680.10 to the Assistant Administrator for Fisheries, NOAA. In order to be considered by the Assistant Administrator, such appeal must be in writing, must state the action(s) appealed, and the reasons therefor, and must be submitted within 30 days of the action(s) by the Regional Director. The appellant may request an informal hearing on the appeal.

(2) Upon receipt of an appeal authorized by this section, the Assistant Administrator may request such additional information and in such form as will allow action upon the appeal. Upon receipt of sufficient information, the Assistant Administrator will decide the appeal in accordance with the criteria set out in this part, as appropriate, based upon information relative to the application on file at the NMFS and the Western Pacific Fishery Management Council and any additional

information, the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (k)(3) of this section, and such other considerations as deemed appropriate. The Assistant Administrator will notify all interested persons of the decision, and the reason(s) therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(3) If a hearing is requested, or if the Assistant Administrator determines that one is appropriate, the Assistant Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place and subject matter of the hearing in the **Federal Register**. A hearing will normally be held no later than 30 days following publication of the notice in the **Federal Register** unless the hearing officer extends the time for reasons deemed equitable. The appellant and, at the discretion of the hearing officer, other interested persons, may appear personally or by counsel at the hearing and submit such material and present such arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Assistant Administrator.

(4) The Assistant Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Assistant Administrator will notify interested persons of the decision, and the reason(s) therefor, in writing within 30 days of receipt of the hearing officer's recommended decision. The Assistant Administrator's action shall constitute final action for the agency for the purposes of the Administrative Procedure Act.

(5) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Assistant Administrator for good cause, either upon his or her own motion or upon written request from the appellant stating the reason(s) therefor.

(l) *Protected species.* Vessels fishing under an EFP are required to report any incidental take of, or fisheries interaction with, protected species in the fishing logbook described in § 680.5. As required by that section, copies of logbook sheets must be submitted to the Regional Director within 3 days of arriving in port.

§ 680.21 [Amended]

5. In § 680.21, Table 1, the coral bed named "Hawaii, American Samoa, Guam" is revised to read as "Hawaii, American Samoa, Guam, U.S. Pacific Island possessions."

6. In § 680.5, paragraph (a)(3) is removed and paragraph (a)(4) is redesignated (a)(3).

§§ 680.2, 680.4, and 680.21 [Amended]

7. In addition to the amendments set forth above, the initials "FCZ" are removed and the initials "EEZ" are added in their place in the following places: §§ 680.2, definition for Permit area, 680.4(k), and 680.21(a) Table 1, footnote (c).

[FR Doc. 88-16412 Filed 7-18-88; 3:39 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 53, No. 140
Thursday, July 21, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

Irish Potatoes Grown in Colorado Area II; Proposed Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenses and establish an assessment rate under Marketing Order No. 948 for the 1988–89 fiscal period. Authorization of this budget would allow the San Luis Valley Potato Administrative Committee Area II to incur expenses reasonable and necessary to administer the program. Funds to cover these expenses would be derived from assessments on handlers.

DATE: Comments must be received by August 1, 1988.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC. 20090–6456. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Order No. 948 (7 CFR Part 948) regulating the handling of potatoes grown in Colorado. 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 proposed 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 proposed rule 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 125 handlers of Colorado Area II potatoes under this marketing order and approximately 290 potato producers. 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.

The marketing order requires that the assessment rate for a particular fiscal period apply to all assessable potatoes handled from the beginning of such period. An annual budget of expenses is prepared by the committee and submitted to the Secretary for approval. The members of the committee are handlers and producers of potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The San Luis Valley Potato Administrative Committee Area II met on June 16, 1988, and unanimously recommended 1988–89 expenditures of $43,552. The proposed budget is $1,350 more than last year's due to salary increases for the committee manager and office personnel and added insurance costs. The committee also recommended an assessment rate of $0.0035 per hundredweight (cwt.) up from last season's rate of $.0034. This rate, when applied to anticipated shipments of 11,800,000 hundredweight, would yield $41,300 in assessment revenue which, when added to interest income and reserve funds, would be adequate to cover budgeted expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approval needs to be expedited. The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 948

Marketing agreements and orders, Potatoes (Colorado).

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 948 be revised as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR Part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674. 2. Section 948.297 is added to read as follows:

§ 948.297 Expenses and assessment rate.

Expenses of $43,552 by the San Luis Valley Potato Administrative Committee Area II are authorized, and an assessment rate of $0.0035 per hundredweight of assessable potatoes is established for the fiscal period ending August 31, 1989. Unexpended funds may be carried over as a reserve.

Dated: July 18, 1988.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 88–16484 Filed 7–20–88; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Parts 303 and 381

[Docket No. 87–029N

Review of Retail Store Inspection Exemptions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking (ANPR).

SUMMARY: The Food Safety and Inspection Service (FSIS) is conducting a review of the retail store exemption provisions of the Federal Meat and Poultry Products Inspection Acts, and the regulations promulgated thereunder, that govern exemptions from Federal inspection requirements for traditional and usual operations of retail stores which produce meat or poultry products for sale in normal retail quantities to consumers at such establishments. This review also includes an examination of FSIS' longstanding "two-store" policy which allows an exemption from Federal inspection requirements for any retail operator that owns only two retail stores and prepare meat and/or poultry products at one of its retail stores for sale to consumers in normal retail quantities at both stores. FSIS is publishing this notice in order to solicit public views and information on what, if any, changes should be considered regarding the retail store exemption from Federal inspection requirements and the "two-store" policy. The preamble to any proposed regulations that are issued will include a discussion of the comments received in response to this notice.

DATE: Comments must be submitted on or before September 19, 1988.

ADDRESS: Comments may be mailed to the Hearing Clerk, Room 3171–S, Food Safety and Inspection Service, USDA, Washington, DC 20250, or delivered to room 3171–S, U.S. Department of Agriculture, between 9:00 a.m. and 4:00 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert Gonter, Assistant Deputy Administrator, Compliance Program, Food Safety and Inspection Service, Washington, DC 20250, (202) 447–7745.

SUPPLEMENTARY INFORMATION:

Background

In 1907, Congress passed the first permanent Federal Meat Inspection Act (34 Stat. 1260) (Act) which, among other things, provided an exemption from the inspection requirements of the Act for the meat and meat food products supplied by retail dealers and retail butchers to their customers. In 1938, the Meat Inspection Act of 1907 was amended (52 Stat. 1235). The 1938 amendment, among other things, reiterated the 1907 Act's exemption from the inspection requirements of the Act for meat and meat food products supplied by retail dealers and retail butchers to their customers, and also defined the terms "retail dealer" and "retail butcher."

In 1967, Congress enacted the Wholesome Meat Act (81 Stat. 584) which extensively revised the provisions of the Meat Inspection Act of 1907, as amended. The Wholesome Meat Act, among other things, deleted the exemptions from inspection for retail dealers and retail butchers and, instead, provided an exemption from the routine inspection requirements of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 603, 604, and 606), for certain operations of retail stores, restaurants, and similar retail type establishments that operated solely within disignated States. This exemption, which is set forth in section 301(c)(2) of the FMIA (21 U.S.C. 661(c)(2)), provides an exemption from the inspection requirements of the FMIA with respect to traditional and usual operations conducted at retail stores, restaurants, and similar type retail establishments, when these operations are conducted at retail stores, restaurants, or similar retail type establishments for sale or service of meat products in normal retail quantities to consumers at such establishments, if such establishments are subject to the inspection provisions of the FMIA only because they are in designated States. A designated State is a State designated for Federal inspection either because it does not have or is not effectively enforcing an inspection program which imposes requirements at least equal to those of the FMIA.

Thus, retail stores meeting the requirements of the FMIA's retail store exemption can engage in traditional and usual operations without having the products prepared during the course of these operations subject to the routine inspection requirements of the FMIA. However, although the FMIA's retail store provisions exempt retail stores from the routine inspection requirements of the FMIA, such stores are not exempt from the adulteration and misbranding provisions of the FMIA, other than the requirement that the official inspection legend be on products or their labels sold by retail stores.

In 1969, the Department proposed regulations, and in 1970 the Department proposed revised regulations, that defined the parameters of the FMIA's retail store exemption set forth in section 301(c)(2) of the FMIA (34 FR 13194; 35 FR 9291). On October 3, 1970, the Department of Agriculture published final regulations that became effective on December 1, 1970. The regulations, among other things, define various terms of the retail store exemption, including "retail store," "normal retail quantity," and "consumer," delineate what types of operations are traditional and usual for retail stores, and provide a percentage limitation and an annual dollar limitation on sales to nonhousehold consumers (35 FR 15552).

Since the 1970 final rule was published, certain aspects of the FMIA's retail store exemption regulations have changed. However, the definition of what a retail store is has remained unchanged, with the exception of adjusting the dollar limitation on sales to nonhousehold consumers by retail stores. Moreover, the definition of what a "normal retail quantity" is and who "consumers" are has remained unchanged. In addition, the parameters set forth in the 1970 final rule that reflect what operations of retail stores are traditional and usual have not changed, except for the addition made to these parameters in 1976, which recognized that the rendering or refining of livestock fat from prior inspected product for sale to household consumers only was a traditional and usual operation of a retail store (41 FR 36197).

The current FMIA's retail store exemption regulations are set forth in Volume 9 of the Code of Federal Regulations in § 303.1 (d) and (e).

These regulations, reflect in § 303.1(d)(1) (9 CFR 303.1(d)(1)), as does the corresponding statutory provision, that operations of types traditionally and usually conducted at retail stores are exempt from the routine inspection requirements of the FMIA, when these

operations are conducted for the purpose of the sale of meat products, in normal retail quantities, to consumers at these stores. The FMIA's retail store exemption regulations do not limit the scope of the retail store exemption to retail stores that operate only within a designated State. Rather, these regulations reflect the Department's interpretation of the retail store exemption provision of the FMIA, in conjunction with the Opinion of the Attorney General of August 17, 1972, [Vol. 42, Op. No. 44], that operations conducted at a store that meets the requirements of the retail store exemption, are exempt from the inspection requirements of the FMIA, regardless of whether the retail store operates in interstate commerce or solely within a designated State.

Section 303.1(d)(2)(iii) (9 CFR 303.1(d)(2)(iii)) of the regulations defines what a retail store is and reflects the traditional and usual activities of these stores. A retail store is defined as any place of business where: (1) Sales of product are made to consumers only; (2) at least 75 percent, in terms of dollar value, of total sales of product represents sales to household consumers and the total dollar value of sales to other than household consumers doesn't exceed the dollar limitation per calendar year established by the Administrator; (3) only federally or State inspected and passed product is handled and used in the preparation of all products, except, under prescribed conditions, those resulting from the custom slaughter or preparation of product not for sale; (4) no sale of product is made in excess of a normal retail quantity; (5) the preparation of products for sale to household consumers is limited to the traditional and usual operations of retail stores in regard to these consumers, that are delineated in the regulations; (6) and the sale of products to other than household consumers is limited to the traditional and usual operations of retail stores in regard to these consumers, set forth in the regulations.

Section 303.1(d)(2)(i) (9 CFR 303.1(d)(2)(i)) of the regulations sets forth the types of operations that are traditionally and usually conducted at retail stores. This section reflects the types of operations that were traditionally and usually undertaken by retail stores at the time the retail store exemption was added to the FMIA, by the passage of the Wholesome Meat Act in 1967. These operations are the: (1) Cutting up, slicing, and trimming of carcasses, halves, quarters, or wholesale cuts into retail cuts and the freezing of these cuts; (2) grinding and freezing of products made from meat; (3) curing, cooking, smoking, rendering or refining of livestock fat, or other preparation of products, except slaughtering or the retort processing of canned products; (4) breaking bulk shipments of products; and (5) wrapping or rewrapping of products.

The types of operations that a retail store can engage in without being subject to the inspection requirements of the FMIA is dependent upon whether it is preparing products for sale to household consumers or it is preparing products for sale to other types of consumers. Section 303.1(d)(2)(vi) of the regulations (9 CFR 303.1(d)(2)(vi)) defines the term consumers to include household consumers, hotels, restaurants, or similar institutions, as determined by the Administrator in specific cases.

Section 303.1(d)(2)(iii)(e) of the regulations (9 CFR 303.1(d)(2)(iii)(e)) permits retail stores to engage in all of the operations discussed above in regard to their preparation of products for sale to household consumers, since it is traditional and usual for retail stores to engage in all of these operations when meat products are prepared for sale to household consumers. However, § 303.1(d)(2)(iii)(f) (9 CFR 303.1(d)(2)(iii)(f)) permits retail stores to engage in only certain operations that are traditional and usual for retail stores in regard to the preparation of meat products for sale to nonhousehold consumers (i.e. hotels, restaurants, or similar institutions, as determined by the Administrator). Thus, a retail store may not engage in operations for sale to nonhousehold consumers if these operations involve curing, cooking, smoking, rendering or refining of livestock fat, or the preparation of product, other than as provided in § 303.1(d)(2)(i)(a)(b)(d) and (e).

All sales of product by a retail store, regardless of whether they are made to household or other types of consumers, must be of a normal retail quantity. The term "normal retail quantity" is defined in § 303.1(d)(2)(ii) of the regulations (9 CFR 303.1(d)(2)(ii)) to be any quantity of product that does not in the aggregate exceed one-half carcass, which for cattle is three hundred pounds, for calves is thirty-seven and one-half pounds, for sheep is twenty-seven and one-half pounds, for swine is one hundred pounds, and for goats is twenty-five pounds.

The Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) (PPIA) was enacted in 1957 (71 Stat. 441). At that time, the Act contained various exemptions from the inspection requirements of the PPIA, including one for certain retail dealers and one for certain poultry producers. In 1968, the PPIA was extensively revised by the Wholesome Poultry Products Act (82 Stat. 791). The wholesome Poultry Products Act provides for an exemption from the inspection requirements of the PPIA, similar to that in the FMIA, for traditional and usual operations of certain retail stores and restaurants. This exemption is set forth in section 5(c)(2) of the PPIA (21 U.S.C. 454(c)(2)). Retail stores meeting the requirements of this exemption can engage in traditional and usual operations, without having the poultry and poultry products prepared during the course of these operations subject to the routine inspection requirements of section 6(b) of the PPIA (21 U.S.C. 455(b)). As for meat products, retail stores processing poultry products are subject to the adulteration and misbranding provisions of the PPIA. However, unlike the FMIA, the PPIA also provides for various other exemptions for retail operations, set forth in section 15 of the Act (21 U.S.C. 464), including an exemption for certain retail dealers and certain poultry producers.

As with the FMIA, similar regulations have been promulgated that define the parameters of the PPIA retail store exemption set forth in section 5(c)(2) of the PPIA (21 U.S.C. 454(c)(2)). These regulations are set forth in Title 9 of the Code of Federal Regulations in § 381.10(d). These regulations reflect in § 381.10(d)(1), as do the similar FMIA retail store exemption regulations, the Department's interpretation, in conjunction with the Opinion of the Attorney General of August 17, 1972, [Vol. 42 Op. No. 44], that the PPIA retail store exemption applies regardless of whether a retail store operates in a designated State and/or in interstate commerce.

In July of 1983, D&W Food Centers, Inc., hereafter D&W, a Michigan corporation that owned and operated thirteen retail stores in the designated State of Michigan, filed a lawsuit in the Western District of Michigan against the Department and the Secretary of Agriculture. The suit challenged the Department's position that D&W's operations of preparing meat pizzas in a central commissary at one of its retail stores, for distribution and sale at its thirteen stores, was subject to the inspection requirements of section 6 of the FMIA (21 U.S.C. 606).

In its suit, D&W sought declaratory and injunctive relief. D&W requested, among other things, a determination that

D&W's pizza-making operations were not subject to the inspection requirements of the FMIA, and that the Department's two-store policy for retail stores was null and void because it had not been promulgated and published in the **Federal Register** in accordance with the provisions of the Administrative Procedure Act, 5 U.S.C. 552 and 553. The Department's two-store policy is a longstanding policy that permits a retail operator that owns and operates a total of two retail stores, that meet the requirements of the retail store exemption, to prepare product at one store and sell that product in normal retail quantities to consumers at that store, as well as it its other retail outlet, without these operations being subject to the routine inspection requirements of the FMIA or the PPIA. This policy was adopted because it was traditional and usual in 1967 and 1968, when the FMIA and the PPIA retail store exemptions were added to the FMIA and PPA, for a retail store to prepare product for sale to consumers at that store, as well as for sale to consumers at one off-premises retail outlet under the same ownership, such as an outlet at a local farmer's market. Since D&W owned and operated more than two retail stores, it did not meet the requirement of the two-store policy.

The District Court ruled that D&W's pizza-making operations were not subject to the inspection requirements of section 6 of the FMIA, and that the Secretary's two-store policy was void for failure to comply with the rulemaking and publications provisions of the Administrative Procedure Act. *D&W Food Centers, Inc. v. Block*, No. G83-844 CA1 Slip. Op. (W.D. Michigan, July 20, 1984). The District Court permanently enjoined the Department from asserting its inspection authority over D&W's pizza-making operations in the designated State of Michigan. The District Court's opinion was upheld by the United States Court of Appeals for the Sixth Circuit. *D&W Food Centers, Inc., v. Block*, 786 F. 2d 751 (6th Cir. 1986).

FSIS has undertaken a review of the FMIA and PPIA retail store exemption provisions and the regulations promulgated thereunder, as a result of the D&W decision and as a result of requests from certain members of the industry.

Request for Comments

FSIS invites public comment on all aspects of the Agency's retail store exemption regulations, and where appropriate, the underlying statutory provisions set forth in 21 U.S.C. 454(c)(2), 661(c)(2), as well as the Agency's two-store policy for retail stores.

Specifically, in this solicitation of public comments, the Agency is particularly interested in receiving substantive comments, including data, which would enable it to identify: (1) operations which were traditional and usual for retail stores prior to 1967 for meat and meat products and before 1968 in the case of poultry and poultry products, but have not been adequately reflected in FSIS regulations, and (2) other types of operations that are currently subject to the inspection requirements of the FMIA and PPIA for which the public feels it would be appropriate to revise the law to permit retail stores to engage in such operations without being subject to the inspection requirements of the FMIA and the PPIA.

Additionally, the Agency solicits public comments about the Agency's longstanding "two-store" exemption policy for retail stores. As noted previously, this policy was adopted because many retail store meat/poultry operations were traditionally and usually selling their products prepared at one store to consumers at that store, as well as to consumers at one off-premises retail outlet under the same ownership, such as a local farmers' market.

The Agency also requests comments, from persons recommending regulatory or statutory changes, regarding any potential public health ramification of the options they recommend. In addition, the Agency requests information about the potential economic impact of any options recommended upon consumers, upon each class of business that would be affected by the change, and upon the economy in general. This information is necessary in order for the Agency to assess whether any potential recommended regulatory change might be a "major rule" under Executive Order 12291, or a rule requiring regulatory analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

All comments submitted in response to this notice must be received in duplicate on or before the date given above. Each comments should cite the docket number found in brackets at the top of this notice. All comments received will be available for public inspection in the Hearing Clerk's office from 9:00 a.m. until 4:00 p.m. each weekday.

Done at Washington, DC on: July 15, 1988.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 88-16409 Filed 7-20-88; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-79-AD]

Airworthiness Directives; Boeing Model 707-300, -300B, -300C, and -400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all Boeing Model 707-300 and -400 series airplanes, which currently requires modification of horizontal stabilizers that have accumulated 8,000 or more landings. This action would require rework of these stabilizers if necessary, to prevent stress corrosion in the horizontal stabilizer rear spar upper chord clevis. This condition, if not corrected, could lead to separation of the horizontal stabilizer.

DATE: Comments must be received no later than September 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-79-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Scott F. Romer, Airframe Branch, ANM-120S; telephone (206) 431-1966. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

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 number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. 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 NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-79-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The FAA issued AD 79-01-06, Amendment 39-3388 (44 FR 2363; January 11, 1979), effective February 10, 1979, to require modification of the horizontal stabilizer on certain Boeing Model 707-300 and -400 series airplanes, in accordance with Boeing Service Bulletin A3313, Revision 6, and Boeing Service Bulletin 3331, Revision 2, both dated October 27, 1978. That action was prompted by an in-service incident of failure of the horizontal stabilizer due to fracture of the rear spar upper chord. This condition, if not corrected, could lead to separation of the horizontal stabilizer.

Since issuance of that AD, there have been several reports of stress corrosion cracking of the clevis fittings modified in accordance with Figure 5, Circle Note 24, of Boeing Alert Service Bulletin A3313. The FAA has determined that further modification of the fittings is necessary to prevent stress corrosion cracking which could lead to the separation of the horizontal stabilizer.

The FAA has reviewed and approved Boeing Alert Service Bulletin A3313, Revision 9, dated February 25, 1988, and Boeing Service Bulletin 3253, Revision 3, dated February 25, 1988, which specify that the clevis fitting and bushing must be reworked to reduce the interference fit.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require, in addition to current requirements, reworking of the clevis fitting and bushing if they have been previously reworked in accordance with Boeing Alert Service Bulletin A3313, Revision 8 or earlier, or in accordance with Boeing Service Bulletin 3253, Revision 2 or earlier.

It is estimated that 55 airplanes of U.S. registry would be affected by this AD, that it would take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $220,000.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 707 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

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 Federal Aviation Regulations (14 CFR 39.13) 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 superseding AD 79-01-06, Amendment 39-3388 (44 FR 2363; January 11, 1979), with the following new airworthiness directive:

Boeing: Applies to all Model 707-300, -300B, -300C, and -400 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the separation of the horizontal stabilizer, accomplish the following:

A. For airplanes on which the modification required by AD 79-01-06 has not been accomplished: Prior to the accumulation of 8,000 total landings, install structural improvement kits on the horizontal stabilizer outer panels and center section in accordance with Boeing Alert Service Bulletin A3313, Revision 9, dated February 25, 1988, and Boeing Service Bulletin 3331, Revision 2, dated October 27, 1978.

B. For airplanes which have been modified in accordance with Boeing Service Bulletin A3313, Revision 8 or earlier revisions, or Boeing Service Bulletin 3253, Revision 2 or earlier revisions, in compliance with AD 79-01-06; Within one year after the effective date of this AD, rework the clevis fittings in accordance with Boeing Alert Service Bulletin A3313, Revision 9, dated February 25, 1988.

Note.—The inspections required by AD 85-12-01 are not changed by this action.

C. Accomplishment of the modification requirements of this AD constitutes terminating action for AD's 77-16-11 and 78-01-04.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle,

Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on July 14, 1988.

Daniel P. Salvano,

Acting Director, Office of Airworthiness.

[FR Doc. 88-16366 Filed 7-20-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 88-NM-78-AD]

Airworthiness Directives, Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes except the Model 747SP, which currently requires periodic inspection of both inboard and outboard trailing edge flaps carriage spindles for fracture or cracks, and repair or replacement, if necessary. This action would expand the scope of the AD by requiring additional inspections and revised compliance intervals to ensure continued airworthiness. This condition, if not corrected, could lead to the failure of the trailing edge flaps carriage spindles, which could result in the inability of the pilot to safely control the airplane during landing.

DATES: Comments must be received no later than September 13, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-78-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

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 number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. 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 NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 88-NM-78-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On February 4, 1988, the FAA issued AD 88-04-06, Amendment 39-5851 (53 FR 4114; February 12, 1988), applicable to Boeing Model 747 series airplanes, to require periodic inspections of both inboard and outboard trailing edge flaps carriage spindles for fracture or cracks, and repair or replacement, if necessary. That action was prompted by a report of two spindles failing on one flap, causing severe control problems during approach and landing. This condition, if not corrected, could lead to the failure of the trailing edge flaps carriage spindles, which could result in the inability of the pilot to safely control the airplane during landing. That AD was issued as an interim regulation until final action was identified.

Since issuance of that AD, the FAA has reviewed and approved Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988, which describes an inspection program that will allow early detection of corrosion of the flap carriage spindle. Unchecked corrosion of the flap carriage spindle may lead to the fracture of the carriage spindle and result in extensive flap damage and severe control problems during approach and landing.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 88-04-06 to require inspection of both inboard and outboard trailing edge flaps carriage spindles for fracture or corrosion, and repair or replacement, if necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 160 airplanes of U.S. registry would be affected by this AD, that it would take approximately 684 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,377,600.

The regulations set forth in this notice would be promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entites because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

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 Federal Aviation Regulations (14 CFR 39.13) 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 revising AD 88-04-06, Amendment 39-5851 (53 FR 4114; February 12, 1988), to read as follows:

Boeing: Applies to all Model 747 series airplanes, except the Model 747SP, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the trailing edge flaps carriage spindles, accomplish the following:

A. Prior to the accumulation by each new or overhauled flap carriage spindle of 30,000 flight hours, or eight years in service, whichever occurs first, or within 30 days after the effective date of this amendment, whichever occurs later, inspect the forward and aft journal areas of each trailing edge flap carriage spindle and overhaul, if necessary, at times and using methods specified in paragraphs A.1., A.2., or A.3., below.

1. *Option I: General Visual Inspection.*

Perform a visual inspection of carriage spindle for cracking and corrosion, in accordance with Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988. Inspection in accordance with paragraph A.2., below, is required within 12 months after the initial inspection.

a. If no cracks or corrosion are found, repeat the visual inspection at intervals not to exceed 3 months.

b. If a cracked carriage spindle is found, replace the carriage spindle prior to further flight, in accordance with Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988.

c. If corrosion is found, inspect in accordance with paragraph A.2., below, within 3 months after detection of corrosion.

2. *Option II: Detailed Visual Inspections.*

a. Remove aft link and perform detailed visual inspection of carriage spindle for cracking and corrosion, in accordance with Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988. If cracked carriage spindle is found, replace carriage spindle prior to further flight, in accordance with the service bulletin.

b. If no cracking or corrosion is found, repeat the inspections required by paragraph A.2.a., above, at intervals not to exceed 12 months. Remove carriage spindle and overhaul within 8 years after the initial inspection required by this AD, in accordance with Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988.

c. If no cracking is found, but light corrosion exists, repeat the inspections required by paragraph A.2.a., above, at intervals not to exceed 6 months. Remove carriage spindle and overhaul within 48 months after detection of light corrosion, in accordance with Boeing Service Bulletin 747-27-2280, Revision 1, dated march 31, 1988.

Note: Light corrosion is considered to be corrosion with pits not exceeding 0.020 inch in depth.

d. If heavy corrosion is found, remove carriage spindle and overhaul in accordance with Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988.

Note: Heavy corrosion is considered to be corrosion with pits that exceed 0.020 inch in depth.

3. *Option III: Overhaul.*

Remove carriage spindle and overhaul in accordance with Boeing Service Bulletin 747-27-2280, Revision 1, dated March 31, 1988.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Washington, DC, on July 15, 1988.

Daniel P. Salvano,

Acting Director, Office of Airworthiness.

[FR Doc. 88-16367 Filed 7-20-88; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 87-AWA-52]

Proposed Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); extension of comment period and notice of informal airspace meeting.

SUMMARY: This notice announces extension of the comment period on an NPRM which proposes to establish an Airport Radar Service Area at Colorado Springs Municipal Airport, CO, and gives notification of informal airspace meeting. See 53 FR 674, January 11, 1988.

DATES: Comments must be received on or before November 7, 1988. Informal airspace meeting will be held October 6, 1988.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 87-AWA-52, 800 Independence Avenue SW., Washington, DC 20591.

Informal airspace meeting will be held at:

Date: October 6, 1988.

Time: 7:00 p.m.

Location: Best Western Palmer House, I-25 at Fillmore, Colorado Springs, CO.

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

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

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87-AWA-52." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available

for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

Meeting Procedures

The FAA will hold an additional informal airspace meeting for Colorado Springs Municipal Airport, CO, in order to receive additional input with respect to the proposal. The date, time, and place for this meeting are listed above. Persons who plan to attend the meeting should be aware of the following procedures to be followed:

(a) The meeting will be informal in nature and will be conducted by the designated representative of the Administrator. Each participant will be given an opportunity to make a presentation.

(b) There will be no admission fee or other charge to attend and participate. The meeting will be open to all persons on a space-available basis. The FAA representative may accelerate the agenda to enable early adjournment if the progress of the meeting is more expeditious than planned.

(c) The meeting will not be recorded. A summary of the comments made at this meeting will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the meeting may be accepted. Participants submitting handout materials should present an original and two copies to the presiding officer. There should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the meeting should not be taken as expressing a final FAA position.

Agenda

Presentation of Meeting Procedures
FAA Presentation of Proposal
Public Presentations and Discussion

Background

Airspace Docket No. 87–AWA–52, published on January 11, 1988, (53 FR 674) proposed to establish an Airport Radar Service Area (ARSA) at Colorado Springs Municipal Airport, CO, and four other locations. In addition, an informal airspace meeting was held on March 10, 1988, to receive additional public comment on the proposal. The FAA intended to mail individual notices of the meeting to pilots in the Colorado Springs, CO, area, in addition to publication of the notice of the informal airspace meeting in the **Federal Register**. Due to an administrative error, not all of the individual mailings were made in a timely manner. This action extends the period for public comment on Airspace Docket No. 87–AWA–52, as it applies to Colorado Springs Municipal Airport, CO, only and schedules an additional informal airspace meeting.

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Extension of Comment Period and Notice of Public Meeting

The comment period for Airspace Docket No. 87–AWA–52 as it applies to Colorado Springs Municipal Airport, CO, is extended to close on November 7, 1988. An informal airspace meeting is scheduled for October 6, 1988. The time and location are listed above.

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

Issued in Washington, DC, on July 14, 1988.

Temple H. Johnson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88–16365 Filed 7–20–88; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–83–87]

Income Taxes; Deductions in Excess of $5,000 Claimed for Charitable Contributions of Certain Property; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to deductions in excess of $5,000 claimed for charitable contributions of certain property.

DATES: The public hearing will be held on Friday, September 23, 1988, beginning at 10:00 p.m. Outlines of oral comments must be delivered or mailed by Monday, September 9, 1988.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR–83–87) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 170A of the Internal Revenue Code of 1986. The proposed regulations appeared in the **Federal Register** for Thursday, May 5, 1988, (53 FR 16156).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than September 9, 1988, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Chief, Technical Section, Legislation and Regulations Division.

[FR Doc. 88-16464 Filed 7-20-88; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[INTL-362-88]

Income Taxes; Definition of a Controlled Foreign Corporation and Foreign Personal Holding Company Income of a Controlled Foreign Corporation After December 31, 1986

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed regulations relating to the definition of a controlled foreign corporation and the definitions of foreign base company income and foreign personal holding company income of a controlled foreign corporation for taxable years of foreign corporations beginning after December 31, 1986. In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary Income Tax Regulations relating to the definition of a controlled foreign corporation and definitions of foreign base company income and foreign personal holding company income of a controlled foreign corporation for taxable years of foreign corporations beginning after December 31, 1986. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: The regulations under §§ 1.954-OT, 1.954-1T, 1.954-2T, and 1.957-1T are proposed to be effective [*date that is 30 days after publication of final regulations in the Federal Register*] and are proposed to be applicable for taxable years of the foreign corporation beginning after December 31, 1986. Written comments and requests for a public hearing must be delivered or mailed by September 19, 1988.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL-0362-88), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Riea M. Lainoff of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (INTL-0362-88). Telephone (202) 566-6645 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of Information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(4)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, Attention: Desk Officer for the Internal Revenue Service, with copies to the Internal Revenue Service at the address previously specified.

The collection of information in this regulation is in §§ 1.954-1T(d)(5), 1.954-2T(a)(4)(ii), 1.954-2T(f)(4)(iii), 1.954-2T(g)(2)(ii), 1.954-2T(g)(2)(iii), 1.954-2T(g)(3)(i), 1.954-2T(g)(4)(i)(C), 1.954-2T(g)(4)(i)(D), and1.954-2T(g)(5)(iii). This information is required by the Internal Revenue Service in order for taxpayers to elect to exclude from adjusted net foreign base company income subject to income taxes imposed by a foreign country at an effective rate that is greater than 90 percent of the maximum U.S. tax rate, to exclude from foreign personal holding company income gains or losses from qualified commodities hedging transactions and foreign currency gains or losses from qualified business transactions on qualified hedging transactions, or for controlled foreign corporations to elect a method of accounting under which all foreign currency gains or losses attributable to section 988 transactions and section 256 currency contracts are included in foreign personal holding company income. The information will be used to provide an exclusion from subpart F income for income taxes at a high rate in the foreign country, to exclude a qualified hedging transaction from commodities gains or losses that would otherwise be foreign personal holding company income, to exclude a foreign currency gain or loss from foreign personal holding company income, and to provide an exception to the requirement that, in order to exclude foreign currency gain or loss from foreign personal holding company income, such gain or loss must be properly identified as being derived from a qualified business transaction or qualified hedging transaction. The likely respondents are business or other for-profit institutions.

Estimated total annual reporting and/or recordkeeping burden: 49,417 hours.

Estimated average annual burden per respondent: 1.1 hour.

Estimated number of respondents: 44,500.

Estimated annual frequency of responses: High tax election—Annually; Currency election—one time.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new §§ 1.954-OT, 1.954-1T, 1.954-2T, and 1.957-1T to Part 1 of Title 26 of the Code of Federal Regulations. These regulations implement sections 954(b), 954(c), and 957(a), which were amended by sections 1201, 1221, 1222, and 1223 of the Tax Reform Act of 1986 (Pub. L. 99-514). The preamble to the temporary regulations explains these additions to the Income Tax Regulations.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of a proposed rulemaking which solicits public comment, 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).

Drafting Information

The principal author of these proposed regulations is David L. Paul formerly of the Office of the Associate Chief Counsel (International) within 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 on matters of both substance and style.

List of Subjects in 26 CFR 1.861–1 Through 1.997–1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposed Amendments to the Regulations

The temporary regulations, FR DOC. 88–16205 [T.D. 8216] published in the Rules and Regulations portion of this issue of the **Federal Register** are hereby also proposed as final regulations under Title 26, Part 1, of the Code of Federal Regulations.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 88–16204 Filed 7–20–88; 8:45 am]

BILLING CODE 4830–01–M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Waiver of the 85–15 Percent Ratio Requirement

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: Generally, the law and the Code of Federal Regulations prohibit the Veterans Administration (VA) from approving new enrollments under many of the education programs which the VA administers when the VA finds that 85 percent or more of the students enrolled are having all or part of their tutition, fees, or other charges paid to or for them by the educational institution or the VA. There is provision for waiver of this requirement. However, the pertinent regulation is not clear as to who has the authority to grant this waiver. This proposed regulation corrects this.

DATES: Comments must be received on or before August 22, 1988. Comments well be available for public inspection until August 30, 1988.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until August 30, 1988.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration (225), Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233–2092.

SUPPLEMENTARY INFORMATION: This proposal amends 38 CFR 21.4201(f) to add the Montgomery GI Bill—Active Duty to the list of education programs which must be considered in determining whether or not an educational institution should be exempted from the 85–15 percent veteran-nonveteran ratio requirement. The proposal amends 38 CFR 21.4201(h) to clarify that the Director, Vocational Rehabilitation and Education Service, has the authority to grant a waiver of the 85–15 percent ratio requirement when a school does not qualify for an exemption.

The VA has determined that these proposed regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs has certified that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the proposed regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because this change simply specifies the VA official who is authorized to exercise waiver authority. It does not change that authority. Moreover, it has been the agency's administrative experience that fewer than five educational institutions apply each year to the Director, Vocational Rehabilitation and Education Service, for a waiver. Many of these are not small entities. Even though a slight increase in this number can be expected as enrollments udnr the Montgomery GI Bill—Active Duty increase, the VA does not think that the number of small entities affected by this proposal will be substantial. There will be no significant economic impact on a substantial number of other small entities, i.e., small businesses and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.111.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 29, 1988.

Thomas K. Turnage,

Administrator.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Section 21.4201 is proposed to be amended by revising the first two sentences of paragraph (f)(1), paragraphs (f)(1) (ii) and (h) to read as follows:

§ 21.4201 Restrictions on enrollment; percentage of students receciving financial support.

* * * * *

(f) * * *

(1) Schools must submit to the VA all calculations needed to support the exemption found in paragraph (c)(4) of this section. If the school is organized on a term, quarter, or semester basis, it shall make that submission no later than 30 days after the beginning of the first term for which the school wants the exemption to apply. * * *

* * * * *

(ii) Until such time as the total number of veterans and eligible persons receiving assistance under chapters 30, 31, 32, 34, 35 or 36, title 38, United States Code, who are enrolled in the educational institution offering the course, equals more than 35 percent of the total student enrollment at the educational institution (computed separately for the main campus and any branch or extension of the institution). At that time procedures contained in paragraph (f)(2) of this section shall apply.

(Authority: 38 U.S.C. 1673(d); Pub. L. 98–525)

* * * * *

(h) *Waivers.* Schools which desire a waiver of the provisions of paragraph (a) of this section for a course where the number of full-time equivalent students receiving VA education benefits equals

or exceeds 85 percent of the total full-time equivalent enrollments in the course may apply for a waiver to the Director, Vocational Rehabilitation and Education Service, through the Director of the VA field station of jurisdiction. When applying, a school must submit sufficient information to allow the Director, Vocational Rehabilitation and Education Service, to judge the merits of the request against the criteria shown in this paragraph. This information and any other pertinent information available to the VA shall be considered in relation to these criteria:

(1) Availability of comparable alternative educational facilities effectively open to veterans in the vicinity of the school requesting a waiver.

(2) Status of the school requesting a waiver as a developing institution primarily serving a disadvantaged population. The school should enclose a copy of its notice from the Department of Education that the school is eligible to be considered for a grant under the Strengthening Institutions Program or the Special Needs Program, if applicable. Otherwise the school should submit data sufficient to allow the Director, Vocational Rehabilitation and Education Service, to judge whether the school is similar to institutions which the Department of Education considers to be eligible to apply for a grant under these programs. The pertinent criteria and data categories are published in title 34, Code of Federal Regulations, chapter VI, part 624, subpart A; part 625, subpart A; and part 626, subpart A. The requirements of those criteria that a school be a "public or nonprofit" institution need not be met.

(3) Previous compliance history of the school, including such factors as false or deceptive advertising complaints, enrollment certification timeliness and accuracy, and amount of school liability indebtedness to the VA.

(4) General effectiveness of the school's program in providing educational and employment opportunities to the particular veteran population it serves. Factors to be considered should include the percentage of veteran-students completing the entire course, ratio of educational and general expenditures to full-time equivalency enrollment, etc.

(Authority: 38 U.S.C. 1673(d); Pub. L. 94-502, Pub. L. 95-202)

[FR Doc. 88-16394 Filed 7-20-88; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 145

[FRL-3413-5]

Nebraska Department of Environmental Control; Underground Injection Control Program; Aquifer Exemption Proposal

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing and of public comment period.

SUMMARY: The purpose of this notice is to announce that (1) the Environmental Protection Agency (EPA) has received an aquifer exemption request along with technical data from the Nebraska Department of Environmental Control (NDEC) to exempt a portion of the Chandron Aquifer in Dawes County, Nebraska, for the purposes of permitting underground injection well for uranium mining; (2) the request and data are now available for inspection; (3) public comments are requested; and (4) a public hearing will be held.

The proposed comment period will provide EPA the breadth of information and public opinion necessary to approve or disapprove the application for aquifer exemption.

DATES: Requests to present oral testimony should be filed by August 10, 1988. The public hearing will be held on August 22, 1988, at 7:00 p.m. and will continue until the end of the testimony. Written comments must be received by September 6, 1988, at which time the comment period will end. EPA reserves the right to cancel the hearing should there be no significant public interest. Those informing EPA of their comments or their intention to testify will be notified of cancellation.

ADDRESSES: Comments and requests to testify should be mailed to Angela Ludwig, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of the NDEC Aquifer Exemption Request and supporting documents are available, during the comment period, for review between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following locations:

Environmental Protection Agency, Region VII, Water Division, 726 Minnesota Avenue, Kansas City, Kansas 66101, Phone: (913) 236-2815

Nebraska Department of Environmental Control, 301 Centennial Mall South, Lincoln, Nebraska 68509, Phone: (402) 471-2186

Nebraska Department of Environmental Control, Chadron Office—Room 112, Chadron, Nebraska 69337, Phone: (308) 432-2550

Nebraska Oil and Gas Conservation Commission, 1135 Jackson, Sidney, Nebraska 69162, Phone: (308) 254-4595

The hearing will be held in the Howard M. Dodd Hall, Highway 20, P.O. Box 392, Fort Robinson State Park, Crawford, Nebraska.

FOR FURTHER INFORMATION CONTACT: Angela Ludwig, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, phone (913) 236-2815. Comments should also be sent to this address.

SUPPLEMENTARY INFORMATION: The following portion of the Chadron aquifer in Dawes County, Nebraska, has been proposed for exemption for Class III injection well activities (involving mineral production of uranium) by NDEC in accordance with the provisions of subsections 144.7, 146.4, and 145.32 of Chapter I, Title 40, Code of Federal Regulations:

LEGAL DESCRIPTION OF THE PROPOSED PORTION OF THE CHADRON AQUIFER (DAWES COUNTY)

T.31N,R.52W.	Section 11	S/2NE/4NW/4SE/4E/2SE/4.
T.31N,R.52W.	Section 12	S/2NW/4SW/4S/2SE/4NW/4SE/4.
T.31N,R.52W.	Section 14	NE/4NE/4.
T.31N,R.52W.	Section 13	NW/4NE/4SE/4NE/4SW/4.
T.31N,R.51W.	Section 17	SW/4SW/4.
T.31N,R.51W.	Section 18	Lots 1,2,3,4SE/4NW/4S/2SE/4NW/4SE/4E/2SW/4.
T.31N,R.51W.	Section 19	ALL.
T.31N,R.51W.	Section 20	W/2NW/4SW/4.
T.31N,R.52W.	Section 24	E/2NE/4NE/4SE/4.
T.31N,R.51W.	Section 29	W/2.
T.31N,R.51W.	Section 30	NE/4NW/4NE/4NE/4SE/4.

The exemption request covers an area of approximately 3,000 acres. Vertically, the exempted area includes the Basal Member of the Chadron Formation. The bottom of the exempted aquifer ranges from a depth of approximately 850 feet below the surface in the southern part of the exempted area to 350 feet in the northern part. The vertical thickness of the Chadron Formation included in the exemption ranges from approximately 110 feet to 140 feet.

The portion of the Chadron Aquifer described above was approved by the Director, Nebraska Department of

Environmental Control, on March 23, 1984. On February 7, 1985, EPA approved approximately 6.7 acres of the Basal Chadron Aquifer for a research and development (R&D) project. The decision on the remaining portion was placed in abeyance until further data from the R & D project became available.

EPA today is particularly interested in receiving comments on current use of the aquifer as a source of drinking water.

On March 24, 1988, the NDEC submitted a request for the EPA to expand the Chadron Aquifer Exemption as part of a program revision to the state UIC program under 40 CFR 144.7, 145.32 and 146.4. This exemption will become part of the NDEC's state UIC program if approved by EPA.

Morris Kay,

Regional Administrator.

[FR Doc. 88-16403 Filed 7-20-88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BERC-465-CN]

Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1989 Rates; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule; correction.

SUMMARY: In the May 27, 1988 issue of the Federal Register (FR Doc. 88-11751), beginning on page 19498, we proposed revisions to the Medicare inpatient hospital prospective payment system and set forth the proposed prospective payment rates for FY 1989. This notice corrects inadvertent errors made in the document.

FOR FURTHER INFORMATION CONTACT: Linda Magno, (301) 966-4529.

SUPPLEMENTARY INFORMATION: We are making the following corrections to the May 27, 1988 document:

1. On page 19511, in the third column, in the thirty-second line from the top of the new page, "at least 20 percent" is changed to read "less than 20 percent".

2. On page 19517, line seven in the table in the first column should read as follows:

DRG	Name
460	Non-extensive burns w/o O.R. procedure.

3. On page 19521, the equation in the fourteenth line from the top of the page should read as follows:

$$1.89 \times \left[\left(1+\frac{\text{interns and residents}}{\text{beds}}\right)^{.405}-1\right]$$

4. On page 19521, the equation in the twentieth line from the top of the page should read as follows:

$$1.43 \times \left[\left(1+\frac{\text{interns and residents}}{\text{beds}}\right)^{.5795}-1\right]$$

5. On page 19522, in the first column, in the eighth line from the bottom of the page, "§ 413.30(f)" is changed to read "§ 413.40(f)".

§ 412.73 [Corrected]

6. On page 19529, in the first column, in § 412.73(c)(5)(i)(C)(*1*), line two, "urban" is changed to "rural" and in § 412.73(c)(5)(i)(C)(*2*), line two "rural" is changed to "urban".

§ 412.84 [Corrected]

7. On page 19530, in the first column, in § 412.84(h), line two, "computed by" is changed to read "computed annually by".

§ 413.40 [Corrected]

8. On page 19533, in § 413.40(b), in the third column, line ten, "nonparticipation of the Medicare program" is changed to read "nonparticipation in the Medicare program".

9. On page 19535, the equation in the twentieth line from the top of the page should read as follows:

$$1.89 \times \left[\left(1+\frac{\text{interns and residents}}{\text{beds}}\right)^{.405}-1\right]$$

10. On page 19540, Table 1c is corrected to read as follows:

TABLE 1C.—ADJUSTED STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor.related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	2085.97	375.45	2065.60	371.79	1466.66	273.11

	Labor-related	Nonlabor-related
National	2311.73	775.96

11. On page 19585, in Table 6a, the second column is corrected by adding DRG 388 to diagnosis codes 765.00, 765.06, 765.07, and 765.08 and by adding DRG 387 to diagnosis code 765.10.

12. On page 19585, in Table 6b, the third column is corrected by changing the DRG for procedure code 20.95 from "3" to "55" and the DRG for procedure code 37.33 from "Non-OR" to "108, 109" and by adding DRG 156 to procedure code 42.25.

13. On page 19586, in Table 6c, the second column is corrected by adding the following after procedure code 15.13:

20.01 Myringotomy with insertion of tube.

14. On page 19617, in the third column, in the third line from the top of the page, "More than hospitals" is changed to read "More than 580 hospitals".

15. On page 19621, in the first column, beginning with the third line from the bottom of the page, "education; and the reclassification of hospitals in certain rural counties adjacent to urban areas." is changed to read "education.".

16. On page 19621, the second column, in the third line from the top of the page, delete the following sentence: The combined effects of all changes mandated by statute are shown in column 3.

(Catalog of Federal Domestic Assistance Program No. 13.773; Medicare—Hospital Insurance)

Dated: July 12, 1988.

James V. Oberthaler,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 88-16467 Filed 7-20-88; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 80736-8136]

Summer Flounder Fishery

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

ACTION: Proposed rule.

SUMMARY: NOAA Issues this proposed rule to implement conservation and management measures as prescribed in the Fishery Management Plan for the Summer Flounder Fishery (FMP). The proposed rule would establish a minimum size limit for summer flounder; require that permitted vessels comply with the stricter of FMP or State minimum size limits; prohibit retention of summer flounder by foreign fishermen; require annually renewable permits; and establish a mechanism to increase minimum size limits if trends in fishing mortality rates so indicate. The regulations are intended to reduce fishing mortality, increase long-term yield from the fishery, improve uniformity of management, and provide better information.

DATE: Comments on the propsoed rule must be received on or before September 6, 1988.

ADDRESSES: Send comments on the proposed rule and FMP to Richard Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930-3799. Mark the outside of the envelope "Comments on Summer Flounder Plan".

Copies of the FMP, the environmental assessment (EA), the regulatory impact review (RIR), and other supporting documents are available from John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 300 South New Street, Dover, DE 19901-6790.

Send comments on the proposed collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst) 617-281-3600, ext. 252.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. A notice of availability for the proposed FMP was published in the **Federal Register** on June 21, 1988 (53 FR 23292). Copies of the FMP are available from the Council (see **ADDRESSES**). The FMP would initiate management of the fishery for summer flounder (*Paralichthys dentatus*) pursuant to the Magnuson Fishery Conservation and Management Act (Magnuson Act). The management unit is summer flounder in the exclusive economic zone (EEZ) from North Carolina northward. Objectives of the FMP are to: (1) Reduce fishing mortality on immature summer flounder; (2) increase yield from the fishery; (3) promote compatible management regulations between state waters and the EEZ; and (4) minimize regulations to achieve the management objectives recognized above.

Background

The FMP was planned jointly with the Atlantic States Marine Fisheries Commission (ASMFC), the States, and the Council. The FMP is based on a management plan drafted by the State/Federal Summer Flounder Management Program pursuant to a contract between the New Jersey Division of Fish, Game, and Wildlife and NMFS. The State/Federal draft plan was adopted by ASMFC in October 1982. In June 1987 an ASMFC advisory committee was convened to review the objectives of the ASMFC plan and to evaluate the condition of the summer flounder stock. The committee recommended that the ASMFC plan should be updated once the FMP being prepared by the Council was approved by the Secretary, and that the States should be encouraged to implement recommendations of the original ASMFC plan. The Council approved the FMP for public hearings on October 29, 1987. Eleven public hearings were held in New England and the Mid-Atlantic coastal States in January 1988.

Measures proposed in the FMP support existing State regulations. The FMP provides that the operator of a vessel holding a Federal permit must fish under the more stringent of Federal or State rules. Because of the significant landings from State waters, the Council considers in critical to the success of the FMP that the States be given time to adjust their regulations to become compatible with those of the FMP.

Problems Addressed by the FMP

Fishing mortality of summer flounder is high. Best estimates indicate that the current instantaneous rate of fishing mortality is nearly double the rate that would produce maximum yield from a given year-class. Further, larger summer flounder are predominantly females and estimates of fishing mortality rates on these fish are nearly three times the rate that would produce maximum yield. By reducing fishing mortality, long-term yield from the fishery could be increased.

Evidence also indicates that, at best, the yield per recruit in the fishery is one-half of its maximum at current levels of

fishing; using more conservative evaluation criteria, the current yield per recruit is significantly less than that. Optimal levels of fishing mortality are considerably lower for females than for males. By increasing minimum size limits, yield per recruit could be increased significantly.

Spawning stock biomass per recruit of summer flounder declines markedly with increasing fishing mortality on females. This concept directly links egg production of a population with fishing mortality. Egg production is highest with no fishing, unless there is density-dependent fecundity, and can be incresased by reducing or delaying mortality, such as through minimun size regulations.

The many jurisdictions involved in management of the summer flounder fishery create other problems. Between Massachusetts and North Carolina, a major portion of both recreational and commercial catch comes from State waters. Existing State regulations differ significantly. Maine, New Hampshire, and Pennsylvania have no specific laws relating to summer flounder because landings in those States are minimal or zero. Massachusetts, Rhode Island, Connecticut, New York, and Delaware have 14-inch total length (TL) minimum size limits. New Jersey has a 13-inch TL limit. Maryland and Virginia limits are 12 inches TL, while the North Carolina limit is 11 inches TL (to become 13 inches TL effective September 1, 1988). Several States have mesh size regulations for some or all of their waters (New York, 4 inches; New Jersey, 4.5 inches; Maryland, 2.5 inches for gillnets; Virginia, 4.5 inches; North Carolina, 4.5 inches). The lack of regulations in Maine, New Hampshire, and Pennsylvania does not present a direct problem because of the small amount of summer flounder landings in those States. However, it could be significant if vessels land summer flounder in those States to avoid regulations in other States.

Although tremendous advances in the quantity and quality of data have occurred since 1979 when the Marine Recreational Fishery Statistics Survey (MRFSS) was initiated and all States began separating summer flounder statistics from those for other flounders, there are still significant data gaps. Biological characteristics of summer flounder have become better understood and most of the catch and biological information necessary for management is currently being collected. However, age composition of the commercial catch for recent years and age composition of the recreational catch are two critical pieces of biological information still needed. Also, very few economic data are currently being collected. The key economic item needed is better effort data for the fishery; nearly one-third of the commercial fishery landings have no associated effort data. Expenditure data for the recreational fishery are also needed.

The continued decline of the New England groundfish fishery will very likely cause more effort to be exerted on summer flounder stocks. Nearly all the major groundfish stocks in New England (haddock, yellowtail flounder, cod, redfish, etc.) have been severely depleted or have current catches exceeding the longterm potential catches. Summer flounder commerical catch has remained relatively constant over the past several years, while total flounder catches along the Atlantic coast have been decreasing. Increasing effort (numbers of vessels) has been directed towards summer flounder during the page 7 years.

Management Measures Proposed in the FMP

The FMP proposes the following management measures:

1. It would be illegal to possess summer flounder less than 13 inches TL or to possess summer flounder parts smaller than 13 inches prior to the point of landing. This is intended to reduce fishing mortality on small fish, preserve spawning stock, create uniform regulations in the EEZ, and provide enforceability of the minimum size limit.

2. Vessels issued permits under the FMP would be required to fish and land as required by the FMP unless the vessels land in States having larger minimum size limits for summer flounder, in which case the State limits would prevail. This allows States to maintain more conservative management measures consistent with those recommended by the ASMFC management plan, and would further reduce fishing mortality of small fish.

3. Foreign fishermen would not be allowed to retain summer flounder since domestic fishermen, by definition, would be harvesting the optimum yield from the resource.

4. Vessels fishing commercially for summer flounder, either directly or as a bycatch in other fisheries, and vessels for hire in the recreational fishery (party and charter boats) would be required to obtain annually renewable permits to improve knowledge of the fishing universe and facilitate data collection to improve management of the fishery.

5. States having minimum size limits larger than those in the FMP and minimum mesh size regulations would be encouraged to maintain them to reduce fishing mortality on summer flounder and improve yield from the fishery.

6. After 3 years of FMP implementation the Council would begin annually to examine fishing mortality estimates of 2-year-old summer flounder to measure effectiveness of the size limit relative to the FMP objectives. If the Council finds that fishing mortality rates for that age class have increased, and if the Regional Director, Northeast Region, NMFS, concurs with the Council, the minimum fish size limit would be adjusted to 14 inches TL. In determining need for such an action, the Council would examine fishing mortality estimates from (1) the Northeast Fisheries Center's (NEFC) spring survey and (2) a virtual population analysis (VPA) based on commerical and recreational catch-per-unit-effort (CPUE) indices. If the trend of either of the mortality estimates increases over a 3-year period, the minimum size increase would be required. The fishing mortality rate of 2-year-old fish estimated from NEFC's spring surveys would be measured relative to the baseline level established from NEFC survey data from 1976–1988. The trend in mortality rates determined by VPA would be compared to a baseline calculated from 1976–1988 catch-at-age data. Best estimates of discards would be incorporated into the catch-at-age and commercial CPUE data. CPUE indices used in VPA would be evaluated using standardized fishing power analyses of commerical and recreational fisheries data. This measure would provide a mechanism for rapid

adjustment of the size limit to reduce fishing mortality should scientific evidence indicate the need for further conservation.

Impact on Endangered Species

A consultation under section 7 of the Endangered Species Act is being conducted by NMFS and a biological opionion regarding potential impacts of the FMP on endangered and threatened sea turtles is being prepared. Copies of the opinion will be available from the NMFS Northeast Regional Office (see **ADDRESSES**).

Structure of Regulations

A recent restructuring of NMFS's domestic fishing regulations (53 FR 24644, June 29, 1988) consolidates sections affecting all domestic fisheries into a new 50 CFR Part 620. This proposed rule reflects the new structure by reference of Part 620, General Provisions for Domestic Fisheries. Changes in preamble and regulatory wording were made by NMFS to shorten and clarify the proposed rule as submitted by the Council.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary of Commerce to publish regulations proposed by a Council within 15 days of receipt. At this time he has not determined that the FMP these rules would implement is inconsistent with the national standards, other provisions of the Magnuson Act, and other applicable law. In making that determination, he will take into account the information, views, and comments received during the comment period.

The Council prepared an EA for the FMP and concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the assessment from the Council (see **ADDRESSES**).

The Under Secretary of Commerce for NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This determination is based on the draft RIR, which demonstrates positive net short-term and long-term economic benefits to the fishery under the proposed management measures. The FMP is not expected to have an annual impact of $100 million or more, nor to lead to an increase in costs or prices to consumers. Recreational anglers are expected to be affected to a small extent in the early years of the FMP, with a redistribution of expenditures of about $300,000. Commercial fishery lost revenue in the first year is estimated at about $1.3 million. However, over 10 years, the discounted benefits are projected to exceed costs by about $300,000. These estimates do not include a value for expected benefits derived from stabilizing the summer flounder population. You may obtain a copy of the draft RIR from the Council (see **ADDRESSES**).

The proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget (OMB), with an explanation of why it is not possible to follow procedures of the order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The 13-inch minimum size requirement would impose a maximum reduction in revenue from summer flounder catches of approximately $4,300 annually on vessels landing in the three states (Maryland, Virginia and North Carolina) with minimum sizes currently below that mandated by the FMP. Since most of those vessels participate in other mixed fisheries, the impact of the proposed regulations would probably be in a range of 4 to 5 percent of total annual ex-vessel revenue. North Carolina recently passed a resolution to increase the minimum size of summer flounder from 11 inches to 13 inches, effective September 1, 1988. This action was taken in support of the FMP, but is independent of its submission and approval. Impacts of the Federal regulations would be considerably reduced, since any effects from a 13-inch size limit would already have been imposed on the industry by the State requirement. After a 3-year monitoring period, a 14-inch minimum size could be implemented if justified by an examination of fishing mortality rates. This measure would impose a burden on fishermen landing in the States specified above and in New Jersey, which currently has a 13-inch minimum size. The maximum average vessel burden is estimated to be $6,200. That burden would also be mitigated by the pending adjustment in the North Carolina size limit and the participation of affected vessels in mixed fisheries.

The prohibition of retention of summer flounder by foreign harvesters is expected to have no significant impact on domestic harvesters. Foreign catches of summer flounder have been incidental to directed catches of *Loligo* squid, and the expected phase-out of foreign fishing for squid would eliminate the incidental catch of summer flounder by foreign fleets.

The annual permit for vessels fishing commercially for summer flounder is expected to impose an insignificant burden because the majority of the vessel owners that would apply already have a permit for other managed species. The inclusion of summer flounder would require little additional time for adding another species to a fishing permit application.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. A request to collect this information has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regional Director and to OMB (see **ADDRESSES**).

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. For New Hampshire, the evaluation concluded that the FMP might affect the coastal zone and was consistent. For Pennsylvania, the Council determined that this rule will not affect the coastal zone. These determinations were submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act; all of the States concurred with the Council's finding except Maine and Rhode Island, which did not respond.

This proposed rule does not contain certain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 625

Fishing, Fisheries, Vessel permits and fees.

Dated: July 15, 1988.

James W. Brennan,

Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NOAA proposes to add 50 CFR Part 625 as follows:

PART 625—SUMMER FLOUNDER FISHERY

Subpart A—General Provisions

Sec.
625.1 Purpose and scope.
625.2 Definitions.
625.3 Relation to other laws.
625.4 Vessel permits and fees.
625.5 Recordkeeping and reporting. [Reserved]
625.6 Vessel identification.
625.7 Prohibitions.
625.8 Facilitation of enforcement.
625.9 Penalties.

Subpart B—Management Measures

625.20 Fishing year. [Reserved]
625.21 Allowable levels of harvest. [Reserved]
625.22 Closure of fishery. [Reserved]
625.23 Size restrictions.
625.24 Gear restrictions. [Reserved]
625.25 Time restrictions. [Reserved]

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 625.1 Purpose and scope.

The regulations in this part (a) implement the Fishery Management Plan for the Summer Flounder Fishery (FMP), which was prepared and adopted by the Mid-Atlantic Fishery Management Council in cooperation with the New England and South Atlantic Fishery Management Councils and approved by the Under Secretary of Commerce for NOAA; and (b) govern fishing for summer flounder by vessels of the United States within the EEZ.

§ 625.2 Definitions.

In addition to the definitions in the Magnuson Act, the terms used in this part have the following meanings:

Charter or *party boat* means any vessel which carries passengers for hire to engage in fishing.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Summer Flounder Fishery and any amendments thereto.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

NEFC means the Northeast Fisheries Center, NMFS, Water Street, Woods Hole, MA 02543.

Person who receives summer flounder for commercial purposes means any person (excluding governments and governmental entities) engaged in commerce who is the first purchaser of summer flounder. The term includes, but is not limited to, dealers, brokers, processors, cooperatives, or fish exchanges. It does not include a person who only transports summer flounder between a fishing vessel and a first purchaser.

Regional Director means the Director, Northeast Region, NMFS, Federal Building, 14 Elm Street, Gloucester, MA 01930–3799, telephone 617–281–3600, or a designee.

Regulated fishery means any fishery of the United States which is regulated under the Magnuson Act.

Summer flounder means *Paralichthys dentatus*.

Total length (TL) means the distance from the top of the head to the tip of the tail (caudal fin) while the fish is lying on its side normally extended.

Vessel length means that length specified on State registration or U.S. Coast Guard documentation.

§ 625.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) The regulations governing fishing for summer flounder by foreign vessels in the EEZ are set forth in 50 CFR Part 611, Subparts A and C.

§ 625.4 Vessel permits and fees.

(a) *General.* Each fishing vessel, including party and charter boats, which fishes for summer flounder under this part must have a permit issued under this section. A vessel with a permit issued under these regulations is required to fish nd land under these regulations unless the vessel lands in a State having larger minimum summer flounder size limits than those provided in these regulations; in that case the landings must meet the State limits. A vessel is exempt from the permitting requirement if it catches no more than 100 pounds of summer flounder per trip.

(b) *Eligibility.* [Reserved]

(c) *Application.* (1) An application for a permit under this part must be submitted and signed by the owner or operator of the vessel on an appropriate form obtained from the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) An applicant must provide all the following information:

(i) The name, mailing address including ZIP code, and telephone number of the owner and master of the vessel;

(ii) The name of the vessel;

(iii) The vessel's U.S. Coast Guard documentation number or the vessel's State registration number for a vessel not required to be documented under Title 46 of the U.S. Code;

(iv) Home part and principal port of landing, gross tonnage, radio call sign, and length of the vessel;

(v) Engine horsepower of the vessel and the year the vessel was built;

(vi) Type of construction, type of propulsion, navigational aids (e.g., Loran C), type of on-board computer, and type of echo sounder of the vessel;

(vii) Permits number of any current or previous Federal fishery permit issued to the vessel;

(viii) Approximate fish hold capacity of the vessel (to the nearest 100 lbs);

(ix) Type and quantity of fishing gear used by the vessel;

(x) Average size of the crew, including the captain, which may be stated in terms of a normal range;

(xi) Directed fishery or fisheries;

(xii) Quantity of summer flounder landed during the calendar year prior to the one for which the permit is being applied;

(xiii) Number of passengers the vessel is licensed to carry (party and charter boats); and

(xiv) Any other information concerning vessel characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (c)(2) of this section must be submitted by the applicant in writing to the Regional Director within 15 days of the change.

(d) *Fees.* No fee is required for any permit issued under this part.

(e) *Issuance.* The Regional Director will issue a permit to the applicant no later than 30 days from the receipt of a completed application.

(f) *Expiration.* A permit will expire upon any change in vessel ownership, registration, name, length, gross tonnage, fish hold capacity, home port, or the regulated fisheries in which the vessel is engaged.

(g) *Duration.* A permit will continue in effect until December 31 of each year unless it is revoked, suspended, or modified under Part 621 of this chapter or 15 CFR Part 904.

(h) *Alteration.* No person may alter, erase, or mutilate any permit. Any permit which has been intentionally altered, erased, or mutilated is invalid.

(i) *Replacement.* Replacement permits may be issued by the Regional Director when requested in writing by the owner or operator, stating the need for replacement, the name of the vessel, and the fishing permit number assigned. An application for a replacement permit will not be considered a new application.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit will be valid only for the

fishing vessel and owner for which it is issued.

(k) *Display.* The permit is subject to inspection by an authorized officer.

(l) *Sanctions.* Subpart D of 50 CFR Part 621 (Civil Procedures) governs the imposition of sanctions against a permit issued under this part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted fishing vessel is used in the commission of an offense prohibited by the Magnuson Act or these regulations, or if a civil penalty or criminal fine imposed under the Magnuson Act is not paid.

§ 625.5 Recordkeeping and reporting. [Reserved]

§ 625.6 Vessel identification.

(a) *Official number.* Each fishing vessel subject to this part and over 25 feet in length must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft.

(b) *Numerals.* (1) The official number must be displayed in block arabic numerals in contrasting color at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels over 25 feet in length.

(2) The official number must be permanently affixed to or painted on the vessel. However, charter or party boats may use non-permanent markings to display the official number whenever the vessel is fishing for summer flounder. The operator of each fishing vessel must:

(i) Keep the official number clearly legible and in good repair; and

(ii) Ensure that no part of the fishing vessel, its rigging or its fishing gear obstruct the view of the official number from any enforcement vessel or aircraft.

§ 625.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Possess or retain summer flounder smaller than the legal minimum length established under § 625.23 of this part.

(b) Use any vessel for the taking, catching, harvesting, or landing of any summer flounder (except as provided for in § 625.4(a)) unless the vessel has a valid permit issued under this part on board the vessel.

(c) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel.

(d) Fail to affix and maintain markings as required by § 625.6.

(e) Refuse to permit an authorized officer to inspect any fishing vessel record.

(f) Falsify or fail to make, keep, maintain, or submit any fishing vessel record or fish dealer or processor report or other record required by this part.

(g) Make any false statement, oral or written, to an authorized officer, concerning the taking, catching, landing, purchase, sale, or transfer of any summer flounder.

(h) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this part.

§ 625.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 625.9 Penalties.

See § 620.9 of this chapter.

Subpart B—Management Measures

§ 625.20 Fishing year. [Reserved]

§ 625.21 Allowable levels of harvest. [Reserved]

§ 625.22 Closure of fishery. [Reserved]

§ 625.23 Size restrictions.

(a) *Minimum fish size.* Summer flounder: 13 inches TL; parts of summer flounder: 13 inchefs to the point of landing.

(b) *Adjustments to minimum fish size.*

(1) Following the third year of FMP implementation, and annually thereafter, the Council will examine fishing mortality estimates of age-2 summer flounder to measure the effectiveness of the size limit relative to the FMP's objectives. If the Council finds that the fishing mortality of age–2 summer flounder has increased, based on the adjustment criteria set forth in paragraph (b)(2) of this section, and if the Regional Director concurs with the Council, the minimum fish length would be increased to 14 inches TL, by notice in the **Federal Register.**

(2) The adjustment criteria are (1) estimated fishing mortality from NEFC's spring survey and (2) estimated fishing mortality from a virtual population analysis (VPA) based on commercial and recreational fishery catch-per-unit-effort (CPUE) indices. If the trend of either of these mortality estimates for age-2 fish increases over 3 years, an increase in the minimum fish length is required. The trends will be measured (1) relative to a baseline level determined from NEFC survey data from 1976–1988, and (2) relative to the baseline level from VPA using catch-at-age from 1976–1988. Best estimates of discards will be incorporated into both the catch-at-age data and commerical CPUE data. CPUE indices used for the VPA will be evaluated using standardized fishing power analyses of commerical and recreational fisheries data.

(c) If a vessel lands in a State with larger minimum fish sizes than those provided in this section, the State limit applies as the minimum fish size.

§ 625.24 Gear restrictions. [Reserved]

§ 625.25 Time restrictions. [Reserved]

[FR Doc. 88–16360 Filed 7–20–88 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 53, No. 140
Thursday, July 21, 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.

DEPARTMENT OF AGRICULTURE

Form Under Review by Office of Management and Budget

July 15, 1988

The Department of Agriculture has summitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Mangement and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- *Agricultural Marketing Service*

Onions Grown in South Texas (Marketing Order No. 959)
Recordkeeping; Monthly; Daily
Farms; Businesses or other for-profit; 1,077 responses; 84 hours
Virginia Olson, (202) 447–5057.

Revision

- *Rural Electrification Administration*

7 CFR Part 1763, Architectural and Engineering Services—Telephone Program
REA Forms 179, 506 and 521
On occasion
Small businesses or organizations; 1,280 hours; 1,149 responses
John D. Soma, (202) 382–8529.

New Collection

- *Food and Nutrition service*

Study of the Long Term Receipt of Food Stamps by Work Registrants One-time survey
Individuals or households; 500 hours; 375 responses
Mark Johnston, (703) 756–3232.

Larry K. Roberson,
Acting Departmental Clearance Officer.
[FR Doc. 88–16415 Filed 7–20–88; 8:45 am]
BILLING CODE 3410-01-M

Soil Conservation Service

Long Beach Watershed, MS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is being prepared for the Long Beach Watershed, Harrison County, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, 1321 Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are needed for this project.

The project concerns a plan for flood prevention to urban areas. Alternatives under consideration to reach these objectives include nonstructural measures and channel improvement.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Soil Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement. Further information on the proposed action may be obtained from L. Pete Heard, State Conservationist, at the above address.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

L. Pete Heard,
State Conservationist.

Date: July 15, 1988.

[FR Doc. 88–16392 Filed 7–20–88; 8:45 am]
BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

Georgia 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 Georgia Advisory Committee to the Commission previously announced in 53 FR 25650 (July 8, 1988) has been rescheduled and relocated. The meeting will convene at 10:30 a.m. and adjourn at 1:30 p.m. on July 22, 1988, at the Richard B. Russell Federal Building, 75 Spring Street, Atlanta, Georgia 30303, room 1478. The purpose of the meeting is to discuss the status of the Committee's report entitled, "Proceedings on Bigotry and Violence" and program plans. Staff will give an orientation for new members.

Dated at Washington, DC, July 15, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–16382 Filed 7–20–88; 8:45 am]

BILLING CODE 6335–01–M

Iowa 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 Iowa Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m., on August 25, 1988, at Hotel Fort Des Moines, 10th and Walnut Streets, Des Moines, Iowa. The purpose of the meeting is to discuss program plans and activities for the remainder of FY'88.

Persons desiring additional information should contact Committee Vice-Chairperson, Lee Furgerson, or Melvin Jenkins, Director of the Central Regional Division (816) 426–5253, (TDD 816/426–5009). 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 July 14, 1988.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 88–16383 Filed 7–20–88; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

National Medal of Technology; Extension of Nomination Deadline

AGENCY: Office of Productivity, Technology and Innovation, Office of Economic Affairs, Commerce.

ACTION: Notice of nomination deadline extension.

SUMMARY: Notice is hereby given that the deadline for nominating persons or companies to be considered for receiving the National Medal of Technology in 1990 (Authorized by 15 U.S.C. 3711), has been extended from July 30, 1988 to December 31, 1988.

DATE: Nominations must be received on or before December 31, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Braden, Executive Director, National Medal of Technology Nomination, Evaluation Committee, H–4814, U.S. Department of Commerce, Washington, DC 20230, (202) 377–5572.

D. Bruce Merrifield,

Assistant Secretary, Productivity, Technology and Innovation.

[FR Doc. 88–16453 Filed 7–20–88; 8:45 am]

BILLING CODE 3510–18–M

Foreign-Trade Zones Board

[Order No. 390]

Temporary Extension of Authority for Subzone 50A, Long Beach, CA

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the FTZ Board (the Board) Regulations (15 CFR Part 400), the Board adopts the following order:

Whereas, on July 14, 1983, the Board authorized the Board of Harbor Commissioners of the City of Long Beach (BHC), grantee of FTZ 50, to establish Subzone 50A for the truck cargo body manufacturing plant of Toyota Auto Body, Inc., of California (Toyota) (formerly, Toyota Motor Manufacturing, U.S.A., Inc.) in Long Beach, California, for a period of five years, subject to extension (Board Order 213, 48 FR 34792);

Whereas, the authorization expires on July 14, 1988;

Whereas, BHC has made application to the Board (FTZ Docket 21–88, filed 4/14/88, 53 FR 16178) for an indefinite extension of the authority for Subzone 50A;

Whereas, the review being conducted by the Board will not be completed by July 14, 1988; and,

Whereas, the FTZ Staff has recommended a temporary extension of authority while a review of the application for an indefinite extension is being completed;

Now, Therefore, the Board hereby orders:

That the authority for Subzone 50A is extended to December 31, 1988, subject to all of the other conditions in Board Order 213.

Signed at Washington, DC, this 14th day of July 1988.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–16472 Filed 7–20–88; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 391]

Temporary Extension of Authority for the Private Zone Sites in Foreign-Trade Zone 84, Houston, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR, Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Board authorized the Port of Houston Authority (PHA) to maintain several privately owned and operated sites in FTZ 84, Houston, Texas, on July 15, 1983 (Board Order No. 214), subject to conditions, including a time limit of five years, subject to extension after a review;

Whereas, the authorization expires on July 15, 1988;

Whereas, PHA, grantee of Foreign-Trade Zone 84, has made application to the Board (FTZ Doc. 8–88, filed 2–8–88, 53 FR 4865) to extend zone status on a permanent basis for several of the private sites;

Whereas, the application is supported by state and local public officials, but the Board's review will not be completed by July 15, 1988; and

Whereas, the FTZ Staff has recommended a temporary extension of authority while a review of the application for an indefinite extension is being completed;

Now, Therefore, the Board hereby orders:

That authority for the private sites in FTZ 84 is extended to January 15, 1989, subject to the other conditions in Board Order 214.

Signed at Washington, DC, this 14th day of July 1988.

Jan W. Mares,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 88–16473 Filed 7–20–88; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

Short-Supply Review on Certain Steel Plate; Request for Comments

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for short-supply determination under Article 8 of the U.S.-Austria Arrangement Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Finland Understanding Concerning Trade in Certain Steel Products, Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products, Article 8 of the U.S.-Korean Arrangement Concerning Trade in Certain Steel Products, and Article 8 of the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, with respect to certain steel plate used in the manufacture of large diameter pipe.

DATE: Comments must be submitted on or before August 1, 1988.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-Austria Arrangement Concerning Trade in Certain Steel Products, the U.S.-Brazil Arrangement Concerning Trade in Certain Steel Products, the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Finland Understanding Concerning Trade in Certain Steel Products, the U.S.-Korean Arrangement Concerning Trade in Certain Steel Products, the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, and Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provide that if the United States determines that, because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the United States for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for various structural and API 5LX line pipe grades of steel plate, 0.25 to 1.50 inches in thickness, and 72 inches or more in width, for use in producing large diameter pipe.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than August 1, 1988. Comments should focus on the econmic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce at the above address.

Jan W. Mares,

Assistant Secretary for Import Administration.

July 14, 1988.

[FR Doc. 88–16471 Filed 7–20–88; 8:45 am]

BILLING CODE 3510–DS–M

National Bureau of Standards

[Docket No. 80741–8141]

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of formal establishment of a laboratory accreditation program for laboratories that test the computer industry's implementation of communications protocols used by the Department of Defense.

SUMMARY: Under the National Voluntary Laboratory Accreditation Program (NVLAP), the National Bureau of Standards (NBS) announces the establishment of a laboratory accreditation program for laboratories that test the computer industry's implementation of communications protocols used by the Department of Defense (Protocols Program). Laboratories that are interested in becoming accredited under the Protocols Program may indicate their interest in the program by informing the Manager, Laboratory Accreditation, National Bureau of Standards of their specific interests.

FOR FURTHER INFORMATION CONTACT: John L. Donaldson, Manager, Laboratory Accreditation, National Bureau of Standards, Admin A527, Gaithersburg, MD 20899, (301) 975–4016.

SUPPLEMENTARY INFORMATION:

Background

This notice is issued in accordance with § 7.17 of the NVLAP Procedures (15 CFR Part 7). Establishment of this program for laboratories that test the computer industry's implementation of communications protocols used by the Department of Defense follows a request by the Defense Communications Agency. A **Federal Register** notice announcing the request for the Protocols LAP was published on December 3, 1987 (50 FR 45986–45988). Comments received in response to the announcement were reviewed by the Defense Communications Engineering Center whose director, Warren P. Hawrylko, has concluded that there were no valid reasons presented in the comment letters to prevent establishment of the Protocols LAP and therefore requested the National Bureau of Standards to proceed to establish the requested program.

The purpose of the LAP is to accredit and provide national recognition to laboratories capable of performing tests in accordance with the designated test methods. The scope of the LAP includes testing services for: (1) Defense Data Network (DDN) X.25 Link and Network Layer Protocols as specified in the DCA DDN X.25 Host Interface Specification; (2) the five DoD packet switching High Level Protocols (HLPs): (I) Internet Protocol (IP) MIL–STD 1777; (II) Transmission Control Protocol (TCP), MIL–STD 1778; (III) File Transfer Protocol (FTP), MIL–STD 1780; (IV) Simple Mail Transfer Protocol, MIL STD 1781; and (V) TELNET, MIL–STD 1782; and (3) the AUTODIN Mode I Protocol. Accreditation will be offered first for the X.25 protocol. Accreditation will be offered next, at least 45 days later, for the DoD HLPs (I)–(V). Accreditation for AUTODIN Mode I protocol will be offered last, after the initial X.25 protocol accreditations have been completed.

Procedure Prior to Application

Any testing laboratory interested in becoming accredited under this LAP should contact the Manager, Laboratory Accreditation, at the address shown above, specifying the protocols of interest. The laboratory will be sent the proposed technical documents for the requested protocol accreditation as they become available and will be invited to submit comments for their revision within 45 days of the publication date of this notice in the case of the X.25 protocol and of the mailing dates of the documents for the HLP and AUTODIN

protocols. A meeting of all interested parties will be scheduled after each of the closing dates to resolve conflicting comments. If none arise, no meeting will be scheduled. The completed technical documents, instructions, fee schedules, and applications will be sent separately for each protocol as they become available to all laboratories that have previously requested them.

Earnest Ambler,

Director.

Dated: July 15, 1988.

[FR Doc. 88-16439 Filed 7-20-88; 8:45 am]

BILLING CODE 3510-13-M

International Laboratory Accreditation Conference (ILAC) 1988; Invitation To Participate and Public Meeting

AGENCY: National Bureau of Standards, Commerce.

ACTION: Invitation to participate in ILAC 88 Conference and announcement of public meeting.

DATES: Tenth ILAC meeting, Auckland, New Zealand, October 17–21, 1988, Open Pre-Conference Meeting, National Bureau of Standards, Gaithersburg, MD, September 16, 1988. Closing Date for Delegate Appointment, August 15, 1988.

SUMMARY: The Tenth International Laboratory Accreditation Conference (ILAC) will be held in Auckland, New Zealand, October 17–21, 1988. ILAC is an informal organization of approximately 42 nations and 12 international organizations whose overall purpose and objective is to promote: (1) The development of national programs for accrediting testing laboratories, (2) the employment of harmonized accreditation criteria, and (3) the development of bilateral or multilateral arrangements which would encourage importers to accept the results of tests and data made by laboratories that have been accredited under a laboratory accreditation program in exporting nations.

Conferences in support of ILAC's stated purpose have been held since 1977, to develop information about laboratory accreditation systems, to provide a forum for discussing differences among such systems, to describe basic principles and criteria for operating such systems, and to develop bilateral or other arrangements which would establish mutual recognition of such systems or of test reports issued by laboratories accredited under such systems. These bilateral arrangements are intended to minimize technical barriers to trade.

The U.S. Delegation is chaired by the Deputy Associate Director for Industry and Standards. Anyone interested in attending this meeting in Auckland as a member of the U.S. Delegation, using his or her own financial resources for registration fees, hotel accommodations, food, and travel expenses, is invited to submit a request by August 15, 1988, to Mr. George Uriano, Deputy Associate Director for Industry and Standards, National Bureau of Standards, Admin. A603, Gaithersburg, MD 20899. Such persons should have a background in standards development, laboratory accreditation, product testing or product certification activities.

Notice is also given that the U.S. Delegation will hold an open pre-conference meeting at 10:00 a.m. on Friday, September 16, 1988, in Lecture Room C of the Administration Building at the National Bureau of Standards, Gaithersburg, Maryland, to prepare for the conference. The meeting attendees and delegates will: (1) Review ILAC Task Force and Committee reports, (2) consider the position that the U.S. Delegation should take in response to those reports, (3) prepare any proposed resolution for introduction at ILAC 88, and (4) consider any additional matters of interest. The pre-conference meeting will be chaired by Mr. Uriano.

Anyone wishing to attend this meeting, which is open to the public, or provide information on proposals for consideration by the delegation, should notify Mr. George Uriano, National Bureau of Standards, Admin. A603, Gaithersburg, MD 20899, telephone: 301–975–4003, by September 1, 1988.

Date: July 15, 1988.

Ernest Ambler,

Director.

[FR Doc. 88-16441 Filed 7-20-88; 8:45 am]

BILLING CODE 3510-13-M

Public Meeting on U.S. Technical Participation in OIML International Conference

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of meeting.

SUMMARY: The National Bureau of Standards will hold a public meeting to discuss U.S. technical participation in the 8th Quadrennial Conference of the International Organization of Legal Metrology (OIML). The principal focus of the meeting will be on twenty-six proposed OIML International Recommendations on legal measuring instruments that will be presented for sanction at the Conference. These proposed Recommendations and OIML-member nations' technical comments on them will be reviewed with interested parties who will be given also an opportunity to present their views on relevant issues of the Conference.

DATE: September 7, 1988 from 9:30 am to 4:00 pm.

Location of Meeting: National Bureau of Standards, Administration Building, Lecture Room D, Gaithersburg, MD.

Status: This is a meeting open to all interested parties. Participants with an expressed interest in particular topics may obtain limited copies of the Conference technical agenda, including the proposed OIML International Recommendations. Presentation of oral and written statements by interested parties should be arranged and scheduled beforehand.

FOR FURTHER INFORMATION CONTACT: Samuel E. Chappell; Chief, Office of Standards Management; National Bureau of Standards, Gaithersburg, MD 20899; telephone (301) 975–4023.

SUPPLEMENTARY INFORMATION: The International Organization of Legal Metrology (OIML) is a treaty organization in which the United States and 49 other member nations participate. Its principal purpose is to harmonize national laws and regulations pertaining to testing and verifying the performance of legal measuring instruments used for equity in commerce and for monitoring and maintaining public health and safety. The harmonized results are to promote international trade of affected instruments and products.

The quadrennial meeting of the OIML International Conference will take place in Sidney, Australia from October 24–28, 1988. At that time, twenty-six proposed International Recommendations on legal measuring instruments will be considered for sanction by the member nations. These Recommendations and the OIML-member nations holding the responsible secretariat for each are as follows:

PR1 Measuring Assemblies for Liquids Other Than Water Fitted with Volume Meters (West Germany, France)

PR2 Visual Disappearing—Filament Pyrometers (USSR)

PR3 Western Tubes for Measurement of Erythrocyte Sedimentation Rate (West Germany)

PR4 Verification Methods for Indicating Pressure Gauges, Vacuum Gauges and Pressure-Vacuum Gauges with Elastic Sensing Elements and Direct Indication by Pointer and Graduated Scale—Ordinary Instruments (USSR)

PR5 Verification Methods for Recording Pressure Gauges, Vacuum Gauges and Pressure-Vacuum Gauges with Elastic

Sensing Elements—Ordinary Instruments (USSR)
PR6 Information on Package Labels (USSR)
PR7 Road and Rail Tankers (France, Rumania)
PR8 Measuring Devices and Measuring Systems for Cryogenic Liquids (USA)
PR9 Gas Chromatographs for Measuring Pollution from Pesticides and toxic Substances (USA)
PR10 Gas Chromatographs Mass Spectrometer/Data System for Analysis of Organic Pollutants in Water (USA)
PR11 Heat Meters (West Germany)
PR12 Resistance-Thermometer Sensors Made of Platinum, Cooper or Nickel for Industrial and Commercial Use (USSR)
PR13 Automatic Measurement of the Level of Liquid in Fixed Storage Tanks (The Netherlands)
PR14 General Provisions for Volumetric Gas Meters (West Germany)
PR15 Diaphram Gas Meters (The Netherlands)
PR16 Rotary Piston Gas Meters and Turbine Gas Meters (West Germany)
PR17 Drum Meters for Alcohol and Supplementary Devices (West Germany)
PR18 Net Content in Packages (Switzerland)
PR19 Integrating-Averaging Sound Level Meters (Switzerland)
PR20 Electroencephalographs; Metrological Characteristics and Methods and Means of Verification (USSR)
PR21 Electrocardiographs; Metrological Characteristics and Methods and Means of Verification (USSR)
PR22 Measurement of the Speed of Vehicles by Radar Equipment (Switzerland)
PR23 Non-Automatic Weighing Instruments (France, West Germany)
PR24 Wood Moisture Meters (USSR)
PR25 Focimeters (Hungary)
PR26 Electronic Weighing Instruments (USA)

Date: July 14, 1988.

Ernest Ambler,

Director.

[FR Doc. 88-16440 Filed 7-20-88; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Marine Mammals; Modification Request; Sea Life Park, Inc. (P10D)

Notice is herby given that Sea Life Park, Inc., Makapuu Point, Waimanalo, Hawaii 96795, has requested a modification of Permit No. 629, issued on March 23, 1988 (52 FR 46315), under the authority of 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).

The Permit Holder was authorized to take and import four (4) false killer whales (*Pseudorca crassidens*) from Japan for permanent maintenance in a public display program. The Permit Holder is now requesting to modify that Permit to allow the taking to occur in Hawaiian waters.

Concurrent with the publication of this notice in the **Federal Register**, The Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Written data or views, or requests for a public hearing on this modification request 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 reason why a hearing on this particular modification request 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 request are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, Permit Division, 1825 Connecticut Avenue NW., Washington, DC; and
Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: July 15, 1988.

[FR Doc. 88-16359 Filed 7-20-88; 8:45 am]

BILLING CODE 3519-22-M

Marine Mammals; Issuance of Permit; Dr. Douglas Wartzok (P375A)

On April, 11, 1988, notice was published in the **Federal Register** (53 FR 11894) that an application had been filed by Dr. Douglas Wartzok, Professor and Chairman, Department of Biological Sciences, Purdue University, Fort Wayne, Indiana 46805-1499 to take Weddell seals (*Leptonychotes weddelli*) for scientific research.

Notice is hereby given that on July 15, 1988 as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1401), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Services, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and
Director, Northest Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs.

Date: July 15, 1988.

[FR Doc. 88-16411 Filed 7-20-88; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Request for Bilateral Consultations With the Government of Thailand To Review Trade in Category 369-D

July 15, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: July 22, 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); Bilateral Textile Agreement of July 27 and August 8, 1983.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textile 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 or call (202) 343–6581. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION: On June 30, 1988, the Government of the United States requested consultations with the Government of Thailand regarding cotton dish towels in Category 369–D, produced or manufactured in Thailand.

Pending a mutually satisfactory solution, the United States has decided to control imports of Category 369–D during the ninety-day consultation period. If no solution is reached the consultation period, the United States may establish a prorated limit for the period June 30, 1988 through December 31, 1988 at a level of 111,292 pounds.

A summary market statement concerning Category 369–D follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 369–D, under the agreement with Thailand, or in any other aspect thereof, or to comment on domestic production or availability of products included in the category, is invited to submit 10 copies of such comments or information to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Please be advised that imports of Category 369–D (cotton dishtowels) from Thailand are within Category 369–O (other than luggage), and will require a 369–O visa. The visa arrangement for this category will remain unchanged until a part-category visa for 369–D is agreed upon by both the United States and Thailand Governments.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement of the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 369–D. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the **Federal Register.**

A description of the 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, published on December 16, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Thailand—Market Statement

Category 369 Pt.—Cotton Dish Towels

June 1988

Summary and Conclusions

United States imports of cotton dish towels—Category 369 Pt.—from Thailand were 183 thousand pounds (133 thousand dozen) during the year ending March 1988, up 39 percent from the 132 thousand pounds (112 thousand dozen) imported a year earlier. During the first quarter of 1988, imports from Thailand reached 79 thousand pounds (52 thousand dozen), four times the amount imported during the first quarter of 1987.

The sharp and substantial increase of low-valued imports of Category 369 Pt. dish towels from Thailand is a real risk of market disruption.

Production and Market Share

U.S. production of cotton dish towels declined from 8.1 million dozens, in 1984 to 6.6 million in 1985, a decrease of 19 percent. Production in 1986 partially recovered, reaching 7.3 million dozen, but fell again in 1987 to a level of 6.2 million dozen, 15 percent below 1986 level and 23 percent below the 1984 level.

The U.S. producers' share of the market for domestically produced and imported dish towels declined in every year since 1984, falling from 54 percent in 1984 to 37 percent in 1987.

Imports and Import Penetration

U.S. imports of Category 369 Pt. dish towels from all sources have been on the rise since 1984, reaching a record level of 10.5 million dozen in 1987, an increase of 51 percent over the 1984 level. During the first three months of 1988, imports of cotton dish towels were up 13 percent over the comparable period in 1987.

The ratio of imports to domestic production doubled, increasing from 85 percent in 1984 to 169 percent in 1987.

Import Values

During the period January-March 1988, 72 percent of Thailand's Category 369 Pt. dish towel imports entered under TSUSA Nos 366.1720 and 366.2420—cotton terry dish towels. The duty-paid landed values of Category 369 Pt. dish towels from Thailand are well below the U.S. producers' prices for comparable dish towels.

Committee for the Implementation of Textile Agreements

July 15, 1988.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) and the Arrangement Regarding International Trade in Textiles done at Geneva on December 30, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27, 1983 and August 8, 1983, as amended and extended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 22, 1988, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the Category 369–D,[1] produced or manufactured in Thailand and exported during the ninety-day period which began on June 30, 1988 and extends through September 27, 1988, in excess of 64,219 pounds.[2]

Textile products in Category 369–D which have been exported to the United States prior to June 30, 1988 shall not be subject to this directive.

Textile products in Category 369–D which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Textile products in Category 369–D shall continue to require a "369–O" [3] visa.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls 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. 88–16396 Filed 7–20–88; 8:45 am]

BILLING CODE 3510–DR–M

[1] In Category 369–D, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[2] The limit has not been adjusted to account for any imports exported after June 29, 1988.

[3] In Category 369–O, all TSUSA numbers except 706.3210, 706.3650 and 706.4111 in Category 369–L.

Announcement of Request for Bilateral Textile Consultations With the Government of the United Arab Emirates

July 15, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Argicultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories on which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION: On June 27, 1988, the Government of the United States requested consultations with the Government of the United Arab Emirates regarding cotton and man-made fiber textile products in Categories 338/339, 340/640, 341/641 and 347/348, produced or manufactured in the United Arab Emirates.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the United Arab Emirates the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on June 27, 1988 and extends through June 26, 1989, at levels of 176,565 dozen (Categories 338/339), 157,919, dozen (Categories 340/640), 121,205 dozen (Categories 341/641) and 115,942 dozen (Categories 347/348).

Summary market statement concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of these categories, or to comment on domestic production or availability of products included in the categories, is invited to submit such comments or information in ten copies to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The United States remains committed to finding a solution concerning Categories 338/339, 340/640, 341/641 and 347/348. Should such a solution be reached in consultations with the Government of the United Arab Emirates, further notice will be published in the **Federal Register.**

A description of the 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, published on December 16, 1987).

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

United Arab Emirates—Market Statement

Men's and Boys', Women's and Girls' Cotton Knit Shirts and Blouses (Category 338/339)

June 1988

Summary and Conclusions

U.S. imports of cotton knit shirts and blouses (Category 338/339) from the United Arab Emirates increased steeply in 1987, and the rapid growth has continued unabated in 1988. Imports of Category 338/339 from the United Arab Emirates in the calendar year 1987 were 22 times the 1986 level. In January-March 1988, these imports were seven thousand times higher than the levels in the same period of 1987. The U.S. government regards with serious concern the alarming increase over a short period of time in a sensitive category of imports from an uncontrolled supplier.

Further, cotton knit shirts and blouses from the United Arab Emirates enter the U.S. market at an average price 66 percent below the price of domestically produced cotton knit shirts and blouses and on average 45 percent below the price of most foreign produced cotton knit shirts and blouses in the United States market.

The levels reached by U.S. imports of cotton knit shirts and blouses from the United Arab Emirates in the first three months of 1988 would, if maintained throughout the current year, reach an annualized level of nearly 580 thousand dozen. The U.S. market for these products has been disrupted. The sharp and substantial growth of imports of these products from the United Arab Emirates at prices 66 percent below the domestic price will contribute to this disruption, particularly if the annual level of imports reaches the annualized amount indicated by the first three months of data. At this level, United Arab Emirates' imports would equal or exceed the import limits for these products established with several major country suppliers which are participants in the Arrangement Regarding International Trade in Textiles (the MFA). The United Arab Emirates' duty-paid landed values are on average 45 percent below the duty-paid landed values of those MFA countries whose annual import limits would be equaled or exceeded by imports from the United Arab Emirates. The U.S. Government is concerned that rapidly rising imports from an uncontrolled non-MFA supplier will frustrate and undermine U.S. efforts to maintain orderly growth of imports through the bilateral agreements negotiated under the auspices of the MFA.

Import Penetration and Market Share

Between 1982 and 1987 U.S. production of cotton knit shirts and blouses remained relatively flat while imports more than doubled. The ratio of imports to domestic production in Category 338/339 increased to 133 percent in 1987, up from 60 percent in 1982. The U.S. manufacturers' share of this market declined by 20 percent points, dropping from 63 percent in 1982 to 43 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

The United Arab Emirates ships in twenty individual tariff product classifications in Category 338/339. The three TSUSA classifications in which the United Arab Emirates ships the majority of their 338/339 garments, representing 44 percent of their shipments during the first three months of 1988, are as follows: TSUSA number 381.4130—men's and boys' cotton knit shirts, excluding t-shirts, sweatshirts and tank tops, not ornamented; TSUSA number 384.2915—women's and girls' cotton knit T-Shirts, not ornamented; and TSUSA number 384.2950—women's cotton knit shirts, excluding T-shirts and sweatshirts, not ornamented. These garments entered the U.S. at duty-paid landed values on average 66 percent below U.S. producers' prices for comparable garments.

United Arab Emirates—Market Statement

Men's and Boys' Cotton and Man-Made Fiber Woven Shirts (Category 340/640)

June 1988

Summary and Conclusions

U.S. imports of men's and boys' cotton and man-made fiber woven shirts (Category 340/640) from the United Arab Emirates increased steeply in 1987, and the rapid growth has continued unabated in 1988. Imports of Category 340/640 from the United Arab Emirates in the calendar year 1987 were seven times the 1986 level. In January-March 1988, these imports were three times above the level in the same period of 1987. The U.S. government regards with serious concern the alarming increase over a short period of time in a sensitive category of imports from an uncontrolled supplier.

Further, men's and boys' cotton and man-made fiber woven shirts form the United Arab Emirates enter the U.S. market at an average price 64 percent below the price of

domestically produced men's and boys' cotton and man-made fiber woven shirts and on average 48 percent below the price of most foreign produced men's and boys' cotton and man-made fiber shirts in the United States market.

The levels reached by U.S. imports of men's and boys' cotton and man-made fiber woven shirts from the United Arab Emirates in the first three months of 1988 would, if maintained throughout the current year, reach an annualized level of 192 thousand dozen. The U.S. market for these products has been disrupted. The sharp and substantial growth of imports of these products from the United Arab Emirates at prices 64 percent below the domestic price will contribute to this disruption, particularly if the annual level of imports reaches the annualized amount indicated by the first three months of data. At this level, United Arab Emirates' imports would equal or exceed the import limits for these products established with several major country suppliers which are participants in the Arrangement Regarding International Trade in Textiles (the MFA). The United Arab Emirates' duty-paid landed values are on average 27 percent below the duty-paid landed values of those MFA countries whose annual import limits would be equaled or exceeded by imports from the United Arab Emirates. The U.S. Government is concerned that rapidly rising imports from an uncontrolled non-MFA supplier will frustrate and undermine U.S. efforts to maintain orderly growth of imports through the bilateral agreements negotiated under the auspices of the MFA.

Import Penetration and Market Share

Between 1982 and 1987 U.S. production of men's and boys' cotton and man-made fiber woven shirts remained relatively flat while imports increased by 38 percent. The ratio of imports to domestic production in Category 340/640 increased to 159 percent in 1987, up from 122 percent in 1982. The U.S. manufacturers' share of this market declined from 45 percent in 1982 to 39 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

Approximately 71 percent of Category 340/640 imports from the United Arab Emirates during the first three months of 1988 entered under TSUSA numbers 381.5650—men's cotton woven sport shirts, except those of corduroy, not ornamented; and 381.9540—men's and boys' man-made fiber woven dress shirts, other than those with two or more colors in the warp and/or the filling, not ornamented. These shirts entered the U.S. at landed duty-paid values on average 64 percent below U.S. producers' prices for comparable garments.

Market Statement

Women's and Girls' Cotton and Man-Made Fiber Woven Shirts and Blouses (Category 341/641)

United Arab Emirates—June 1988

Summary and Conclusions

U.S. imports of women's and girls' cotton and man-made fiber woven shirts and blouses (Category 341/641) from the United Arab Emirates increased steeply in 1987, and the rapid growth has continued unabated in 1988. Imports of Category 341/641 from the United Arab Emirates in the calendar year 1987 rose by more than three and one half times over the 1986 total. In January-March 1988, these imports were more than three times above the level in the same period of 1987. The U.S. government regards with serious concern the alarming increase over a short period of time in a sensitive category of imports from an uncontrolled supplier.

Further, women's and girls' cotton and man-made fiber woven shirts and blouses from the United Arab Emirates enter the U.S. market at an average price 74 percent below the price of domestically produced women's and girls' cotton and man-made fiber woven shirts and blouses and on average 61 percent below the price of most foreign produced women's and girls' cotton and man-made fiber woven shirts and blouses in the United States market.

The levels reached by U.S. imports of women's and girls' cotton and man-made fiber woven shirts and blouses from the United Arab Emirates in the first three months of 1988 would, if maintained throughout the current year, reach an annualized level of nearly 270 thousand dozen. The U.S. market for these products has been disrupted. The sharp and substantial growth of imports of these products from the United Arab Emirates at prices 74 percent below the domestic price will contribute to this disruption, particularly if the annual level of imports reaches the annualized amount indicated by the first three months of data. At this level, United Arab Emirates' imports would equal or exceed the import limits for these products established with several major country suppliers which are participants in the Arrangement Regarding International Trade in Textiles (the MFA). The United Arab Emirates' duty-paid landed values are on average 50 percent below the duty-paid landed values of those MFA countries whose annual import limits would be equaled or exceeded by imports from the United Arab Emirates. The U.S. Government is concerned that rapidly rising imports from an uncontrolled non-MFA supplier will frustrate and undermine U.S. efforts to maintain orderly growth of imports through the bilateral agreements negotiated under the auspices of the MFA.

Import Penetration and Market Share

Between 1982 and 1986 U.S. production of women's and girls' cotton and man-made fiber woven shirts and blouses remainded relatively flat while imports more than doubled reaching a record level in 1986. The ratio of imports to domestic production in Category 341/641 increased to 104 percent in 1986, up from 49 percent in 1982. The U.S. manufacturers' share of this market declined by 18 percentage points dropping from 67 percent in 1982 to 49 percent in 1986. In 1987, U.S. production dropped sharply failing 21 percent below the 1986 level to its lowest level in the decade. Imports in 1987 declined from their 1986 record level, but remained at the second highest level on record. The import to production ratio increased to 118 percent in 1987 as the U.S. manufacturers' share of the market fell to 46 percent.

Duty-Paid Value and U.S. Producers' Price

Approximately 72 percent of Category 341/641 imports from the United Arab Emirates during the first three months of 1988 entered under TSUSA numbers 384.4608—women's cotton woven blouses with two or more colors in the warp and/or the filing, not ornamented; 384.4614—women's cotton woven blouses, other than those of poplin, broadcloth and those with two or more colors in the warp and/or the filing, not ornamented; and 384.4616—girls' cotton woven blouses, other than those of poplin, broadcloth and those with two or more colors in the warp and/or the filing. These blouses entered the U.S. at duty-paid landed values on average 74 percent below U.S. producers' prices for comparable blouses.

United Arab Emirates—Market Statement

Men's and Boys', Women's and Girls' Cotton Trousers, Slacks and Shorts (Category 347/348)

June 1988

Summary and Conclusions

U.S. imports of cotton trousers, slacks and shorts (Category 347/348) from the United Arab Emirates increased sharply in 1987, and the rapid growth has continued unabated in 1988. Imports of Category 347/348 from the United Arab Emirates in the calendar year 1987 rose by 42 percent over the 1986 total. In January-March 1988, these imports were 78 times higher than the levels in the same period of 1987. The U.S. government regards with serious concern the alarming increase over a short period of time in a sensitive category of imports from an uncontrolled supplier.

Further, cotton trousers, slacks and shorts from the United Arab Emirates enter the U.S. market at an average price 70 percent below the price of domestically produced cotton trousers, slacks and shorts and on average 56 percent below the price of most foreign produced cotton trousers, slacks and shorts in the United States market.

The levels reached by U.S. imports of cotton trousers, slacks and shorts from the United Arab Emirates in the first three months of 1988 would, if maintained throughout the current year, reach an annualized level of nearly 400 thousand dozen. The U.S. market for these products has been disrupted. The sharp and substantial growth of imports of these products from the United Arab Emirates at prices 70 percent below the domestic price will contribute to this disruption, particularly if the annual level of imports reaches the annualized amount indicated by the first three months of data. At this level, United Arab Emirates' imports would equal or exceed the import limits for these products established with several major country suppliers which are participants in the Arrangement Regarding International Trade in Textiles (the MFA). The United Arab Emirates' duty-paid landed values are on average 44 percent below the duty-paid landed values of those MFA countries whose annual import limits would be equaled or exceeded by imports from the United Arab Emirates. The U.S. Government is concerned

that rapidly rising imports from an uncontrolled non-MFA supplier will frustrate and undermine U.S. efforts to maintain orderly growth of imports through the bilateral agreements negotiated under the auspices of the MFA.

Import Penetration and Market Share

Between 1982 and 1987 U.S. production of cotton trousers, slacks and shorts remained relatively flat while imports more than doubled. The ratio or imports to domestic production in Category 347/348 increased to 70 percent in 1987, up from 33 percent in 1982. The U.S. manufacturers' share of this market declined from 75 percent in 1982 to 59 percent in 1987.

Duty-Paid Value and U.S. Producers' Price

Approximately 65 percent of Category 347/348 imports from the United Arab Emirates during the first three months of 1988 entered under TSUSA number 384.4723—infants', other than infant boys over 24 months of age, cotton woven shorts, not ornamented and 384.4724—women's and girl's cotton woven shorts, not ornamented. These garments entered the U.S. at duty-paid landed values on average 70 percent below U.S. producers' prices for comparable garments.

[FR Doc. 88–16397 Filed 7–20–88; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Low Observable Technology

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Low Observable Technology scheduled for June 22–23, 1988 as published in the **Federal Register** (Vol. 53, No. 13, Page 1658, Thursday, January 21, 1988, FR Doc. 88–1124) will be held on August 24–25, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88–16432 Filed 7–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Low Observable Technology

ACTION: Cancellation of meeting.

SUMMARY: The meeting of the Defense Science Board Task Force on Low Observable Technology scheduled for May 4, 1988 as published in the **Federal Register** (Vol. 53, No. 13, Page 1658, Thursday, January 21, 1988, FR Doc. 88–1124) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88–16433 Filed 7–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Use of Commercial Components in Military Equipment

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Use of Commercial Components in Military Equipment will meet in open session on September 13, 1988 at TRW, Fairfax, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review issues concerning intellectual property, the domestic semiconductor industry, and issues as requested from industry.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88–16428 Filed 7–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board 1988 Summer Study on Countering Soviet Fire Support

ACTION: Change in date of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board 1988 Summer Study on Countering Soviet Fire Support scheduled for June 1–2, 1988 as published in the **Federal Register** (Vol. 53, No. 35, Page 5293, Tuesday, February 23, 1988, FR Doc. 88–3772) will be held on June 2–3, 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88–16429 Filed 7–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow-on Forces Attack

ACTION: Change in date/location of advisory committee meeting notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Follow-on Forces Attack scheduled for June 28, 1988 at the Pentagon, Arlington, Virginia as published in the **Federal Register** (Vol. 53, No. 100, Page 18595, Tuesday, May 24, 1988, FR Doc. 88–11615) will be held on July 6, 1988 at the BDM Corporation, Rosslyn, Virginia.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88–16430 Filed 7–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow-on Forces Attack (FOFA)

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Follow-on Forces Attack (FOFA) scheduled for April 11, 1988 as published in the **Federal Register** (Vol. 53, No. 35, Page 5294, Tuesday, February 23, 1988, FR Doc. 88–3774) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88–16431 Filed 7–20–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force To Review the Strategic Force Modernization Program

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force to Review the Strategic Force Modernization Program will meet in closed session on September 27–28, October 26–27, November 8–9, and December 7–8, 1988 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine strategic force modernization issues within the context of evolving Soviet threat capabilities, potential strategic arms control restraints, and an increasingly austere fiscal environment.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings,

concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 18, 1988.

[FR Doc. 88–16434 Filed 7–20–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Advanced Naval Warfare Concepts

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Advanced Naval Warfare Concepts will meet in closed session on September 23, 1988, at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine advanced naval warfare concepts and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 18, 1988.

[FR Doc. 88–16423 Filed 7–20–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Army Subgroup on Low Observable Technologies

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Army Subgroup on Low Observable Technologies will meet in closed session on September 8–9, 1988, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will examine and provide advice regarding Army activities in the area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 18, 1988.

[FR Doc. 88–16424 Filed 7–20–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board 1988 Summer Study on Assured Military Use of Space

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board 1988 Summer Study on Assured Military Use of Space scheduled for June 9–10, 1988 as published in the **Federal Register** (Vol. 53, No. 59, Page 9963, Monday, March 28, 1988, FR Doc. 88–6659.) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88–16425 Filed 7–20–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board 1988 Summer Study on Assured Military Use of Space

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board 1988 Summer Study on Assured Military Use of Space scheduled for July 12–13, 1988 as published in the **Federal Register** (Vol. 53, No. 35, Page 5393, Tuesday, February 23, 1988, FR Doc. 88–3771.) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88–16426 Filed 7–20–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board Task Force on Use of Commercial Components in Military Equipment—Revisit

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Force on Use of Commercial Components in Military Equipment—Revisit scheduled for June 17, 1988 as published in the **Federal Register** (Vol. 53, No. 105, Page 19985, Wednesday, June 1, 1988, FR Doc. 88–12299) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88–16427 Filed 7–20–88; 8:45 am]

BILLING CODE 3810–01–M

Membership of the Defense Contract Audit Agency (DCAA) Performance Review Boards

AGENCY: Defense Contract Audit Agency, DOD.

ACTION: Notice of Membership of the Defense Contract Audit Agency Performance Review Boards.

SUMMARY: This notice announces the appointment of the members of the Performance Review Boards (PRBs) of the Defense Contract Audit Agency (DCAA). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Performance Review Boards provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Director, DCAA, regarding final performance ratings and performance awards for DCAA SES members.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Coughlan, Personnel Management Specialist, Office of the Director of Personnel and Security, Defense Contract Audit Agency, Department of Defense, Cameron Station, Alexandria, Virginia, 202/274–5798.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of the executives who have been appointed to serve as members of the DCAA Performance Review Boards. They will serve one-year terms, effective upon publication of this notice.

Headquarters Performance Review Board

Mr. William Sharkey Assistant Director, Policy and Plans, Defense Contract Audit Agency, Chairperson

Mr. Roy Heidemann Assistant Director, Operations, Defense Contract Audit Agency, member

Mr. John van Santen Assistant Director, Resources, Defense Contract Audit Agency, member

Regional Performance Review Board

Mr. Bernard Topf Regional Director, Western, Defense Contract Audit Agency, Chairperson
Mr. Robert Hubbard Regional Director, Southwestern, Defense Contract Audit Agency, member
Mr. Robert Matter Regional Director, Northeastern, Defense Contract Audit Agency, member

Linda M. Bynum,

Alternate Office of the Secretary of Defense, Federal Liaison Officer, Department of Defense.

July 15, 1988.

[FR Doc. 88-16437 Filed 7-20-88; 8:45 am]

BILLING CODE 3801-01-M

Membership of the Office of the Secretary of Defense Performance Review Board

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, DoD Field Activities, the Organization of the Joint Chiefs of Staff, the U.S. Court of Military Appeals, the Strategic Defense Initiative Organization, U.S. Mission to NATO, Defense Advanced Research Projects Agency, Defense Investigative Service, and the Defense Security Assistance Agency. The publication of PRB membership is required by 5 U.S.C. 4314 (c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance and performance awards to the Secretary of Defense.

EFFECTIVE DATE: August 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Bobb, Chief, Senior Executive Service and Classification Division, Directorate for Personnel and Security, WHS, Office of the Secretary of Defense, Department of Defense, the Pentagon, (202) 697-8304.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314 (c)(4), the following executives are appointed to the OSD PRB; specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective August 1, 1988.

Office of the Secretary of Defense

Primary Members

Werner E. Michel, Chairman, Assistant To The Secretary of Defense (Intelligence Oversight)
Jordan E. Rizer, Director, American Forces Information Services
David J. Berteau, Deputy Assistant Secretary of Defense (Resource Management & Support)
Lenard G. Campbell, Director for Plans and Systems
Richard G. Howe, Director, Theater and Tactical C³I
John E. Mansfield, Director, Strategic Technology Office
Donald R. Greenlee, Deputy Director for Plans & Programs
John V. Bolino, Assistant Deputy Director for Test Facilities Resources
Charles R. Gentzel, Staff Specialist for Ground Air Defense Systems
Deborah P. Christie, Deputy Director, Theater Assessments and Planning
Robert L. Gilliat, Assistant General Counsel, Personnel and Health Policy
Cynthia Kendall, Deputy Director for Program and Financial Control
Frederick C. Smith, Principal Director, Policy Analysis
Thomas F. Garnett, Jr., Director for Workforce Relations, Training and Staffing Policy
Albert V. Conte, Deputy Assistant Secretary of Defense (Guard/Reserve Manpower and Personnel)
Anthony R. Grieco, Assistant Director, Electronic Combat Systems
John D. Martin, Special Advisor for International and Governmental Affairs
Gregory D. Hulcher, Assistant Deputy Under Secretary of Defense (Force Analysis Concepts and Plans)
Thomas F. Granahan, Clerk of the Court
Henry H. Gaffney, Jr., Director for Plans
Blair G. Ewing, Director for Management Improvement
William J. Sharkey, Jr., Director, Spares Program Management

Alternate Members

John L. Laughlin, Deputy Assistant Secretary of Defense (Guard/Reserve Program and Budget
Diane D. Fountaine, Director, Information Systems
Mick L. Blackledge, Assistant Director for Technology, KEWO
Claiborne D. Haughton, Jr., Director for Civilian Equal Opportunity Program
John E. Lynch, Economic Advisor
William M. McDonald, Director, Freedom of Information and Security Review
Thomas E. Ewald, Deputy Director, Investigations
Vincent D. Kern, II, Director, Africa Region
William Kahn, Director, Theatre Nuclear Forces Policy
George W. Bader, Principal Director, European and NATO Policy
John M. Russ, Deputy Assistant Secretary of Defense (Resources)
James W. Brooks, Jr., Director, Strategic Defensive and Theater Nuclear Forces Division
Arthur W. Pennington, Director, Naval Forces Division
John H. McNeill, Assistant General Counsel (International and Intelligence)
Paris Genalis, Staff Specialist for Research
Walter B. Bergmann, III, Director, Logistics Planning and Analysis
Michael J. Mestrovich, Director, Defense Medical Systems Support Center
Joanne D. Shuck, Director, Resource Management
Irving Bialick, Joint ADP/ Communications Integration Manager/Scientific and Technical Advisor
William T. Marquitz, Deputy Director, Technology Assessment and Long Range Planning Office
Thomas J. Welch, Deputy Assistant Secretary of Defense (Chemical Matters)
Karen A. Alderman, Director, Civilian Requirements and Analysis

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 18, 1988.

[FR Doc. 88-16438 Filed 7-20-88; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Technological and Operational Surprise

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Technological and Operational Surprise in the US-Soviet Military Competition will meet in closed session on September 15-16, 1988, at the DIAC Building, Bolling AFB, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will evaluate the potential for technological and operational surprise in the U.S.-Soviet military competition.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 (U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that

accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

July 18, 1988.

[FR Doc. 88-16435 Filed 7-20-88; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army, Corps of Engineers,

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Local Flood Protection Project for Petersburg, WV

AGENCY: US Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: .

1. *Proposed Action.* The Corps of engineers, acting as the Federal sponsor, and the local sponsor, the Interstate Commission on the Potomac River Basin (ICPRB), are examining alternative plans for local flood protection for Petersburg, West Virginia. Measures being considered included channel improvements and the construction of north and/or south bank levees along the South Branch Potomac River.

2. *Alternatives.* In the feasibility study, alternatives being considered include a combination of earth levees along one or both banks of the South Branch Potomac River and channel improvements in the vicinity of the Main Street Bridge. Depending on the level of protection, the earth levees may range from 5.5 to 12.5 feet high and may extend up to 13,000 feet. Channel improvements would consist of deepening and concrete lining of a reach of about 335 feet Appurtenant project features would include facilities for interior drainage, stream diverson for Johnson Run, and a number of closure structures.

3. *Scoping Process.* The proposed public education and involvement program is being organized through the local sponsor (ICPRB) and consists of coordination meetings and distribution of information to interested and affected agencies, groups, and individuals. Input to the impact analysis is being solicited through letter survey of relevant agencies and news releases to local publications. Major concerns anticipated include effects on local stream habitat as well as historical and archaeological resources. Efforts will be made to identify any and all such impacts and develop mitigation strategies. Agencies contacted include the U.S. Fish and Wildlife Service, the Environmental Protection Agency, the West Virginia Department of Natural Resources, and the West Virginia Department of Culture and History. The draft environmental impact statement is expected to be available to concerned agencies and the public for review and comment on October 1989.

4. *Address.* Questions about the project and the draft environmental impact statement can be answered by Mr. Larry J. Lower, Chief, Environmental Analysis Branch, CENAB-PL-E, P.O. Box 1715, Baltimore, Maryland 21203-1715 or Dr. Nancy Ehrlich, Interstate Commission on the Potomac River Basin, Suite 300, 6110 Executive Boulevard, Rockville, Maryland 20852-1908.

Bernard E. Stalmann,

Colonel, Corps of Engineers, Commanding.

Date: July 5, 1988.

[FR Doc. 88-16387 Filed 7-2-88; 8:45 am]

BILLING CODE 3710-41-M

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.019, 84.021, 84.022]

Grants Available, etc.: Fulbright-Hays Faculty Research Abroad Fellowship Program, etc.

AGENCY: Department of Education.

ACTION: Combined notice inviting applications under Fulbright-Hays training grant programs: faculty research abroad, group projects abroad, and doctoral dissertation research abroad for fiscal year 1989 new awards.

Purpose: Applications are invited for new awards under the Fulbright-Hays Training Grant Programs include the Faculty Research Abroad, Group Projects Abroad, and Doctoral Dissertation Research Abroad Programs. Authority for these programs is contained in the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2450(b)(6)).

The Faculty Research Abroad Program offers opportunities to faculty members of institutions of higher education for research and study abroad in modern foreign languages and area studies.

The Group Projects Abroad Program provides grants to educational institutions or nonprofit organizations for training, research, and study abroad in modern foreign languages and area studies by groups of individuals engaged in a common endeavor.

The Doctoral Dissertation Research Abroad Program provides opportunities for graduate students to engage in full-time dissertation research abroad in modern foreign languages and areas studies.

Deadline for Transmittal of Applications: October 31, 1988.

Applications Available: August 15, 1988.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.019, Faculty Research Abroad Program; 84.021, Group Projects Abroad Program; or 84.022, Doctoral Dissertation Research Abroad Program. 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretaryv does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Eligible Applicants: For the Faculty Research Abroad and Doctoral Dissertation Research Abroad Programs, eligible applicants are institutions of higher education.

For the Group Projects Abroad Program, eligible applicants include institutions of higher education, State departments of education, private nonprofit educational organizations, and

consortia of such institutions, departments, and organizations.

Priorities: The regulations governing the Faculty Research Abroad Program (34 CFR 663.32(c)), Group Projects Abroad Program (34 CFR 662.32(c)) provide for the establishment of funding priorities by the Secretary. For Fiscal Year 1989, the Secretary has established funding priorities for these Fulbright-Hays programs. These priorites will be applied in accordance with the provisions of the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.105(c)(3). All available funds for these programs will be reserved solely for applications that propose research and training focusing upon one or more of the following world areas: (1) Africa; (2) the Western Hemisphere; (3) East Asia; (4) Southeast Asia and the Pacific; (5) Eastern Europe and the U.S.S.R.; (6) the Near East; or (7) South Asia. Applications that propose projects focusing on Western Europe will not be funded.

FULBRIGHT-HAYS TRAINING GRANTS PROGRAMS

Title and CFDA Number	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Faculty Research Abroad (CFDA No. 84.019)	US $700,000	$8,000 to 60,000	$28,000	25	3 to 12
Group Projects Abroad (CFDA No. 84.021)	US $2,040,415, Rs. 4,500,000 [1].	20,000 to 200,000	55,000	38	1.5 to 12
Doctoral Dissertation Research Abroad (CFDA No. 84.022)	US $1,500,000, Rs. 1,545,920 [1].	4,000 to 50,000	17,500	95	6 to 12

[1] Rupee allocation from the U.S.-India Fund.

Applicable Regulations: Regulations applicable to these programs include the following:

(a) Regulations governing the Higher Education Programs in Modern Foreign Language Training and Area Studies, 34 CFR Parts 662, 663, and 664.

(b) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact: Mrs. Merion Kane (Faculty Research Abroad Program), Telephone (202) 732-3301; Dr. Stephney J. Keyser (Group Projects Abroad Program), 732-3394 or Mr. John Paul (Doctoral Dissertation Research Abroad Program), (202) 732-3298, Department of Education, Mail Stop 3308, 400 Maryland Avenue, SW., Washington, DC 20202.

Authority: 22 U.S.C. 2452(b)(6).

Dated: June 27, 1988.

Kenneth D. Whitehead,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 88-16395 Filed 7-20-88; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Conduct of Employees

Section 207(f), title 18, United States Code, authorizes the Secretary of Energy to waive the post-employment restrictions of subsection (a) of section 207, title 18, United States Code, to permit a former employee with outstanding scientific or technological qualifications to make appearances before or communications to the Department in connection with a particular matter which requires such qualifications, where it has been determined that such a waiver would serve the national interest.

It has been established to my satisfaction that Richard H. Kropschot, formerly Associate Director of the Office of Basic Energy Sciences in the Department of Energy's Office of Energy Research, has outstanding scientific and technological qualifications in the fields of physics, chemistry, and materials sciences, and extensive experience in management and administration of energy sciences research and development programs. I am further satisfied that it will serve the national interest to permit him, in his capacity as Associate Laboratory Director for Energy Sciences of Lawrence Berkeley Laboratory, to appear before and communicate with employees of the Department of Energy and other Government agencies with respect to the funding, operation, and management of energy sciences programs of the Laboratory. I am satisfied that these activities are in a scientific or technological field and require the qualification stated.

I have, therefore, waived the post-employment prohibitions of subsection (a) of section 207, title 18, United States Code, in consultation with the Director of the Office of Government Ethics, with respect to contact by Dr. Kropschot with employees of the Department of Energy and other Government agencies to permit him to undertake the stated activities.

Date: July 15, 1988.

John S. Herrington,

Secretary of Energy.

[FR Doc. 88-16466 Filed 7-20-88; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP88-45-000, RP88-46-000]

Arkla Energy Resources, a Division of Arkla, Inc.; Informal Settlement Conference

July 19, 1988

Take notice that an informal settlement conference will be convened in the above proceeding on August 2, 1988 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC for the purpose of continuing to explore the possible settlement of the above-referenced dockets, and in particular, the offer of settlement to be circulated by the applicant prior to that time.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact J. Carmen Castilo (202) 357-5737.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-16482 Filed 7-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-61-001]

Bayou Interstate Pipeline System; Supplement To Filing

July 19, 1988.

Take notice that on July 1, 1988, Bayou Interstate Pipeline System (Bayou) filed a supplement to its June 1, 1988 filing. The supplement included a Substitute Sixth Revised Sheet No. 4 and revised Exhibit B to be effective August 1, 1988.

Bayou state that, pursuant to Staff Request, its supplement relates to the Purchased Gas Cost Adjustment provision contained in section 15 of Bayou's tariff. A copy of the supplement is being mailed to Bayou's jurisdictional sales customer and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before August 8, 1988. 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. 88-16475 Filed 7-20-88; 8:45 a.m.]

BILLING CODE 6717-01-M

[Docket Nos. RP88-207-001 and RP87-55-005]

Columbia Gas Transmission Corp.; Correction To Filing

July 18, 1988.

Take notice that on July 8, 1988, Columbia Gas Transmission Corporation (Columbia) filed a Substitute Sixteenth Revised Sheet No. 16A2 to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective August 1, 1988.

Columbia states that this tariff sheet corrects Sixteenth Revised Sheet No. 16A2 previously filed on July 1, 1988. Columbia states that Sixteenth Revised Sheet No. 16A2 contained an inadvertent clerical error in that the proposed 5.33 cent per dth Order No. 500 volumetric surcharge was included in the derivation of the minimum commodity rates under Rate Schedules FTS and ITS.

Columbia states that a copy of this filing was sent to all parties which were served with its July 1, 1988 filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 25, 1988. 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. 88-16476 Filed 7-20-88; 8:45 a.m.]

BILLING CODE 6717-01-M

[Docket Nos. TQ88-2-23-000 et al.]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

July 18, 1988.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on July 8, 1988, certain revised and alternate revised tariff sheets included in Appendix A attached to the filing. Such sheets are proposed to be effective June 1, 1988 and August 1, 1988, respectively.

ESNG states that the reason for making the instant tariff filing is threefold. (1) ESNG is filing substitute revised tariff sheets proposed to be effective June 1, 1988 in a manner consistent with the Commission's order issued May 25, 1988 in ESNG's Docket No. TA88-2-23-000, *i.e.*, ESNG has removed from the Demand Charge 1 component of its sales rates Transco's fixed monthly charge for take-or-pay buyout/buydown costs of $65,191. (2) ESNG is filing revised tariff sheets proposed to be effective June 1, 1988 to properly reflect their correct pagination as a result of the Commission's action in Docket No. TA88-2-23-000 by letter order dated May 25, 1988. (3) ESNG is filing revised tariff sheets proposed to be effective August 1, 1988 in accordance with § 154.308 of the Commission's Regulations and pursuant to section 21 (Purchased Gas Adjustment Clause) of ESNG's FERC Gas Tariff to reflect changes in its jurisdictional rates due to a change in its projected average cost of gas.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before July 25, 1988. 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. 88-16477 Filed 7-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ88-2-34-000 and TQ88-2-34-001]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 18, 1988.

Take notice that on June 30, 1988, Florida Gas Transmission Company (FGT) tendered for filing the following tariff sheets to its FERC Gas Tariff, to be effective August 1, 1988.

FERC Gas Tariff, First Revised Volume No. 1

29th Revised Sheet No. 8

FERC Gas Tariff, Original Volume No. 2

51st Revised Sheet No. 128

On July 12, 1988, FGT submitted Substitute 29th Revised Sheet No. 8 correcting a typographical error that was originally submitted in its June 30, 1988 filing.

Reason for Filing

The above referenced tariff sheets are being filed in accordance with § 154.308 of the Commission's Regulations and pursuant to section 15 (Purchased Gas Adjustment Clause) of FGT's FERC Gas Tariff. First Revised Volume No. 1 to reflect a decrease in FGT's jurisdictional rates due to a decrease in its average cost of gas purchased from that reflected in its Quarterly PGA filing, Docket No. TQ88-1-34-000, effective June 1, 1988.

FGT states that the effect of the purchased gas cost reduction being filed

represents a decrease of .049¢/therm for Rate Schedules G and I and .02¢/Mcf for Rate Schedule T–3 as measured against FGT's Quarterly PGA filing in Docket No. TQ88–1–34–000, effective June 1, 1988.

FGT states that copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 2 and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 25, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–16478 Filed 7–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–2–008]

Northern Natural Gas Co., Division of Enron Corp.; Sale of Natural Gas

July 19, 1988.

Take notice that on July 8, 1988, Northern Natural Gas Company, Division of Enron Corp. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, submitted the following information regarding the sale of natural gas to be made to an affiliate under Northern's Rate Schedule ISS–2, pursuant to the authorization granted by order in Docket No. CP88–2–000 issued March 11, 1988 [42 FERC ¶ 61,303].

(1) Name of Buyer: Enron Gas Processing Company (EGP).

(2) Location of Buyer: Houston, Texas.

(3) Affiliation between Northern and Buyer: EGP is a subsidiary of Enron Corp.; Northern is a division of Enron Corp.

(4) Term of Sale: Through March 31, 1990.

(5) Estimated Total and Maximum Daily Quantities: Maximum Daily Quantity: 50,000 MMBtu. Estimated Total: 1 Bcf per month.

(6) Rate: $1.35/MMBtu.

Any interested party desiring to make any protest with reference to this sale of natural gas should file with the Federal Energy Regulatory Commission, Washington, DC 20426, within 30 days after issuance of the instant notice by the Commission, pursuant to the order of March 11, 1988. If no protest is filed within that time or the Commission denies the protest, the proposed sale may continue until the underlying contract expires. If a protest is filed, Northern may sell gas for 120 days from the date of commencement of service or until a termination order is issued, whichever is earlier.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–16480 Filed 7–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP88–239–000]

Questar Pipeline Co.; Informal Technical Conference

July 18, 1988.

Take notice that a conference will be convened in this proceeding on August 23, 1988, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC for the purpose of technical understanding of data submitted by applicant in the captioned proceeding. Any party as defined by 18 CFR 385.102(c) is invited to attend. For additional information, contact Charles Barrow (202) 357–9049.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88–16481 Filed 7–20–88; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–115–002]

Texas Gas Transmission Corp.; Filing of Revised Tariff Sheets

July 18, 1988.

Take notice that on July 11, 1988 Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

FERC Gas Tariff, Original Volume No. 1

Substitute Fifth Revised Sheet No. 1
Substitute Twelfth Revised Sheet No. 10
Substitute Twelfth Revised Sheet No. 10–A
Substitute Third Revised Sheet No. 76

FPC Gas Tariff, Original Volume No. 2

Substitute Eighth Revised Sheet No. 82
Substitute Twenty-Fourth Revised Sheet No. 333
Substitute Ninth Revised Sheet No. 547
Substitute Ninth Revised Sheet No. 919
Substitute Eleventh Revised Sheet No. 982
Substitute Ninth Revised Sheet No. 1005
Substitute Second Revised Sheet No. 1123

FERC Gas Tariff, Original Volume No. 2–A

Substitute Original Sheet No. 1
Substitute Original Sheet No. 11
Substitute Original Sheet No. 14
Substitute Original Sheet No. 20
Substitute Original Sheet No. 21
Substitute Original Sheet No. 22
Substitute Original Sheet No. 23
Substitute Original Sheet No. 24
Substitute Original Sheet No. 25
Substitute Original Sheet No. 26
Substitute Original Sheet No. 27
Substitute Original Sheet No. 28
Substitute Original Sheet No. 29
Substitute Original Sheet No. 30
Substitute Original Sheet No. 42
Substitute Original Sheet No. 43
Substitute Original Sheet No. 44
Substitute Original Sheet No. 45
Substitute Original Sheet No. 46
Substitute Original Sheet No. 47
Substitute Original Sheet No. 48
Substitute Original Sheet No. 49
Substitute Original Sheet No. 50
Substitute Original Sheet No. 80
Substitute Original Sheet No. 81
Substitute Original Sheet No. 82
Substitute Original Sheet No. 83
Substitute Original Sheet No. 91
Substitute Original Sheet No. 92
Substitute Original Sheet No. 94
Substitute Original Sheet No. 103
Substitute Original Sheet No. 110
Substitute Original Sheet No. 111
Substitute Original Sheet No. 113
Substitute Original Sheet No. 115
Substitute Original Sheet No. 119
Substitute Original Sheet No. 134

FERC Gas Tariff, Original Volume No. 3

Substitute First Revised Sheet No. 1
Substitute Third Revised Sheet No. 21
Substitute Fourth Revised Sheet No. 22

The revised tariff sheets are being filed pursuant to the "Order Rejecting and Accepting Tariff Sheets, For Filing, Subject to Refund and Conditions and Ordering Hearing" (Suspension Order) 43 FERC Para. 61,324, issued by the Commission on May 31, 1988, in Docket No. RP88–115–000.

Copies of the revised tariff sheets are being mailed to Texas Gas' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 2.11 and 2.14 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 July 25, 1988. 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. 88-16479 Filed 7-20-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-67-000 and RP88-81-000]

Texas Eastern Transmission Corp; Informal Settlement Conferences

July 19, 1988

Take notice that conferences will be convened in this proceeding on August 11 and September 26, 1988, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c) or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Dennis H. Melvin at (202) 357-8076.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 88-16483 Filed 7-20-88; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $28,348,738.50 (plus accrued interest) obtained as a result of a consent order which the DOE entered into with Exxon Corporation of Houston, Texas (Case No. KEF 0087). The fund will be available to customers who purchased refined petroleum products from Exxon during the period March 6, 1973 through January 27, 1981.

DATE AND ADDRESS: Applications for Refund of a portion of the consent order funds must be filed in duplicate no later than February 28, 1989 and should be addressed to: Exxon Corporation Refund Proceeding Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. KEF-0087.

FOR FURTHER INFORMATION CONTACT: Laurie Breslin, Staff Analyst, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4921.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a consent order entered into by the DOE and Exxon Corporation of Houston, Texas. The consent order settled possible violations of the Federal petroleum price and allocation violations with respect to the firm's operations during the period January 1, 1973 through January 27, 1981. On September 10, 1987, the Office of Hearings and Appeals issued a Proposed Decision and Order which tentatively established refund procedures and solicited comments from interested parties concerning the proper disposition of the consent order fund. 52 FR 35313 (September 18, 1987).

As the Decision and Order indicates, Applications for Refunds from the portion of the Exxon consent order fund available for distribution to purchasers of Exxon refined petroleum products may now be filed. Applications will be accepted provided they are filed no later than February 28, 1989. Applications will be accepted from customers who purchased refined petroleum products from Exxon during the period March 6, 1973 through January 27, 1981. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: July 14, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

July 14, 1988.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Exxon Corporation
Date of Filing: February 6, 1987
Case Number: KEF-0087

On February 6, 1987, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) filed with the Office of Hearings and Appeals (OHA) a Petition for the Implementation of Special Refund Procedures to distribute funds received from Exxon Corporation (Exxon) under the terms of an October 8, 1986 consent order between the DOE and Exxon. In accordance with the provisions of the procedural regulations at 10 CFR Part 205, Subpart V, the ERA requests in its Petition that the OHA establish special procedures to make refunds in order to remedy the effects of alleged regulatory violations which were settled by the Exxon consent order. On September 10, 1987, the OHA issued a Proposed Decision and Order (PDO) which tentatively set forth procedures for disbursement of the Exxon consent order fund. 52 FR 35313 (September 18, 1987). We provided a 30 day period for submission of comments regarding the proposed procedures. The present Decision will address comments in connection with the procedures proposed for disbursement of the portion of the Exxon fund allocated to purchasers of Exxon refined products and will set forth final procedures for distribution of the Exxon refined product pool.

Section I below summarizes the tentative procedures set forth in the PDO for distributing the Exxon refined product pool. Section II reviews and considers the comments we received regarding those procedures. Section III sets forth the final Exxon refund procedures applicable to parties claiming refunds based upon Exxon's alleged overcharges in sales of refined products. The Appendix to this Decision is a suggested application form that refund applicants may use. Applications for refund from the Exxon refined product pool must be postmarked by February 28, 1989.

I. Summary of Proposed Exxon Refund Procedures

As we stated in the PDO, Exxon is a major integrated refiner which produced and sold crude oil and a full range of refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR Part 150 and 10 CFR Parts 210, 211, and 212. During the price control period, the ERA conducted an extensive audit of Exxon's operations and alleged in several judicial and administrative proceedings that Exxon had violated certain applicable DOE price and allocation regulations in its sales of crude oil and refined petroleum products. Settlement discussions were held, and on October 8, 1986, the ERA and Exxon finalized a consent order (Consent Order No. REXL00201Z) that resolved issues pertaining to Exxon's crude oil and

refined petroleum product operations during the period January 1, 1973 through January 27, 1981 (the consent order period). Pursuant to the consent order, Exxon remitted a total of $37,798,318 (the consent order fund) [1] to the DOE for distribution through Subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution.

In the PDO, we noted that the Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of enforcement proceedings. We further stated that the DOE policy is to use the Subpart V process to distribute such funds. We therefore tentatively granted the ERA's petition and assumed jurisdiction over disbursement of the Exxon consent order fund.

Because the consent order resolves alleged violations involving both sales of crude oil and refined petroleum products, we proposed to divide the consent order fund into two pools. As we stated in the PDO, 25 percent of the alleged violations settled by the consent order concern Exxon's production and sales of crude oil. We therefore proposed that this same percentage of the Exxon principal, or $9,449,579.50, plus accrued interest, be set aside as a pool of crude oil funds available for disbursement. We further proposed that 75 percent of the principal contained in the Exxon escrow account, $28,348,738.50, plus interest accrued on that amount, be made available for distribution to purchasers of Exxon refined petroleum products who demonstrate that they were injured as a result of Exxon's alleged regulatory violations. It is this latter sum which is the subject of this Decision and Order.[2]

The PDO set forth the procedures under which purchasers of Exxon refined products could apply for refunds from the $28,348,738.50 pool apportioned to refined products. In this regard, we first presumed that the alleged overcharges were dispersed equally in all sales of refined product made by Exxon during the consent order period and that refunds should therefore be made on a pro-rata or volumetric basis. Under the volumetric refund approach, a claimant's allocable share of the refined product pool is equal to the number of gallons of covered products purchased during the consent order period times the per gallon refund amount. In the PDO, we tentatively set the per gallon refund amount at $0.0002419 per gallon. We derived this figure by dividing the consent order funds allocated to the Exxon refined product pool ($28,348,738.50) by the approximate number of gallons of covered products other than crude oil which Exxon sold from March 6, 1973, the date that Exxon became subject to the Federal price controls under Special Rule No. 1 (38 Fed. Reg. 6283 (March 8, 1973)), through the date of decontrol for the relevant product (117,185,000,000 gallons).

In accordance with prior Subpart V proceedings, we also proposed to adopt a number of presumptions regarding injury for certain categories of Exxon refined product purchasers. First, we tentatively adopted the presumption that an end-user or ultimate consumer of Exxon petroleum products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. We therefore proposed that end-users of Exxon refined petroleum products need only document their purchase volumes from Exxon during the consent order period to make a sufficient showing that they were injured by the alleged overcharges and to receive a full volumetric refund.

We also proposed that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement needs only to submit documentation of purchase volumes used by itself or, in the case of a cooperative, sold to its members. However, we stated that a regulated firm or cooperative will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of its receipt of the refund. This latter requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers through the operation of automatic adjustment mechanisms. Similarly, any refunds received would be passed through to its customers. With respect to a cooperative, in general, the cooperative agreements which control prices would ensure that the alleged overcharges and, similarly, refunds would be passed through to its member-customers.

We also tentatively adopted the presumption that a firm who resold Exxon products and requests a small refund was injured by the alleged regulatory violations. Under the proposed small claims presumption, a refiner, reseller, or retailer seeking a refund of $5,000 or less, exclusive of interest, would not be required to submit evidence of injury beyond documentation of the volume of Exxon covered products it purchased during the consent order period. As we have noted in numerous prior proceedings, there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; in some cases, that expense might possibly exceed the expected refund. Consequently, failure to allow simplified application procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable in that it allows the OHA to process the large number of routine refund claims expected in an efficient manner.

We also tentatively adopted a 40 percent presumptive level of injury for all medium-range claimants in this proceeding, whereby, in lieu of making a detailed showing of injury, a refiner, reseller, or retailer claimant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000. We stated that the us of this presumption reflects our conviction that these claimants were likely to have experienced some injury as a result of the alleged overcharges. We therefore tentatively determined to adopt the single general presumptive level of injury of 40 percent for all medium-range claimants, regardless of the refined products they purchased, based upon the analyses in prior proceedings, most notably in *Gulf Oil Corp.*, 16 DOE ¶ 85,381 (1987). Consequently, we proposed that an

[1] This amount consists of the principal consent order amount of $36,930,356 plus $867,962 in interest which accrued prior to Exxon's payment to the DOE.

[2] The final procedures for disbursing the Exxon crude oil refund pool were set forth in *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988).

applicant in this group would only be required to provide documentation of its purchase volumes of Exxon refined petroleum products during the consent order period in order to be eligible for a refund of 40 percent of its total allocable share.

II. Comments Regarding Distribution of the Exxon Refined Product Pool

The only comments we received concerning our proposed procedures for disbursement of the Exxon refined product pool were submitted by the Petroleum Marketers' Association of America (PMAA). In its comments, the PMAA expressed general support for the proposed procedures. However, it questioned the appropriateness of a general presumptive level of injury of 40 percent for all medium-range claimants, regardless of the products they purchased. Specifically, the PMAA suggests that we adopt higher presumptive levels of injury for medium-range refiner, reseller, and retailer purchasers of natural gas liquid products (NGLPs) and middle distillates as we did in *Getty Oil Co.*, 15 DOE ¶ 85,064 (1986).

The PMAA has not provided us with convincing reasons why we should abandon or revise the general presumptive level of injury tentatively adopted in the PDO. The analysis in the Getty special refund proceeding was largely based upon data specific to that proceeding. There is no evidence that the firm-specific data utilized in the Getty proceeding should have any bearing in the present case. Furthermore from an administrative standpoint, a single cross-the-board presumptive level of injury allows us to streamline the process of evaluation of the numerous applications expected. We will therefore adopt the 40 percent presumptive level of injury for all medium-range refiner, reseller, and retailer purchasers of Exxon covered products as proposed in the PDO.

The PMAA also urges that we allow all refund applicants to submit in support of their Applications yearly schedules of their purchase volumes of Exxon covered products instead of the monthly schedules which we have required in most prior proceedings. We are not persuaded that a blanket approval of the use of yearly purchase volume schedules is appropriate. In evaluating a refund application, we are willing to accept reasonable estimates of the applicant's purchase volumes. In those cases where an applicant submits estimates, submission of only an annual schedule masks certain factors which help us to determine the authenticity of the estimates, such as seasonal patterns in purchases. In such cases, it is clearly beneficial to be able to rely upon monthly figures. However, we will accept annual purchase volume data if submitted in a form that convinces us that the data is reasonably accurate, such as a computer printout of purchases provided by Exxon, or if submitted with supporting documentation.

Having considered these comments, we will assume jurisdiction over the Exxon consent order fund and will issue the final refund procedures applicable to refund claims from the Exxon refined product pool. These procedures are set forth in Section III below.

III. Refund Procedures for the Exxon Refined Product Pool

A. *Standards for Evaluation of Refined Product Refund Claims.* This Section sets forth the standards applicable to refund claims from the Exxon refined product pool by purchasers of Exxon products who demonstrate that they were injured by Exxon's alleged violations. From our experience with Subpart V proceedings, we expect that potential applicants will fall into the following categories of Exxon refined product purchasers: (i) End-users, i.e., ultimate consumers; (ii) regulated entities, such as public utilities or cooperatives; and (iii) refiners, resellers, and retailers.

In order to receive a refund, each claimant will be required to submit a schedule of its purchases of Exxon refined petroleum products during the consent order period. If the product was not purchased directly from Exxon, the claimant must provide a statement setting forth its reasons for maintaining that the product originated with Exxon.[3]

In addition, a refiner, reseller, or retailer claimant, except those who choose to utilize the injury presumptions set forth below, will be required to make a detail showing that it was injured by the alleged overcharges. This showing will generally consist of two distinct elements. First, the claimant will be required to show that it maintained "banks" of unrecouped increased product costs (banked costs) in excess of the refund claimed.[4] *See* 10 CFR 212.83(e) (refiners) and 212.93(e) (resellers and retailers). Second, because a showing of banks alone is not sufficient to establish injury, the claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom. Atlantic Richfield Co. v. DOE*, ¶ 618 F. Supp. 1199 (D. Del. 1985). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from Exxon. *Id., See also Allied Materials Corp./Great Plains Corp.*, 13 DOE ¶ 85,289 (1985).

1. *Presumptions for Claims Based upon Refined Product Purchases.* As discussed above and in the PDO, refunds will generally be made on a pro-rata lor volumetric basis.[5] In the present case, we expect an exceedingly large number of refund applications to be filed. As a result of our experience in previous special refund proceedings, especially those arising from global settlements with large refiners, we have decided to simplify the calculation of refunds by increasing the per gallon volumetric refund amount to $0.00025 (1/40th of a cent).[6]

We will also adopt the presumptions set forth in the PDO regarding injury for claimants in each category listed below. These presumptions will generally simplify the refund proces and will help to ensure that refund claims are evaluated in the most efficient and equitable manner possible.

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[3] Indirect purchasers who establish that the purchases originated with Exxon will be eligible for a refund unless the direct purchaser has filed a refund claim and established that it did not pass through the alleged Exxon overcharges to its customers. *Compare Southern Union Co./Union Carbide Corp.*, 16 DOE ¶ 85,026 (1987) (full refund to indirect purchaser) with *Resources Extraction & Processing Co./Mobil Oil Corp.*, 15 DOE ¶ 85,145 (1986), *reconsideration denied*, 15 DOE ¶ 85,334 (1987) (no refund to indirect purchaser). The level of the refund will depend on (i) whether the indirect purchaser falls within one of the classes of applicant whose injury is presumed, or demonstrates injury, and (ii) whether the intermediate supplier demonstrates that it absorbed a portion of the alleged overcharges.

[4] Claimants who have previously relied upon banked costs in order to receive refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See Husky Oil Co./Metro Oil Products, Inc.* 16 DOE ¶ 85,090 at 88.179 (1987).

[5] Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, we will allow any purchaser to file a refund application based upon a claim that an allocation on the basis of a specifically alleged overcharge amount should be used in considering its refund application. *See, e.g., Standard Oil Co. (Indiana)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

[6] This represents a 3% increase from $.0002419. *CF. Conoco Inc.*, 13 DOE ¶ 85.316 at 88.791 n. 6 (1985) (volumetric amount rounded to nearest 1/100 of a cent for the sake of simplicity of calculation). In addition, as in previous cases, we are establishing a minimum refund amount of $15.00. We have found through our experience that the cost of processing claims for amounts less than $15.00 outweighs the benefits of restitution in those instances. *See Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985).

a. *End-users.* In order to make a sufficient showing that they were injured as a result of Exxon's alleged overcharges, end-users of Exxon refined petroleum products need only document their purchase volumes from Exxon during the consent order period.[7]

b. *Regulated Firms and Cooperatives.* A claimant whose prices for goods and services are regulated by a government agency, e.g., a public utility, or by the terms of a cooperative agreement, will not be required to make a detailed demonstration of injury.[8] Such a claimant (i) must submit documentation of purchase volumes used by itself or, in the case of a cooperative, sold to its members; (ii) must certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution; and (iii) must certify that it will notify the appropriate regulatory body or membership group of its receipt of the refund.

c. *Refiners, Resellers, and Retailers Seeking Refunds of $5,000 or Less.* A refiner, reseller, or retailer seeking a refund of $5,000 or less, exclusive of interest (i.e., who purchased less than 20,000,000 gallons of Exxon refined petroleum products during the consent order period), will not be required to submit evidence of injury beyond documentation of the volume of Exxon refined petrolum products it purchased during the consent order period.

d. *Medium-Range Refiner, Reseller, and Retailer Claimants.* In lieu of making a detailed showing of injury, a refiner, reseller, or retailer claimant whose volumetric share exceeds $5,000 may elelct to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000.[9] These claimants will only be required to provide documentation of their purchase volumes of Exxon refined petroleum products during the consent order period.[10]

e. *Spot Purchasers.* We also are adopting the rebuttable presumption that a refiner, reseller, or retailer who made only spot purchases from Exxon did not suffer injury as a result of these purchases.[11] Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Exxon. In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. *See Quaker State Oil Refining Corp./Certified Gasoline Co.*, 14 DOE ¶ 85,465 (1986).

f. *Consignees.* A consignee agent is a firm that distributed covered products pursuant to a contractual agreement with a refiner, under which the refiner retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based upon the volume of covered products it distributed. 10 CFR 212.31 (definition of "consignee agent"). We are adopting our proposed rebuttable presumption that consignees of Exxon refined petroleum products were not injured as a result of their arrangement with their refiner/supplier. *See, e.g., Jay Oil Co.*, 16 DOE ¶ 85,147 (1987). However, a consignee may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the consent order firm's] practices." *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 at 88,962 (1986).

2. *Allocation Claims.* We also recognize that we may receive claims based upon Exxon's alleged failure to furnish petroleum products that it was obliged to supply to the claimant under the DOE allocation regulations. *See* 10 CFR Part 211. We will evaluate refund applications based upon allocation claims by referring to the standards set forth in Decisions such as *Standard Oil Co. (Indiana)*, 10 DOE ¶ 85,048 at 88,220 (1982), and *Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984). Under those standards an allocation claimant first must demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR Part 211. Secondly, the claimant must provide evidence that it contemporaneously notified the DOE about, or otherwise sought redress from the alleged allocation violation. Finally, it must establish that it was injured and document the extent of the injury.

B. *Refund Application Requirements.* We will not accept Applications for Refund from purchasers of refined petroleum products sold by Exxon between March 6, 1973 and January 27, 1981. There is no specific application form that must be used. However, a suggested format for Exxon Applications for Refund is set forth in the Appendix to this Decision. Retailer applicants using the suggested format must file a separate form (with supporting schedules) for *each* retail station for which a refund is requested. All Applications for Refund must contain the following information:

(1) A conspicuous reference to "Exxon Refund Proceeding—Case No. KEF-0087" and the name and address of the applicant during the period for which the claim is filed, as well as the name to whom the refund check should be made out and the address to which the check should be sent.

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the Application.

(3) The manner in which the applicant used the Exxon product e.g., whether the applicant is a refiner, petroleum jobber, gas station, consumer, consignee agent, public utility, or cooperative.

(4) Monthly schedules of the applicant's purchases of each refined petroleum product that it purchased from Exxon from March 6, 1973 through the date of decontrol of that product (see p. 3 of suggested application form). The applicant must indicate the source of this volume information and, if

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[7] A firm that purchased products from Exxon for use as fuel or raw materials in business operations that were subjected to the DOE regulations will be treated as refiner, reseller, or retailer, as applicable. *See Seminole Refining, Inc.*, 12 DOE ¶ 85,188 at 88,576 (1985); *National Helium Corp./Formland Industries*, 11 DOE ¶ 85,257 at 88,472 (1984).

[8] A cooperative's sales to non-members will be treated in the same manner as sales by other resellers. *See Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,515 (1986).

[9] That is, claimants who purchased between 20,000,000 gallons and 500,000,000 gallons of Exxon refined petroleum products during the consent order period (medium-range claimants) may elect to utilize this presumption. Claimants who purchased more than 500,000,000 gallons may elect to limit their claim to $50,000.

[10] A claimant who makes a detailed demonstration of injury will be eligible to receive a refund equal to its full allocable share. However, a claimant who attempts to make a detailed showing of injury, but instead provides evidence that leads us to conclude that it passed through all of the alleged overcharges will receive no refund. If we conclude that claimant who attempts to prove injury absorbed some of the alleged overcharges, we will grant a partial refund based upon the extent of the injury shown and not the $5,000 or 40 percent presumptions. *See Union Texas Petroleum Corp./Arrow Enterprises, Inc.*, 15 DOE ¶ 85,087 (1986); *Quaker State Oil Refining Corp./Campbell Oil Co.*, 15 DOE ¶ 85,089 (1986).

[11] As we have previously stated, spot purchasers tend to have considerable discretion as to the timing and market in which to make purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981).

estimates were used, the estimation method must be explained. Alternatively, the applicant may submit yearly schedules that are (i) convincingly accurate on their face (such as computer printouts provided by Exxon), or (ii) accompanied by adequate supporting documentation.

(5) If the applicant was supplied directly by Exxon, it must provide its Exxon customer number. If the applicant was an indirect purchaser, it must submit the name and address of its immediate supplier and indicate why it believes that the covered product was originally sold by Exxon.

(6) If the applicant is a refiner, reseller, or retailer whose volumetric share exceeds $5,000, it must indicate whether it elects to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000. If it does not elect to use the presumptions, it must submit a detailed showing that it was injured by the alleged overcharges. *See* Part IIIA, *supra*.

(7) A statement whether it or a related firm has filed, or authorized any individual to file on its behalf any other refund application in the Exxon proceeding, and if so, an explanation of the circumstances surrounding that filing or authorization.

(8) If the applicant is or was entirely or partly owned by Exxon, it must explain the nature of the affiliation.

(9) If the applicant has been involved in an enforcement proceeding brought by DOE or private action under section 210 of the Economic Stabilization Act of 1970, it should describe the action and its current status. If the applicant was a party to any such action which is no longer pending, it should indicate how the proceeding was resolved. The applicant must keep the OHA informed of any change in status during the pendency of its Application for Refund.

(10) The Application should also contain the following statement signed by the individual aplicant or a responsible official of the business or organization applying for a refund: "I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room."

All Applications should be sent to: Exxon Corporation Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All Applications must be filed in duplicate and postmarked by no later than February 28, 1989. Any applicant who believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application with the confidential information deleted, together with a statement specifying why the information is confidential.

C. *Distribution of Funds Remaining after First Stage.* Any funds that remain after all first stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C.A. 4501–4507. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODRA Section 4502. The Secretary has delegated these responsibilities to the OHA, and any funds in the Exxon consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured Exxon customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

(1) Applications for refined product refunds from the fund remitted to the Department of Energy by Exxon Corporation pursuant to the consent order executed on October 8, 1986 may now be filed.

(2) Application for Refund from the Exxon Corporation refined product refund pool must be filed by no later than February 28, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: July 14, 1988.

BILLING CODE 6450-01-M

Suggested Format for Application for EXXON Refund -- KEF-0087

RF 307 -

DOE use only

1. Name of Applicant during refund period (3/73-1/81): _____

Address during refund period: _____

_____

_____

2. To whom should refund check be payable? _____

Address to which check should be sent: _____

_____

_____

Contact Person: _____

Telephone No.: ( ) _____

3. Type of Applicant:

Gas Station____ Consumer____ Consignee Agent____ Petroleum Jobber____ Public Utility____

Cooperative____ Other_____
(please specify)

4. (a) Total gallonage for which refund is requested: _____
(Enter total gallons here)

(b) Product(s) (e.g., gasoline, propane): _____

(c) Source of your gallonage information: _____

(If estimates, explain method on separate sheet.)

5. If you are a petroleum marketer (refiner, reseller, or retailer) and the total Exxon refund requested by your firm and all affiliated entities exceeds $5,000, do you elect the 40 percent presumption of injury method or $5,000 (whichever is greater) (See Questions & Answers 6-8)?

Yes ☐ No ☐ Not Applicable ☐

If you do not elect either the $5,000 small claims amount or the 40 percent presumption of injury method, or if you are requesting a refund greater than $50,000, attach the required "injury" showing. (See the Decision & Order for details on the injury showing required.)

(Check One)

6. Was the product you bought Exxon-branded? Yes ❑ No ❑

7. Were you supplied by Exxon directly? Yes ❑ No ❑

If yes, please provide Exxon customer number here_____. If no, (i)attach an explanation of why you believe the product was sold by Exxon and (ii)include the name and address of the person or firm from which you purchased the product.

8. Is (was) your business owned all or in part by Exxon? If yes, please explain. Yes ❑ No ❑

9. Have you been a party or are you currently a party in a DOE enforcement action or private Section 210 action? (See Q & A No. 4) If yes, please attach an explanation. Yes ❑ No ❑

10. Have you or a related firm filed any other application for refund involving any Exxon product in this proceeding? If yes, attach an explanation. Yes ❑ No ❑

11. Have you or a related firm authorized any individual(s) other than those identified on this form to file an application on your behalf in this Exxon refund proceeding? If yes, attach an explanation. Yes ❑ No ❑

12. Were you an Exxon consignee agent? (See Q & A No. 13) Yes ❑ No ❑
If yes, attach information sufficient to rebut the presumption of non-injury for consignees (See Decision for details.)

13. Did ownership of your firm change during or since the refund period? Yes ❑ No ❑
If you answered yes, please provide an explanation that includes the names and addresses of any previous or subsequent owners.

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a jail sentence, a fine, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

_____
Date

_____
Signature of Applicant

_____
Title

SCHEDULE OF PURCHASES

NOTE: YOU DO NOT NEED TO COMPLETE THIS PAGE IF YOU ATTACH THE PURCHASE VOLUME SCHEDULE PROVIDED BY EXXON.

Name of Applicant: _____ RF307-

MONTHLY PURCHASE VOLUMES OF _____
(PRODUCT)

	1973	1974	1975	1976	1977	1978	1979	1980	1981
January	*******	_____	_____	_____	_____	_____	_____	_____	_____
February	*******	_____	_____	_____	_____	_____	_____	_____	*******
March	_____	_____	_____	_____	_____	_____	_____	_____	*******
April	_____	_____	_____	_____	_____	_____	_____	_____	*******
May	_____	_____	_____	_____	_____	_____	_____	_____	*******
June	_____	_____	_____	_____	_____	_____	_____	_____	*******
July	_____	_____	_____	_____	_____	_____	_____	_____	*******
August	_____	_____	_____	_____	_____	_____	_____	_____	*******
September	_____	_____	_____	_____	_____	_____	_____	_____	*******
October	_____	_____	_____	_____	_____	_____	_____	_____	*******
November	_____	_____	_____	_____	_____	_____	_____	_____	*******
December	_____	_____	_____	_____	_____	_____	_____	_____	*******
Yearly Total	_____	_____	_____	_____	_____	_____	_____	_____	_____

TOTAL FOR THIS PRODUCT: _____ GALLONS

Claims for less than $15.00 will not be processed (60,000 gallons total purchases).

✔ **Do not include any purchases of product on or after that product's date of decontrol. (See below for decontrol dates)**

Product	Date Decontrolled	Product	Date Decontrolled
Motor Gasoline, Propane	January 28, 1981	Diesel Fuel, Kerosene	July 1, 1976
Butane and Natural Gasoline	January 1, 1980	No. 1 and No. 2 Heating Oil	July 1, 1976
Aviation Gas and Jet Fuel	February 26, 1979	Residual Fuel	June 1, 1976
Naphtha-Based Jet Fuel	October 1, 1976	Ethane and Asphalt	April 1, 1974
Naphthas	September 1, 1976		

[FR Doc. 88-16465 Filed 7-20-88; 8:45 am]
BILLING CODE 6450-01-C

ENVIRONMENTAL PROTECTION AGENCY

[FRL-34128-1]

Grants; Availability and Review of New Financial Assistance Program; Water Pollution Revolving Fund

AGENCY: Environmental Protection Agency.

ACTION: Notrice of availability and review.

SUMMARY: The Environmental Protection Agency (EPA) announces the availability of a new financial assistance program (Catalogue of Domestic Federal Assistance # 66.458). Under this assistance program, States that establish water pollution control revolving fund (SRF) programs in accordance with the requirements of Title VI of the Clean Water Act (CWA) (33 U.S.C. 1381 *et. seq.*), are eligible to receive grants from EPA for the capitalization of SRFs.

In fiscal years 1987 through 1990, States may request a capitalization grant from allotments available to be awarded as construction grants under Title II of the CWA (33 U.S.C. 1281–1299), by submitting a Notice of Intent to the appropriate Regional Administrator by July 3 of the preceding fiscal year. For fiscal year 1987, the amount requested may not exceed 50 percent of the State's Title II allotment. For fiscal year 1988, the amount requested may not exceed 75 percent of the State's Title II allotment. Separate authorizations under Title VI for capitalization grants begin in fiscal year 1989 and continue through fiscal year 1994. Capitalization grants are available for obligation to the States in the year of allotment and during the following fiscal year.

FOR FURTHER INFORMATION CONTACT: EPA Regionaql SRF Coordinators:

Region I: Larry Brill, Water Management Division, US EPA Room 2203, John F. Kennedy Federal Building, Boston, MA 02203 (617/565–3560).

Region II: Leslie Peterson, Water Management Division, US EPA 26 Federal Plaza, New York, NY 10278 (212/264–3279).

Region III: Lee Murphy, Water Management Division, US EPA, 841 Chestnut Street, Philadelphia, PA 19107 (214/5497–3847).

Region IV: John Hagan, Water Management Division, US EPA, 345 Courtland Street, NE., Atlanta, GA 30365 (404/347–3633).

Region V: John Kelley, Water Division, US EPA, 230 South Dearborn Street, Chicago, IL 60604 (312/353–2123).

Region VI: John Cernero, Water Management Division, US EPA, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202 (214/655–7110).

Region VII: Rosalie Minor, Water Management Division, US EPA, 726 Minnesota Avenue, Kansas City, KS 66101 (913/236–2813).

Region VIII: Harvey Hormberg, Water Management Division, US EPA, 999 18th Street, Suite 500, Denver, CO 809202–2405 (303/293–1545).

Region IX: Mike Muse, Water Management Division, US EPA, 215 Fremont Street, San Francisco, CA 94105 (415/974–8313).

Region X: Kathy Veit, Water Division, US EPA, 1200 Sixth Avenue, Seattle, WA 98101 (206/442/2728).

SUPPLEMENTARY INFORMATION: Section 601(a) of the CWA authorizes the Administrator of the EPA to make capitalization grants to States for deposit in State Water Pollution Control Revolving Funds (SRFs). From these Funds, States can provide loans and other types of financial assistance, but not grants, to communities and intermunicipal and interstate agencies for the construction of publicly-owned wastewater treatment facilities, and for implementation of nonpoint source management programs and development and implementation of plans under the new estuary protection program.

Congress created the SRF capitalization grant program to facilitate the establishment of permanent institutions in each State that would provide continuing sources of financing needed to maintain water quality. The SRF capitalization grant program is fundamentally different from the established construction grant program. In the existing grant program, EPA is ultimately responsibile for awarding construction grants, with the States managing the projects on a day-to-day basis. In the capitalization grant program, the States have the responsibility for SRF operations, and provide assistance from State SRF funds for construction. Each SRF is to be primarily State-designed and operated, with minimal Federal requirements beyond those in Federal law imposed on its structure.

To bring about an effective transition from an EPA focused grant program to a State operated loan program, States and Regional Offices are encouraged to work closely to develop an application that effectively addresses all the critical areas of the new SRF program.

The SRF progrtam is eligible for intergovernmental review under Executive Order 12372 and is subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. The State must notify the following office in writing within 30 days of this publication whether applications to this program are subject to the State's official Executive Order 12372 review process: Grants Policy and Procedure Branch, Grants Administration Division (PM–216F), U.S. Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460.

Applicants must contact their State's Single Point of Contact (SPOC) for intergovernmental review as early as possible to find out whether capitalization grant applications (CFDA # 66.458) are subject to the State's official Executive Order review process and what material must be submitted to the SPOC for review. SPOCS and other reviewers should send their comments concerning applications to the appropriate Regional SRF Coordinator no later than 60 days after receipt of an application and other required material for review.

Date: July 7, 1988.

William A Whittington,

Acting Assistant Administrator for Water.

[FR Doc. 88–16406 Filed 7–20–88; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44513; FRL–3418–3]

Toxic Substances Control Act; Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on the C9 aromatic hydrocarbon fraction and on ortho-cresol (CAS No. 95–48–7), meta-cresol (CAS No. 108–39–4), and para-cresol (CAS No. 106–44–5), submitted pursuant to final test rules under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received.

I. Test Data Submissions

A. C9 Aromatic Hydrocarbon Fraction

Test data for the C9 aromatic hydrocarbon fraction was submitted by the American Petroleum Institute pursuant to a test rule at 40 CFR 799.2175. It was received by EPA on July 5, 1988. The submission describes an inhalation developmental toxicity study in mice with C9 aromatic hydrocarbon fraction. Developmental toxicity testing is required by this test rule. This chemical is used in solvents, components of solvents and in gasoline blending.

B. Cresols

Test data for ortho-, meta-, and para-cresol were submitted by the Cresols Program Panel of the Chemical Manufacturers Association pursuant to a test rule at 40 CFR 799.1250. The data were received by EPA on July 7, 1988.

The submissions describe: (1) Mutagenicity tests on para-, ortho- and meta-cresol in an *in vitro* cytogenetic assay measuring chromosomal aberration frequencies in Chinese hamster ovary (CHO) cells; (2) a mutagenicity test on meta-cresol in a rat primary hepatocyte unscheduled DNA synthesis assay; (3) mutagenicity tests on para- and meta-cresol in a mouse lymphoma mutation assay; (4) mutagenicity tests on meta- and para-cresol in the *in vitro* transformation of BALB/C–3T3 cells assay; (5) developmental toxicity evaluations of ortho-, meta-, or para-cresol administered by gavage to New Zealand white rabbit and to Sprague-Dawley (CD) rates; and (6) an analytical chemistry cresols report in support of *in vitro* genetic toxicology assessment of ortho-, meta- and para-cresol.

Cresols are used as wire enamel solvents, automotive cleaners, and organic intermediates in manufacturing phenolic resins and phosphate esters. Additional uses of either individual isomers or mixtures are: in the production of several herbicides and disinfectants; as cleaning compounds, degreasers and antioxidants; and in ore flotation.

EPA has initiated its review and evaluation process for this data submission. At this time, the Agency is unable to provide any determination as to the submission's completeness.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS–44513). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: July 12, 1988.

Richard Troast,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 88–16410 Filed 7–20–88; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

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 the 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.: 224–200141.

Title: Port of Portland Terminal Use Agreement.

Parties:

Port of Portland

Kawasaki Kisen Kaisha, Ltd. (K Line)

Synopsis: The agreement provides for the preferential use of berth, cranes and container yard area at Terminal 6. K Line guarantees the Port a minimum annual throughput of containers and will pay a set per container wharfage and dockage rate.

Agreement No.: 224–2000142.

Title: Port of Portland Terminal Use Agreement.

Parties:

Port of Portland

Hyundai Merchant Marine Co., Ltd. (Hyundai)

Synopisis: The agreement provides for the preferential use of (1) a container yard area located at Terminal 6, (2) one vessel berth and (3) two container cranes. Hyundai guarantees the Port a minimum annual throughput of containers and will pay a set per container wharfage and dockage rate.

By Order of the Federal Maritime Commission.

Dated: July 18, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–16458 Filed 7–20–88; 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: Extension of comment period.

SUMMARY: On April 5, 1988, the Board requested public 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. 53 FR 11,911 (Apr. 11, 1988). The Secretary of the Board, acting pursuant to delegated authority, 12 CFR 262.2(a)(6), has extended the comment period for 120 days.

DATE: Comments must be received by December 1, 1988.

FOR FURTHER INFORMATION CONTACT: Elliott C. McEntee, Associate Director (202–452–2231), Louise L. Roseman, Associate Director (202–452–2789), Thomas C. Luck, Senior Analyst (202–452–3935), Division of Federal Reserve Bank Operations; Joseph R. Alexander, Senior Attorney (202–452–2489), Legal Division; or for the hearing impaired *only*: Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson (202–452–3544).

By order of the Secretary of the Board, acting pursuant to delegated authority, 12 CFR 265.2(a)(6), July 15, 1988.

William W. Wiles,

Secretary of the Board.

[FR Doc. 88–16371 Filed 7–20–88; 8:45 am]

BILLING CODE 6210–01–M

First Decatur Bancshares, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or

through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 12, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Decatur Bancshares, Inc.*, Decatur, Illinois; to engage *de novo* through its subsidiary, First Tech, Inc., Decatur, Illinois, in data processing activities pursuant to § 225.25(b)(7); and courier services pursuant to § 225.25(b)(10) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 15, 1988.

James McAfee,

Associate Secretary to the Board.

[FR Doc. 88–16372 Filed 7–20–88; 8:45 am]

BILLING CODE 6210–01–M

First Wisconsin Corp. et al., Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the Offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 12, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Metropolitan Bank Group, Inc., Bloomington, Minnesota, and thereby indirectly acquire MetroBank, Bloomington, Minnesota.

2. *Sullivan Bancshares, Inc.*, Sullivan, Illinois; to become a bank holding company by acquiring 97 percent of the voting shares of First National Bank of Sullivan, Sulivan, Illinois. Comments on this application must received by August 10, 1988.

3. *Presidential Holdings, Inc.*, Bourbounnais, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Bourbonnais, Bourbonnais, Illinois.

4. *F.W.S.B. Corporation*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Metropolitan Bank Group, Inc., Bloomington, Minnesota, and thereby indirectly acquire MetroBank, Bloomington, Minnesota.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Cattleman's Bancshares, Inc.*, Gordon, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Gordon, Gordon, Texas. Comments on this application must be received by August 5, 1988;

Board of Governors of the Federal Reserve System, July 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–16373 Filed 7–20–88; 8:45 am]

BILLING CODE 6210–01–M

Jackson County Bancorp Inc.; Formation of; Acquisitions by; and Mergers of Bank Holding Companies; Corrections.

This notice corrects a previous **Federal Register** notice (FR Doc. 88–15425) published at page 26116 of the issue for Monday, July 11, 1988.

Under the Federal Reserve Bank of Kansas City, the first entry, for *IV Corporate Woods Acquisition, Inc.*, is revised to read as follows:

1. *Fourth Financial Corporation*, Wichita, Kansas; to acquire Corporate Bankshares, Inc., Overland Park, Kansas, and thereby indirectly acquire Corporate Woods State Bank, Overland Park, Kansas.

In connection with this application, IV Corporate Woods Acquisition, Inc., Wichita, Kansas, has applied to become a bank holding company by merging with Corporate Bankshares, Inc.

Comments on this application must be received by July 29, 1988.

Board of Governors of the Federal Reserve System, July 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–16376 Filed 7–20–88; 8:45am]

BILLING CODE 6210–01–M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 5, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *David B. Lilly, Jr.*, Middleburg, Virginia; to acquire up to 18.3 percent of the voting shares of Harvest Bancorp, Inc., Hamilton, Virginia, and thereby indirectly acquire The Farmers & Merchants National Bank of Hamilton, Hamilton, Virginia.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *A. Andrew Boemi* and Flora Boemi; Andrew A. Boemi and Pamela L. Boemi; and Edwin Cee Buchanan and Marcia Buchanan; to acquire 13.98 percent of the voting shares of Madison Financial Corporation, Chicago, Illinois, and thereby indirectly acquire Madison Bank and Trust Company, Chicago, Illinois; Madison National Bank of Niles, Des Plaines, Illinois; and 1st National Bank of Wheeling, Wheeling, Illinois.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Thomas J. Sexton*, St. Paul, Minnesota, to acquire 30 percent; Dennis J. Zaun, St. Cloud, Minnesota, to acquire 30 percent; James H. Lehr, Ottertail, Minnesota, to acquire 20 percent; and Gary Davis, Wadena, Minnesota, to acquire 20 percent of the voting shares of Yellow Medicine Bancshares Inc., Granite Falls, Minnesota, and thereby indirectly acquire Yellow Medicine County Bank, Granite Falls, Minnesota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Russell Moore*, Albuquerque, New Mexico, as trustee for Banco de Vizcaya, Bilbao, Spain; to acquire 42 percent of the voting shares of New Mexico Banquest Investors Corporation, Santa Fe, New Mexico, and thereby indirectly acquire New Mexico Banquest Corporation, Santa Fe, New Mexico, and thereby indirectly acquire Banquest National Bank, Albuquerque, New Mexico; The First National Bank of Santa Fe, Santa Fe, New Mexico; and Banquest/First State Bank of Taos, Taos, New Mexico.

Board of Governors of the Federal Reserve System, July 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-16374 Filed 7-20-88; 8:45 am]

BILLING CODE 6210-01-M

Alan S. Fellheimer, et al; Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Collection

This notice corrects a previous **Federal Register** notice (FR Doc. 88-15424) published at page 26116 of the issue for Monday, July 11, 1988.

Under the Federal Reserve Bank of Cleveland, the first entry, for Equimark Corporation, is revised to include the following individual as an acquiring party:

James M. Murphy, Bethel Park, Pennsylvania.

Comments on this application must be received by July 26, 1988.

Board of Governors of the Federal Reserve System, July 15, 1988.

James McAffee,

Associate Secretary of the Board.

[FR Doc. 88-16377 Filed 7-20-88; 8:45 am]

BILLING CODE 6210-01-M

Regency Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 11, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Regency Bancorporation*, to acquire the credit related insurance agency activity now conducted by it subsidiary bank, Pueblo Boulevard Bank, Pueblo, Colorado, and thereby engage in the sale of credit related life, accident and health insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 15, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-16375 Filed 7-20-88; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 53 FR 4458, February 16, 1988) is amended to reflect the following changes in the Office of Director, NIH: (1) Revise the functional statements for the Office of Administration (HNA7) and the Office of Research Services (HNAA); and (2) transfer the Division of Procurement (HNAA6) and the Division of Logistics (HNAA7) from the Office of Research Services (HNAA) to the Office of Administration (HNA7). The transfer of these two divisions will centralize the business functions of the NIH under the Associate Director for Administration.

Section HN-B, Organization and Functions is amended as follows: (1) Under the heading *Office of Administration (HNA7)*, delete the functional statement in its entirety and substitute the following:

Office of Administration (HNA7), (1) Advises the Director, NIH, and staff on administration and management; (2)

provides leadership and guidance on all phases of administrative management; and (3) directs staff and service functions in the areas of budget and financial management, personnel management, management policy, grant and contract management, management survey and review, procurement, and logistics.

(2) After the statement of the *Division of Personnel Management (HNA73)*, under the heading *Office of Administration (HNA7)*, insert the following:

Division of Procurement (HNA74). (1) Is responsible for all aspects of station support and intramural procurement; (2) manages the program using small purchases, formal advertisement, and negotiated contracting procedures; (3) provides technical assistance in specification preparation and in Small and Disadvantaged Business opportunities; (4) provides for follow-up on orders and for continuing contract administration; (5) formulates and disseminates policies and procedures to implement Federal and Departmental regulations (meeting needs for guidance in the procurement function); and (6) provides oversight and technical assistance (manuals and training guides) to decentralize station support procurement operations.

Divisions of Logistics (HNA75). (1) Plans and operates a centalized NIH-wide supply system providing a variety of needed chemical and other scientific and medical requirements; (2) provides transport services both in connection with the central supply system and the self-service stores as well as support of all campus activities; and (3) manages a personal property program (which accounts for and effectively utilizes government property used at the NIH).

(4) Under the heading *Office of Research Services (HNAA)*, delete the functional statement in its entirety and substitute the following:

Office of Research Services (HNAA). (1) Advises the Director, NIH, and staff on the management and provision of technical and administrative services to all components of NIH in support of the research mission; (2) plans and directs service programs for engineering services, safety, and space management, and technical services.

(5) Under the heading of *Office of Research Services (HNAA)*, delete the statements for the *Division of Procurement (HNAA6)* and the *Division of Logistics (HNAA7)* in their entirety.

Date: July 13, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 88-16418 Filed 7-20-88; 8:45 am]

BILLING CODE 4140-01-M

Office of the Secretary

Advisory Commission Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following national advisory body scheduled to meet during the month of August 1988:

Name: Secretary's Commission on Nursing

Date: August 4, 1988

Time: 8:30 a.m.

Place: Room 727A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201

Purpose: The Secretary's Commission on Nursing will advise the Secretary of Health and Human Services on how the public and private sectors can work together to address problems and implement solutions regarding the supply of active registered nurses. The Commission will also consider the recruitment and retention of nurses in the U.S. Public Health Service, the Veteran's Administration and the Department of Defense. As appropriate for its work, the Commission will consider the findings of studies which are relevant to the development of a multi-year action plan for implementation by the public and private sectors.

Agenda: The agenda for the August 4 meeting will consist of discussions about potential recommendations for inclusion in the Commission's final report.

Agenda items are subject to change as priorities dictate.

Anyone wishing to attend these meetings who is hearing impaired and requires the services of an interpreter for the deaf should contact the Commission at least one week before the scheduled meeting. All such requests, as well as requests for information, should be addressed to the Secretary's Commission on Nursing, Hubert H. Humphrey Building, Room 600E, 200 Independence Avenue, SW., Washington, DC 20201, telephone 202/245-0409.

John Busa,

Administrative Officer, Secretary's Commission on Nursing.

[FR Doc. 88-16569 Filed 7-20-88; 8:45 a.m.]

BILLING CODE 4150-04-M

Centers for Disease Control

Gynecologic Cytology Quality Control Measures; Second Conference

ACTION: Notice of meeting—Second Conference on Quality Control Measures in Gynecologic Cytology.

Time and Date: 8:00 a.m. through 5:00 p.m., Thursday, September 1, 1988.

Place: Centers for Disease Control, Auditorium B, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public for participation, comment, and observation, limited only by space available.

Purpose: The conference will provide one session for professional organizations, Government agencies, and academic and clinical laboratories concerned with gynecologic cytology testing to present their recommendations for personnel standards, daily workload, external monitoring of laboratory performance, and intra-laboratory quality assurance programs. Additional sessions at the conference will discuss optimal specimen collection techniques, criteria for assessing the adequacy of a Pap smear, and comparability of the various diagnostic nomenclatures.

Contact person for more information: Vernon N. Houk, M.D., Director, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia 30333. Telephones: FTS: 236-4111; Commercial: (404) 488-4111.

Dated: July 14, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 88-16442 Filed 7-20-88; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 88F-0209]

Ciba-Geigy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-(8-heptadecenyl)-4, 5-dihydro-1*H*-imidazole-1-ethanol as a multipurpose additive for lubricants with incidental food contact.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and

Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4093) has been filed by Ciba-Geigy Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) be amended to provide for the safe use of 2-(8-heptadecenyl)-4,5-dihydro-1*H*-imidazole-1-ethanol as a multipurpose additive for lubricants with incidental food contact.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 13, 1988.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 88–16378 Filed 7–20–88; 8:45 am]

BILLING CODE 4160–01–M

[FDA 225–88–4000]

Memorandum of Understanding Among the Food and Drug Administration, the Environmental Protection Agency, and the United Kingdom Department of Health and Social Security

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) among FDA, the Office of Pesticides and Toxic Substances, United States Environmental Protection Agency, and the Medical Division of Toxicology and Environmental Protection, United Kingdom Department of Health and Social Security. This MOU provides for (a) reciprocal recognition of each country's good laboratory practice program, (b) acceptance of test data collected in either country for evaluation of safety, and (c) implementation of procedures for continuing efforts between the countries.

DATE: The agreement became effective March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1583.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing this memorandum of understanding.

Dated: July 14, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Among the Food and Drug Administration, United States Department of Health and Human Services and the Office of Pesticides and Toxic Substances, United States Environmental Protection Agency and the Medical Division of Toxicology and Environmental Protection United Kingdom Department of Health and Social Security

I. Purpose

The participating agencies of the United States (US) and the United Kingdom (UK) have a concern for assuring the quality and integrity of safety evaluation data that support the approval of applications for research and/or marketing permits and licensing or registration of chemicals for agricultural, industrial, pharmaceutical, or food use. The parties share the view that health and environmental safety studies which are required to be submitted to a national authority should be conducted in accordance with principles of good laboratory practice (GLP) that are internationally recognized and that laboratories conducting such tests should be monitored by effective national inspection programs. Accordingly, this agreement provides for (a) reciprocal recognition of each country's good laboratory practice program (b) acceptance of test data collected in either country for evaluation of safety, and (c) implementation of procedures for continuing efforts between the countries.

It is intended that as a routine matter, inspections of health and environmental testing laboratories are to be carried out by the respective national authorities.

II. Background

Safety evaluation data submitted to one national authority are frequently based on studies conducted by laboratories located in another country. Therefore, the standards observed by those laboratories that conduct health and environmental safety studies which are submitted to the authorities of the other country should be conducted in accordance with principles of good laboratory practice that are internationally recognized. When the safety evaluation data submitted to a national authority originate from a laboratory within another country, the national authority of the country of origin should be able to provide the other with information that assures that the laboratory is operated in accordance with recognized good laboratory practices.

The GLP authorities in both the United States and the United Kingdom have established national programs of inspection to verify the compliance of laboratories with those standards. Both standards and inspection programs are in accord with the Decision of the Council of the Organization for Economic Cooperation and Development (OECD) on "The Mutual Acceptance of Data in the Assessment of Chemicals" (May 12, 1981) including Annex 2, "OECD Principles of Good Laboratory Practice." These standards and procedures are consistent with the July 26, 1983, recommendation of the OECD Council on "The Mutual Recognition of Compliance with Good Laboratory Practice."

A. Good Laboratory Practice

The participating agencies of the United States and the United Kingdom have published comparable standards of good laboratory practice relating to health and environmental studies for safety evaluation experiments.

The inspectors of the US Food and Drug Administration (FDA) will rely on regulations relating to Good Laboratory Practice for Nonclinical Laboratory Studies (21 CFR Part 58) in evaluating the laboratories and auditing the data from the studies conducted in the US.

The inspectors of the US Environmental Protection Agency (EPA) will rely on the regulations relating to Pesticide Programs, Good Laboratory Practice Standards (40 CFR Part 160) and Toxic Substances Control, Good Laboratory Practice Standards (40 CFR Part 792) in evaluating the laboratories and auditing the data from the studies conducted in the US.

The inspectors of the UK Department of Health and Social Security (DHSS) will rely on the Approved Code of Practice: Principles of Good Laboratory Practice made under the "Health and Safety: Notification of New Substances Regulations, 1982," in evaluating the

laboratories and auditing the data from the studies conducted in the UK.

B. National Inspection Programs

The participating parties assess compliance of a laboratory with the standards of good laboratory practice by having a trained government inspector conduct a laboratory inspection approximately once every two years. The inspection programs permit assessment of current laboratory operations as well as the audit of data from completed studies. Laboratories are generally pre-notified and inspectional procedures are mutually consistent among the parties. A report of the results of the inspection is prepared that describes laboratory operations and addresses conformity with good laboratory practice standards and when appropriate, verification of adherence to study plans and data validation.

C. Compliance

Each of the parties has established satisfactory procedures to secure the compliance of laboratories with the standards of good laboratory practice. These procedures include, for example, notifying a laboratory of deficiencies observed and the issuance of corrective and/or warning notices, or the removal of a laboratory from national GLP compliance programs. These and other actions may lead regulatory authorities to invalidate specific studies or to cancel or refuse registration of specific chemicals. In some cases, depending upon the gravity and extent of the violation, more severe penalties may be applied.

III. Substance of the Agreement

A. The parties agree that: 1. Adherence to adequate standards of good laboratory practice is essential to the conduct of high quality safety testing;

2. A national program of periodic inspections conducted by a trained inspectorate is required to monitor adherence to the standards of good laboratory practice;

3. Appropriate compliance procedures are necessary to assure adherence to the standards of good laboratory practice;

4. Studies conducted in accordance with the respective standards of good laboratory practice promulgated by either country are to be acceptable to the parties for evaluation of safety.

B. Each party will: 1. Inform the other parties of changes in their respective good laboratory practice standards and their respective inspection programs;

2. Provide the other parties quarterly, with the names and addresses of health and environmental testing laboratories operating within their national boundaries, the dates inspected, and the compliance designation of the laboratories which are inspected under the good laboratory practice program;

3. Provide upon request of one of the other parties, further information regarding whether or not a specific laboratory or study is in compliance with the good laboratory practice standards;

4. Agree to a request by the other party to conduct a good laboratory practice inspection or data audit at a specified health or environmental laboratory whenever (a) there is serious concern about the quality and integrity of the data submitted to either country, (b) an inspection has not been performed within the last 2 years, or (c) an approval of an application for research and/or marketing permit is pending based upon tests performed in a specified testing facility whith are important to granting the approval. In exceptional situations in which the requesting party can justify a special concern, the requesting party may designate one or more of its scientists to participate in the audit of a study;

5. Conduct a joint inspection of a laboratory each year in order to maintain a continuing understanding of each party's inspection techniques. These joint inspections are to alternate each year in the United States and the United Kingdom;

6. Recognize the need to protect from public disclosure data and information that are exchanged between the parties and that fall within the definition of a trade secret, or confidential commercial or financial information.

IV. Participating Parties

A. Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857

B. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

C. Department of Health and Social Security, Hannibal House, Elephant and Castle, London SE1 6TE England

V. Liaison Officers

The parties respectively appoint the following officials to serve as liaison officers for all communications regarding matters relative to the memorandum.

A. For the Food and Drug Administration: Director, Division of Compliance Policy, Office of Regulatory Affairs, (Currently: Mr. Ernest L. Brisson), 5600 Fishers Lane, Rockville, Maryland 20587.

B. For the Environmental Protgection Agency: Director, Laboratory Data Integrity Program, Office of Compliance Monitoring, (Currently: Dr. Dexter Goldman), 401 M Street, SW., Washington, DC 20460.

C. For the Department of Health and Social Security: Chief, Good Laboratory Practice Monitoring Unit, Medical Division of Toxicology and Environmental Protection, (Currently: Mr. M. J. Van den Heuvel), Hannibal House, Elephant and Castle, London, SE1 6TE England.

VI. Duration of Agreement

This agreement shall became effective upon the date of the last signature and shall remain in effect for a period of five (5) years. It may be extended or amended by mutual written consent or terminated by any party upon written notice to the other parties.

Approved and accepted for the food and Drug Administration.

Frank E. Young,

Commissioner of Food and Drugs.

Date: March 28, 1988.

Approved and accepted for the Environmental Protection Agency.

John A. Moore,

Assistant Administrator, OPTS.

Date: February 3, 1988.

Approved and accepted for the Department of Health and Social Security.

Dr. B.H. MacGibbon,

Head, Medical Division of Toxicology and Environmental Protection.

Date: December 31, 1987.

[FR Doc. 88–16379 Filed 7–20–88; 8:45am]

BILLING CODE 4160-01-M

National Institutes of Health

Recombinant DNA Advisory Committee Ad Hoc Subcommittee on International Projects; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee Ad Hoc Subcommittee on International Projects at the National Institutes of Health, Building 31C, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892, on August 15, 1988, from approximately 9:00 a.m. to adjournment at approximately 5:00 p.m. to discuss applicability of NIH Guidelines to projects carried out abroad. This meeting will be open to the public. Attendance by the public will be limited to space available.

Further information may be obtained from Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee Ad Hoc Subcommittee on International Projects, Office of

Recombinant DMA Activities, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, telephone (301) 770–0131.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual Programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Date: July 12, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–16445 Filed 7–20–88; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Function and Delegation of Authority

Part H, Chapter H (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38418–24, August 31, 1982 as amended most recently at 52 FR 43676–78, November 13, 1987) is amended to reflect the transfer of the program coordination functions from the Office of Program Support, Bureau of Health Professions, to the Office of Program Development, Bureau of Health Professions, within the Health Resources and Services Administration (HRSA).

Under HB–10, Organization and Functions, amend the following functional statements within HRSA.

1. Under the *Bureau of Health Professions (HBP)* delete the *Office of Program Development (HBP13)* in its entirety and insert the following:

Office of Program Development (HBP13). Serves as the Bureau focal point for planning, evaluation, legislation, reimbursement, regulations, contracts, program award procedures, procurement plan and program award schedules, **Federal Register** notices, grant application materials, congressional reports, and OMB information clearances for forms and regulations. This includes the development and dissemination of program objectives, alternatives, and policy positions. Specifically: (1) Stimulates, guides, and coordinates program planning, reporting, and evaluation activities of the Divisions and staff offices; (2) provides staff services to the Bureau Director for program planning and its relation to the budgetary process, the development of issue papers, congressional reports, and coordination of OMB information clearance requests for forms and regulations; (3) coordinates the development and implementation of the Bureau's evaluation programs; (4) provides staff services and coordinates activities pertaining to legislative policy development, interpretation, and implementation, including the development of legislative proposals, the analysis of existing and pending legislation with other agencies, and distribution of legislative materials; (5) reviews and interprets program award policies and authorities for incorporation into the development and implementation of the Bureau's program and award procedures; (6) coordinates the development, clearance, and dissemination of legislative implementation plans, regulations, **Federal Register** notices, application guidelines and operating procedures; (7) identifies issues and coordinates the resolution of program award policy and procedural questions that arise; (8) coordinates the development of Bureau's annual procurement and conference plans and the award schedule for Bureau grants contracts and cooperative agreements; and (9) develops general guidance and criteria related to the Bureau's grant programs and coordinative management and information services for the Bureau's program contract activities.

2. Under the *Bureau of Health Professions (HBP)* delete the *Office of Program Support (HBP12)* in its entirety and insert the following:

Office of Program Support (HBP12). Plans, directs, coordinates and evaluates Bureauwide administrative management activities, including grants management and financial management activities. Maintains close liaison with officials of the Bureau, Agency, the Office of the Assistant Secretary for Health, and the Office of the Secretary on management and support activities. Specificially: (1) Serves as the Bureau director's principal source for management and administrative advice and assistance; (2) provides advice, guidance, and coordinates personnel activities for the Bureau with the Division of Personnel, HRSA; (3) directs and coordinates the allocation of personnel resources; (4) provides organization and management analysis, develops policies and procedures for internal operation, and interprets and implements the Bureau's management policies, procedures and systems; (5) develops and coordinates program and administrative delegations of authority activities; (6) responsible for planning and directing Bureau financial management activities, including budget formulation, presentation, and execution functions; (7) conducts all business management aspects of the review, negotiation, award and administration of Bureau grants management activities; (8) directs and manages the National Advisory Council on Health Professions; (9) provides Bureauwide support services such as supply management, equipment utilization, printing, property management, space management, records management and management reports; (10) serves as the Bureau's focal point for correspondence control; (11) manages the Bureau's performance appraisal and employee's performance management systems; (12) coordinates and provides guidance on the Freedom of Information Act and Privacy Act activities, and (13) serves as the Bureau focal point for the analysis, selection and implementation of all ADP, word processing and telecommunication equipment and system.

Dated: July 14, 1988.

Ellen Wormser,

Acting Director, Office of Management.

[FR Doc. 88–16419 Filed 7–20–88; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–967–4213–15]

Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of section 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Afognak Joint Venture. The

lands involved are in the vicinity of Afognak Island, Alaska.

SEWARD MERIDIAN, ALASKA

Serial No.	Land description	Approximate acreage
AA-14637	T. 19 S., R. 20 W., unsurveyed Sec. 31.	1.0
AA-14638	T. 24 S., R. 24 W., unsurveyed Sec. 11.	2.0
AA-45834	T. 21 S., R. 16 W., unsurveyed Sec. 19;	10
	T. 21 S., R. 17 W., unsurveyed Secs. 13 and 24.	380

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until August 22, 1988 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 88-16400 Filed 7-20-88; 8:45 am]

BILLING CODE 4310-JA-M

Closure Order; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Prohibition of shooting on certain public lands in San Benito, Monterey, and Fresno counties in the Hollister Resource Area, Bakersfield District, California.

SUMMARY: Certain described public lands within the Hollister Resource Area in and around public access points, high use areas, and a BLM administrative site are hereby closed to the shooting or discharge of any firearm, air or gas gun, sling, elastic or spring gun, slingshot, bow, crossbow, dart or any implement or mechanical appliance by which any bullet, shot, stone, dart or other projectile may be propelled, sprung or thrown from one place to another for any reason. The closures are effective on all of the following described public lands:

1. *Condon Peak Parking Area*—Within 100 yards of the Condon Peak parking area and entrance road located at the Fresno/San Benito County line along the Coalinga/Los Gatos Creek Road in the SE¼ NW¼ Sec. 9, T.19S., R.12E., MDM.

2. *Laguna Mountain Parking Area*—Within 100 yards of the Laguna Mountain parking area and entrance road located along Coalinga Road in San Benito County in the N½ Lot 3 Sec. 13, T.18S., R.10E., MDM.

3. *Upper Sweetwater Access (undeveloped)*—Within 100 yards of Coalinga Road where the public lands cross the road in San Benito County in the W½ SW¼ Sec. 13, T.18S., R.10E., MDM.

4. *Lower Sweetwater Access*—Within 100 yards of the Lower Sweetwater parking areas along Coalinga Road in San Benito County in the SE¼ SW¼ Sec. 14, T.18S., R.10E., MDM.

5. *Short Fence Access*—Within 100 yards of the Short Fence parking areas and associated vehicle access route located along Coalinga Road in San Benito County in the NE¼ SW¼ Sec. 15, T.18S., R.10E., MDM.

6. *Section 17 Access (undeveloped)*—Within 100 yards of Highway 198 where the public lands cross the highway in Fresno County in the SE¼ SE¼ Sec. 17, T.21S., R.14E., MDM.

7. *Stockale Mountain Parking Area*—Within 100 yards of the Stockdale Mountain parking area and entrance road at the north end of Slack Canyon Road in Monterey County in Lot 2 Sec. 21, T.22S., R.13E., MDM.

8. *BLM Administrative Site*—All lands in the NE¼ SE¼ Sec. 8, T.18S., R.10E., MDM. in San Benito County. Also within 100 yards of Coalinga Road on public lands in San Benito County located in the N½ SW¼ Sec. 9, T.18S., R.10E., MDM.

9. *Panoche Access Road*—All public lands within the Panoche Access Road right-of-way between Little Panoche Road and the second gate. Also on public lands within 100 yards of the second gate. The Panoche Access Road includes public lands in Sections 11, 12, 13, 14, and 15, T.14S., R.10E., MDM. Restricted public lands adjacent to the second gate are in Lots 2 and 3, Sec. 18, T.14S., R.11E., MDM.

10. *Tumey Hills access point*—Within 100 yards of the Tumey Hills parking area off of Panoche Road in Fresno County in the NW¼ SW¼, Sec. 15, T.15S., R.12E., MDM.

11. *Griswold Hills access point*—Within 100 yards of Griswold Hills parking area off of New Idria Road in San Benito County in Lot 9, Sec. 1, T.16S., R.10E., MDM.

12. *Clear Creek Canyon*—On public lands within ¼ mile of Clear Creek Canyon Road in San Benito County located in Secs. 1, 2, 10, 11, 12, 14, and 15, T.18S., R.11E., MDM Secs. 7 and 8, T.18S., R.14E., MDM. (This closure notice replaces Federal Regulation Notice Doc. #85-825 published 1-18-85 in Fed. Reg. Vol. 50 No. 13 Pg. 2733).

SUPPLEMENTARY INFORMATION: This order is necessary for the protection of public safety and for the protection of public and private property, lands and resources within and adjacent to the closed areas. This closure is issued under the authority of 43 CFR 8364.1. Any person who fails to comply with this closure order shall be subject to the penalties provided in 43 CFR 8360.0-7. Only delegated Federal Law Enforcement Officers, or any California State Peace Officer as defined in California Penal Code Section 830, while engaged in the execution of their official duties shall be exempt from this order.

DATES: This order is in effect immediately and the order is permanent until cancelled, amended or replaced.

FOR FURTHER INFORMATION CONTACT: J. Steven Addington, Acting Area Manager, Hollister Resource Area, Bureau of Land Management, P.O. Box 365, Hollister CA 95024-0365; (408) 637-8183.

Dated: July 13, 1988.

J. Steven Addington,

Acting Area Manager.

[FR Doc. 88-16408 Filed 7-20-88; 8:45 am]

BILLING CODE 4310-40-M

[OR-090-08-6310-12: GP8-077]

Emergency Closure of Public Lands and Access Roads; Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency closure of public lands and access roads in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands and access roads in Lane County, Oregon are temporarily closed to all public use, including vehicle operation, camping, shooting, hiking and sightseeing, from July 18, 1988 through October 1, 1988. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as Clear Cut Unit No. 3 of Timber Sale Contract No. OR090–TS85–65 and are located as follows:

Willamette Meridian, Oregon

T. 15 S., R. 1 W.,
Sec. 33: Metes and Bounds within the SE¼NE¼;
Sec. 34: Metes and Bounds within the S½NW¼.

Containing approximately 31 acres.

All roads on the public lands listed above are closed as specified above, as are BLM Road No. 16–1–5.3 from its beginning in Section 5, T. 16 S., R. 1 W., W.M. to its junction with BLM Road No. 16–1–3 in Section 3, T. 16 S., R. 1 W., W.M., BLM Road No. 16–1–3 from its beginning to its junction with BLM Road No. 15–1–34.2 in Section 34, T. 15 S., R. 1 W., W.M., BLM Road No. 15–1–34.3 in its entirety located in Section 34, T. 15 S., R. 1 W., W.M., and BLM Road No. 15–1–34.2 in its entirety located in Section 34, T. 15 S., R. 1 W., W.M. Road Nos. 16–1–3, 15–1–34.2 and 15–1–34.3 are entirely located on public land, while Road No. 16–1–5.3 is located partially on public land and partially on private land.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the purchaser of BLM timber within the closure area and their subcontractors. In addition, the owners of the non-federal lands crossed by BLM Road No. 16–1–5.3 and those residing full time on such lands are exempt from the closure to the extent necessary to access and manage their lands. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands and roads temporarily closed to public use under this order will be posted with signs at points of public access. In addition, the boundaries of the closed Clear Cut Unit are blazed, painted and posted.

The purpose of this emergency temporary closure is to protect valuable public timber resources from unauthorized damage, to facilitate authorized timber harvest operations, and to protect persons from potential harm from logging operations.

EFFECTIVE DATES: July 18, 1988 thorugh October 1, 1988.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands and roads are available from the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Lee Lauritzen, McKenzie Area Manager, Eugene District Office, at (503) 683–6988.

Date: July 12, 1988.

Lee Lauritzen,

Area Manager.

[FR Doc. 88–16407 Filed 7–20–88; 8:45 am]

BILLING CODE 4310–33–M

[I–25693]

Realty Action; Sale of Public Lands in Cassia County, ID

The following land has been found suitable for sale under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value (FMV). The land will not be offered for sale for at least 60 days after the date of this notice.

Legal description	Acreage	Appraised FMV
T. 14 S., R. 22 E., B.M., section 4: SW¼SE¼	40	$3,000

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The parcel will be offered for competitive sale beginning at 1:00 p.m. MDT, September 28, 1988, in the conference room of the Burley District Office, 200 South Oakley Highway, Burley, Idaho.

The parcel will be offered by sealed bid only. All bids must be submitted to the BLM's Burley District Office, 200 South Oakley Highway, Route 3 Box 1, Burley, Idaho 83318, by no later than 1:00 p.m. MDT, September 28, 1988. Sealed bid envelopes must be marked on the front left corner with the parcel number and sale date. Bids must not be less than the appraised value specified in this notice. The bid must be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the USDI, Bureau of Land Management, for not less than 30 percent of the bid amount. A bid will also constitute an application for conveyance of the mineral rights, except for geothermal, oil and gas. The mineral interests being offered for conveyance have no known monetary value. Each bidder must submit a nonreturnable (for the successful bidder) fifty dollar ($50.00) filing fee for the mineral conveyance (43 CFR 2720.1–2(c)).

The terms and conditions applicable to the sale are:

1. All oil, gas, and geothermal resource minerals shall be reserved to the United States.

2. A reservation for the City of Oakley road right-of-way, I–26286, and the City of Oakley water system right-of-way, I–012608, will be included in the patent.

3. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the authority of the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945).

Federal law requires that bidders must be U.S. citizens 18 years of age or older, or, in the case of a corporation, subject to the laws of any State of the U.S. Proof of citizenship shall accompany the bid. If two or more valid bids are received for the parcel, the determination of which is to be considered the highest bid shall be by supplemental oral bidding. The remainder of the full bid price shall be paid within 180 days of the date of the sale. Failure to pay the full price within the 180 days shall disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM.

Should the parcel not sell on the sale date, it will be offered competitively on a continuing basis until March 31, 1989, at the Burley District Office, Burley, Idaho. Sale will be by sealed bid. Sealed bids will be opened every Wednesday of each month at 1:00 p.m. All bids must be received at the Burley District Office no later than 1:00 p.m. on the day of the sale.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available for review at the Burley District Office, 200 South Oakley Highway, Burley, Idaho 83318.

For a period fo 45 days from the date of this notice, interested parties may submit comments to the District Manager, Burley District, at the above address. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Date: July 13, 1988.

Marvin Bagley,

Associate District Manager.

[FR Doc. 16401 Filed 7–20–88; 8:45 am]

BILLING CODE 4310–84–M

[NM-010-3110-10-7202; NM NM 65251/ GP8-0118]

Issuance of Exchange Conveyance Document; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States issued an exchange conveyance document to the State of New Mexico on September 15, 1987, pursuant to section 206 of the Act of October 21, 1976 (43 U.S.C. 1716). The conveyance was issued for 24,721.22 acres of public land located in Torrance County, New Mexico. The public lands were described in the Notice of Realty Action published in the **Federal Register** (FR) on December 15, 1986, 51 FR 44951 and corrected notice published on January 26, 1987, 52 FR 2770.

In exchange for the public lands mentioned above, the State of New Mexico reconveyed to the United States 28,587.50 acres of non-Federal lands and interests therein located in Cibola County, New Mexico. The reconveyed lands were described in the Notice of Realty Action published in the **Federal Register** on December 15, 1986, 51 FR 44951 and corrected Notice published on January 26, 1987, 52 FR 2770.

The purpose of the exchange was to consolidate land ownerships for the Federal Government within El Malpais Special Management Area, the De-Na-Zin Wilderness Area, the Chaco Culture National Historic Park, or well blocked areas within the Rio Puerco Resource Area. In addition, the exchange consolidated the State's ownership in Torrance County. The exchange was consistent with the approved Rio Puerco Resource Management Plan approved on January 16, 1986. The values of the Federal land and the non-Federal land in the exchange were equal.

Dated: July 13, 1988.

Monte G. Jordan,

Associate State Director.

[FR Doc. 88-16398 Filed 7-20-88; 8:45 am]

BILLING CODE 4310-FB-M

[MT-930-08-4220-11; M-034538]

Proposed Continuation of Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that the withdrawal for the Whitetail Creek and Caribou Recreation Areas on 52.65 acres of forest system lands continue for an additional 20 years. The lands will remain closed to surface entry and mining but have been and will remain open to mineral leasing.

DATE: Comments should be received by October 19, 1988.

ADDRESS: Comments should be sent to Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM Montana State Office, 406-657-6082.

SUPPLEMENTARY INFORMATION: The U.S. Department of Agriculture proposes that the existing mineral withdrawal made by Public Land Order 2850 of December 10, 1962, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:.

Principal Meridian, Kootenai National Forest, Caribou Creek Recreation Area

T. 37 N., R. 30 W.,
Sec. 21, S½ of lot 5;
Sec. 22, W½SW¼SW¼SW¼;
Sec. 28, NE¼NE¼ of lot 1.

The area described contains approximately 12.65 acres in Lincoln County.

Whitetail Creek Recreation Area

T. 35 N., R. 33 W.,
Unsurveyed, but when surveyed will probably be:
Sec. 1, N½N½SE¼.

The area described contains 40 acres in Lincoln County.

The purpose of the withdrawal is to protect unique resource areas with cultural value to the Kootenai Indians. The withdrawal segregates the land from prospecting, location, entry, and purchase under the United States mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Land Resources, in the Montana State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for mineral resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

July 14, 1988.

John E. Moorhouse,

Acting Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 88-16399 Filed 7-20-88; 8:45 am]

BILLING CODE 4310-DN-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Office, Washington, DC 20503, telephone (202) 395-7340.

Title: Requirement for Permits and Permit Processing, 30 CFR 773

Abstract: Section 510(c) Pub. L. 95-87 requires that prior to issuance of a surface coal mining and reclamation permit, the applicant and persons associated with the applicant be reviewed and finding made that all other mining operations of the applicant and associates, are being or have been conducted in accordance with the law. This information is used by the regulatory authority and the Office of Surface Mining Reclamation and Enforcement to ensure that surface coal mining and reclamation operations are conducted in a manner which preserves and enhances environmental concerns as expressed in the Act.

Bureau Form Number: None

Frequency; On occasion and annually

Description of Respondents: Business or other for profit

Annual Responses: 7,605

Annual Burden Hours: 36,899

Average Burden Hours Per Response: 5

Bureau Clearance Office: Nancy Ann Baka, (202) 343-5981.

Date: June 30, 1988.

Richard O. Miller,

Chief Regulatory Development and Issues Mangement Office.

[FR Doc. 88-16393 Filed 7-20-88; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-3 (Sub-78X)]

Missouri Pacific Railroad Co.—Abandonment Exemption—Plaquemines Parish, LA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 11-mile line of railroad between milepost 24.0 near Myrtle Grove, LA, and milepost 35.0 near Magnolia, in Plaquemines Parish, LA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandoment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective August 20, 1988, unless stayed pending reconsideration. Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by July 26, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by August 5, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Law Dept., Room 830, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption containes false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (See) will prepare an environmental assessment (EA). See will serve the EA on all parties by July 21, 1988. Other interested persons may obtain a copy of the EA from See by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, See at (202) 275-7316).

A notice to the parties will be issued if use of the exemption is conditioned upon environmental, or public use conditions.

Decided: July 11, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 88-16276 Filed 7-20-88; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See* Ex Parte No. 274 (Sub-No. 8), *Exemption of Out-of-Service Rail Lines* (not printed), served March 8, 1988.

[2] *See Exemption of Rail Abandonments or Discontinuance—Offers of Financial Assistance*, 4 I.C.C. 2d 164 (1987), and final rules published in the Federal Register on December 22, 1987 (52 FR 48440-48446).

[Ex Parte No. 387 (Sub-No. 961)]

Petition to Disclose Long-Term Rail Coal Contracts

AGENCY: Interstate Commerce Commission.

ACTION: Denial of petition to institute rulemaking.

SUMMARY: The Commission is denying a petition by Western Fuels Associations, Inc. to establish rules for disclosure of long-term coal contracts made pursuant to 49 U.S.C. 10713 and 49 CFR Part 1313. The petition is denied because it requests action that is contrary to section 10713 and interpreting that section.

EFFECTIVE DATE: July 21, 1988.

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).

Authority: 49 U.S.C. 10321, 10713; and 5 U.S.C. 553.

Decided: July 13, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley. Commissioner Lamboley concurred in the result.

Noreta R. McGee,

Secretary.

[FR Doc. 88-16444 Filed 7-20-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 18, 1988, a proposed consent decree in *United States* v. *Robert Countess, d/b/a Countess Service Center, et al.* (Civ. Action No. HAR-87-2347); *United States* v. *Capital Milk Producers Co-op, Inc., et al.* (Civ. Action No. HAR-87-2348); *United States* v. *Easton Petroleum Co., Inc., et al.* (Civ. Action No. HAR-87-2349), was lodged with the United States District Court for the District of Maryland.

The proposed consent decree resolves a judicial enforcement action brought by the United States against Fleet Transit, Inc. ("Fleet") for violations of the Clean Air Act. The complaints filed by the United States each alleged that Fleet violated the Unleaded Gasoline Regulations, 40 CFR Part 80.

The proposed consent decree enjoins Fleet from violating the Unleaded Gasoline Regulations in the future. The proposed consent decree also requires Fleet to establish an Unleaded Gasoline Quality Assurance Program, which consists of testing of gasoline storage tanks, to assure that Fleet's operations are effective in preventing contamination of unleaded gasoline. The consent decree further requires Fleet to

pay a civil penalty of $18,000 to the United States Treasury.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Robert Countess, d/b/a Countess Service Center, et al., United States* v. *Capital Milk Producers Co-op, Inc., et al., United States* v. *Easton Petroleum Co., Inc., et al.* D.O.J. Ref. Nos. 90–5–2–1–1060, 1079, and 1088.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Maryland, United States Courthouse, Eighth Floor, 101 West Lombard Street, Baltimore, Maryland 21201–2692 and at the Eastern Field Office I, Field Office and Support Division, of the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attention: Richard Friedman. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land & Natural Resources Division, Department of Justice. In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–16391 Filed 7–20–88; 8:45 am]

BILLING CODE 4410–01–M

Pollution Control; Consent Judgments: Plainville Electro Plating Co., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 13, 1988, a proposed Consent Decree in *United States* v. *Plainville Electro Plating Co. and Gerald Glassman*, Civil Action Number H–86–342 AHN, was lodged with the United States District Court for the District of Connecticut. The Complaint filed by the United States alleged violations of the Resource Conservation and Recovery Act of 1976, as amended. Defendants Plainville Plating Company and Gerald Glassman own and operate an electroplating facility in Plainville, Connecticut which generated and disposed of hazardous wastes. Defendants violated the Resource Conservation and Recovery Act and the regulations passed thereunder by, *inter alia*, operating without an interim or final permit to treat, store or dispose of hazardous wastes, failing to implement an adequate groundwater monitoring program, failing to close its land disposal units in accordance with an appropriate closure plan, failing to establish a financial mechanism to assure proper closure, and failing to demonstrate financial responsibility for sudden and non-sudden accidental occurrences resulting in environmental impairment.

The Consent Decree provides that the defendants shall pay a civil penalty of $230,000.00 and be subject to continuing obligations with respect to compliance with various hazardous waste regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Plainville Electro Plating Co. and Gerald Glassman*, D.J. No. 90–7–1–332.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Room 250, Federal Building, 450 Main Street, Hartford, Connecticut 06103, at the Region I office of the Environmental Protection Agency, Office of Regional Counsel, John F. Kennedy Federal Building, Boston, Massachusetts 02203, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decress may be obtained in person or by mail from the Environmental enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *Plainville Electro Plating Company and Gerald Glassman*, D.J. No. 90–7–1–332, and include a check for $2.80 (10 cents per page reproduction charge) payable to the United States Treasury.

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88–16390 Filed 7–20–88; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration; Arenal Chemical Corp.

By Notice dated April 1, 1988, and published in the **Federal Register** on April 11, 1988; (53 FR 11919), Arenol Chemical Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

	Schedule
Drug:	
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100)	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 13, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88–16457 Filed 7–20–88; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 87–60]

Melvin C. Butler, D.D.S.; Revocation of Registration

On June 12, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Melvin C. Butler, D.D.S. (Respondent) of 335 Coolspring Street, Uniontown, Pennsylvania 15401 proposing to revoke his DEA Certificate of Registration AB2377934 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 proposed action was Respondent's lack of authorization to handle controlled substances in the Commonwealth of

Pennsylvania. In addition, the Order to Show Cause alleged that Respondent's continued registration is inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

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. Due to Respondent's apparent lack of authorization to handle controlled substances in the Commonwealth of Pennsylvania, Government counsel filed a motion for summary disposition on August 10, 1987. Judge Bittner denied this motion after Respondent presented evidence that he was in fact licensed to handle controlled substances in Pennsylvania.

On June 8, 1988, Government counsel filed another motion for summary disposition based on an order dated March 31, 1988, issued by the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs whereby Respondent's license to practice dentistry was suspended. Subsequently, on June 8, 1988, Government counsel received a letter from Respondent withdrawing his request for a hearing. On June 10, 1988, the Administrative Law Judge issued an order terminating the proceedings before her. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that between February 18, 1982 and March 11, 1982, while practicing dentistry in the State of New York, Respondent forged ten prescriptions each for 30 dosage units of Talwin 50 mg. using an associate's name and DEA number. As a result, on November 24, 1982, Respondent was convicted of one count of forgery in the third degree in violation of the laws of the State of New York.

The Administrator further finds that between April 13, 1987 and May 18, 1987, while practicing dentistry in the Commonwealth of Pennsylvania, Respondent wrote three prescriptions for Percocet, a Schedule II narcotic controlled substance, once again using an associate's prescription pad and DEA number. As with the prescriptions written in New York, Respondent forged his associate's signature on the prescriptions. Respondent filled two of the prescriptions at a local pharmacy and was arrested attempting to fill the third one. Following his arrest, Respondent admitted that he had forged the prescriptions. He indicated that he owed some individuals a large amount of money and had forged the prescriptions in an attempt to make some extra money to satisfy his debts.

On July 9, 1987, Respondent was indicted in the United States District Court for the Western District of Pennsylvania and charged with two counts of possession with intent to distribute Percocet in violation of 21 U.S.C. 841(a)(1); two counts of acquiring and obtaining possession of Percocet by misrepresentation, fraud, forgery, deception or subterfuge in violation of 21 U.S.C. 843(a)(3); two counts of using a DEA number issued to another person for the purpose of acquiring or obtaining Percocet in violation of 21 U.S.C. 843(a)(2); and two counts of attempting to fraudulently acquire or obtain possession of Percocet in violation of 21 U.S.C. 846. On February 17, 1988, after entering a guilty plea in the United States District Court for the Western District of Pennsylvania, Respondent was convicted of one count of possession with intent to distribute Percocet; one count of acquiring or obtaining possession of Percocet by misrepresentation, fraud, forgery, deception or subterfuge; and one count of attempting to fraudulently acquire or obtain possession of Percocet, all felony offenses relating to controlled substances. Therefore, lawful grounds exist to revoke Respondent's DEA registration. 21 U.S.C. 824(a)(2).

Following his conviction, on March 31, 1988, the Commonwealth of Pennsylvania, Department of State, Bureau of Professional and Occupational Affairs suspended Respondent's license to practice dentistry, thereby terminating his ability to handle controlled substances in the Commonwealth of Pennsylvania. Therefore, additional grounds exist to revoke Respondent's DEA registration pursuant to 21 U.S.C. 824(a)(3).

The Administrator concludes that Respondent's actions exhibit a total disregard for the tremendous responsibilities which accompany DEA registration. Respondent had a duty to protect against the diversion of controlled substances into the illicit market. He ignored that duty and instead forged prescriptions for controlled substances in two different states.

Having concluded that lawful grounds exist to revoke Respondent's DEA registration, and having further concluded that under the facts and circumstances presented in this case the registration should be revoked, 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 AB2377934, previously issued to Melvin C. Butler, D.D.S., be, and it hereby is, revoked. The Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective July 21, 1988.

Date: July 13, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-16456 Filed 7-20-88; 8:45 am]

BILLING CODE 4410-09-M

Justice Programs Office

Office for Victims of Crime; Assistance to Victims of Federal Crime in Indian Country; Discretionary Grants

AGENCY: Department of Justice, Office of Justice Programs, Office for Victims of Crime, Jane Nady Burnley, Director.

ACTION: Notice of availability of funds.

SUMMARY: The Office for Victims of Crime (OVC) is publishing this notice to announce a $1 million discretionary grant program aimed at providing assistance to Native American Indians, and others, who are victims of crimes in Indian country that fall under the jurisdiction of the Federal government.

The money for these grants will come from the Victims of Crime Act of 1984 (VOCA), as amended, 42 U.S.C. 10601-10604 (Supp. 1987). The Act established a Crime Victims Fund in the Department of Treasury made up of monies received from certain Federal criminal fines; special penalty assessments; forfeited appearance, bail bonds, and collateral security; and literary profits due certain convicted Federal defendants. Under 42 U.S.C. 10603(c)(1)(B) a portion of these funds may be used to assist victims of Federal crimes.

This money, set aside to improve the treatment of victims of Federal crime, can be used for a wide variety of activities that include, but are not limited to: (a) Crisis intervention services such as counseling to provide emotional support to victims following a violent crime; (b) emergency short-term child care services or temporary shelter for family violence victims; (c) assistance in participation in Federal criminal justice proceedings; (d) payment of reasonable costs for a forensic medical examination to a Federal crime victim; (e) training of law enforcement personnel in the delivery of services to Federal crime victims and publication of related materials; and (f) the payment of salaries of personnel

who provide assistance services to victims of Federal crime.

During Fiscal Year 1988 OVC has assisted Federal victims by supporting training of Victim-Witness Coordinators in the U.S. Attorneys' offices, and by co-sponsoring a conference attended by teams of Assistant U.S. Attorneys, Coordinators, and Federal investigators on the investigation and prosecution of child sexual abuse. In addition, funds have been made available, through the U.S. Attorneys' offices, for direct assistance, e.g., mental health services, to victims of Federal crimes when no other source of support was available.

Consistent with Congressional intent, 132 *Cong. Rec.* H 11294 (daily ed. October 17, 1986), nearly all of the funds OVC has allocated to date for providing direct assistance to victims of Federal crime has been used to aid Native American Indians. This experience has convinced OVC of the need to commit significant funds to seed the development of victim assistance programs that will provide direct services to Federal crime victims in Indian country.

Consequently, OVC has decided to make available between eight and ten grants to selected state agencies presently administering VOCA victim assistance grants. These agencies will in turn either subgrant or contract for victim assistance services in Indian country where currently no programs exist or where services need to be augmented. This notice describes the availability and purpose of this grant program. Individual states that have a qualifying target population, eligible to receive these services, should contact OVC and request a grant information and application package.

EFFECTIVE DATE: July 21, 1988.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be directed to Stephen Appell, Federal Program Manager, OVC, or Cynthia Darling, Program Specialist, OVC, 633 Indiana Avenue NW., Washington, DC 20531, (202) 272-6500.

Purpose

The Office for Victims of Crime is making $1 million available to selected states to promote the development of direct services to victims of Federal crimes in Indian country. The purpose of these grants are: (1) To address the clear and pressing needs of victims of Federal crime, particularly Native American Indians on Federal enclaves, who have limited access to existing victim assistance programs primarily due to geographic remoteness; and (2) to build upon the existing base of victim services in Indian country and to seed the development of new programs where currently there are none. It is not our intention to establish a separate service system to assist victims of Federal crimes. Instead, our intention is to use a significant portion of funds available for Federal crime victims to foster the development of an expanded network of victim assistance services which will enable victims of Federal crimes in Indian country to have improved access to victim assistance and support services.

Eligible Applicants

Applications may be submitted by agencies designated by the chief executive officer of each state as responsible for applying for and administering VOCA victim assistance funds. Grants will be limited to those states where there are Federal victims of crime in Indian country. Copies of a program instruction detailing the application requirements and procedures will be sent to eligible states upon request. State agencies will either subgrant or contract the funds to eligible organizations that will establish or improve victim assistance programs in Indian country. In the subgrant process, preference will be given to Indian tribes or tribal organizations. When subgrants are awarded to Indian tribes, no matching funds will be required of the tribe.

Selection Criteria

Applications from states will be reviewed for criteria that will be described in full in the program instruction package. In determining which state applications to fund, OVC will consider: (a) Documentation of Federal criminal jurisdiction over the portion of Indian country covered by the application; (b) evidence of cooperation between tribal, local, state, and Federal agencies and officials, including the U.S. Attorney who has responsibility for the prosecution of Federal criminal matters and victim and witness coordination; (c) a description of the population(s) that could be served and a brief description of the victim service needs; and (d) a description of how the state agency intends to disperse the funds to organizations that will develop or expand victim services in Indian country.

Application Deadline

September 15, 1988.

Award Amounts

Awards to states will vary in size depending on the number of victims to be served and the number of grants awarded. Generally they range from between $100,000 to $250,000.

Additional Information

Requirements relating to the preparation of the application, and reporting, financial management, civil rights, and other issues will be contained in the program instruction/application package.

Jane Nady Burnley,

Director, Office for Victims of Crime.

[FR Doc. 88-16470 Filed 7-20-88; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Media Arts Advisory Panel

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 Media Arts Advisory Panel (Media Arts Centers Section) to the National Council on the Arts will be held on August 16-17, 1988, from 9:00 a.m.-7:00 p.m., and on August 18, 1988, from 9:00 a.m.-5:30 p.m., in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is 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 discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of 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.

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.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88-16384 Filed 7-20-88; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Media Arts Advisory Panel

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 Media Arts

Advisory Panel (National Services Section) to the National Council on the Arts will be held on August 9, 1988, from 9:00 a.m.–6:00 p.m., and on August 10, 1988, from 9:00 a.m.–5:30 p.m., in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is 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 discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of 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.

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.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–16385 Filed 7–20–88; 8:45am]

BILLING CODE 7537-01-M

Meeting; Arts National Council

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 National Council on the Arts will be held on August 5–6, 1988, from 9:00 a.m. to 5:30 p.m. and on August 7, 1988, from 9:00 a.m. to 2:00 p.m., in Room M–09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of this meeting will be open to the public on Friday, August 5, 1988, from 9:00 a.m. to 5:30 p.m., and Saturday, August 6, 1988, from 9:00 a.m. to 1:00 p.m. The topics for discussion will include Program Review and Guidelines for Locals Program, Theater, Expansion Arts, Museums; Guidelines only for Music Fellowships, Inter-Arts Artists Projects: New Forms, and Challenge III; and the State of the Arts Report.

The remaining sessions on Saturday, August 6, 1988, from 2:30 p.m. to 5:30 p.m., and on Sunday, August 7, 1988, from 9:00 a.m. to 2:00 p.m., are for the purpose of Council 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 discussion of information given in confidence to the agency by grant applicants, and for discussion and development of confidential budgetary projections and related plans to be submitted to the Office of Management and Budget and the Congress. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of Title 5, United States Code.

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.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–16386 Filed 7–20–88; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Record Keeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Extension.

2. The title of the information collection: Generic Letter to Collect Operator Licensing Examination Data.

3. The form number if applicable: N/A.

4. How often the collection is required: Annually.

5. Who will be required or asked to report: All power reactor licensees and applicants for an operating license.

6. An estimate of the number of responses: 88 annually.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 176 annually, two hours per response.

8. Section 3504(h), Pub. L. 96–511 does not apply.

9. Abstract: This generic letter to nuclear power facilities requests the estimated number of candidates and dates for operator licensing examinations. This letter also requests the anticipated dates for requalification examinations. This information is requested for four fiscal years, commencing with the present. This information would be used to plan budgets and resources in regards to operator examination scheduling in order to meet the needs of the nuclear industry.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

ADDRESSES: Copies of the submittal will be made available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Comments and questions should be directed to the OMB reviewer Vartkes L Broussalian, (202) 395–3084.

NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 7th day of July 1988.

For the Nuclear Regulatory Commission.

William G. McDonald,

Director, Office of Administration and Resources Management.

[FR Doc. 88–16461 Filed 7–20–88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–346]

Toledo Edison Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–3 issued to Toledo Edison Company and The Cleveland Electric Illuminating Company (the licensees), for operation of the Davis-Besse Nuclear Power Station, Unit No. 1 located in Ottawa County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the provisions in the Davis-Besse Nuclear Power Station, Unit No. 1, Technical Specifications (TS's), Section 4.4.5.2 relating to steam generator tube sample selection and inspection in accordance with Toledo Edison Company's application dated January 11, 1988.

Specifically, the proposed amendment would add a third, special interest group comprised of tubes near the centers of

both steam generators. This new special interest group shall be effective only through the fifth refueling outage.

The Need for the Proposed Action

The proposed changes are needed to support inspection of 100 percent of the specified region of tubes in the central regions of the steam generators in addition to the random sampling of the remaining tubes.

Environmental Impacts of the Proposed Action

The Davis-Besse steam generators provide primary to secondary pressure boundary and provide heat removal from the reactor vessel. The tube inspection ensures this boundary is maintained by verifying tube material integrity.

The Technical Specifications for the Davis-Besse Nuclear Power Station require periodic inspection of a minimum of 3% of the total tubes in both steam generators. The tubes for inspection are to be selected randomly, except that certain tubes known to have detectable wall penetrations are to be included in the inspection and at least 50% of the tubes to be inspected are to be in areas where experience has indicated potential problems. Experience has shown that many tubes with defects are clustered in certain regions of the steam generators. This phenomenon is a result of the non-homogeneous arrangement of tubes in the steam generator which allows various degradation mechanisms to be more important in certain regions. The Technical Specifications, therefore, permit excluding tubes in certain regions from the random sample provided that all tubes in that region are inspected. The Davis-Besse Technical Specifications provide for two of these special-interest groups, and the proposed amendment would add a third. The designation of special-interest groups is important for several reasons, one of which is that since inspection frequency and subsequent sample size for inspection is dependent upon the results of the random sampling, exclusion of the special-interest groups from the random sample can result in substantially reduced numbers of tubes to be inspected. Thus, the inspection can be accomplished more economically with little or no reduction in safety.

The Commission has evaluated the environmental impact of the proposed amendment and has determined that post-accident radiological releases would not be greater than previously determined, and the proposed amendment does not otherwise affect radiological plant effluents during normal operation. In addition, occupational radiation exposure is not changed significantly. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed amendment.

With regard to potential nonradiological impacts, the proposed amendment involves a change in steam generator inspection performance and tube selection. 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 amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 25, 1988 (53 FR 9835). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts attributable to this facility. Denial would result in fewer tube inspections and, therefore, decreased awareness of actual steam generator tube conditions.

Alternate Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to operation of the Davis-Besse facility.

Agencies and Persons Consulted

The Commission's 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 amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated January 11, 1988 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 14th day of July, 1988.

For the Nuclear Regulatory Commission.

Timothy G. Colburn,

Acting Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V & Special Projects.

[FR Doc. 88-16459 Filed 7-20-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

In the matter of Boston Edison Co., Exemption

I

The Boston Edison company (BECo), the licensee, is the holder of Operating License No. DPR-35, which authorizes operation of Pilgrim Nuclear Power Station. The license provides, among other things, that the Pilgrim Nuclear Power Station is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The plant is a boiling water reactor located at the licensee's site in Plymouth County, Massachusetts.

II

On November 19, 1980, the Commission published a revised Section 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised Section 50.48 and Appendix R became effective on February 17, 1981. Section III of Appendix R contains 15 subsections, lettered A through O, each of which specifies requirements for a particular aspect of the fire protection features. One of these subsections, III.G, is the subject of this exemption request.

Section III.G.1 of Appendix R requires fire protection to be provided for structures, systems and components important to safe shutdown and capable of limiting fire damage so that:

a. One train of systems necesary to achieve and maintain hot shutdown conditions from either the control room or emergency control stations(s) is free of fire damage; and

b. Systems necessary to achieve and maintain cold shutdown from either the control room or emergency control station(s) can be repaired within 72 hours.

Section III.G.2 of Appendix R requires that one of the redundant trains of systems necessary to achieve and maintain hot shutdown be maintained

free of fire damage by one of the following means:

a. Separation of cables and equipment and associated non-safety circuits of redundants trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier.

b. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; or

c. Enclosure of cable and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

If the above conditions are not met, Section III.G.3 requires that there be alternative or dedicated shutdown capability independent of the fire area of concern. Appendix R Section III.G.3 also requires that fire detection and a fixed fire suppresion system be installed in the fire area of concern. These alternative requirements are not deemed to be equivalent; however, they provide equivalent protection for those configuration in which they are accepted.

Because it is not possible to predict the specific conditions under which fire may occur and propagate, design basis protective features rather than the design basis fire are specified in the rule. Plant-specific features may require protection different from the measures specified in Section III.G. In such a case, the licensee must demonstrate, by means of a detailed fire hazards analysis, that existing protection, or existing protection in conjunction with proposed modification, will provide a level of safety equivalent to the technical requirements of Appendix R Section III.G.

In summary, Section III.G is related to fire protection features provided for structures, systems and components important to safe shutdown by ensuring these features are capable of limiting fire damage.

Fire protection features must meet the specific requirements of Section III.G. or an alternative fire protection configuration must be justified by a fire hazards analysis. Generally the staff will accept an alternative fire protection configuration if the following criteria, to the extent applicable to the requested exemption, are satisfied.

- The alternative ensures that one train of equipment necessary to achieve hot shutdown from either the control room or emergency control station(s) is free of fire damage,
- The alternative ensures that fire damage to at least one train of equipment necessary to achieve cold shutdown is limited so that it can be repaired within a reaonable time (minor repairs using components stored on the site),
- Fire-retardant coatings are not used as fire barriers, and
- Modifications required to meet Section III.G would not significantly enhance fire protection safety levels above that provided by either existing or proposed alternatives, or the modifications would be detrimental to overall facility safety.

III

By letter dated November 16, 1983 (BECo 83–281), the licensee requested four exemptions from the technical provisions of Section III.G. of Appendix R to 10 CFR Part 50. The four exemptions requested were: Nos. 11 and 12, which pertain to the lack of rated fire barriers between the reactor building torus compartment and the control rod drive quadrant rooms; No. 13, which pertains to unprotected structrual steel in the reactor building torus compartments; and No. 14, which pertains to unprotected structural steel in the reactor building steam tunnel. To simplify the review, exemptions 11 and 12 were considered together as one, and exemptions 13 and 14 were considered separately.

The requests for exemptions were clarified and modified to reflect both improvements in separation of redundant features and refinements in calculating the effects of varying combustible loadings. This supplementary information was furnished in letters dated December 27, 1984 (BECo 84–214), July 28, 1986, (BECo 86–110), November 14, 1986 (BECo 86–176), April 21, 1987 (BECo 87–062), August 4, 1987 (BECo 87–132), and in a meeting on November 24, 1987. In addition NRC Region I fire protection engineers visited Pilgrim on April 1, 1986 to inspect fire protection improvements and to examine the fire areas where the exemptions from Appendix R were requested. A site fire protection inspection and audit was also conducted by the Region I fire protection engineer, assisted by NRR and contractor personnel on May 11–15, 1987.

Tables 1, 2 and 3 consolidate the information gathered to date and reflect the Pilgrim Plant configuration as it will be modified prior to restart in 1988. The information in the tables and the other information presented in the text were used in the staff evaluation leading to the conclusion that these exemptions should be granted.

Exemptions 11 and 12 pertain to the lack of 3-hour rated fire barrier separation between redundant trains of safe shutdown equipment. The most obvious location for those barriers is in the doorways between the reactor building torus compartment and surrounding compartments as described below.

The torus compartment is a circular shaped room having an outer wall of roughly 150 ft in diameter. This compartment is enclosed in a square section of the reactor building measuring about 160 ft on a side. The cutoff corners of the square outside the torus compartment house some safe shutdown components and connect to other areas also containing safe shutdown equipment. Redundant trains of safe shutdown equipment and cables are segregated so that only one train is in any one quadrant. The location of affected safe shutdown equipment is shown in Table I. The torus compartment is designated fire zone (FZ) 1.30A and is about 40 ft high. Doorways to three of the four corner equipment rooms have been placed about half way up the 3 ft thick walls. The doorways connect to FZ 1.2 at the northwest corner, FZ 1.6/1.8 at the northeast corner, FZ 1.1 on the southeast corner, and FZ 1.5/1.7 on the southwest corner. FZ 1.2 and 1.1 are each 40 ft high. FZ 1.6 below/1.8 above, and 1.5 below/1.7 above are each 20 ft high. The relationship between redundant trains and interconnected fire zones is given in Table 2. Table 3 gives the combustible loadings in the affected fire zones along with the burning times for "standard fires."

Tables 1 and 2 reveal that the only common point betwen trains A and B is FZ 1.30 A, the torus compartment. Access from the torus compartment to train A is through the FZ 1.1 and 1.8 doorways; access to train B components is through the FZ 1.2 doorway. Therefore, with two exceptions, the analysis can be simplified to an evaluation of the torus compartment (FZ 1.30 A).

The first exemption is that train B cables for both the High Pressure Coolant Injection (HPCI) system and the Reactor Core Isolation Cooling (RCIC) system run in a cable tray about 8 feet above the fire zone 1.8 doorway. While both HPCI and RCIC are safe shutdown systems for other situations, they are not depended upon, and no credit is taken

for them when considering a fire in fire zone 1.30A or other zones connected to FZ 1.30A.

The second exception is the presence of trains A and B of torus instrumentation (torus water level and torus water temperature) inside the torus compartment. The alternative torus instruments and cables are also located in FZ 1.30A. However, they are fully protected with a one-hour fire-rated wrapping inside FZ 1.30 A, and the train A, train B and alternative system cables are located approximately 120° apart from each other on the torus compartment wall. (This arrangement was the subject of Exemption Request No. 5 and has already been reviewed and approved by the staff.)

The minimum horizontal distance between train A and train B safe shutdown components, considering the path through the torus compartment, is over 100 feet and involves doorways between the torus compartment and the corner rooms on opposite sides of the torus compartment. Automatic fire detection and suppression through the torus compartment is not required because:

The combustible fuel load in the torus compartment is low;

- Automatic fire detection capability in three of the four corner rooms is expected to detect any fire of significance in the torus compartment; The Fire Brigade will be notified promptly of any fire in the area (torus compartment or corner rooms); and
- Portable extinguishers and manual hose stations (hoses are equipped with combination spray/straight stream nozzles) located in the corner rooms are adequate for manual suppression of any anticipated fire in the torus compartment or the corner rooms.

In summary, we have concluded that the licensee's requests 11 and 12, which request exemption from the provisions of III.G.2.a, should be granted based on:

(1) No combustibles within 20 ft horizontally of the doorways to FZ 1.2 and 1.1,

(2) Combustible loads in FZ 1.30A (torus compartment) do not exceed 1500 Btu/ft ^{2},

(3) Combustibles are located where they do not interfere with fire fighting activities, and

(4) Available fire fighting equipment is effective for fighting fires anywhere in the torus compartment or the corner rooms.

TABLE 1.—LOCATION OF AFFECTED REDUNDANT SAFE SHUTDOWN COMPONENTS

System	Train A	Train B
Reactor Heat Removal	FZ 1.1, 1.9, 1.8	FZ 1.2, 1.10.
Core Spray	FZ 1.1, 1.9	FZ 1.2, 1.10.
Rector Building Closed Cooling Water	FZ 1.1, 1.9	FZ 1.2, 1.10.
Area Coolers	FZ 1.1, 1.9	FZ 1.2, 1.10.
High Pressure Coolant Injection		FZ 1.30A.
Reactor Core Isolation Cooling		FZ 1.30A.
Torus Water Level	FZ 1.30A	FZ 1.30A.
Torus Water Temperature	FZ 1.30A	FZ 1.30A.

TABLE 2.—FIRE ACCESS/PROTECTION FEATURES

Train	Fire zone	Adjoining fire zones/Fire propagation paths	Fire protection/Fighting features [1]
A	1.1	—1.9 above by open stairwell	A, C.
		—1.30 A by open doorway	
A	1.9	—1.1 below by open stairwell	A, B. C.
		—1.1, 1.10 adjoining	Water curtain between 1.10.
A	1.6	—1.8 above by open stairwell	A, B, C.
A	1.8	—1.9 above by open stairwell	A, B, C.
		—1.6 below by open stairwell	
		—1.30A by open doorway	
B	1.2	—1.10 above by open stairwell	A, B, C.
		—1.30A by open doorway	
B	1.10	—1.2 below by open stairwell	A, B, C.
		—1.9 adjoining	Water curtain between 1.9.
		—Also has alternate shutdown panel	
B	1.30A	—1.1 by open doorway	None except covered by portable fire extinguishers and manual hose stations in other adjoining areas.
		—1.2 by open doorway	
		—1.8 by open doorway	
		—Also is connecting paths between Trains A and Train B Components	

[1] A—Smoke Detectors.
B—Portable Fire Extinguishers.
C—Manual Hose Stations.

TABLE 3.—FUEL AND FIRE DATA

Fire zone	Combustible	Quality (Btu/ft ^{2})	Fire duration (in minutes)
1.1	Cable, Lube oil	15,300	12
1.9	Cable	39,200	30
1.6	Cable, Lube oil	11,000	8
1.8	Cable	1,600	1
1.2	Cable, Lube oil	14,900	11
1.10		36,400	28

TABLE 3.—FUEL AND FIRE DATA—Continued

Fire zone	Combustible	Quality (Btu/ft ^{2})	Fire duration (in minutes)
1.30A	Cable	1,400	1
1.32	Cable	5,800	4

BECo exemption requests 13 is for relief from the requirements of Appendix R Section III.G.2.a to the extent that it requires structural steel forming a part of or supporting 3-hour rated fire barriers to be protected to provide fire resistance equivalent to that required of the barrier. The barrier in question is the ceiling of the torus compartment (FZ 1.30A), which forms the floor of fire zones 1.9 and 1.10.

BECo surveyed the structural steel in the torus compartment and found that six types of beams were required to maintain the integrity of the FZ 1.30A ceiling as a fire barrier. BECo analyzed the unprotected steel for potential failure caused by exposure to burning cable in trays. BECo demonstrated an adequate margin of safety for the structural steel and indicated that additional protection for the steel, either in the form of fire proofing applied directly to the steel, or tray covers installed on the cable trays in the area, is not required.

BECo first considered all of the fuel (cable insulation and jacket material) in the torus compartment to be burining, and evaluated the effect of the heat released on the unprotected structural steel. BECo calculated the average fuel loading per square foot of area in the locality of the exposed cable tray in the torus compartment to be about 1400 Btu/sq ft with an equivalent fire severity of less than 2-minutes. Existing fire test results have already shown these six beam types can survive a "Standard" fire for 14 to 21 minutes before failure. Therefore, a fire lasting less than 2-minutes will not lead to failure even if all of the heat released by the burning cables is assumed to heat only the steel.

BECo also assumed that the cable tray crossed under the structural steel at an angle of 90° and about 12-inches below the beam. The combustible instulation and jacket material in the cable tray is assumed to burn completely and release 100% of its potential heat of combustion. This heat of combustion was assumed to consist equally of radiant heat and convective heat in the fire plume. The final assumption is that 100% of the convective heat in the fire plume is absorbed in the steel section directly above the cable tray with no losses into the air, the surrounding concrete or by axial conduction into the remainder of the structural steel beam. Each of these assumptions is individually conservative. The termperatures calculated using those assumptions for the six beam types (or sizes) ranged from 685 °F for the heaviest beam to 970 °F for the lightest; these temperatures are well below the critical failure temperature of 1100 °F for this type of steel.

Based on the above evaluation the staff concludes that no additional fire proteciton features are required in FZ 1.30A for the structural steel supporting the floor forming the fire barrier between FZ 1.30A and fire zones 1.9 and 1.10 above it. Therefore; the licensee's request 13, which requests exemption from the provisions of III.G.2.a, should be granted.

Exemption request 14 sought relief from Section III.G.2.a to the extent that it requires structural steel forming a part of or supporting the floor which forms the fire barrier between the reactor building steam tunnel, FZ 1.32, and fire zone 1.11 and 1.12 to be protected to provide fire resistance equivalent to that required of the barrier.

BECo performed an analysis to determine the quantity of combustible material that would be required to raise the temperature of the steel to the yield temperature, above which it would fail to support the floor. The analysis indicated that a combustible loading of 21,500 Btu per squre foot would be required. The combustible contents of FZ 1.32 consist of exposed electrical cables that could yield approximately 5,800 Btu/ft², for an equivalent fire severity of approximately four mintues. The majority of cables in this fire zone are routed in conduits and no other combustible materials are present. Fire proteciton consists of a portable fire extinguisher and a manual hose station in an adjacent area.

The licensee's analysis indicates that the structural steel would not fail even if it instantaneouly absorbed the entire heat of combustion of the materials persent in fire zone 1.32. Although the licensee did not consider the effect of a fire plume impinging directly on a structural member as in FZ 1.30A, the negligible combustible loading makes it unlikely that such a fire exposure would be significant. Therefore, reasonable assurance exists that a fire originating in this fire zone will not pervent the plant from safely shutting down.

Based on the above evaluation, the staff concluded that the existing fire protection features for the structural steel in fire zone 1.32, which supports the floor of fire zones 1.11 and 1.12, provide and acceptable level of proteciton for the redundant trains of cables and equipment located in fire zone 1.11 and 1.12. Therefore; the licensee's request 14, which requests exemption from the provisions of III.G.2.a, should be granted.

Conclusion

Based on the evaluations described above, the staff concluded that the level of fire safety in fire zones 1.30 and 1.32 is equivalent to that achieved by compliance with the technical requirements of Section III.G of Appendix R to 10 CFR Part 50 and literal compliance would not significantly enhance fire proteciton safety levels, therefore; the licensee's request for exemption in these zones (requests 11, 12, 13 and 14) should be granted.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), (1) the exemptions as described in Section III are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security and (2) in this case, special circumstances are present in the configuration of the plant and the quantities of combustible materials present to achieve the underlying purpose of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the exemptions from the requirements of Section III.G.2. a of Appendix R to 10 CFR Part 50 regarding fire barries and protection of structural steel as follows:

(1) 3-hour rated fire barrier spearation between redundant trains of safe shutdown equipment located in fire zones 1.2, 1.1, 1.8, which are connected through FZ 1.30A.

(2) 3-hour fire proofing for structural steel in the reactor building torus compartment, elevation 17 feet, fire zone 1.30A.

(3) 3-hour fire proofing for structural steel in the reactor building steam tunnel, elevation 23 feet, fire zone 1.32.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will not result in any significant environmental impact (52 FR 35603 September 22, 1987). A copy of the licensee's request for exemption dated November 16, 1983 and subsequent documents are available for public inspection at the Commission's Public Document Room, 1717 H Street NW; Washington, DC. and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360. Copies may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

These Exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 14 day of July, 1988.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-16460 Filed 7-20-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Revision

Form N-1A, File No. 270-21
Form N-3, File No. 270-281
Form N-4, File No. 270-282

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed amendments to Forms N-1A, N-3, and N-4 under the Investment Company Act of 1940 and the Securities Act of 1933.

Form N-1A is the registration statement for use by open-end management investment companies, except small business investment companies and insurance separate accounts. There are approximately 2300 registrants using Form N-1A, with an estimated average compliance time of 1055 hours per registrant. The proposed amendments would reduce, by one hour, the time necessary for some registrants to comply with the form's requirements.

Form N-3 is the registration statement for use by insurance separate accounts organized as open-end management investment companies. There are approximately 53 registrants using Form N-3, with an estimated average compliance time of 514 hours per registrant. The proposed amendments would add two thirds of an hour to the time necessary for each registrant to comply with the form's requirements.

Form N-4 is the registration statement for use by insurance company separate accounts organized as unit investment trust. There are approximately 183 registrants using Form N-4, with an estimated average compliance time of 138 hours per registrant. The proposed amendments would add two thirds of an hour to the time necessary for each registrant to comply with the form's requirements.

General comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Direct any comments concerning the accuracy of the estimated average burden hours for compliance to Robert Neal at the above address and to Kenneth A. Fogash, Deputy Executive Director, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549-6004.

July 15, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-16446 Filed 7-20-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25918; SR-BSE-87-1]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Partially Approving Proposed Rule Change

I. Introduction

The Boston Stock Exchange, Inc. ("BSE" or "Exchange") has submitted for Commission consideration, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] a proposed rule change that would establish an automated communication, order routing and execution system for use by Exchange member organizations to be known as *"Beacon"*.[2]

As proposed by the Exchange, generally, *Beacon* would guarantee automatic or manual execution of orders entered on the system by participating member firms in stocks traded on the Intermarket Trading System ("ITS")[3] of up to either 599 or 1299 shares, depending on the classification of the stock. Orders would be executed at the *Beacon* quotation, that is the primary market price or, where a superior quote was present from another market for over 100 shares, at that superior price up to the number of shares (the "size") of the quote.

Under the proposed rules, BSE specialists would be permitted to incease the size of orders guaranteed automatic execution on specific stocks from all participating member firms. The proposal also allows specialists to arrange with specific BSE member firms automatic order execution levels higher than the generally available guaranteed automatic execution level.

II. Description of Proposed Rule

All issues traded on the Exchange will be eligible for trading on *Beacon* but only agency orders (orders executed on behalf of a member organization's client) will be eligible for automatic execution. Orders entered on *Beacon* may be executed by the system either automatically or manually. *Beacon* permits orders to be routed to specialists or to floor brokers.[4] The system also allows floor brokers to transmit orders directly to specialists.

Under the proposed rule, market and marketable limit orders in issues traded over ITS transitted to the specialist prior to the BSE's opening will be given the opening price on the primary market on which it is traded. The only exception to applying the primary market opening price to an opening transaction will be where the member firm entering the order has asked, instead, for the order to be given the consolidated opening price. Market and marketable limit orders entered after the opening will receive an execution price based upon the *Beacon* quotation.[5] *Beacon* orders, when transmitted to the specialist for execution, will be displayed on the specialist's video display terminal for up to 15 seconds to allow the specialist to improve on the *Beacon* quotation that was automatically determined by the system when the order was received.

The system will automatically execute all market and marketable limit orders in ITS issues up to 1299 shares for Tier I stocks and 599 shares for Tier II stocks.[6]

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[1] 15 U.S.C. 78s(b).

[2] The Term "BEACON" is an acronym for Boston Exchange Automated Communications Order-routing Network. The initial set of rules proposed for BEACON (File No. SR-BSE-87-1) was noticed in Securities Exchange Act Release No. 24187, March 6, 1987; 52 FR 8682 . No comments were received on this proposal. Subsequently, the Commission received amendments to the BSE's proposed BEACON rules. These amendments were notices in Securities Exchange Act Release No. 24690, July 9, 1987, 52 FR 26612. On December 8, 1987, June 10, 1988, and July 1, 1988, the Commission received additional amendments to the proposed BEACON rules. These amendments were not separately noticed by the Commission.

[3] ITS is a communication system designed to facilitate trading among competing exchanges and the National Association of Securities Dealers by providing each market with order routing capabilities based on current quotation information.

[4] A floor broker receiving such an order would bring the order to the trading crowd for execution.

[5] The *Beacon* quotation is the primary market quotation price. Regardless of the indicated size for such primary market quotations, market and marketable limit orders entered on *Beacon* that are within the quaranteed execution parameters for the particular stock will be executed in their entirety at this price. Where, however, bids and offers from other markets are displayed that are superior to the *Beacon* price and such quotes are for more than 100 shares, the market and marketable limit orders entered on *Beacon* will be executed at that superior price up to the size of the quote displayed.

[6] Under the proposed rule, all ITS issues will be deemed Tier I stocks. Tier II stocks will be comprised of exceptions from Tier I. Those exceptions may be requested by specialists who must submit a statement to the BSE's Market Performance Committee that sets forth the specific reasons that would cause Tier I classification of the stock to be burdensome.

Specialists will be able to provide guaranteed automatic execution for *Beacon* orders above the Tier I or Tier II guaranteed execution levels on specific stocks.[7] Guarantee levels in excess of a specialist's automatic execution guarantee may be made by arrangement between a specialist and a specific member organization.

III. Discussion

Currently, the BSE is unique among the regional exchanges because it only has manual systems for the routing and execution of small orders. *Beacon* is a key element in the BSE's overall effort to automate a substantial portion of its operations. The Exchange's development of *Beacon* will provide a major improvement for the BSE in terms of the speed and efficiency with which it can process and execute retail orders and submit reports of executed trades.

It is the Commission's understanding that the initial phase of *Beacon's* implementation involves allowing the system to accept and route to specialists market orders in three stocks. At this early stage the system's automatic execution feature will not be operational. After the system has sucessfully operated at this level for several days, additional stocks will be added in increments of two or three at a time. An interval of several days will follow each incremental increase in the number of stocks on the system to permit specialists and member firms to become familiar with the system and to allow the Exchange to identify and correct any problems with the system that may emerge.

The Commission has concluded that it is appropriate to permit the BSE to proceed with the initial stages of the implementation of *Beacon*. The system will enable BSE to make improvements in the speed and efficiency of its operations. Further, *Beacon*, when fully implemented, will enable the Exchange to compete more effectively with other markets for new retail order volume and enable it to better serve its member firms and their customers. During the initial implementation period, the Commission will closely review *Beacon's* test results as stocks are added to the system, more member firms are brought on line, and additional specialist posts are provided with the system. Further, as more of the system becomes operational, the BSE has told the Commission that it will submit the results of stress tests on the system in order to demonstrate that *Beacon* has the capacity to handle transaction and order volume levels similar to those that BSE encountered during the October 1987 market break without the system experiencing significant order queues or delays in order execution.

Accordingly, the Commissin has determined that the BSE may proceed with the initial stage of the implementation of *Beacon*, operating under the procedures outlined in the proposed *Beacon* rule, as amended. During this period BSE will be permitted to bring up to 20 stocks on to *Beacon*. Also during this period only market orders may be entered on *Beacon* for execution.

In view of the above, the Commission concludes that the initial stage of the implementation of the proposed *Beacon* system is reasonable and is consistent with the requirements of the Act, particularly section 6(b)(5).

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act that the prposed rule change be, and hereby is, approved with the limitations cited above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz.

Secretary.

Dated: July 15, 1988.

[FR Doc. 88-16447 Filed 7-20-88; 8:45am]

BILLING CODE 8010-01-M

[7] The Exchange currently has a execution guarantee under Chapter II, section 233 of the BSE Rules. Under this provision, BSE specialists guarantee execution on all agency orders from 100 up to 1299 shares in all issues traded through ITS registered to a BSE member specialist. For the 100 most actively traded stocks reported to the consolidated tape, BSE specialists must guarantee execution on all agency orders of up to 2500 shares. Market orders filled under this guarantee must be filed on the basis of the best Consolidated Quotation System ("CQS") bid or offer or better.

[Release No. 34-25920; Filed No. SR-PHLX-88-5]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

I. Introduction

On March 25, 1988 the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[1] a proposed rule change that would formally codify existing Exchange policies and adopt new provisions concerning denial or conditions for Exchange membership.[2]

[1] 15 U.S.C. 78s(b) and 17 CFR 240.19b-4.

[2] The proposed rule change was noticed in Securities Exchange Act Release No. 25680, May 9, 1988, 53 FR 17292. No comments were received on this proposal.

II. Description of Proposed Rule

The proposed rule would add a new Rule 901 specifying circumstances under which the Exchange could deny or condition membership on the Exchange or association with a member of the Exchange.[3] Subparagraph (a) of the proposed rule expressly permits the Exchange to deny or condition membership, or deny from becoming associated with a member firm, any person subject to a statutory disqualification as defined in the Act.[4] The rule would also allow, under subparagraph (b), the Phlx to deny or condition membership of a registered broker or dealer that is unable to demonstrate satisfactorily its capacity to conform to the requirements of sections 15 and 17 of the Act,[5] and the rules and regulations thereunder, and the Exchange's rules relating to the maintenance of books and records. The Phlx would also be able to take such action where the broker or dealer has previously violated the requirements cited above, or similar requirements of other self-regulatory organizations ("SRO") of which the broker or dealer is or was a member, and there is a reasonable likelihood the broker or dealer will again violate those requirements.

Subparagraph (c) of the proposed rule specifies a number of additional circumstances under which the Exchange could deny or condition the membership of a broker or dealer, or bar or condition the association of a person with a member. These circumstances include where the broker or dealer or person:

(1) Fails to pass a written qualification examination required by the Exchange; [6]

(2) Fails to meet other qualification standards set by the Exchange;

(3) Cannot demonstrate a capacity to conform to the policies, rules and requirements of the Exchange, other SROs, or the applicable Federal regulatory agency;

[3] The Phlx's current Rules 901-904 will, accordingly, be renumbered as Rules 902-905.

[4] *See* 15 U.S.C. 78c(a)(39).

[5] Section 15 sets out the requirements for registration and regulation of brokers and dealers. Section 17 contains the requirements for the maintenance of accounts and records, dissemination of reports, and examinations of national securities exchanges, their members, and brokers or dealers.

[6] Under subparagraph (d) of the proposed rule, the Phlx's Committee on Admissions may waive the applicable examination requirement in exceptional cases and where good cause is shown and accept other standards as evidence of an applicants' qualifications.

(4) Has been found by any of the above mentioned entities to have engaged in acts or practices inconsistent with just and equitable principles of trade, and there is a reasonable likelihood the person will do so again;

(5)(i) Or is subject to any outstanding material liens, judgments or insubordinated creditor claims; (ii) has been or is the successor or an entity which has been subject to bankruptcy proceedings or receivership; (iii) has been or remains associated as a partner, principal, officer, director, stockholder, or Phlx registered trader for a member firm which has been subject to any material unsatisfied liens, judgments or insubordinated creditor claims; (iv) has engaged in a pattern of failure to pay just debts; (v) would bring the Exchange into disrepute; (vi) or for such other cause the Exchange may reasonably decide.

III. Discussion

As stated previously, the proposed rule change is largely a codification of current Phlx policies concerning the denial or imposition of conditions on Exchange membership. For example, subparagraph (a) of the proposed rule will expressly permit to Exchange to deny membership, or deny permission to become associated with a member, to any person subject to a statutory disqualification under the Act. Similarly, subparagraph (e) permits the Exchange to deny or condition membership of persons who have failed to pass Phlx required qualifying examinations. At the same time subparagraph (d) will codify the Admissions Committee's authority to waive an examination requirement under special circumstances such as where the applicant has passed a similar qualifying exam administered by another SRO.

Other provisions of the proposed rule permit the Exchange to deny or condition membership where the applicant has been unable to demonstrate satisfactorily to the Exchange a capacity to comply with requirements under the Act for brokers and dealers and for the maintenance of accounts and records, or similar requirements of the Exchange or other SRO's.

In general, as stated by the Exchange, these and the majority of the other circumstances described in the proposed rule under which the Exchange may deny or condition membership address situations where an individual or organization has failed to demonstrate the ability to comply with the significant financial and regulatory responsibilities attendant on Exchange membership. This includes the following circumstances: Where the applicant cannot demonstrate the capacity to comply with applicable requirements of the Exchange, other SRO's and the applicable Federal regulatory agency; where a SRO or Federal regulatory agency has found that the applicant engaged in acts or practices inconsistent with just and equitable principles of trade; and a variety of circumstances where the applicant person or organization is, or has been, or was associated with an organization that was, subject to bankruptcy, receivership, unsatisfied liens, judgments creditor claims, or has evidenced a pattern of failure to pay just debts. As noted by the Exchange in its filing, these policies have functioned well in the past and their codification should permit the Phlx to ensure that its members will be able to comply with the financial and regulatory responsibilities that come with Exchange membership.

The language in Subparagraph (c) allowing the Exchange to deny or condition membership where the applicant "would bring the Exchange into disrepute" or "for such other cause as the Committee on Admissions reasonably may decide" is new. The Exchange states that these provisions are designed to cover important legal and ethical reasons for denial of membership not covered by other parts of the proposed rule but which should be available to the Exchange in its efforts to ensure that membership is extended only to individuals and firms of integrity and trustworthiness. The language of these provisions is substantially similar to language contained in a proposed rule change submitted by the Chicago Board Options Exchange ("CBOE") which was approved by the Commission.[7] As noted by the Commission in our order approving the CBOE's proposed rule change, the "such other causes" language is a general saving clause needed because an SRO could not possibly specify all the individual reasons that might arise for denying membership. Moreover, the language in the CBOE clause, like that in the proposed Phlx rule, is limited in its discretionary application by the word "reasonably." Finally, an applicant who has been denied membership or association with a member would always have the right to appeal that decision to the Commission.

The Commission has closely reviewed the provisions of the proposed rule change and believes that they are consistent with the requirements of the Act. In particular, the Commission believes that the proposed rule under which the Phlx may deny or condition membership is reasonable and consistent with section 6(b)(5) of the Act in that it promotes just and equitable principles of trade and, in general, serves to protect investors and the public interest, and is also consistent with the grounds upon which an exchange may deny or condition membership under section 6(c)(3) of the Act. Adoption of the proposed rule will provide applicants for Phlx membership with notice of the standards for Exchange membership and the general circumstances under which that privilege may be denied or conditioned. Similarly, codification of these policies will serve to focus, and limit, those grounds upon which the Exchange may seek to deny or condition membership.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 15, 1988.

[FR Doc. 88-16448 Filed 7-20-88; 8:45 am]

BILLING CODE 8010-01-M

[7] *See* File No. SR-CBOE-87-23. The proposed rule change was approved by the Commission in Securities Exchange Act Release No. 24996, October 5, 1987, 52 FR 37861.

[Release No. 34-25903; File No. SR-CBOE-88-12]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc., Relating to deletion of rules concerning GNMA and Foreign Currency Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 27, 1988 the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Note.—Italics indicates material proposed to be added.

Rule 6.1 Days and Hours of Business. No change.

Interpretations and Policies:
.01 No change
.02 The Board of Directors has established different hours of trading for Government security options (Rule 21.10, Interpretation .01) *and* index options (Rule 24.6) [and foreign currency options (Rule 22.5)].

Chapter XX GNMA Options

Delete Introduction and all rules in Chapter. The rules to be deleted are Rules 20.1 through and including Rule 20.18B, Rules 20.22 through and including Rule 20.25 and Rule 20.30. Rules 20.19, 20.20, 20.21, 20.26, 20.27, 20.28, and 20.29 were deleted as of October 25, 1983.

Chapter XXII Foreign Currency Options

Delete Introduction and all rules in Chapter. The rules to be deleted are Rules 22.1 through and including Rule 22.17.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV belw and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The proposed rule amendment would delete from Exchange rules all references to GNMA and foreign currency options because the Exchange does not presently nor does it intend in the future to trade such options contracts. The deletions are designed to avoid investor confusion that could arise from continuing to refer to Exchange rules for products that are no longer traded on the Exchange.

The proposed rule change is consistent with the provisions of the Securities Act of 1934 and, in particular, section 6(b)(5) thereof, in that the rules to be deleted are not being used and retaining the rules could confuse investors, and therefore the rule change is designed to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making writing submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements withr espect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 11, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: July 13, 1988.

[FR Doc. 88-16486 Filed 7-20-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25908; File No. SR-DTC-88-12]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by The Depository Trust Co.; Relating to the Proposed ADR Tax Withholding Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 1, 1988, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed "ADR Tax Withholding Service" will enable certain U.S. and Canadian investors in American Depositary Receipts for securities of United Kingdom issues ("UK ADRs") on deposit at DTC to receive at source, without having to withdraw the UK ADRs from DTC, the favorable tax treatment of dividends by the government of the United Kingdom (the "UK Government") to which they are entitled. In the UK, when a UK corporation pays a dividend to a shareholder, it simultaneously pays an "advance corporation tax" (the "ACT") to the UK Government. A UK shareholder is deemed to have received as income not only the dividend but also the ACT. The terms of the Double Taxation Convention (as hereinafter defined) or another tax treaty and the UK Government regulations known as the "H Arrangement" provide that certain U.S. and Canadian residents, such as certain U.S. investors who are not exempt from U.S. federal income tax, may receive some relief from double taxation *at source*—that is, on the occasion of the payment of the dividend. At that time the UK corporation will pay the dividend to each such U.S. or Canadian shareholder and the shareholder will also receive a partial refund of the ACT paid to the UK Government to the extent that the ACT exceeds 15% of the sum of the dividend and the ACT attributable thereto. This eliminates or reduces the need for a time-consuming and inefficient refund claims process for qualifying U.S. and Canadian residents. The beneficial owners of UK ADRs eligible for deposit

at DTC include U.S. and Canadian owners who are entitled to the benefits of the "H Arrangement" and U.S. owners and others who are not. Under the new service, DTC will receive all UK ADR dividends at the more favorable rate. DTC's Participants will certify to DTC the number of shares of each issue that are entitled to favorable tax treatment for their beneficial owners. DTC will pay each Participant the dividend reflecting the favorable rate on the certified number of shares and will pay the dividend at the unfavorable rate on the rest. DTC will then remit the amount attributable to shares paid at the unfavorable rate to the UK Government. The UK Government has approved this procedure. DTC will begin the new service for the dividend record date for UK ADRs of July 3, 1988.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The main purpose of DTC's ADR Tax Withholding Service is to eliminate a disincentive to the immobilization of American Depositary Receipts for shares of United Kingdom corporations at DTC. The statutory bases for encouraging immobilization are section 17A(e) of the Securities Exchange Act of 1934, as amended, and the "Convention Between the Government of the United States of America and the Government of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and Capital Gains" (the "Double Taxation Convention").

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Progress in the development of DTC's ADR Tax Withholding Service in conjunction with the United Kingdom's Inspector of Foreign Dividends at Inland Revenue has been reported to DTC Participants in DTC Program Agenda Memoranda and DTC monthly Newsletters. No written comments have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 11, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary

Dated: July 14, 1988

[FR Doc. 88–16489 Filed 7–20–88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34–25915; File No. SR–NASD–88–20]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Reporting of Trade Data

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 20, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to Article VII, Section 1 of the NASD By-Laws would require NASD members to provide the NASD with comparison and other trade data as may be required by the Board of Governors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change was considered by the NASD Board of Governors and its Uniform Practice Committee and is intended to make clear the NASD's authority to require the reporting by members of trade data

which may be required by the NASD. This clarification of authority will be utilized in implementation of the requirement which was recently approved by the Commission that all NASD members which are participants in registered clearing agencies for purposes of clearance of over-the-counter securities shall participate in and reconcile eligible transactions through the facilities of the NASD's Trade Acceptance and Reconciliation Service. The proposed rule change will also facilitate the planned expansion of that requirement which will mandate that all NASD members conducting an interdealer business in over-the-counter securities submit trade reconciliation data as required by the NASD. The NASD is currently studying the most cost effective methods for allowing members that are not clearing corporation participants to input such trade comparison information. In addition, the proposed rule change will clarify the NASD's authority to require reporting of trade data, including aggregate volume information, on non-NASDAQ over-the-counter transactions which will facilitate the gathering of data on these transactions and the increased surveillance of the non-NASDAQ marketplace which has been requested by the Commission's Division of Market Regulation.

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the NASD's rules be designed to foster cooperation and coordination with persons engaged in clearing, settling and facilitating transactions in securities, to remove impediments and perfect the mechanism of a free and open market and to protect investors and the public interest. The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions and will better enable the NASD to carry out its surveillance function of the over-the-counter market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule charge does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD solicited comments on the proposed rule change in Notice to Members 87–79. The NASD received 16 comments in response to Notice to Members 87–79. Six generally supported the amendment and 10 opposed the amendment.

Eight commentators opposing the proposal generally believed that the amendment would impose an undue burden on small member firms and would require such firms to incur additional costs which would, in some cases, cause the firms to cease doing an over-the-counter securities business. One commentator said that its current method of comparing OTC transactions through the facilities of a regional clearing corporation should be allowed to continue without having to be a TARS subscriber. Another commentator said that TARS participation should not be required for members using automated service bureau facilities that already efficiently generate trade comparisons.

The NASD Board reviewed the comment letters and concluded that the amendment to the NASD By-Laws should be adopted. The Board noted that the mandatory TARS requirement will not affect many commentators since they are not members of registered clearing corporations. Also, the mandatory trade comparison procedure for non-participants in clearing corporations, when implemented, will be structured in the most cost-effective manner for member firms.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 11, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: July 14, 1988.

[FR Doc. 88–16487 Filed 7–20–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–25919; File No. SR–NASD–88–27]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Inclusion of Qualification as Limited Representative—Corporate Securities as Alternative Prerequisite for Qualification as Registered Options Principal and Registered Options Representative

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 1, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the full text of proposed amendments to Part II, paragraph (2)(e) and Part III, paragraph (2)(d) of Schedule C to the NASD By-Laws. New text is italicized.

Schedule C

* * * * *

Part II

* * * * *

(2) Categories of Principal Registration.

* * * * *

(e) Registered Options Principals.

(i) No change.

(ii) No change.

(iii) No change.

(iv) Each person required to register and qualify as a Registered Options Principal must, prior to or concurrent with such registration, be or become qualified pursuant to Part III hereof, as *either* a General Securities Representative *or a Limited Representative—Corporate Securities* and also qualified pursuant to Part III, section (2)(d) hereof as a Registered Options Representative.

(v) No change.

* * * * *

Part III

* * * * *

(2) Categories of Representative Registration.

* * * * *

(d) Registered Options Representative—Each person associated with a member whose activities in the investment banking or securities business include the solicitation and/or sale of option contracts shall be required to be certified as a Registered Options Representative and to pass an appropriate certification examination for such or an equivalent examination acceptable to the Corporation. Registered Options Representatives qualified in either put or call options shall not engage in both put and call option transactions until such time as they are qualified in both such options. Members shall be required to report to the Corporation the names of any associated persons certified as Registered Options Representatives pursuant to an examination approved by the Corporation. Registered Options Representatives must also be qualified with the Corporation as *either* General Securities Representatives *or as a Limited Representative—Corporate Securities;* provided, however, Registered Options Representatives of members that are members of a national securities exchange which has standards of approval acceptable to the Corporation may be deemed to be approved by and certified with the Corporation, so long as such representatives are approved by and registered with such exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On May 20, 1988, the Commission approved the establishment of a category of representative registration and a corresponding examination entitled Limited Representative—Corporate Securities (See Rel. No. 34-25719, File No. SR-NASD-87-50). The NASD Board of Governors has determined that it is appropriate to permit qualification as a Limited Representative—Corporate Securities to serve as an alternative to qualification as a General Securities Representative for purposes of satisfying the prerequisite for undertaking to qualify as a Registered Options Representative ("ROR") or a Registered Options Principal ("ROP"). The amendments set forth herein would accomplish this purpose.

The proposed rule change is consistent with the provisions of section 15A(g)(3) of the Securities Exchange Act of 1934, which section provides that the NASD may prescribe standards of training, experience, and competence for persons seeking to associate with a registered broker-dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the addition of qualification as a Limited Representative—Corporate Securities as an alternative prerequisite for qualification as an ROR or ROP imposes any burden on competition that is not necessary or appropriate in furtherance of the Act.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-88-27 and should be submitted by August 11, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: July 15, 1988.

[FR Doc. 88-16488 Filed 7-20-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. SIPA-147; File No. SIPC 88-1]

Securities Investor Protection Corporation; Proposed Bylaw Change Relating to SIPC Fund Assessments on SIPC Members

Pursuant to section 3(e)(1) of the Securities Investor Protection Act of 1970 ("SIPA"), 15 U.S.C. 78ccc(e)(1), notice is hereby given that on June 22, 1988, the Securities Investor Protection Corporation ("SIPC") filed with the Securities and Exchange Commission a proposed bylaw change. The Commission is publishing this notice to solicit comments on the proposed bylaw change from interested persons.

I. Description of Proposed Bylaw Change

The proposed bylaw change would amend section 1(a) of Article 6 of SIPC's

bylaw regarding SIPC Fund assessments on SIPC's members.[1] The bylaw change provides that, beginning on January 1, 1989, each SIPC member will be required to pay assessments at the rate of 3/16 of 1 percent of its gross revenues from the securities business, with a minimum assessment of $150 per annum. Currently, each SIPC member's assessment is $100 per annum. The SIPC bylaw change also provides that if SIPC determines that the SIPC Fund [2] totals or is reasonably likely to total less than $250 million, the amount of each member's assessment shall be ¼ of 1 percent of such member's gross revenues from the securities business (rather than ⅛ of 1 percent as is currently provided).[3] SIPC indicates that the SIPC Board of Directors ("SIPC Board") took these actions after consultation with representatives of various self-regulatory and securities industry organizations and the Commission.

SIPC indicates that the SIPC Fund currently totals approximately $385 million, and that SIPC maintains a $500 million confirmed line of credit with a consortium of banks. SIPC indicates that while these amounts, coupled with its statutory right to borrow up to $1 billion from the U.S. Treasury Department through the Commission, appear, in light of SIPC's historical experience, to be sufficient to enable SIPC to carry out its anticipated responsibilities, the SIPC Board believes that it is appropriate to increase gradually SIPC's resources.

SIPC indicates that the SIPC Board chose a commencement date of January 1, 1989, so as to give SIPC members ample time to plan for this expense and to give the collection agents (the self-regulatory organizations) time to prepare for these changes. SIPC further states that the SIPC Board selected 3/16 of 1% as a rate that would not prove too onerous for the securities industry, but would, over a reasonable period of time, add substantially to the SIPC Fund. SIPC states that the SIPC Board increased the minimum assessment from $100 per annum to $150 because it believes that all registered broker-dealers benefit from the SIPC program and should pay a reasonable amount to support that program. SIPC notes that SIPC does not permit a greater minimum assessment than $150 per annum.

Finally, in the past, SIPC assessments based on gross revenues were collected on a quarterly basis. In order to simplify the collection process, SIPC expects to collect assessments on a semi-annual basis for the first year. SIPC states that the frequently of collection will be reviewed next June.

II. Need for Public Comment

Section 3(e)(1) of the SIPA provides that SIPC must file with the Commission a copy of proposed bylaw changes. That section further provides that bylaw changes shall take effect 30 days after filing, unless the Commission either (i) disapproves the change as contrary to the public interest or the purposes of SIPC, or (ii) finds that the change involves a matter of such significant public interest that public comment should be obtained. Thus, under section 3(e)(1) of the SIPA, a proposed bylaw change does not have to be noticed for public comment. However, under section 3(e)(1)(B) of SIPA, the Commission can find that "such proposed bylaw change involves a matter of such significant public interest that public comment should be obtained," in which case the Commission may, after notifying SIPC in writing of such finding, require that the proposed bylaw change be considered by the same procedures as a proposed rule change including, among other things, publication in the **Federal Register** and opportunity for public comment.

The SIPC Fund, which is built from assessments on its members and interest earned on the Fund, is used for the protection of customers of members liquidated under SIPA to maintain investor confidence in the securities markets. In light of this fact and the significant market developments since October 1987, the Commission finds that the proposed bylaw change involves a matter of significant public interest, that public comment should be obtained, and that the procedures applicable to proposed SIPC rule changes in section 3(e)(2) of the SIPA should be followed. As required by section 3(e)(1) of the SIPA, the Commission has notified SIPC in writing of its finding.

III. Date of Effectiveness of the Proposed Bylaw Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which SIPC consents, the Commission will:

(A) By order approve such proposed bylaw change, or

(B) Institute proceedings to determine whether the proposed bylaw change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file three copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed bylaw change that are filed with the Commission, and all written communications relating to the proposed bylaw change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. All submission should refer to File Number SIPC 88-1 and must be received on or before August 11, 1988.

By the Commission.

Jonathan G. Katz,

Secretary.

July 14, 1988.

[FR Doc. 88-16485 Filed 7-20-88; 8:45 am]

BILLING CODE 8010-01-M

[1] All broker-dealers registered under section 15(b) of the Securities Exchange Act of 1934, with some minor exceptions, are SIPC members.

[2] The SIPC Fund consists of cash and amounts invested in U.S. government or agency securities.

[3] Section 1(a) of Article 6 currently provides that if SIPC determines that the SIPC Fund totals or is reasonably likely to total less than (i) $250 million, the amount of each member's assessment shall be ⅛ of 1 percent of such member's gross revenues from the securities business, (ii) $150 million, the amount of each member's assessment shall be ¼ of 1 percent of such member's gross revenues from the securities business and (iii) $100 million, the amount of each member's assessment shall be ½ of 1 percent of such member's gross revenues from the securities business.

SMALL BUSINESS ADMINISTRATION

[License No. 06/06-0187]

Grocers Small Business Investment Corp; Surrender of License

Notice is hereby given that Grocers Small Business Investment Corporation (Grocers), 3131 East Holcombe Blvd., Houston, Texas 77021, has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). Grocers was licensed by the Small Business Administration on February 14, 1977.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was effective on July 8, 1988, and accordingly, all rights, privileges, and franchises therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: July 18, 1988.

[FR Doc. 88-16450 Filed 7-20-88; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting; California

The U.S. Small Business Administration, Region IX advisory Council, located in the geographical area of San Francisco will hold a public meeting at 2:30 p.m. On Tuesday, August 9, 1988 in the District Director's Conference Room, 4th Floor, 211 Main Street, San Francisco, California to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Michael R. Howland, District Director, U.S. Small Business Administration, 211 Main Street, 4th Floor, San Francisco, California 94105, (415) 974-0642.

Jean M. Nowak,

Director, Office of Advisory Councils.

July 18, 1988.

[FR Doc. 88-16451 Filed 7-20-88; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 09/09-0377]

Wells Fargo Capital Corp.; Application for License To Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) by Wells Fargo Capital Corporation, 420 Montgomery Street, 9th Floor, San Francisco, California 94163 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 *et. seq.*).

The proposed officers, directors and shareholders of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
John F. Grundhofer, 333 South Grand Avenue, Los Angeles, California 90071	Board Chairman	
Charles A. Greenberg, 420 Montgomery Street, San Francisco, California 94163.	President, Director	
Sandra J. Menichelli, 420 Montgomery Street, San Francisco, California 94163.	Vice President	
Guy Rounsaville, Jr., 420 Montgomery Street, San Francisco, California 94163.	Secretary	
Ronald S. Parker, 333 South Grand Avenue, Los Angeles, California 90071.	Director	
David M. Petrone, 420 Montgomery Street, San Francisco, California 94163.	Board Vice Chairman	
Wells Fargo Capital Markets, Inc., 420 Montgomery Street, 9th Floor, San Francisco, California 94163.	Investment Advisor/ Manager, Parent.	100

Wells Fargo Capital Corporation is a wholly owned subsidiary of Wells Fargo Capital Markets, Inc., which in turn, is a wholly owned subsidiary of Wells Fargo & Company, a bank holding company.

Prior to this application, Wells Fargo & Company established two small business investment companies. Wells Fargo Investment Company, License No. 12/12-0147, was licensed on January 6, 1969 and surrendered its license on July 18, 1984. Wells Fargo Equity Corporation, License No. 09/09-0316, was licensed on October 29, 1982 and surrendered its license on December 4, 1985.

The Applicant, a California corporation, will begin operations with $2,000,000 of paid-in capital and paid-in surplus. The Applicant will conduct its activities in the State of California.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

A copy of the notice shall be published in a newspaper of general circulation in the San Francisco, California area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: July 11, 1988.

[FR Doc. 88-16402 Filed 7-20-88; 8:45 am]

BILLING CODE 8025-01-M

UNITED STATES TRADE REPRESENTATIVE

Investment Policy Advisory Committee; Meeting and Determination of Closing of Meeting

The meeting of the Investment Policy Advisory Committee to be held Tuesday, July 26, 1988, from 9:30 a.m. to 12:00 Noon in Washington, DC will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

Inquiries may be directed to Barbara W. North, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President, Washington, DC 20506.

Alan F. Holmer,

Acting United States Trade Representative.

[FR Doc. 88-16389 Filed 7-20-88; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 140
Thursday, July 21, 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 ELECTION COMMISSION

DATE AND TIME: Tuesday, July 26, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters purusant to 2 U.S.C. 437g.
Audits conducted prusuant to 2 U.S.C. 437, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, July 28, 1988, 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future meetings.
Correction and Approval of Minutes.
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds.
Draft AO 1988-28:
Paul Suplizio Associates on behalf of Tele/900 Inc., dba Teleline
Draft AO 1988-32:
Terry Lee George on behalf of Frank Shurden Democrat for U.S. Congress
Status of Presidential Audits
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 88-16555 Filed 7-19-88; 2:46 pm]
BILLING CODE 6715-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on July 15, 1988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, July 20, 1988.

CHANGES IN THE MEETING: The open meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: July 18, 1988.

James McAfee,
Associate Secretary of the Board.
[FR Doc. 88-16510 Filed 7-19-88; 11:15 am]
BILLING CODE 6210-01-M

DEPARTMENT OF JUSTICE

Parole Commission

Record of Vote of Meeting Closure (Pub. L. 94-409) (5 U.S.C. 552b)

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at eight-thirty o'clock am. on Monday, July 11, 1988 at the Commission's Western Office, 1301 Shoreway Road, Fourth Floor, Belmont, California 94002. The meeting ended at or about 12:30 p.m. The purpose of the meeting was to decide approximately 24 appeals from National Commissioners' decisions pursuant to 28 CFR 2.27. Nine Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Benjamin F. Baer, Saundra Brown Armstrong, Cameron M. Batjer, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, Daniel R. Lopez, G. MacKenzie Rast, and Victor M.F. Reyes.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: July 18, 1988.

Benjamin F. Baer,
Chairman, U.S. Parole Commission.
[FR Doc. 88-16538 Filed 7-19-88; 2:10 pm]
BILLING CODE 4410-C1-M

NATIONAL COUNCIL ON THE HANDICAPPED

Quarterly Meeting

AGENCY: National Council on the Handicapped.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Council on the Handicapped. This notice also describes the functions of the Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (P.L. 94-409).

DATES:

August 1, 1988, 9:00 a.m. to 5:00 p.m.
August 2, 1988, 8:30 a.m. to 5:00 p.m.
August 3, 1988, 9:00 a.m. to 12:00 noon

LOCATION: Away Grand Hotel, Grand Rapids, Michigan.

FOR FURTHER INFORMATION CONTACT: Andrea Farbman, National Council on the Handicapped, 800 Independence Avenue SW., Suite 814, Washington, DC 20591, (202) 267-3846, TDD: (202) 267-3232.

The National Council on the Handicapped is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Pub. L. No. 95-602 in 1978), the Council was initially an advisory board within the Department of Education. In 1984, however, the Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Pub. L. 98-221).

The Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting disabled individuals and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute of Disability and Rehabilitation Research (NIDRR).

The meeting of the Council shall be open to the Public. The proposed agenda includes:

Report from the Chairperson and Executive Committee
Forum: Implementing Public Policy In *Toward Independence*
Introduction of New Executive Director
Site Visits to Rehabilitation Facilities
Status Reports on the Following:

Conference on Families for Persons with Disabilities
800 Information and Referral Number
Forum on Living Arrangements for Severely Disabled Children and Youth
Commission on Special Education
Presentation on Integrated Employment
Discussion of Unfinished and New Business

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on the Handicapped.

Signed at Washington, DC, on July 15, 1988.

Ethel D. Briggs,

Acting Executive Director.

[FR Doc. 88-16541 Filed 7-19-88; 2:02 pm]

BILLING CODE 6820-BS-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, August 3, 1988.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of July, 1988.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

DATE OF NOTICE: July 18, 1988.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 88-16550 Filed 7-19-88; 2:03 pm]

BILLING CODE 7550-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 25, 1988.

A closed meeting will be held on Tuesday, July 26, 1988, at 2:30 p.m. An open meeting will be held on Thursday, July 28, 1988, at 9:30 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 26, 1988, at 2:30 p.m., will be:

Formal order of investigation.

Settlement of administrative proceeding of an enforcement nature.

Institution of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, July 28, 1988, at 9:30 a.m., will be:

1. Consideration of whether to adopt amendments to Rule 204-2, the recordkeeping rule under the Investment Advisers Act of 1940. The amendments would require advisers to retain, for Commission inspection, all advertisements and supporting records for performance information in advertisements. Advertisements and supporting records would be required to be kept for five years from the end of the fiscal year in which the advertisement was last published. For further information, please contact Dorothy M. Donohue at (202) 272-2107.

2. Consideration of whether to propose for public comment forms N-17f-1 and N-17f-2 under the Investment Company Act of 1940 and form ADV-E under the Investment Advisers Act of 1940. The forms would serve as cover sheets for accountant examination certificates which are currently required to be filed with the Commission. The forms are designed to facilitate the proper filing of examination certificates and, thus, increase the accessibility of such information to both investors and the Commission's staff. For further information, please contact John McGuire at (202) 272-2107.

3. Consideration of whether to propose for public comment Rule 17 and amendments to Rule 2 and Form U-3A-2 under the Public Utility Holding Company Act of 1935. Rule 17 would specify the circumstances in which nonutility diversification by an intrastate public-utility holding company would not be deemed detrimental to the public interest or the interest of investors or consumers. Amended Rule 2 would provide that a claim of exemption under Rule 2 by an intrastate public-utility holding company, in order to be effective, would require the holding company to meet one of the safe harbor provisions of Rule 17, and amended Form U-3A-2 would require the company to furnish information supporting its ability to rely on one of the safe harbor provisions of Rule 17. For more information, please contact Sidney L. Cimmet at (202) 272-7340.

4. Consideration of an application filed by Merrill Lynch California Municipal Series Trust *et al.* and all similar investment companies to be established, advised, or managed by Merrill Lynch Asset Management, Inc. ("MLAM") or Fund Asset Management, Inc. ("FAMI"), or distributed by Merrill Lynch Funds Distributor, Inc. ("MLFD") ("Funds"); MLAM; FAMI; and MLFD (collectively, "Applicants") for an order of the Commission under Section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Applicants from Sections 18(f), 18(g), and 18(i) of the Act to the extent necessary to permit the Funds to sell separate classes of securities for the purpose of establishing a dual distribution system, and from the provisions of Sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder to the extent necessary to permit assessment of a contingent deferred sales charge on certain redemptions of a class of their securities, and waiver of the contingent deferred sales charge in certain redemptions; and for an order under Section 11(a) approving certain offers of exchange for shareholders of the Funds. For further information, please contact Fran Pollack-Matz at (202) 272-3024.

5. Consideration of whether to repropose for public comment Rule 11a-3 and to seek additional public comment on proposed Rule 11c-1, both under the Investment Company Act of 1940. Revised proposed Rule 11a-3 would allow certain open-end investment companies and their principal underwriters to make certain exchange offers to their own shareholders or to shareholders of another fund in the same group of funds. Proposed Rule 11c-1 would allow unit investment trusts and their sponsors to make certain exchange offers to unitholders of the same trust or to unitholders of another trust having the same sponsor. Consideration will also be given to whether to seek comment on insurance considerations relevant to the question of whether the Commission should propose to amend Rule 11a-2, which permits certain insurance company separate accounts to make offers of exchange. For further information, contact Brian Kindelan at (202) 272-2048.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Martha Peterson at (202) 272-7502.

Jonathan G. Katz,

Secretary.

July 18, 1988.

[FR Doc. 88-16599 Filed 7-19-88; 4:03 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 53, No. 140
Thursday, July 21, 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.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80P-0157 et al.]

Approved Variances for Laser Light Shows; Availability

Correction

In notice document 88-15191 beginning on page 25547 in the issue of Thursday, July 7, 1988, make the following correction:

On page 25547, in the table, under "Demonstration laser product", in the fourth line, "krypton" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0250]

Drug Export; Ornade-A.F.® Spansule® Capsules

Correction

In notice document 88-15334 appearing on page 25691 in the issue of Friday, July 8, 1988, make the following corrections:

1. In the first column, under **SUMMARY**, in the sixth line, "Ornade" and "Spansule" were misspelled.

2. In the second column, in the second complete paragraph, in the third line, "July 8" should read "July 18".

3. In the same column, in the last paragraph, in the next to last line, between "for" and "Evaluation" insert "Drug".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8211]

Income Taxes; Income of Foreign Governments and International Organizations

Correction

In rule document 88-14429 beginning on page 24060 in the issue of Monday, June 27, 1988, make the following corrections:

1. On page 24061, in the first column, in the fifth paragraph, the first line should read "Paragraph (a) of § 1.1441-8T sets forth the ". Also, in the third line, "§ 1.144-1" should read "§ 1.1441-1".

§ 1.892-1T [Corrected]

2. On page 24061, in the third column, in § 1.892-1T(a), in the ninth line, "1.982-3T" should read "1.892-3T".

§ 1.892-2T [Corrected]

3. On page 24061, in the third column, in § 1.892-2T(a)(3), in the third line, "separated" should read "separate".

§ 1.1441-8T [Corrected]

4. On page 24066, in the second column, in § 1.1441-8T(a), in the 10th line, "§ 1441.1" should read "§ 1.1441-1". Also, in § 1.1441-8T(b), in the fourth line from the bottom, "§ 1441-1" should read "§ 1.1441-1".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL-285-88]

Income Taxes; Income of Foreign Governments and International Organizations

Correction

In proposed rule document 88-14428 beginning on page 24100 in the issue of Monday, June 27, 1988, make the following correction:

On page 24101, under **FOR FURTHER INFORMATION CONTACT**, in the seventh line, the telephone number should read "202-566-6384".

BILLING CODE 1505-01-D

Federal Register

Thursday
July 21, 1988

Part II

Department of Transportation

Office of the Secretary

49 CFR Part 24

Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[FHWA Docket No. 87-22]
RIN 2125-AB 85

Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation implements statutory amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act) made by the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, (1987 Amendments) Pub. L. 100-17, 101 Stat. 246-256. The Uniform Act applies to all Federal or federally assisted activities that involve the acquisition of real property or the displacement of persons, including displacements caused by rehabilitation and demolition activities. Consequently, it affects a wide variety of Federal and federally funded programs and projects. This NPRM is the latest in a series of actions that have been taken to ensure that the implementation of the Uniform Act by Federal agencies is, in fact, as uniform and consistent as possible. While encouraging State and local discretion in implementing the Uniform Act's provisions.

DATES: Comments must be received on or before September 19, 1988. Public meetings will be held on August 17, 22, and 24; see Supplementary Information for further details.

ADDRESS: Submit signed, written comments to FHWA Docket No. 87-22, Federal Highway Administration, Room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. Public meetings will be held in Philadelphia, Pennsylvania; Chicago, Illinois; and Portland, Oregon; see Supplementary Information for further details.

FOR FURTHER INFORMATION CONTACT: Robert J. Moore, Chief, Policy Development, Office of Right-of-Way, HRW-11, (202) 366-0116; or Reid Alsop, Office of the Chief Counsel, HCC-40, (202) 366-1371. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

A few provisions of the 1987 Amendments upon which the law is explicit and allows for little, if any, administrative discretion or interpretation, and for which a period of public notice and comment would have been impractical, were implemented in an interim final rule in Part 24 issued by FHWA (52 FR 47994) and referenced by all but one of the affected Federal agencies (52 FR 48015) on December 17, 1987. That one agency subsequently referenced Part 24 (53 FR 4964) on February 19, 1988. These agencies are as follows:

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Environmental Protection Agency
Federal Emergency Management Agency
General Services Administration
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
National Aeronautics and Space Administration
Pennsylvania Avenue Development Corporation
Tennessee Valley Authority
Department of Transportation
Veterans Administration

In addition, the United States Postal Service issued a Final Rule in 39 CFR Part 777 on December 17, 1987 (52 FR 48029) to amend the Postal Service's regulations to make them consistent with the 1987 Amendments.

This proposed rule, if promulgated, would implement all of the remaining provisions of the 1987 Amendments by amending the existing interim final rule. Following consideration of comments received in response to this notice of proposed rulemaking (NPRM), as well as in response to the interim final rule, we anticipate promulgating a final rule in Part 24 that would replace the interim final rule. For the easy reference of the reader, Part 24 as proposed to be revised herein is printed in its entirety in order to present a complete full text regulation.

As originally enacted, the Uniform Act authorized "the head of each Federal agency" to establish regulations and procedures for implementing the Uniform Act. Inevitably, this led to significant differences in agency implementing regulations. In a March 8, 1978, Report to Congress (GAO Report No. GGD-78-6, "Changes Needed in the Relocation Act to Achieve More Uniform Treatment of Persons Displaced by Federal Programs", B-148044 (1978)), the Comptroller General found that as a result of these differences the Federal government was not providing uniform treatment to people displaced from their homes and businesses by Federal or federally assisted programs. Those differences among Federal implementing regulations also imposed significant administrative burdens on State and local governments.

In 1981, for the Vice President's Presidential Task Force on Regulatory Relief, State and local governments identified the Uniform Act as a good candidate for State and local regulatory relief. Therefore, in May 1982, the Office of Management and Budget (OMB) formed a Uniform Act Interagency Regulatory Review Working Group to develop uniform regulations to be implemented by each agency covered by the Uniform Act. On February 27, 1985, a Presidential Memorandum was signed and published in the **Federal Register** on March 5, 1985 (50 FR 8953), naming the Department of Transportation (DOT) as the agency with lead responsibility for the Uniform Act. The Secretary of the Department of Transportation delegated this responsibility to the Federal Highway Administration. On March 5, 1985 (50 FR 8953), DOT published in the **Federal Register** a model Uniform Act rule, which, in accordance with the President's February 27, 1985 memorandum, served as the basis for a proposed common Uniform Act rule for the 16 other affected agencies (50 FR 8955). The proposed common rule was issued for comment by those 16 agencies on May 28, 1985 (50 FR 21712). After consideration of comments, the disparate regulations of all affected agencies were superseded by the common rule which was published as a final rule on February 27, 1986 (51 FR 7060). This common rulemaking effort, applicable to both direct Federal programs and projects and federally-assisted programs and projects undertaken by State or local agencies, achieved consistency in regulations among the separate Federal agencies.

To a significant extent, this common rulemaking effort presaged many of the statutory changes to the Uniform Act made by the 1987 Amendments. In the administrative area, for example, the

Amendments specifically designate the DOT as lead agency and require it, in coordination with other Federal agencies, to issue rules, establish procedures and make interpretations to implement provisions of the Uniform Act. In the substantive area, with the major exception of payment levels or criteria that were set by statute, the common rulemaking effort granted greater flexibility and discretion to State and local agencies, a theme reiterated in the 1987 Amendments.

Implementation of the 1987 Amendments

On Tuesday, May 19, 1987 (52 FR 18768) the FHWA issued a Notice describing significant changes in the law and general plans to implement those changes. On Tuesday, December 1, 1987 (52 FR 45667) the FHWA issued a Notice of Regulatory Intent giving further notice of the specific regulatory actions that it and the other affected Federal agencies would take to implement the 1987 Amendments.

On December 17, 1987 (52 FR 47994) the FHWA issued an interim final rule in Part 24 that revised the common rule to include those provisions of the 1987 Amendments (primarily increases in the dollar amounts of specific relocation benefits) that did not allow for discretion in their implementation. This was done to allow those Federal, State and local agencies that were willing and able to implement those provisions to do so expeditiously. On the same day (52 FR 48015) 17 Federal Departments and agencies that administer the Uniform Act published interim final rules rescinding the common rule from each of their regulations and adopting in its place a cross-reference to the single governmentwide regulation published by FHWA at 49 CFR Part 24. The effective date for these agency rescissions and cross references varied, however all such actions will take effect on or before April 2, 1989, the date the 1987 Amendments become mandatory.

An eighteenth Federal Department, the Department of Housing and Urban Development (HUD), was unable to join the other Federal agencies in publishing an interim final rescission and cross referencing action on December 17, 1987, because of its need to first satisfy certain Congressional review obligations. HUD subsequently published such an interim rule on February 19, 1988 (53 FR 4964).

While comments were sought on these interim rules, only eight comments were received, seven by FHWA and one by the Department of Housing and Urban Development (HUD). The seven comments received by FHWA did not address either the establishment of a single governmentwide regulation at 49 CFR Part 24, the agency rescission and cross-referencing actions, or the changes made in the interim rule. Rather, they concerned matters that are addressed in this NPRM, and they will therefore be considered, along with the comments received in response to this NPRM, in the development of a final rule. The one comment received by HUD objected to any delay in the effective date of the rescission and cross-referencing action contained in HUD's interim rule. However, the comment did not otherwise object to the rescission and cross-referencing action itself.

Since no comments were received concerning the use of rescission and cross-referencing actions by the various agencies to establish a single governmentwide regulation, the individual agencies will finalize their interim final actions. HUD will consider the comment concerning its interim rule's effective date before its interim rule is finalized.

Accordingly, the changes proposed in this NPRM, if adopted, will govern the relocation and land acquisition programs of all those 18 Federal departments and agencies, as well as the United States Postal Service. Those departments and agencies, and the parts of the Code of Federal Regulations which will contain a cross reference to this part, are listed below:

Department of Agriculture
7 CFR Part 21
Department of Commerce
15 CFR Part 11
Department of Defense
32 CFR Part 259
Department of Education
34 CFR Part 15
Department of Energy
10 CFR Part 1039
Environmental Protection Agency
40 CFR Part 4
Federal Emergency Management Agency
44 CFR Part 25
General Services Administration
41 CFR Part 105–51
Department of Health and Human Services
45 CFR Part 15
Department of Housing and Urban Development
24 CFR Part 42
Department of the Interior
41 CFR Part 114–50
Department of Justice
41 CFR Part 128–18
Department of Labor
29 CFR Part 12
National Aeronautics and Space Administration
14 CFR Part 1208
Pennsylvania Avenue Development Corporation
36 CFR Part 904
Tennessee Valley Authority
18 CFR Part 1306
Veterans Administration
38 CFR Part 25

The United States Postal Service will incorporate changes in its full-text regulation at 39 CFR Part 777 and intends to publish its final rule simultaneously with the publication of the final governmentwide rule at 49 CFR Part 24.

All members of the public who are affected by relocation or land acquisition activities undertaken or funded by those departments and agencies are encouraged to comment on this NPRM. Comments from interested State and local governments are particularly requested.

A description of the regulatory changes proposed in this part are set forth below. The only major changes proposed are those required by enactment of the 1987 Amendments. Where no such changes are required, the provisions of the governmentwide rule are generally repeated in this proposed rule. That is, the proposed rule is basically the same as the governmentwide rule with the exception of those changes that are necessary to fully implement the 1987 Amendments. Comments are invited on both those non-discretionary changes that were adopted in the December 17, 1987, interim final rule and the remaining changes proposed in this NPRM.

Public Meetings

In furtherance of the statutory objective of securing the views of State and local governments and the public in the promulgation of these regulations, the Federal Highway Administration proposes to conduct three public meetings during the comment period following publication of this proposed rule. The purpose of these meetings will be to receive comments on the proposed rule from interested parties. These comments will be entered in FHWA Docket No. 87–22 and will be given full consideration prior to issuance of the final rule.

The meetings will be held during the comment period. Dates for the meetings are August 17, 1988 in Philadelphia, Pennsylvania, August 22 in Portland, Oregon and August 24 in Chicago, Illinois. Specific information relative to these meetings will be detailed in a notice soon to be published in the **Federal Register**.

Speakers are invited to make brief presentations of no more than 10 minutes and will be scheduled based on the order of pre-registration and registration at the door. Written comments may also be submitted. Persons wishing to reserve presentation time or seating should contact Ms. Barbara J. Satorius, Realty Specialist, Policy Development Branch, HRW-11, (202) 366-0116, Federal Highway Administration, Washington, DC at least 10 days in advance of the meeting they wish to attend.

The major changes made by the 1987 amendments include:

—Expansion of the Uniform Act coverage to include virtually all activities that receive Federal funds, including those undrtaken by private entities.

—A moderate increase in benefit levels.

—The establishment of a lead agency to issue a single governmentwide implementing regulation.

—Providing that the computation of certain relocation benefits be done in accordance with the lead agency regulations, rather than prescribing the computation method in the statute.

—Granting State greater flexibility and discretion in implementing the provisions of the Uniform Act.

Explanation of the Changes in This NPRM

The changes proposed in this NPRM are described in detail below. (For a description of the nondiscretionary provisions of the 1987 Amendments adopted in the interim final rule the reader is directed to the preamble to that rule at 52 FR 47994, December 17, 1987).

Subpart A—General

Section 24.1 Purpose.

A new paragraph (c) is proposed to replace the current paragraph which refers to changes made by the interim rule. The new paragraph would establish efficient and cost effective implementation as one of the primary purposes of this part. We are particularly concerned that State and local implementing agencies not be burdened with unnecessary regulatory requirements. In this regard such agencies should be fully aware of the waiver provision in § 24.7 and should utilize it when its use could avoid unnecessary delay or administrative burdens.

Section 24.2 Definitions.

Section 24.2(a) contains proposed definitions based on the generic term "agency" which are found in the amended Uniform Act. These proposed definitions relate to particular functions agencies may be performing at a given time in program or project development. These definitions are not mutually exclusive and a single "agency" may be an acquiring agency, a displacing agency and/or a State agency, or all three, at various times during the performance of its Uniform Act activities.

Most significant is the fact that the 1987 Amendments broadened Uniform Act coverage to provide that a "person" who receives Federal financial assistance is now considered to be included within the definitions of acquiring agency, displacing agency, State agency or agency, depending upon the circumstances. It should be noted that, as a result of the 1987 Amendments, the relocation provisions in Title II of the Uniform Act now apply to all "displacing agencies". That term, as it is defined in the 1987 Amendments, includes all private entities that carry out projects with Federal financial assistance that cause people to be displaced whether or not such entities have the power of eminent domain. The real property acquisition policies and procedures in Title III of the Uniform Act, however, now apply to Federal agencies and to "acquiring agencies" that receive Federal financial assistance. Acquiring agencies are all State and private entities that have the power of eminent domain and such State or private entities without the power of eminent domain, to the extent provided in the lead agency regulations. While the term "Agency" is generally used throughout this proposed part, the proposed part reflects these changes in Uniform Act coverage.

In § 24.2(b) the definition of the term "appraisal" would be shifted from Subpart B to this subpart, without change.

Section 24.2(d) contains a new definition of a "comparable replacement dwelling". The proposed definition is based on the new statutory definition of a comparable replacement dwelling and proposes additional information on the meaning of the terms "functionally equivalent" and "financial means" as used in the definition.

Section 24.2(d)(8)(ii) defines the term "financial means" for a person renting a replacement dwelling. (See Subpart E of this preamble).

Section 24.2(d)(8)(iii) proposes financial means criteria for displaced persons not eligible for payments under §§ 24.401 or 24.402 of Subpart E of this part. It is proposed that such persons, because of their short tenure at the displacement dwelling, be required to contribute, to the extent they are able, to any increased costs for affordable comparable replacement housing.

Proposed § 24.2(g) expands and modifies the definition of "displaced person" eligible for the benefits of the Uniform Act. The most significant additions to the definition, which derive from the 1987 amendments, bring persons displaced as a direct result of the rehabilitation or demolition of their dwellings within the coverage of the law.

Section 24.2(g)(2)(iv) would apply primarily to certain residential tenants affected by rehabilitation activities undertaken with financial assistance provided by the Department of Housing and Urban Development (HUD). This section indicates that residential tenants who are not required to move permanently from the building or from a nearby building on the real property as a result of such activities are not to be considered displaced persons within the meaning of the Uniform Act if they are provided with specific protections. These include an offer of a lease for a suitable, decent, safe and sanitary dwelling in the same building (or in a nearby building on the real property) under reasonable terms and conditions of continued occupancy, and reimbursement for out-of-pocket costs associated with any temporary relocation (including moving expenses incurred, and any increased rental and/or utility charges which a tenant is required to pay during the period of the temporary relocation to a decent, safe and sanitary dwelling).

This proposed regulation does not directly address an important issue relating to rehabilitation activities. The expanded definition of "displaced person" added by the 1987 Amendments includes residential tenants displaced as a direct result of assisted rehabilitation activities. Considerable controversy has arisen over the question of whether this definition covers a tenant who need not relocate permanently as a result of the physical alteration of his dwelling or a change in its legal ownership, but whose rent is increased significantly following the completion of rehabilitation activities, resulting in the tenant moving elsewhere.

Relocation assistance is now offered such tenants in some programs administered by HUD, but this is done on the basis of administrative requirements not emanating from the Uniform Act. HUD takes the position that a rental increase which prompts relocation is not a direct result of rehabilitation, as is required for

coverage of the Uniform Act, but is an indirect or secondary result of the assisted rehabilitation. While HUD generally agrees that its program regulations should provide for assistance to tenants moving as a result of these rental increases, HUD does not believe that such tenants are covered by the 1987 Amendments. Proposed § 24.2(g)(2)(iv) would not include such tenants within the definition of "displaced person" so long as the other conditions set forth in the section were satisfied.

From 1971 to 1975 HUD regulations implementing the Uniform Act, appearing at 24 CFR Part 42, did contain a provision permitting relocation assistance for those whose rent increased ten percent or more following activities designated "voluntary rehabilitation" under the urban renewal and model cities programs. Such activities under these specified programs were deemed "acquisition" for purposes of establishing eligibility for benefits under the Uniform Act by section 217 of the legislation, which has now been repealed. Nothing in section 217 or elsewhere in the statute addressed this question of rental increases, however. The regulatory provision was included to preserve a policy of the urban renewal program which had been followed since 1965. HUD did not believe that this policy had any basis in the law, and therefore eliminated it from its revised Uniform Act regulations which were published in February, 1975. HUD points out that this policy was not challenged by Congress or in the courts and has remained operative for the last thirteen years. HUD generally supports program regulations which provide relocation assistance to residential tenants that move because of substantial rent increases following rehabilitation, but believes that these regulations must be tailored to each such HUD program, and are not based upon the provisions of the Uniform Act. One effect of this approach would be to limit the uniformity among Federal and federally assisted programs that provide relocation assistance. Such uniformity is a primary goal of the Uniform Relocation Act.

To summarize, the 1987 Amendments alter section 101(6) of the Uniform Act to include as eligible for benefits residential tenants who move as a direct result of rehabilitation. HUD takes the position that Congress did not intend the 1987 Amendments to cover displacement resulting from rent increases that follow rehabilitation since they are the secondary consequence of assisted activities, and that Congress fully understood and recognized the distinction between the "direct" and the "indirect" results of assisted rehabilitation.

A contrary opinion holds that these rental increases are such an integral and foreseeable consequence of assisted rehabilitation activities that displacement resulting from such increases must be considered to be a direct result of rehabilitation.

It also has been suggested that a further condition be added to proposed § 24.2(g)(2)(iv) to provide that so long as the tenant is offered an opportunity to rent an adequate decent, safe, and sanitary dwelling at a rent that is the same as that paid by the tenant before the project, or 30% of the household's gross income, whichever is greater, such tenant would not be considered a displaced person. If the rent for the dwelling offered to the tenant exceeded the greater of those figures, the tenant would then be considered a displaced person.

We invite public comment on this extremely important issue. Also, comment is solicited on any other federally funded activity which may cause a person to be displaced.

Section 24.2(j) proposes to except any interest reduction payment to an individual for the purchase and occupancy of a residence from the definition of Federal financial assistance. This exception is contained in the 1987 Amendments.

Section 24.2(k)(2) proposes to define the action which is the "initiation of negotiations" for displacements caused by rehabilitation, demolition or certain privately undertaken acquisitions, where there is no related acquisition by a Federal or State agency.

Section 24.2(l) is a proposed addition to this section which simply adopts the statutory definition of the term "mortgage".

Section 24.2(m) proposes a definition of the term "nonprofit organization" that would make it clear that this term refers to those organizations that are exempt from income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

Section 24.2(n) proposes to revise the definition of "owner of a replacement dwelling" to include the owner of any dwelling.

Section 24.2(p) includes a new definition of the term "project". The effect of this proposed definition would be to exclude from coverage under this part those actions or activities that result from Federal or federally assisted payments that are made to individuals or families and which are intended primarily to assist or benefit such individual or family.

Section 24.2(r) contains a proposed definition of the term "small business". It is a simple definition chosen for easy application to the eligibility requirements for the business reestablishment payment which was added by the 1987 Amendments. The proposed use of the number of employees (500) at the affected site as the sole criterion for defining a small business precludes an agency from having to delve into the financial affairs of a displaced business in order to qualify it for payments. This definition includes a business which may be considered a chain operation under the fixed payment criteria of § 24.304(a)(3), regardless of the total number of persons employed throughout the entire business enterprise, provided no more than 500 persons are employed at the affected site. Specific comment on the 500 employee threshold for the definition of a "small business" is solicited.

Section 24.2(u) defines the term "uneconomic remnant" and is shifted unchanged from Subpart B to this subpart.

Section 24.2(v) contains a proposed definition of the term "unlawful occupancy". The proposed definition evisions considerable Agency discretion in determining a person's lawful or unlawful occupancy. It discourages the use of trivial technical violations of codes or leases to deny eligibility for Uniform Act benefits due to unlawful occupancy.

Section 24.2(x) is a proposed definition of "utility costs" as they pertain to residential or commercial consumers.

Section 24.2(y) and (z) are proposed definitions of "utility facility" and "utility relocation" for use in the implementation of § 24.307, Subpart D of this part.

Section 24.4 Assurances, monitoring and corrective action.

Section 24.4(a)(2) is a proposed alternative to the retirement that all agencies seeking Federal financial assistance must submit assurances to funding Federal agencies that they will comply with the Uniform Act and this part. The details of the alternative procedure are found at Subpart G of this part.

Section 24.6 Administration of jointly-funded projects.

This section proposes to implement the new statutory mandate requiring the lead agency to designate one Federal

agency as the cognizant agency when two or more Federal agencies fund activities in geographic or functionally related areas and when such agencies cannot agree upon which agency's procedures should be followed by the Agency or Agencies carrying out such activities.

Section 24.9 Recordkeeping and reports.

Section 24.9(c) requires that real property acquisition and displacement activities be reported in the format contained in Appendix B of this part. Appendix B proposes the use of a revised report form which has been reformatted, but does not require additional statistical data except for one added entry concerning the new business reestablishment payment. Special consideration and comment on the format and timing of this report is requested.

Section 24.10 Appeals.

Section 24.10(b) contains a proposed modification to accommodate the statutory expansion which allows any issue relating to an aggrieved person's application to be appealed. Because the statute is silent as to what issues should be appealable, it is proposed that any issue affecting a person's eligibility for, or the amount of a payment, including an Agency's failure to grant appropriate waivers in hardship cases could be appealed. This could also include issues involving benefit levels which are subject to Agency discretion.

Subpart B—Real Property Acquisition

Section 24.101(a)(1) would be clarified by including language addressing voluntary transactions. The current language would be removed from Appendix A and changed to eliminate the provisions relating to the location of the property to be acquired; since the essence of a voluntary transaction concerns only the fact that an agency will not acquire the property if an amicable agreement is not reached.

The 1987 Amendments broadened the scope of the real property provisions of the Uniform Act implemented in this subpart to include Federal agencies and acquiring agencies. "Acquiring agency" is defined in the 1987 Amendments to include both State agencies and persons with authority to acquire property by eminent domain; and State agencies or persons without such authority, to the extent provided in the lead agency regulations. (See proposed § 24.2(a)(4)). These regulations propose, in § 24.101(a)(3), to generally exclude a State agency or person without the power of eminent domain from the requirements of this subpart, but to require that such agency or person (1) clearly advise any property owner, prior to making an offer, that it is unable to acquire the property except through amicable negotiations, and (2) advise the owner of what it believes to be the fair market value of the property, based on an appraisal. Comments are specifically requested on this aspect of the proposed requirements pertaining to an "acquiring agency," particularly with respect to whether these two conditions are adequate to protect persons whose property is purchased by such State agencies or persons acting without eminent domain authority.

Accordingly, it is proposed that this subpart apply to all programs or projects receiving Federal financial assistance, except where (1) the acquisition can be classified as a voluntary transaction, (2) the property to be acquired is in government ownership and cannot be taken by eminent domain, or (3) an Agency or person is acquiring real property with Federal financial assistance, but without the power of eminent domain. However, such agency or person would be required to ensure that an owner is advised of the value of the property, except as provided in § 24.102(c)(2).

Section 24.102(c) proposes to implement the 1987 Amendments which permits waiver of appraisals. An appraisal would not be required by this subpart where the owner is donating the property and releases the acquiring agency from the appraisal obligation. Also it is proposed to permit an acquiring agency to determine that an appraisal is not necessary because the valuation problem is uncomplicated and the estimated fair market value is $2,500 or less. Such determination could be made where the property is being donated or where the owner is to receive compensation. This proposal is not intended to preclude any acquiring agency from preparing an appraisal whenever it is deemed prudent to do so. The $2,500 amount is being proposed because it is consistent with § 24.103(e). Specific comment on the $2,500 amount is requested.

Section 24.102(k) proposes to shift the definition of "uneconomic remnant" to § 24.2(u), Subpart A. The definition is proposed to be revised slightly to conform to the statutory definition, but no difference in meaning is intended.

Section 24.103 proposes to shift the definition of "appraisal" to § 24.2(b), Subpart A, without change. In addition, the term "detailed' would be added before "appraisal" in § 24.103(a). This is considered to be an editorial change only. These changes would also require some paragraph relettering in this section.

Section 24.108 proposes revised language to conform to the new statutory language. This revision is considered to be editorial and no change in meaning is intended.

Subpart C—General Relocation Requirements

Section 24.204(c)(2) proposes to add payment of utility costs to increased rental costs incurred by persons required to temporarily relocate. This change is consistent with the overall revised policy regarding inclusion of utility costs as part of the monthy housing costs for displaced tenants.

Section 24.205(a) proposes to implement the new statutory requirement for relocation planning in the early stages of program or project development. Included in this proposed section is a suggested outline of the information considered to be essential to meaningful relocation planning. The Congress views effective relocation planning as essential for successful completion of any program or project which displaces persons and this proposed section is designed to reflect that view. Most displacing agencies are well aware of the program or project benefits which can be derived through early and sound relocation planning and many agencies currently use comprehensive planning techniques in project development. We do not, however, view relocation planning as a complicated, time consuming activity. Relocation planning is seen as a process which provides meaningful information to program or project decision makers and it need not result in a detailed document which contains unnecessary data and needless problem solving. Instead, it should be a process which is scoped to the complexity and nature of anticipated program or project relocation activity and should not require a burdensome commitment of Agency resources.

Proposed § 24.205(b) addresses the issue of loans for planning and preliminary expenses under section 215 of the Uniform Act. While the provision in section 215 for certain seed money loans remains a part of the Federal statute, it is not known to have ever been used, despite the existence of detailed implementing regulations in 24 CFR Part 43. Those regulations will be removed and rescinded on April 2, 1989 (53 FR 4964). The reason for the non-use of section 215 is that it provides project

funding for purposes for which project funding is already available under other sections of the Act. For this reason it is not considered appropriate to propose further regulations to implement this provision until such time as there is a demonstrated need to do so.

Section 24.205(c)(2)(vi) proposes to add to the list of persons eligible for advisory services those persons who occupy an acquired property on a short term rental basis by agreement with the Agency. This class of eligible persons was created by the 1987 Amendments.

Section 24.208 proposes to implement the new statutory change which will enable an Agency to take relocation assistance payments into account when determining a low-income person's eligibility for housing assistance.

For editorial purposes, several references in this subpart to other sections in this part have been changed and minor language clarifications have been made.

Subpart D—Payments for Moving and Related Expenses

Section 24.302 proposes a $50 limitation for fixed residential moving payments to persons who are eligible for payment under the moving expense and dislocation allowance schedule, but who would incur little or no expense in moving their personal property. Special consideration and comment on this limitation is solicited.

Sections 24.304 (a), (c) and (d) propose to add the business reestablishment expense as an expense item which a business must forego when it elects a fixed payment in lieu of the payments for moving and related expenses. This payment, not to exceed $10,000, was added by the 1987 Amendments and is further described in proposed § 24.306. The amended statute also provides that criteria for the fixed payment be established in this part.

Sections 24.304(a) (1), (3) and (4) contain new proposed criteria for eligibility for the nonresidential fixed payment. Under these proposals a business must (1) own or rent personal property which must be moved and the business itself must vacate the displacement site, (2) the business cannot be part of an enterprise having more than three other entities not being displaced. (This is to correct inequities and hardship frequently suffered by small "chains" where the displaced entity may be its owner's primary source of income), and (3) the business may not be operated solely for the purpose of renting a dwelling to others. (This implements the new statutory exclusion of such business from eligibility for the fixed payment). Sections 24.304(a) (2) and (5) propose to retain two of the eligibility criteria previously contained in the Uniform Act relating to loss of patronage and material contribution to a person's income.

Section 24.304(d) proposes to establish a standard $2,500 fixed payment for eligible nonprofit organizations. This recognizes that, while a nonprofit organization may not have taxable income, it can suffer substantial reductions in revenue due to displacement. For this same reason it is proposed that the condition currently in § 24.304(a)(3) that the organization not be part of an enterprise having more than one establishment be eliminated.

Section 24.306 contains the proposed provisions for implementation of the new business reestablishment expenses benefit authorized by the 1987 Amendments. This is a payment intended to assist a small business, farm or nonprofit organization to continue its operation at a new location, under conditions not less favorable than those prevailing prior to displacement. This proposed section contains non-exclusive listings of eligible and ineligible expenses for which reestablishment payments may be made. Although the statute imposes a $10,000 maximum total amount for this payment, regulatory maximums are proposed for three eligible items. These are for (1) exterior signing to advertise the business, (2) advertisement of replacement location, and most importantly, (3) increased costs of operation at the replacement site. In order to minimize the effect of this payment on the replacement site selection process, particularly in influencing the selection of a far superior replacement site, the amount of the business reestablishment payment which may be applied to expenses for increased costs of operation is limited to $5,000 over a two year period. It is not considered appropriate that substantial up-grading of business locations or facilities be made solely because public funds may be available for such up-grading. Any enhancements must be reasonable and necessary. The alternative to a monetary cap on costs for up-grading would be to impose a requirement that displacing agencies use a formal comparability process to set limits on expenditures for obviously superior replacement sites. This would, in turn, create additional administrative responsibilities for the displacing agency. Section 24.306(a)(13) proposes that a waiver of the regulatory maximum for this eligible item may be permitted in cases where up-grading cannot be avoided.

Section 24.307 contains proposed implementation requirements for the discretionary reimbursement of expenses incurred by owners of utility facilities which are displaced from publicly owned property by federally funded programs or projects. The authority for such reimbursement is embodied in the 1987 Amendments. This proposed section defines and provides for payment of "extraordinary expenses" incurred by displaced utility facilities. It also proposes eligibility criteria and guidance, in Appendix A, as to how agreement may be reached between the Agency and the utility facility owner on such items as scope of work, betterments, manner of disbursement and amounts of payment.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement housing payment for 180-day homeowner-occupants.

In § 24.401(a)(2) a new provision is proposed which would permit a displacing Agency to extend, for good cause, the one-year period during which a displaced homeowner occupant has to purchase and occupy a decent, safe, and sanitary dwelling. This authority is contained in the 1987 Amendments.

In § 24.401(b)(2) a slight change in the wording is proposed to complement the major language changes that would be made in § 24.401(d).

In § 24.401(d) the use of the "annuity" formula for determining the amount to be paid to a displaced homeowner-occupant for increased mortgage interest costs would be eliminated. This method, formerly required by statute, has been a source of numerous windfall and unwarranted payments during past periods of inflation and high mortgage interest rates. For this reason it is proposed that the "annuity" method no longer be used. Instead, a more reasonable and equitable "buydown" approach to payment computation for increased mortgage interest costs is proposed. This method, which previously could only be used for last resort housing cases, was offered as an optional procedure in the interim final rule published by DOT on December 17, 1987. We now propose making the exclusive use of this payment computation method mandatory.

As a special note, the lead agency is giving serious consideration to an alternative approach to compensation for increased mortgage interest costs. This alternative would be a new simplified procedure for the computation and disbursal of this payment. The

simplified procedure is based on a recognition that favorable financing is considered to be a valuable attribute, the loss of which should require a relocation payment to its owner. For this reason, it would be proposed that the displacing agency not impose restrictions upon the disposition of the proceeds that provide compensation for such loss. Therefore, the displacing agency would no longer be required to examine the financial arrangements which the displaced homeowner makes for the purchase of a replacement dwelling in order to determine the amount of the increased mortgage interest payment. The payment determination would be made using a method designed to make it possible for the displaced homeowner to replicate the repayment terms of the existing mortgage(s) on the displacement dwelling, as to both the remaining term of the mortgage(s) and the amount of the monthly payments for principal and interest.

Further, the simplified procedure would permit the payments to be made at a time in the relocation process when it could readily be applied to the downpayment on the replacement dwelling, thereby reducing the balance to be financed and lowering the required monthly payments for such financing. If the displaced homeowner wishes to buy his future mortgage down to an even lower amount with his own funds, even to zero, that is certainly the owner's prerogative and the displacing agency need not follow up to ascertain the terms for the purchase of the replacement dwelling, except in those cases were incidental costs will be claimed by the displaced homeowner.

It is believed that the simplified procedure would accomplish two desirable objectives. First, it would provide a payment to the displaced homeowner at a time when such payment could actually be used for its intended purpose, i.e., applied toward the purchase price of the replacement dwelling, thereby offsetting the impact of any higher new interest rate on the monthly mortgage payment. Too often in the past, the mortgage interest differential payment was not computed until a replacement mortgage had been secured because the computation was based on the amount of the new mortgage. Therefore, when the payment was finally made to the displaced homeowner it was too late to apply the payment amount to the new mortgage in any way that would reduce the monthly mortgage payment amount. Secondly, the use of the simplified "buydown" procedure would significantly reduce the displacing agency's administrative burden of having to follow through and examine the financial term for every displaced homeowner's replacement dwelling. It would also reduce paperwork burdens imposed on displaced homeowners. Careful consideration and comment on this possible alternative to the "buydown" procedure contained in § 24.401(d) of this subpart is requested.

Section 24.402 Replacement housing payment for 90-day occupants.

It is proposed that § 24.402(b) be substantially revised to meet the new statutory requirement that a low income person's income be taken into consideration when calculating rental assistance payments for comparable replacement housing. To reflect the requirement that income be taken into consideration in the fairest, yet simplest manner, it is proposed that this section depart entirely from the current "make-whole" approach for 90-day occupants and return to a former commonly used base monthly housing cost/monthly income formula for payment determination. It is proposed that an amount representing 30% of average monthly gross household income be used to compute a displaced person's replacement housing payment if the 30% figure is less than the rent actually paid at the displacement dwelling. The 30% figure is proposed as a reasonable percentage of income to be applied to rental housing costs under current market and economic conditions, and is consistent with the percentage of income figures currently being used in other subsidized housing and related programs. Further, the 30% of income test would be applied equally to all 90-day occupants regardless of income. This would assure consideration of income for all low income persons; and, at the same time, eliminate inequities for tenants with marginal incomes which might barely exceed criteria established under other methods for defining low income persons. Finally, because utility expenses are considered to be an integral part of monthly housing costs, it is proposed that these expenses be included in the monthly base housing cost computation.

It is proposed that § 24.402(c) be slightly revised to clarify the new statutory limitations on the amount of downpayment assistance a 90-day occupant may receive and the new agency discretion for modifying those amounts. Specific comment is requested on the issue of special criteria for use in the exercise of Agency discretion under this section. Suggestions are solicited for methods of promoting uniformity and equity in this process.

Section 24.403 Additional rules governing replacement housing payments.

Because it is proposed that Subpart G, Last Resort Housing, be reformatted and redesignated as § 24.404, § 24.403(b) has been deleted and the balance of § 24.403 has been re-numbered accordingly.

Section 24.404. Replacement housing of last resort.

It is proposed that Subpart G, Last Resort Housing be reformatted and redesignated as § 24.404 in order to emphasize that housing of last resort is not an independent program, but is merely an extension of the replacement housing function. This simply means that, with few exceptions, the same basic eligibility criteria, payment computation methods, and displaced person protections apply equally to all persons eligible for replacement housing. Therefore, it was felt that the proposed melding of the two functions into one subpart might help dispel a common misconception that persons receiving payments under Section 206 of the Uniform Act are separate and distinct from those receiving payments under sections 203 and 204 of the Act, each having rights and entitlements that are different and exclusive.

In addition to the proposed shift to the new subpart, the last resort housing procedures would be revised to reflect a change in section 206(a) of the Uniform Act, as required by the 1987 Amendments. As amended, section 206(a) now specifically authorizes payments in excess of the maximum amounts payable under sections 203 and 204, on a case-by-case basis for good cause. Sections 24.404(a)(1) of this subpart proposes the elements which must be considered in determining "case-by-case for good cause." These elements would all be subject to a fundamental analysis and correlation of the housing needs of persons to be displaced, with the availability of appropriate housing resources to meet those needs, both within the monetary limits for owners and tenants under this subpart and within acceptable time constraints as dictated by project or program need. Failure of any or all of these elements to properly correlate would constitute "case-by-case for good cause" justification for authorizing replacement housing payments in excess of the normal prescribed limits.

Other minor revisions are proposed in the last resort housing section of this subpart. One deals with possible

variations from precise comparability, under limited circumstances; another would permit consideration of financial means, in special cases; but most are technical or editorial language changes for purposes of clarification.

Subpart F—Mobile Homes

Section 24.502 is proposed to be modified and simplified to apply only to the moving of the mobile home dwelling itself. It is considered that other moving expenses incurred by the occupant of the mobile home are adequately covered by § 24.501.

This subpart also contains some minor editorial alterations.

Subpart G—Certification

This subpart proposes implementation of the new process created by the 1987 Amendments whereby the head of a Federal agency may discharge his-her responsibilities under the Uniform Act by accepting a certification by a State agency that it shall accept such responsibility and that it shall conduct its Uniform Act activities in accordance with a State law and regulations which serves the same purpose and effect as the Uniform Act. The subpart proposes a multi-step procedure for the certification process. As part of that process, a major role would be played by the State governor or such person or agency as the governor designates. The certification process is proposed to proceed in the following manner:

1. If a State agency determines that it desires to operate under certified State law and regulations, it may submit a request for certification approval to the governor or State contact designated by the governor.

2. The designated contact shall review the request and determine the adequacy of the applicable State law and regulations and of the State agency's staffing. If the designated State contact approves the request, it shall forward the request to the Federal funding agency.

3. The Federal funding agency shall forward all complete requests to the Federal lead agency, along with its assessment of the State agency's capabilities.

4. The Federal lead agency shall review the material received, solicit comments from the public and local governments, and then make a determination concerning the State agency's ability to satisfy Uniform Act responsibilities under the State law.

Certification is a new concept for Uniform Act activities. For this reason, special attention and consideration of the proposed process is invited. We are particularly interested in ideas and suggestions as to how this concept might best be implemented at the State and Federal levels, as well as alternative proposals for the sequencing of the certification process.

Appendix A—Additional Information

Proposed modification of the appendix includes the shifting of several portions of the appendix to the subparts to which they pertain. Discussions relative to these changes are found in the preambles for the appropriate subparts.

Section 24.401 Replacement housing payment for 180-day homeowner-occupants.

Explanatory information has been added to this section of the appendix relative to the adjustments required for the "buydown" increased mortgage interest cost payment when a person secures a mortgage on the replacement dwelling which is of a lesser amount than the remaining balance of the mortgages on the displacement dwelling.

Appendix B—Statistical Report Form

The instructions for completing the form propose to include a line item for reporting payments for the new statutory business reestablishment expense entitlement and the report form has been reformatted.

Regulatory Impact

The FHWA has determined that this action does not constitute a major proposed rule under Executive Order 12291 or a significant proposal under the regulatory policies and procedures of the Department of Transportation. Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or has certain other specified effects.

The economic impacts of this proposed rulemaking are primarily mandated by the provisions of the 1987 Amendments. Therefore, a full regulatory evaluation has not been prepared. However, since some of the statutory changes are administrative or procedural, savings to Federal, State, and local agencies should result in the administration of the Uniform Act. Other statutory changes, which alter benefit levels, and expand the Act's application to include certain private persons who receive Federal financial assistance, and persons displaced by certain nonacquisition activitities, should result in a modest increase in amounts paid under the Uniform Act.

However, we do not believe that the proposed regulations will have an annual economic effect of $100 million or more, or the other effects listed in the Executive Order. For this reason, we have determined that these proposed regulations are not a major rule within the meaning of the Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that for each rule with a "significant economic impact on a substantial number of small entities" an analysis be prepared describing the rules impact on small entities, and identifying any significant alternatives to the rule that would minimize the economic impacts on small entities.

The provisions of the Uniform Act that are implemented in this proposed rule have not changed substantially. The primary impact of the 1987 Amendments is expected to be an increase in benefits provided to small businesses, the elimination of unnecessary administrative requirements imposed on State and local agencies, and the consequent reduction of burden on those affected entities, and the expansion of the Act's application to those private entities that seek and receive Federal financial assistance.

Based on information available to FHWA at this time and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Requirements

Today's proposed rule would make one change to the Uniform Act Report form, which is contained in Appendix B of Part 24. A new item, 7A, would be added to obtain information relating to the new business reestablishment payment added by the 1987 Amendments. Several minor editorial changes would also be made in this form. If these proposed changes are adopted, the revised form will be submitted to the Office of Management and Budget for review under 44 U.S.C. 3504(h), the Paperwork Reduction Act, Pub. L. 96–511.

Federalism Assessment

As discussed in the Supplementary Information sections of this preamble, this proposed rule builds upon the positive Federalism accomplishments achieved in the promulgation of the governmentwide common rule on February 27, 1986 (51 FR 7000) which significantly reduced administrative burdens on States and local recipients of

Federal financial assistance. The FHWA has determined that the Federalism accomplishments of the common rule are retained in today's rule and any proposed changes are fully consistent with the principles and criteria contained in Executive Order 12612 and do not have sufficient further Federalism implications to warrant the preparation of a complete Federalism Assessment.

This proposed rule implements a provision of the 1987 Amendments that gives substantial additional discretion to the States. This is the certification procedure which provides an alternative whereby State agencies, with adequate authority under State law, can comply with the Uniform Act with a minimum amount of Federal supervision or oversight. As proposed, this certification procedure would give maximum authority and control to the State governor, or his or her designee, in managing and coordinating the certification procedure in each State.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

Issued on: July 15, 1988.

Robert E. Farris,

Federal Highway Administrator.

It is proposed to amend Title 24 of the Code of Federal Regulations by revising Part 24 to read as follows:

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

Sec.

24.1 Purpose.
24.2 Definitions.
24.3 No duplication of payments.
24.4 Assurances, monitoring and corrective action.
24.5 Manner of notices.
24.6 Administration of jointly-funded projects.
24.7 Federal agency waiver of regulations.
24.8 Compliance with other laws and regulations.
24.9 Recordkeeping and reports.
24.10 Appeals.

Subpart B—Real Property Acquisition

24.101 Applicability of acquisition requirements.
24.102 Basic acquisition policies.
24.103 Criteria for appraisals.
24.104 Review of appraisals.
24.105 Acquisition of tenant-owned improvements.
24.106 Expenses incidental to transfer of title to the Agency.
24.107 Certain litigation expenses.
24.108 Donations.

Subpart C—General Relocation Requirements

24.201 Purpose.
24.202 Applicability.
24.203 Relocation notices.
24.204 Availability of comparable replacement dwelling before displacement.
24.205 Relocation planning, advisory services, and coordination.
24.206 Eviction for cause.
24.207 General requirements—claims for relocation payments.
24.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

24.301 Payment for actual reasonable moving and related expenses—residential moves.
24.302 Fixed payment for moving expenses—residential moves.
24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
24.304 Fixed payment for moving expenses—nonresidential moves.
24.305 Ineligible moving and related expenses.
24.306 Reestablishment Expenses—nonresidential moves.
24.307 Discretionary utility relocation payments.

Subpart E—Replacement Housing Payments

24.401 Replacement housing payment for 180-day homeowner-occupants.
24.402 Replacement housing payment for 90-day occupants.
24.403 Additional rules governing replacement housing payments.
24.404 Replacement housing of last resort.

Subpart F—Mobile Homes

24.501 Applicability.
24.502 Moving and related expenses—mobile homes.
24.503 Replacement housing payment for 180-day mobile homeowner-occupants.
24.504 Replacement housing payment for 90-day mobile home occupants.
24.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Certification

24.601 Purpose.
24.602 Certification application.
24.603 Monitoring and corrective action.
Appendix A to Part 24—Additional Information.
Appendix B to Part 24—Statistical Report Form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note); and 49 CFR 1.48 (dd).

Subpart A—General

§ 24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs; and

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

§ 24.2 Definitions.

(a) *Agency.* The term "Agency" means the Federal agency, State, State agency, or person that acquires the real property or displaces a person.

(1) *Federal agency.* The term "Federal agency" means any department, Agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(2) *State agency.* The term "State agency" means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(3) *Lead agency.* The term "lead agency" means the Department of Transportation acting through the Federal Highway Administration.

(4) *Acquiring agency.* The term "acquiring agency" means a State agency, as defined in paragraph (a)(2) of this section, which has the authority to acquire property by eminent domain under State law, and a State agency or person which does not have such

authority, unless any such Agency or person is acquiring property pursuant to the provisions of § 24.101(a)(1), (2) or (3).

(5) *Displacing agency.* The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(b) *Appraisal.* The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(c) *Business.* The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(d) *Comparable replacement dwelling.* The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe and sanitary as described in paragraph (f) of this section;

(2) Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. (See Appendix A of this part);

(3) Adequate in size to accommodate the occupants;

(4) In an area not subject to unreasonable adverse environmental conditions;

(5) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 24.403(a)(2).);

(7) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A of this part.); and

(8) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full price differential as described in § 24.401(c), all increased mortgage interest costs as described at § 24.401(d) and all incidental expenses as described at § 24.401(e), plus any additional amount required to be paid under Subpart E of this part, last resort housing.

(ii) A replacement dwelling rented by a displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at § 24.402(b)(2).

(iii) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income. Such rental assistance must be paid under last resort housing provisions in Subpart E of this Part for a period of 42 months.

(e) *Contribute materially.* The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $5000; or

(2) Had average annual net earnings of at least $1000; or

(3) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(f) *Decent, safe and sanitary dwelling.* The term "decent, safe and sanitary dwelling means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climate conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(g) *Displaced person.* (1) *General.* The term "displaced person" means any person who moves from the real property or moves his or her personal property from the real property:

(i) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project. This includes a person who does not meet the length of occupancy requirements of section 203 or 204 of the Uniform Act.

(ii) As a direct result of rehabilitation or demolition for a project; or

(iii) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c), and moving expenses under § 24.301, § 24.302 or § 24.303.

(2) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(i) A person who moves before the initiation of negotiations (see also § 24.403(e)), unless the Agency determines that the person was displaced as a direct result of the program or the project;

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project;

(iii) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(iv) A tenant-occupant of a dwelling who has been notified on a timely basis that he or she will not be displaced by the project, provided that:

(A) The tenant is offered a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building or nearby building on the real property;

(B) The terms and conditions of continued occupancy are reasonable and set forth in a lease which is offered to the tenant; and

(C) If the tenant is required to relocate temporarily, the conditions of the temporary relocation shall be reasonable; the tenant shall be reimbursed for the actual out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent/utility costs; and the temporarily occupied dwelling shall be decent, safe and sanitary.

(v) An owner-occupant who moves as a result of an acquisition that is not subject to the requirements of Subpart B of this part or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.);

(vi) A person who the Agency determines is not displaced as a direct result of a partial acquisition;

(vii) A person who, after receiving a notice of relocation eligibility (described at § 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

(viii) An owner-occupant who voluntarily sells his or her property, as described at § 24.101(a) (1) or (3), after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part;

(ix) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency;

(x) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93–477 or Pub. L. 93–303; or

(xi) A person who is determined to be in unlawful occupancy (see paragraph (v) of this section) or a person who has been evicted for cause, under applicable law, prior to the initiation of negotiations for the property.

(h) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(i) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(j) *Federal financial assistance.* The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(k) *Initiation of negotiations.* Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiations" means the following:

(1) Whenever the displacement results from acquisition of the real property by a Federal agency or State agency, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.

(2) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(3) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96–510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Mortgage.* The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(m) *Nonprofit organization.* The term "nonprofit organization" means an organization that is exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(n) *Owner of a dwelling.* A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

(1) Fee title, a life estate, a 99-year lease, or a lease including any options for extention with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraphs (n) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(o) *Person.* The term "person" means any individual, family, partnership, corporation, or association.

(p) *Project.* The term "project" means any action or series of actions undertaken by a Federal agency or with Federal financial assistance that are designed primarily to further or complete an activity or program that will benefit the public as a whole. It does not include an action or series of actions undertaken by an individual or family with Federal financial assistance if such assistance is intended primarily to assist or benefit such individual or family.

(q) *Salvage value.* The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(r) *Small business.* A business having not more than 500 employees working at the site being acquired or permanently displaced by a program or project.

(s) *State.* Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands or a political subdivision of any of these jurisdictions.

(t) *Tenant.* The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(u) *Uneconomic remnant.* The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner.

(v) *Unlawful occupancy.* A person is considered to be in unlawful occupancy when such person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations for the acquisition of the occupied property. At the discretion of the displacing agency, squatters who occupy real property without the permission of the owner may be considered to be in unlawful occupancy. Technical violations of law and unlitigated violations of the terms of a lease, such as having an unauthorized pet or withholding rent because of improper building maintenance, do not render a person's occupancy unlawful for purposes of this section.

(w) *Uniform Act.* The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 *et seq.*; Pub. L. 91-646), and amendments thereto.

(x) *Utility costs.* The term "utility costs" means expenses for heat, lights, water and sewer.

(y) *Utility facility.* The term "utility facility" means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(z) *Utility relocation.* The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequency of project construction.

§ 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, or local law which is determined by the Agency to have the same purpose and effect as such payment under this part. (See Appendix A of this part, § 24.3.)

§ 24.4 Assurances, monitoring and corrective action.

(a) *Assurances.* (1) Before a Federal agency may approve any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing agency's assurances shall be in accordance with Section 210 of the Uniform Act. An acquiring agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to Sections 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency which both acquires real property and displaces persons may combine its section 210 and section 305 assurances in one document.

(2) If a Federal agency or State agency provides Federal financial assistance to a "person" causing displacement, such Federal or State agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal agency may provide Federal financial assistance to a State agency after it has accepted a certification by such State agency in accordance with the requirements in Subpart G of this part.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with this part, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations. (Also see § 24.603, Subpart G.)

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§ 24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the

notice described at § 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 24.6 Administration of jointly-funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies, other than a Federal agency, to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. In the unlikely event that agreement among the Agencies cannot be reached as to which agency shall be the cognizant Federal agency, then the lead agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federallly assisted activities under the agreement shall be deemed a project for the purposes of this part.

§ 24.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 24.8 Compliance with other laws and regulations.

The implementation of this part shall be in compliance with all applicable laws and implementing regulations, including the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).

(f) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(g) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12259.

(h) Executive Order 11246—Equal Employment Opportunity.

(i) Executive Order 11625—Minority Business Enterprise.

(j) Executive Order 12259—Leadership and Coordination of Fair Housing in Federal Programs.

(k) The Flood Disaster Protection Act of 1973 (Pub. L. 93–234);

(l) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

(m) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

§ 24.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause. The report shall be prepared and submitted in the format contained in Appendix B of this part.

§ 24.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B—Real Property Acquisition

§ 24.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this subpart apply to any acquisition of real property for a Federal project, and to projects where there is Federal financial assistance in any part of project costs except for:

(1) Voluntary transactions when the acquiring agency has the power of eminent domain, but it will not acquire the property in the event negotiations

fail to result in an amicable agreement, and the owner is so informed in writing.

(2) The acquisition of real property from a Federal agency, State, or State agency, if the acquiring agency does not have the authority to acquire the property through condemnation.

(3) Projects or programs undertaken by an acquiring agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner of what it believes to be fair market value of the property, based on an appraisal.

(b) *Less-than-full-fee interest in real property.* In addition to fee simple title, the requirements of this subpart apply to the acquisition of fee title, subject to a life estate or a life use, to aquisition by leasing where the lease term, including option(s) for extension, is 50 years or more, and to the acquisition of permanent easements. (See Appendix A of this part, § 24.101(b).)

(c) *Federally-assisted projects.* For projects receiving Federal financial assistance the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the extent practicable under State law. (See § 24.4(a).)

§ 24.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections, including the Agency's obligation to secure an appraisal, provided to the owner by law and this part. (See also § 24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.*

(1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in § 24.101(c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if the owner is donating the property and releases the Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at $2,500 or less, based on a review of available data.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See § 24.2(u).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the

real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

§ 24.103 Criteria for appraisals.

(a) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* To the extent permitted under applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(q)) of the retained improvement.

(d) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(e) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is $2,500, or less.

§ 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with § 24.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

§ 24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(q).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 24.106 Expenses incidental to transfer of title to the Agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

§ 24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§ 24.108 Donations.

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation, except as provided in § 24.102(c)(2).

Subpart C—General Relocation Requirements

§ 24.201 Purpose.

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§ 24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § 24.2(g).

§ 24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § 24.2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice.*

(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

§ 24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2(d)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a

substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

§ 24.205 Relocation planning, advisory services, and coordination.

(a) *Relocation planning.* During the early stages of development, Federal and Federal-aid programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should include an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that may be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of last resort housing actions should be instituted.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

(4) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the lead agency will establish criteria and procedures for such use upon the request of the Federal agency funding the program or project.

(c) *Relocation assistance advisory services.* (1) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(ii) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 24.204(a).

(A) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § 24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(B) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 24.2 (d) and (f).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(C) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(D) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(iii) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commerical and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(vi) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (Also see § 24.6, Subpart A.)

§ 24.206 Eviction for cause.

Eviction for cause must conform to applicable State and local law. Any person who has lawfully occupied the real property, but who is later evicted for cause on or after the date of the initiation of negotiations, retains the right to the relocation payments and other assistance set forth in this part. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves or the date a comparable replacement dwelling is made available, whichever is later. This section applies only if the Agency had intended to displace the person.

§ 24.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a harship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* (1) All claims for a relocation payment shall be filed with the Agency within 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one displacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§ 24.208 Relocation payments not considered as income.

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance.

Subpart D—Payments for Moving and Related Expenses

§ 24.301 Payment for actual reasonable moving and related expenses—residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 24.2(g)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

§ 24.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under § 24.301. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration, except that the expense and dislocation allowance to a person occupying a furnished one-room unit shared by more than one other person, or a person whose residential move is performed by an Agency at no cost to the person, shall be limited to $50.

§ 24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs.* Any business or farm operation which qualifies as a displaced person (defined at § 24.2(g)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property describe at § 24.303(a)(12. This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to

adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for:

(i) Planning the move of the personal property,

(ii) Moving the personal property, and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated costs shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation.

(ii) Meals and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in § 24.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self-moves.* If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

§ 24.304 Fixed payment for moving expenses—nonresidential moves.

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§ 24.303 and 24.306. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site.

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

(5) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see § 24.2(e)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 24.2(i)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of $2,500, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise.

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

§ 24.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this part does not preclude the computation under § 24.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in § 24.306(a)(10); or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in § 24.303(a)(3) and § 24.306(a); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

§ 24.306 Reestablishment expenses—nonresidential moves.

In addition to the payments available under § 24.303 of this subpart, a small business, as defined in § 24.2(r), farm or nonprofit organization may be eligible to receive a payment, not to exceed $10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They may include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs, not to exceed $1,500 for exterior signing to advertise the business.

(4) Provision of utilities from right-of-way to improvements on the replacement site.

(5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.

(6) Licenses, fees and permits when not paid as part of moving expenses.

(7) Feasibility surveys, soil testing and marketing studies.

(8) Advertisement of replacement location, not to exceed $1,500.

(9) Professional services in connection with the purchase or lease of a replacement site.

(10) Increased costs of operation during the first two years at the replacement site, not to exceed $5,000, for such items as:

(i) Lease or rental charges,

(ii) Personal or real property taxes,

(iii) Insurance premiums, and

(iv) Utility charges, excluding impact fees.

(11) Impact fees or one-time assessments for anticipated heavy utility usage.

(12) Other items that the Agency considers essential to the reestablishment of the business.

(13) Expenses in excess of the regulatory maximums set forth in paragraphs (a)(3), (8) and (10) of this section may be considered eligible if large and legitimate disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site. In such cases the regulatory limitation for reimbursement of such costs may, at the request of the Agency, be waived by the Federal agency funding the program or project, but in no event shall total costs payable under this section exceed the $10,000 statutory maximum.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation.

(3) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in paragraph (a)(5) of this section.

(4) Interest on money borrowed to make the move or purchase the replacement property.

(5) Payment to a part-time business in the home which does not contribute materially to the household income.

(6) Payment to a person whose sole business at a displacement dwelling is the rental of such dwelling to others.

§ 24.307 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (see §§ 24.2(y) and (z)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way; and

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency; and

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency is permitted by State statute.

(b) For the purposes of this section the term "extraordinary expenses" means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in value of the new facility and salvage value of the old facility. The displacing agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See Appendix A, § 24.307.)

Subpart E—Replacement Housing Payments

§ 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court, or

(ii) The date the person moves from the displacement dwelling.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed $22,500. (See also § 24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date such person is initially offered a comparable replacement dwelling, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidential to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential.*—(1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see § 24.3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling, shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 24.2(f)); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A of this part, § 24.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section.

The payment shall be an amount which will reduce the mortgage balance on the replacement dwelling to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d) (1)–(5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balances on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance computed in the buydown determination, the payment will be prorated and reduced accordingly. (See Appendix A.)
In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling regardless of the term of the new mortgage.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment as soon as the facts relative to the person's current mortgages are known and the payment shall be made available at the time of closing on the replacement dwelling.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed $5,250, computed and disbursed in accordance with § 24.402(b).

§ 24.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the required amount is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment.*—(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $5,250 for rental assistance. (See also § 24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances; or

(ii) Thirty (30) percent of the person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.)

(3) *Manner of disbursement.* A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by § 24.403(g), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) *Downpayment assistance payment.*—(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the discretion of the Agency, a downpayment assistance payment may be increased to any amount not to exceed $5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under § 24.401(b) if he or she met the 180-day occupancy requirement. An Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under § 24.401(a) is not eligible for this payment. (See also Appendix A of this part, § 24.402(c).)

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 24.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 24.2(d)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also § 24.205(a)(2)). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(3) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 24.2(f).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling; or

(2) Purchases and rehabilitates a substandard dwelling; or

(3) Relocates a dwelling which he or she owns or purchases; or

(4) Constructs a dwelling on a site he or she owns or purchases; or

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the displacing agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

§ 24.404 Replacement housing of last resort.

(a) Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in § 24.401 or § 24.402, as appropriate, the Agency shall provide additional or alternate assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable housing in the project or program area; and

(ii) The resources available to provide comparable housing; and

(iii) The individual circumstances of the displaced person; or

(2) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire project or program area; and, therefore a case-by-case justification for last resort housing assistance is not necessary; and

(ii) A project or program cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project or program costs. (Will project delay justify waiting

for less expensive replacement housing to become available?)

(b) *Basic rights of persons to be displaced.* Not withstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) *Methods of providing replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in § 24.401 or 24.402. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation, and, if necessary rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers to the handicapped.

(viii) The change in status of the displaced person from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.

(2) Under special circumstances, modified methods of providing housing of last resort permit consideration of:

(i) Replacement housing based on space and physical characteristics different from those in the displacement dwelling. (See Appendix A, § 24.404.)

(ii) Upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence.

(iii) The financial means of a displaced person who is not eligible to receive a replacement housing payment because of failure to meet length-of-occupancy requirements when comparable replacement rental housing is not available at rental rates within 30% of the person's gross monthly household income.

Subpart F—Mobile Homes

§ 24.501 Applicability.

This Subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this Subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

§ 24.502 Moving and related expenses—mobile homes.

(a) A homeowner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with § 24.301. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under § 24.303. However, if the mobile home is not acquired, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at § 24.503(a)(3), the owner is not eligible for payment for moving the mobile home.

(b) The following rules apply to payments for actual moving expenses under § 24.301:

(1) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(2) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and sanitary, and the Agency determines that it would be economically feasible to incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

(3) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

§ 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.

(a) A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed $22,500, under § 24.401 if:

(1) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements at § 24.401(a); and

(3) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not and cannot economically be made decent, safe, and sanitary; or

(ii) Cannot be relocated without substantial damage or unreasonable cost; or

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) If the mobile home is not acquired, and the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at § 24.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

§ 24.504 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed $5,250, under § 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at § 24.503(a)(3).

§ 24.505 Additional rules governing relocation payments to mobile home occupants.

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either $22,500 or $5,250) permitted under the section that governs the computation for the dwelling. (See also § 24.403(b).)

(b) *Cost of comparable replacement dwelling.* (1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under § 24.401(c), the cost of a comparable replacement dwelling is the sum of:

(i) The value of the mobile home,

(ii) The cost of any necessary repairs or modifications, and

(iii) The estimated cost of moving the mobile home to a replacement site.

(c) *Initiation of negotiations.* If the mobile home is not actually acquired, but the occupant is considered displaced under the part, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this part.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under this part, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this part.

Subpart G—Certification

§ 24.601 Purpose.

This subpart permits a State Agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by § 24.4 of this part.

§ 24.602 Certification application.

(a) *General.* (1) The State governor, or his or her designee, on behalf of any State agency or agencies may apply for certification in accordance with this section.

(2) The governor may designate a lead agency to administer certification in accordance with this section.

(b) *Responsibilities of State agency.* (1) The State agency's application shall be submitted to the governor, or his or her designee, for approval or disapproval.

(2) The State agency application shall contain a statement that the State agency shall carry out the responsibilities imposed by the Uniform Act. The State agency application shall include a copy of the State laws and regulations which shall accomplish the purpose and effect of the Uniform Act.

(c) *Responsibilities of governor or his or her designee.* (1) The governor, or his or her designee, shall approve or disapprove the State agency's application.

(2) The governor, or his or her designee, shall have discretion to disapprove any State agency application.

(3) The governor, or his or her designee, shall analyze State law and regulations and shall certify that they accomplish the purpose and effect of the Uniform Act.

(4) The governor, or his or her designee, shall determine in writing whether the State agency's professional staffing is adequate to fully implement the State law and regulations.

(5) If the State agency's application is approved by the governor, or his or her designee, it shall be transmitted to the Federal agency providing financial assistance to the State agency, with an information copy to the Federal lead agency.

(6) When a determination is received from the Fedeal funding agency, the governor, or his or her designee, shall notify the State agency.

(d) *Responsibilities of Federal funding agency.* (1) The Federal funding agency shall accept the approved application for certification provided by the governor or his or her designee and shall not conduct an independent review unless or until future monitoring or other appropriate indicators reveal program deficiencies originating therefrom.

(2) The Federal funding agency shall transmit all complete, approved applications, for certification to the Federal lead agency.

(3) At the same time as transmission to the Federal lead agency or during the public comment period, the Federal funding agency shall provide its written assessment of the State agency's capabilities to operate under certification.

(4) The Federal funding agency shall promptly notify the governor, or his or her designee, of the Federal lead agency's determination described in paragraph (e)(2) of this section.

(5) The Federal funding agency shall recognize the State agency's certification within 30 days of the Federal lead agency's finding.

(e) *Responsibilities of Federal lead agency.* (1) The lead agency shall:

(i) Accept the approval provided by the governor, or his or her designee, and shall not conduct an independent review, except as provided for in (ii), (iii) and (iv), unless future monitoring or other appropriate indicators reveal program deficiencies originating therefrom.

(ii) Analyze the extent to which the provisions of the applicable State laws and regulations accomplish the purpose and effect of the Uniform Act, with particular emphasis on the definition of a displaced person, the categories of assistance required, and the levels of assistance provided to persons in such categories;

(iii) Provide a 60-day period of public review and comment, and solicit and consider the views of interested general purpose local governments within the

State, as well as the views of interested Federal and State agencies; and consider all comments received as a result;

(iv) Consider any extraordinary information it believes to be relevant.

(2) After considering all the information provided, the lead agency shall either make a finding that the State agency will carry out the Federal agency's Uniform Act responsibility in accordance with State laws and regulations which shall accomplish the same purpose and effect as the Uniform Act, or shall make a determination that a finding cannot be made; and shall so inform the Federal funding agency.

§ 24.603 Monitoring and corrective action.

(a) The Federal lead agency shall, in coordination with other Federal agencies, monitor from time to time State agency implementation of programs or projects conducted under the certification process and the State agency shall make available any information required for this purpose.

(b) A Federal agency that has accepted a State Agency's certification pursuant to this subpart may withhold its approval of any Federal financial assistance to or contract or cooperative agreement with such State agency if it is found by the Federal agency to have failed to comply with the applicable State law and regulations.

(c) A Federal agency may, after consultation with the lead agency, and notice and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State agency fails to comply with its certification or with applicable State law and regulations.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the lead agency report biennially to the Congress on State agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the lead agency may require periodic information or data from affected Federal or State agencies.

Appendix A To Part 24—Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A—General

Section 24.2(j) Definition of comparable replacement dwelling.

The requirement in § 24.2(d)(2) that a comparable replacement dwelling be "functionally equivalent" to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable to contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa. Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or consequentially less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally equivalent" to a larger but very run-down substandard displacement dwelling.

Section 24.2(d)(7) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing program, the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 24.2(g)(2) Persons not displaced.

Section 24.2(g)(2)(iv) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessary that an occupant of the property be displaced. Because such occupants are not considered "displaced persons" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with § 24.10.

Section 24.2(k) Initiation of negotiations.

This section of the part provides a special definition for acquisitions and displacements under Pub. L. 96–510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

Section 24.3 No duplication of payments.

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

Section 24.9(c) Reports.

This paragraph allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form (see Appendix B of this part) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B—Real Property Acquisition

Section 24.101(b) Less-than-full-fee interest in real property.

This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

Section 24.102(d) Establishment of offer of just compensation.

The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures.

It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

Section 24.102(i) Administrative settlement.

This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession.

It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair rental.

Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value * * * to a short-term occupier." The Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 24.103(a) Standards of appraisal.

In paragraph (a)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section 24.103(b) Influence of the project on just compensation.

As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(e) Conflict of interest.

The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, § 23.103(e) provides that the same person may both appraise and negotiate an acquisition, if the value is $2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at $2,500, or less.

Section 24.104 Review of appraisals.

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

Section 24.106 Expenses incidental to transfer of title to the Agency.

Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

Subpart C—General Relocation Requirements

Section 24.204(a) Availability of comparable replacement dwelling before displacement.

This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, § 24.204(a) requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 24.205 Relocation assistance advisory services.

Section 24.205(c)(2)(ii)(C) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 24.206 Eviction for cause.

Basic eligibility for assistance is established on the basis of facts existing as of the date of the initiation of negotiations. Once the Agency has determined that a person has satisfied such requirements there is no basis for changing that determination.

Section 24.207 General requirements—claims for relocation payments.

Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate.

Subpart D—Payment for Moving and Related Expenses

Section 24.307 Discretionary utility relocation payments.

Section 24.307(c) describes the issues which must be agreed to between the displacing agency and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR, Part 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement housing payment for 180-day homeowner-occupants.

The provision in § 24.401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have an appraisal made. Any reasonable method at arriving at the fair market value may be used.

The provision in § 24.401(d) set forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages.

In any case where the person elects to obtain a replacement mortgage of a lesser amount than the one computed in the buydown determination, then the amount computed as the "buydown" payment must be adjusted to reflect the change in mortgage amount. This can be done through proration by dividing the amount of the actual

replacement mortgage by the computed eligible replacement mortgage amount. This calculation provides a percentage factor which can then be applied to the computed "buydown" amount resulting in an adjusted increased mortgage interest payment.

Section 24.402 Replacement housing payment for 90-day occupants.

The downpayment assistance provisions in § 24.402(c) are intended to limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance which exceeds the computed rental assistance payment, up to the $5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or indiscriminate fashion. The displacing agency should develop a policy which affords equal treatment for persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects.

For purposes of this section, the term downpayment means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the downpayment may be the amount which the Agency determines is necessary.

Section 24.404 Replacement housing of last resort.

Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may vary from the usual standards of comparability. However, it should be specially noted that such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

Section 24.404(b) Basic rights of persons to be displaced.

This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement.

Appendix B to Part 24—Statistical Report Form

This appendix sets forth the statistical information collected from Agencies in accordance with § 24.9(c).

General

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by Pub. L. 100–17, 101 Stat. 132.

2. *Report period.* Activities shall be reported on a Federal Fiscal Year basis, i.e., October 1–September 30.

3. *Where and when to submit report.* Submit an original and two copies of this report to (*Name and Address of Federal Agency*) as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts B and C to the nearest dollar.

6. *Statutory references.* The references in Part B indicate the Section of the Uniform Act that authorizes the cost housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at § 24.2(n). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing replacement housing.

The use of cost effective means of providing replacement housing is implied throughout the subpart. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are encouraged, they should be cost-effective.

Subpart F—Mobile Homes

Section 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under § 24.401 and a replacement housing payment for a site computed under § 24.402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under § 24.401 to assist in the purchase of a replacement site or, under § 24.402, to assist in renting a replacement site.

Part A. Persons Displaced

Report in Part A the number of persons ("households,") "businesses, including nonprofit organizations," and "farms") who were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, *not* by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

Part B. Relocation Payments and Expenses

Columns (A) and (B). Report in Column (A) the number of claims approved during the report year. Report in Column (B) the total amount represented by the claims reported in Column (A).

Lines 7A and 9, Column (B). Report in Column (B) the amount of costs that were included in the total amount approved on Lines 6 and 8, Column (B).

Lines 12A and B. Report in Column (A) the number of households displaced by project or program activities which were provided assistance in accordance with Section 206(a) of the Uniform Act. Report in Column (B) the total financial assistance under Section 206(a) allocable to the households reported in Column (A). (If a household received financial assistance under Section 203 or Section 204 as well as under Section 206(a) of the Uniform Act, report the household as a claim in Column (A), but in Column (B) report *only* the amount of financial assistance allocable to Section 206(a). For example, if a tenant-household receives a payment of $7,000 to rent a replacement dwelling, the sum of $5,250 shall be included on Line 10, Column (B), and $1,750 shall be included on Line 12B, Column (B).)

Line 13. Report on Line 13 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under Section 205 of the Uniform Act.

Line 15. Report on Line 15 the total number of relocation appeals filed during the fiscal year by aggrieved persons.

Part C—Real Property Acquisition Subject to Uniform Act

Line 16, Columns (A) and (B). Report in Column (A) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (B) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved.

BILLING CODE 4910-22-M

UNIFORM RELOCATION ASSISTANCE
AND REAL PROPERTY ACQUISITION
STATISTICAL REPORT FORM

FEDERAL FISCAL YEAR ENDING SEPT. 30, 19___

REPORTING AGENCY_____

CITY/COUNTY/STATE_____

FEDERAL FUNDING AGENCY_____

PART A. PERSONS DISPLACED BY ACTIVITIES SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	TOTAL(A)	OWNERS(B)	TENANTS(C)
1. HOUSEHOLDS (FAMILIES & INDIVIDUALS)			
2. BUSINESSES & NONPROFIT ORGANIZATIONS			
3. FARMS			

PART B. RELOCATION PAYMENTS & EXPENSES UNDER THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM		NO. OF CLAIMS(A)	AMOUNT(B)
4. PAYMENTS FOR MOVING HOUSEHOLDS	ACTUAL EXPENSES-SEC.202(A)		
5. PAYMENTS FOR MOVING HOUSEHOLDS	SCHEDULE PAYMENT/DISLOCATION ALLOWANCE-SEC.202(B)		
6. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO	ACTUAL EXPENSES-SEC.202(A)		
7. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO	IN LIEU PAYMENTS-SEC.202(C)		
7A. NO. OF CLAIMS AND AMOUNT ON LINE 6 ATTRIBUTABLE TO REESTABLISHMENT EXPENSES			
8. REPLACEMENT HOUSING PAYMENTS FOR 180 DAY HOMEOWNERS-SEC.203(A)			
9. NO. OF CLAIMS AND AMOUNT ON LINE 8 ATTRIBUTABLE TO INCREASED MORTGAGE INTEREST COSTS			
10. RENTAL ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC.204(1)			
11. DOWNPAYMENT ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC.204(2)			
12A. HOUSING ASSISTANCE AS LAST RESORT-SEC.206(A)	OWNERS		
12B. HOUSING ASSISTANCE AS LAST RESORT-SEC.206(A)	TENANTS		
13. RELOCATION ADVISORY SERVICES COSTS-SEC.205		\\\\\\\\\\\\\\\\	
14. TOTAL (SUM OF LINES 4(B) THROUGH 13(B)), EXCLUDING LINES 7A AND 9		\\\\\\\\\\\\\\\\	
15. RELOCATION GRIEVANCES FILED DURING THE FISCAL YEAR IN CONNECTION WITH PROJECT/PROGRAM			\\\\\\\\\\\\\\\\

PART C. REAL PROPERTY ACQUISITION SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	NO. PARCELS(A)	COMPENSATION(B)
16. TOTAL PARCELS ACQUIRED		
17. TOTAL PARCELS ACQUIRED BY CONDEMNATION INCLUDED ON LINE 16 WHERE PRICE DISAGREEMENT WAS INVOLVED		\\\\\\\\\\\\\\\\

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federal register

Thursday
July 21, 1988

Part III

Department of Transportation

Federal Highway Administration

49 CFR Part 383
Commercial Driver Testing and Licensing Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 383

[FHWA Docket No. MC-87-18]
RIN 2125-AB68

Commercial Driver Testing and Licensing Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending Part 383 of the Federal Motor Carrier Safety Regulations (FMCSRs) to establish minimum standards for State testing and licensing of commercial motor vehicle (CMV) drivers, in keeping with the Commercial Motor Vehicle Safety Act of 1986 (the Act). The FHWA, with this rulemaking, is establishing standards which include commercial driver licensing and testing procedures to be used by the States; knowledge, skills, and abilities which drivers of different types of CMVs must possess; and the information to be contained on the commercial driver's license (CDL) issued by the States. The standards also require that CMV drivers take and pass the appropriate knowledge and skills tests by April 1, 1992, in order to be qualified and licensed to operate a CMV. These actions are being taken to improve the safe operation of CMVs, and to help reduce truck and bus accidents and injuries by effecting minimum Federal standards for the qualification of CMV operators, as called for in the Act.

In addition, the FHWA published a request for comments on several petitions for waivers from various requirements of the Act for certain groups of drivers on April 14, 1988 (53 FR 12504; FHWA Docket No. MC-88-8). These groups included farmers, firefighters, transit workers, active duty military personnel, certain railroad employees and employees of public utilities. Specifically, the FHWA requested public comment on whether, if granted, the waivers would serve the public interest or diminish public safety as required by the waiver provisions included in the Act. The comment period closed on May 14, 1988, and the FHWA received over 2000 comments. These comments are being analyzed and a separate action will address them in detail.

EFFECTIVE DATE: August 22, 1988, except for § 383.23, which will be effective April 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Chief, Standards Review Division, Office of Motor Carrier Standards, (202) 366-4009, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, 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.

SUPPLEMENTARY INFORMATION:

Background

Currently, only 32 States issue some form of a classified driver's license (i.e., a license which makes a distinction between types of vehicles the holder may operate). Of these, only 12 require State-conducted, behind-the-wheel testing of all applicants in a vehicle which represents the type which the driver operates or expects to operate. The other 20 States waive testing if the applicants meet certain conditions, such as certification of training and testing by their employer, and two States recognize training schools. The remaining 18 States and the District of Columbia do not require applicants to demonstrate their driving skills in the types of vehicles they drive or intend to drive, nor do they require certification of training and testing by the employer or a recognized training school. Drivers in these States who may be qualified to drive only a passenger car may also drive an 18-wheeler or a three-axle intercity bus.

The Congress enacted the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. L. 99-570) to address these problems. Section 12005 of the Act directs the issuance of minimum testing standards to ensure the fitness of drivers of CMVs. In general, the standards must include written and driving tests. The written tests must cover the driver's knowledge of Federal regulations related to the safe operation of CMVs contained in Title 49 of the FMCSRs (49 CFR Chapter III) and knowledge of the vehicle's safety systems. The skills tests must be taken in a vehicle representative of the type of vehicle that each person operates or expects to operate. Also, the standards must ensure that persons are qualified to operate a CMV according to regulations published in the FMCSRs, to the extent that these regulations are applicable to such persons. In addition, the standards must ensure that drivers of CMVs which contain hazardous materials are qualified to operate such vehicles and have a working knowledge of the hazardous materials regulations. Finally, minimum scores for passing the tests must be established.

Section 12006 requires establishment of minimum uniform standards for issuance of CDLs by States. At a minimum, each person to whom a CDL is issued must pass written and driving tests that meet the established standards. Also, CDL documents must contain certain information and be tamperproof.

Section 12009 delineates requirements with which States must comply in order to avoid having Federal-aid highway funds withheld. Some of these requirements are related to issuance of a CDL and must be addressed in the driver licensing procedures. Generally, these requirements define the conditions which must be met for a State to issue a CDL, the information a State must provide to the Commercial Driver's License Information System (CDLIS) about its CDL holders, and the checks a State must make of each applicant's driving record before issuing the CDL.

Section 12011 of the Act provides for the withholding of funds from States which fail to substantially comply with any of the requirements listed in section 12009(a). This final rule addresses a portion of those requirements. Thus, a State that is not in substantial compliance (throughout Fiscal Year 1993 and subsequent years) with this and other regulations issued pursuant to the Act could lose 5 percent of its Federal-aid highway funds in Fiscal Year 1994, and 10 percent in later years. At a later date, the FHWA will propose in the **Federal Register**, for State and public comment, a definition of "substantial compliance" and the means of assuring it for the purposes of the withholding provisions of the Act.

Throughout implementation of the Act, the FHWA has solicited comment from the States, industry, and the general public. These cooperative efforts have helped to ensure the commercial driver's licensing program is effective and practical. The notice of proposed rulemaking (NPRM) requested comment to Docket MC-87-18 on three alternative approaches to establishing testing and licensing programs in consonance with the Act. In addition, the NPRM identified and sought comment on numerous issues associated with program implementation. To stimulate public comment and discussion, the FHWA organized four public forums—in Washington, DC, Atlanta, St. Louis, and Los Angeles—at which 60 persons testified on behalf of a full range of public agencies and private associations and enterprises. In addition, over 1,200 parties submitted comments to Docket MC-87-18.

Following is a listing of the comments submitted to Docket MC-87-18 by major categories:

NTSB	1
State agencies	39
State-related groups	3
Trucking industry and related parties	21
Bus industry and related parties	29
General trade associations	12
Insurance industry	3
Public interest associations	2
Farmers protesting rule or seeking waiver	1,019
Others protesting rule or seeking waiver	28
Other individuals	43
Total	1,200

The FHWA expects to assess whether and what types of duplication or overlap may exist between testing requirements of the CDL program and the requirements in Part 391 of the FMCSRs. This will be part of the FHWA's continuing efforts to ensure that the CDL program is practical and effective. Any reduction or elimination of burdens on drivers, States, or motor carriers that may be realized as part of this assessment would be incorporated into future rulemaking actions.

The rest of this supplementary information section summarizes the major differences between the NPRM and this final rule, discusses the FHWA's selection among the alternative approaches proposed in the NPRM, and presents a section-by-section analysis of the rule.

Major Differences Between NPRM and Final Rule

In response to the many public comments on the NPRM, and FHWA has incorporated numerous changes and refinements in this final rule, all of which are discussed in detail further below. With respect to certain issues prominently raised in the NPRM or by the respondents to the docket, the FHWA has:

(1) Selected Alternative 2 as the basis for the final rule.

(2) Eliminated the Commercial Driver's Certificate (CDC), and replaced it—for foreign drivers only—with a "Nonresident CDL."

(3) Eliminated the requirement that a State check an applicant's record with all other States.

(4) Clarified which applicants may, at the discretion of the State, substitute driving record and other qualifications for their CDL skills tests.

(5) Adopted a three-tiered vehicle classification system, based on weight and configuration, and added a passenger endorsement available in all three vehicle groups.

(6) Eliminated the air brake endorsement and substituted a restriction.

(7) Eliminated the skills test in a tank vehicle.

(8) Enhanced the flexibility accorded to the States with regard to knowledge and skills requirements.

(9) Allowed the States the leeway to establish their own knowledge and skills test performance standards.

(10) Omitted any specification for CDL document format.

The changes listed above only partially reflect the differences between the NPRM and the final rule; the section-by-section analysis presents the specifics and rationale of all such changes.

Selection Among Alternative Approaches

Development of Alternatives

The Congress passed the Act because of public concern for improving safety on the Nation's highways. To remedy this concern and to assure the public that all CMV operators possess at least the minimum knowledge and skills necessary to safely operate their vehicles, the Act directed the Secretary to develop minimum testing and licensing standards which all States must meet. In response to this mandate, the FHWA, in its NPRM of December 11, 1987, considered whether to propose specific standards or more general standards that would give the States greater discretion in implementing the testing and licensing programs mandated by the Act. The FHWA decided to propose two principal alternatives for consideration by the States and other interested parties, and a third alternative that would allow States to use either of the two main alternatives.

Under NPRM Alternative 1, the States would have to develop and implement a CMV driver licensing program meeting the requirements of the Act without specific directions on program content. A State would be required to submit its testing and licensing plan to the FHWA explaining how its licensing program meets the requirements in the Act. The FHWA would then review each plan to determine whether it is likely to be effective in determining whether a person is qualified to operate a CMV.

Under NPRM Alternative 2, the FHWA would issue specific minimum standards, especially with regard to application procedures, the content of basic tests, and methods of testing. States would have to meet those specific testing and licensing standards in order to satisfy the requirements of the Act. Under Alternative 2, the States also would have flexibility to exceed the prescribed Federal standards in all areas, and would benefit from considerable leeway in implementing many of the prescribed minimum standards.

Under NPRM Alternative 3, each State would elect either to participate in the iterative process described in Alternative 1, or to adhere to the requirements of Alternative 2.

In several areas, the FHWA proposed identical provisions for each of the three alternatives. These areas included the vehicle classifications, license endorsements, conditions States must meet to "grandfather" certain drivers, and information to be contained on the license document. Thus, while Alternatives 1 or 3 would have provided greater flexibility to the States, these alternatives required uniform minimum standards in the above areas.

Public Response to the Alternatives

In the NPRM, the FHWA solicited comments on the desirability of each of the three alternatives. As indicated in Exhibit 1, Alternative 2 garnered strong support from the overwhelming majority of respondents in virtually all categories, including: The NTSB; four-fifths of the States and the District of Columbia; the American Association of Motor Vehicle Administrators (AAMVA); trucking industry associations, carriers, and the International Brotherhood of Teamsters (IBT); general trade associations; the insurance industry; and public interest groups. Only transit and school bus interests endorsed Alternative 1 to any appreciable degree.

Of the States and the District of Columbia, 40 preferred Alternative 2; five argued for Alternative 1; and five supported Alternative 3. Dual opinions emerged from the docket responses of two transportation-related agencies in one State. In compiling these State totals, the FHWA first used the direct State responses to the NPRM docket. When a State did not submit a docket response, or did not address the alternatives issue in its response, the FHWA made use of a survey conducted and submitted to the docket by AAMVA. Thus, the FHWA gleaned 29 State responses on this issue directly from the docket, and 22 State and District of Columbia responses by means of the AAMVA submittal.

Exhibit 1.—Stratified Tally of Preferences for Alternatives 1, 2, and 3

Respondent category	Total responses	Preferences by alternative			
		Alt. 1	Alt. 2	Alt. 3	No opinion
NTSB	1		1		
States and D.C.:					
Direct responses to FHWA	29	5	19	4	1
Responses thru AAMVA	22	0	21	1	0
State/D.C. totals	51	5	40	5	1
State-related:					
AAMVA	1		1		
Natl. Conf. of State Legislatures	1				1
Essex Corp.	1		1		
Trucking industry and related parties:					
Trucking Associations	9		9		
Motor Carriers	8		7		1
Unions	1		1		
Driver Education Industry	3		3		
Bus industry and associations:					
Public Transit Industry:					
Carriers	6	4	1		1
APTA	1		1		
Private Bus Industry: Am. Bus Assoc	1		1		
School Bus Industry:					
Wisconsin	18	18			
All others	3	1	1		1
Trade associations:					
General Industry	9		8		1
Agriculture	2	1			1
Assoc. of Am. Railroads	1		1		
Insurance industry	3		3		
Public interest associations:					
AAA	1		1		
HUFSAM	1		1		
Individuals	6	1	3	1	1

Selected Alternative

Based on the substance and volume of the arguments in the docket, which emphasized Alternative 2 as best meeting the Congressional mandate for minimum uniform Federal standards for the CDL program, the FHWA has selected Alternative 2 as its conceptual framework for the final rule. Thus, the final rule consists of NPRM Alternative 2, as modified in light of the comments to the docket. These modifications are described in the section-by-section analysis, which appears later in this preamble.

Issues and Arguments Underlying the Selected Alternative

In reviewing the docket, the FHWA identified several major issues bearing on the selection among alternatives. This part of the supplementary information section analyzes those issues, and shows how the Alternative 2 approach—as incorporated in the final rule—responds to them in comparison with Alternative 1.

The comments in favor of Alternative 3 were essentially the same as those supporting alternative 1 because Alternatives 3 and 2 differed largely in the former's inclusion of Alternative 1 as an option open to the States. Three respondents—the NTSB, the American Trucking Associations, Inc. (ATA), and the Commonwealth of Pennsylvania—asserted that Alternative 3 was inferior to Alternative 1 because it would establish two completely different administrative paths for the States and the FHWA. As the NTSB stated, "Alternative 3 raises questions and problems that do not exist if either of the primary alternatives is chosen. There would be additional administrative burdens as FHWA attempts both to establish national standards and review and approve State plans." The ATA likewise opposed Alternative 3 "because it would exacerbate the problem (of lack of uniformity of licensing standards) by allowing two entirely different approaches to the establishment of licensing standards." For all of these reasons, the following discussion confines itself to the primary choices, Alternatives 1 and 2.

Federalism

This regulation has obvious Federalism implications because it will have a substantial direct effect on the States. This direct effect will result from the introduction of statutorily mandated minimum Federal standards for the testing and licensing of CMV operators. However, the FHWA has adhered strictly to the criteria of Executive Order 12612, "Federalism," in writing this rule. Specifically:

(a) The FHWA has closely examined the statutory authority supporting this action, and has carefully assessed its necessity. The rule derives its authority from the Commerical Motor Vehicle Safety Act of 1986, which requires the Secretary to "issue regulations to establish minimum Federal standards for testing and ensuring the fitness of persons who operate commercial motor vehicles," and to establish "minimum uniform standards for the issuance of commerical drivers' licenses by the States and for information to be contained on such licenses." (Pub. L. 99-570, sections 12005 and 12006.) The necessity for this action resides in the need for improved highway safety with respect to CMVs. For example, in 1985, medium and heavy trucks were involved in 12.3 percent of all fatal highway accidents, but accounted for only 4.9 percent of vehicle-miles traveled and approximately 2 percent of registered vehicles. Owing to this disproportionate involvement of CMVs in highway fatalities, the Congress found that minimum Federal standards for State testing and licensing of CMV operators were necessary to help assure that such drivers have the knowledge and skills necessary to operate their vehicles safely. Thus, this action is both authorized and necessary.

Moreover, the FHWA has consulted the States and relied heavily on their collective experience before implementing this action. The NPRM yielded comments on the proposed minimum uniform Federal standards from 29 States, and the other States expressed their opinions through the AAMVA. As Exhibit 1 indicates, the States and the District of Columbia overwhelmingly endorsed Alternative 2. With the changes introduced in this final rule to augment the flexibility available to the States, the FHWA believes that an even higher proportion of States will favor the conceptual basis of this rulemaking. Furthermore, the FHWA has constructively addressed many of the comments to the docket from those States supporting Alternative 1 or Alternative 3.

(b) Because the CMV safety problem is national in scope, it is necessary to have the reciprocity among the States that is mandated by the provisions of the Act. While this action establishes minimum standards for the issuance of CDLs, it does not in any way alter the basic role of the States in issuing driver's licenses.

(c) While specifying minimum uniform Federal standards for CMV operator testing and licensing, Alternative 2 grants to the States the maximum administrative discretion possible. Not only may each State choose to impose its own higher standards in every facet of the program, but the States will also benefit from significant flexibilities in applying the minimum standards. Indeed, the "flexibility" section below identifies (in Exhibit 2) 19 sample areas in which the States will exercise considerable latitude within the minimum standards.

(d) The language of the enabling legislation requires the establishment of uniform national standards for this program. However, the FHWA has carefully considered the comments of the States and their organizations in formulating these standards. In addition, the FHWA has worked closely with State officials in their independent efforts to develop materials and procedures with which to implement the CDL Program. Federal/State cooperation has also characterized the development of the CDLIS, an integral part of the total program.

This final rule, based on Alternative 2 in the NPRM, therefore, conforms fully to the letter and spirit of the Federalism Policymaking Criteria issued by the President.

Federal Involvement as Viewed by Respondents

The docket responses substantiated the FHWA's assessment of the Federalism implications of Alternative 2. Only a few responding organizations equated Alternative 2 with undue Federal interference in internal State prerogatives. On the other hand, at least one respondent argued that the Federal review and approval process embodied in Alternative 1 could lead to a more intrusive Federal presence than would be the case in Alternative 2. Thus, Pennsylvania observed:

> While on the surface, Alternative 1 seems to provide greater flexibility for the States, in reality, there will be minimum standards that FHWA will utilize to judge whether a State's program is acceptable or not. However, these standards will not be openly discussed or developed * * *. Although [Alternative 1] provides the guise of State flexibility, it actually allows FHWA more latitude in interpreting without State comment what constitutes an acceptable program. A State could make an enormous investment in the development of a test only to have it rejected * * * because it is deemed "ineffective" by FHWA. However, "effectiveness" is not defined within the proposed rules [for Alternative 1]. Therefore, we feel that Alternative 2 provides States with more latitude in developing their testing programs by providing [them] with clear minimum guidelines for the program.

The Alternative 1 process would require each State to submit a planning document for FHWA review by July 15, 1989. The FHWA, in turn, would have 90 days to review each plan and issue a determination. The NPRM analysis states that the FHWA would judge whether each plan is "likely to result in an effective program that insures that only qualified driver applicants are licensed."

Given the short-time frame to evaluate 51 State and District of Columbia plans, however, the FHWA would have had to develop a set of "checklist" criteria against which discrete elements of each State plan would be judged.

Consonance With Goals of the Act

In issuing the NPRM, the FHWA determined that all three Alternatives would accord with the goals of the enabling legislation. However, the CDL program, far from being a unilateral Federal effort, will succeed or fail due to the degree of cooperation of a host of parties including the State motor vehicle administrations, carriers, drivers, and trade associations. The FHWA thus requested public comment on the desirability of each of the alternatives. Most respondents—including the groups critical to program implementation—have asserted that only Alternative 2 provides the minimum uniform Federal standards called for in the Act. Exemplifying these responses, the State of Illinois writes: "Alternative 2 is the only alternative that professionally addresses the problems which generated (the Act) in the first place." By contrast, the respondent organizations overwhelmingly perceive Alternatives 1 and 3 as antithetical to the purpose of the Act.

A minority of respondents, on the other hand, argued that the latitude afforded by Alternative 1 would lead to greater compliance on the part of the States. These arguments imply that greater compliance would result in improved highway safety and would thus be consistent with the goals of the Act. On the basis of the tally of State opinions, the FHWA believes that compliance will also result if the rule encompasses the clear preference of most State respondents. In addition, the practical concerns discussed further below would support the FHWA's view that Alternative 2 could better permit the States to focus their resources so as to meet the statutory deadline for full implementation of the CDL testing and licensing program—April 1, 1992.

In sum, the FHWA agrees with the majority of respondents that Alternative 2 is the better means of meeting the provisions of the Act.

Testing Materials and Procedures

Simultaneously with this proceeding, a Committee of States (with FHWA funding and technical support) has been developing a comprehensive set of commercial driver testing materials and procedures through a contractor, the Essex Corporation. These Essex outputs had been circulated, in draft form, prior to the NPRM comment deadline. Several respondents misidentified NPRM Alternative 2 with the draft Essex outputs: that is, they mistakenly inferred that FHWA adoption of Alternative 2 would automatically include promulgation of the Essex testing materials and procedures as binding on all States. For example, since the draft Essex materials included a mandatory off-street driving skills test, certain respondents incorrectly concluded that off-street testing—including the provision of potentially costly sites and personnel—would be required of the States under Alternative 2.

Such an inference continues to be incorrect, both for the specific off-street testing example and for the Essex outputs as a whole. The FHWA regards the Essex materials as important, but optional, aids for the States to consider

in developing their own testing and licensing programs. States may incorporate all, some, or none of the Essex outputs in their testing programs, as long as those programs meet or exceed the minimum standards set forth in this rule. In the example cited above, this rule requires only that some or all of the skills test be given in actual traffic conditions. In other words, off-street testing remains an option available to, but not forced upon, each State. The same principle applies to all other elements of the Essex program, which may be of maximal utility to States that currently have no classified testing program in place and that do not wish to develop their own skills and knowledge tests.

Flexibility

The supporters of Alternatives 1 and 3 adduced as their prime argument the additional "flexibility" promised by those Alternatives. Comments by California and Pennsylvania, however, suggest that Alternative 1—with its early FHWA review requirement—would not be as flexible as it might appear, and Alternative 2 (as modified by the comments by AAMVA and the States) would offer a high degree of latitude to the States.

Exhibit 2 lists 19 examples of flexibility available to the States within the minimum standards of the final rule. As requested by AAMVA and several States, the FHWA has also revised the knowledge and skills listings of NPRM Alternative 2 to enhance State flexibility. Knowledge and skills requirements have been made more general so as to allow the States greater discretion in selecting specific topics for emphasis.

In arguing for the flexibility afforded by Alternative 3, the State of Alaska cited its own unique situation: The existence of many localities that, although physically detached from the State highway network and from driver testing facilities, still have CMVs and operators subject to this final rule. The FHWA believes that the waiver process as prescribed in the Act and in § 383.7 would be the most appropriate forum in which to address this specific local problem.

Exhibit 2.—Examples of Flexibilities Offered by Final Rule

Each State may * * *

(1) Set the price level for the CDL.

(2) Set age limits for CDL holders not covered by Part 391 of the Federal Motor Carrier Safety Regulations.

(3) Establish the duration of its penalties against driver applicants providing false information. (Section 383.73)

(4) Impose or omit knowledge and skills tests on applicants for renewal or for license transfer from other States. (Section 383.73)

(5) Develop alternative methods for the driver certifications to ensure compliance with verification of driver qualifications (Section 383.73)

(6) Contract with third parties to administer skills tests, or preserve skills testing as an exclusive State prerogative. (Section 383.75)

(7) Waive, or insist upon, driving skills tests for certain categories of initial CDL applicants who are already CMV operators. (Section 383.77)

(8) Incorporate, or omit off-street testing as part of the skills test. (Section 383.113)

(9) Use simulator technology in the skills testing program, although not as a substitute for the required test in traffic. (Section 383.113)

(10) Develop its own driver and examiner manuals incorporating test content and procedures. (Section 383.131)

(11) Administer knowledge tests in written, oral, or machine formats, or any combination thereof. (Section 383.133)

(12) Prepare its own knowledge test question and procedures in keeping with the required knowledge areas. (Section 383.133)

(13) Develop its own methods for skills testing and scoring. (Section 383.133)

(14) Set the qualification requirements for driver examiners. (Section 383.133)

(15) Accept in whole or in part, or ignore, the Essex Corporation materials and procedures now under development for the Committee of States.

(16) Determine the waiting period for an applicant to retake a test which he/she fails, and the maximum number of times a person may take and fail any test. (Section 383.135)

(17) Design the form its CDL document. (Section 383.153)

(18) Show or omit the applicant's Social Security Number, weight, eye color, or hair color on the CDL. (Section 383.153)

(19) Incorporate improved positive identification methods on the CDL. (Section 383.153)

In addition to the foregoing flexibilities, each State may add more stringent requirements to the minimum standards contained in all individual sections of the rule.

Cost

Most of the States supporting Alternatives 1 and 3 pointed to the allegedly higher costs of Alternative 2. In reality, each State will be free to set the price of the CDL at any level, regardless of the selected Alternative. Furthermore, the "grandfathering" and "third-party testing" provisions of the final rule will allow the States to mitigate the impact of initial startup costs on State budgets. Inferring that Alternative 2 incorporated the Essex tests as requirements, certain respondents incorrectly ascribed to Alternative 2 the major capital investment associated with producing off-street testing sites Statewide. In fact, Alternative 2 did not include any such requirement, nor does the final rule. Conversely, Alternative 1 carried a significant administrative cost burden—preparation, submission, and iteration of the State Plan at an early date. Under the final rule, States will need to plan carefully for program implementation, but the clarity of the standards could lead to more efficient planning than would have been the case under Alternative 1. For all these reasons, cost considerations do not argue against Alternative 2 as incorporated in the final rule.

Reciprocity

The Act mandates reciprocity among all States. Many respondents argued that, given the history of the development of State licensing procedures, one State could hardly be expected to have full confidence in all the other State programs unless a perceived minimum uniform national standard pervailed. Reciprocity, in turn, will influence State decisions on such issues as transfer retesting. As the approach perceived by most respondents as uniform, Alternative 2 would encourage true nationwide reciprocity including the minimization of the retesting burden.

Practical Concerns

In arguing in favor of Alternative 2, most responding jurisdictions and organizations cited the practical problems inherent in the Alternative 1 process. Although time is of the essence in the CDL program, respondents pointed out, the requirement under Alternative 1 for a State plan, FHWA review, and possible further iterations would detract from the States' ability to comply with the April 1, 1992, deadline. The paperwork and likely time delays would create high cost burdens at both the State and Federal levels. By contrast, at least one respondent pointed out that adoption of Alternative 2 in mid-1988 would give all involved parties—including CMV operators and their employers—an early warning of

the April 1, 1992, requirements, hence a head start on responding to them. One State respondent claimed that Alternative 2, by advancing specific Federal requirements, could ease the task of pushing enabling legislation through the respective legislatures.

Mechanisms To Assure State Compliance

To assure proper implementation of the CDL testing and licensing standards, State compliance must take two forms. First, a State must design an organizational framework and set of procedures and materials that will allow the standards to be met. Second, the State must administer the program so that the organization, procedures, and materials actually function according to the program design. In the NPRM, Alternative 1 would have addressed the first form of compliance by producing an FHWA-approved State plan for CDL testing and licensing. By contrast, Alternative 2 would have included neither a requirement for State plans, nor a process for their review by FHWA. The NPRM did not address the second form of compliance in any way under either Alternative, except to raise the following question for comment:

> * * * Is it appropriate for the Governor to certify that the State is in compliance? Should the FHWA monitor the licensing procedures and, if so, on what basis? What is the most practical and cost-effective method that can be used to certify that the States are in compliance? Should the FHWA approve each of the States' programs? If so, how often should the FHWA review these determinations?

In the NPRM docket, 19 States and the AAMVA responded to this question. No consensus emerged from their responses. The largest group of respondents (five States and AAMVA) asserted that State self-certification would suffice, without any subsequent FHWA audit programs. The 14 other commenters embraced ten different compliance certification schemes, most of which combined an initial State certification with some form of FHWA review on an initial, random, annual, or longer-term basis. One respondent suggested initial State certification with a periodic "peer review" to be conducted annually by AAMVA on behalf of FHWA.

Owing to this current lack of a consensus among the States on the important issue of compliance, the FHWA has elected to defer the establishment of a compliance certification and/or audit mechanism. In any event, the Act does not require full implementation by the States of the CDL program until October 1, 1993, when statutory sanctions would take effect. Thus, ample time remains to resolve this important issue. The FHWA plans to seek additional State and public comments on the issue of a compliance certification and/or audit mechanism by issuance of a future **Federal Register** notice. The States, meanwhile, should proceed without delay to implement the testing and licensing standards contained in this final rule because CMV drivers must be relicensed under the program by April 1, 1992.

The rest of this supplementary section contains a section-by-section analysis of the final rule.

Section-by-Section Analysis

Section 383.5 Definitions.

Commercial motor vehicle (CMV). The Act (section 12019) defined a CMV, in part, as having "a gross vehicle weight rating of 26,001 or more pounds, or such lesser gross vehicle weight rating as the Secretary determines appropriate by regulation * * *." This regulation has expanded that definition to include all vehicles having a gross combination weight rating of 26,001 or more pounds, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds. The definition change reflects comments received from the AAMVA with respect to vehicle groups. The FHWA agrees with AAMVA that combination vehicles, when hauling 5-ton and greater trailers, merit inclusion in the definition of a CMV because of their handling characteristics, even though the gross vehicle weight rating of the main vehicle, if operated without a trailer, may be well below 26,001 pounds. The operator of such a power unit would not have to possess a CDL if the unit is operated without a trailer, or with a trailer having a gross vehicle weight rating of less than 10,000 pounds.

Tank vehicle. In commenting on the NPRM, the National Tank Truck Carriers, Inc., asserted that the use of the term "cargo tank" would unduly constrain the types of vehicles for which the special dynamics of bulk cargoes would mandate an endorsement. The FHWA recognizes that "cargo tank" is a term of art in the hazardous materials regulations; to expand the definition of this term for the special purposes of Part 383 would create unnecessary inconsistencies among regulations issued by the Department of Transportation. Therefore, the final rule has eliminated the term "cargo tank" and substituted the term "tank vehicle."

A tank vehicle must meet the definition of a CMV as provided in this rule. Thus, a tank vehicle must either satisfy the 26,001 pound vehicle weight floor as specified in § 383.5, or be of any size and be used in the transportation of materials requiring the motor vehicle to be placarded under the Hazardous Materials Regulations. Moreover, the tank vehicle must be designed to transport any liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Examples of such vehicles would be cargo tanks and portable tanks.

Drivers of vehicles that transport nonhazardous materials (such as milk) in bulk, and that have a weight rating below the 26,001 pound floor, would not require a CDL at all, since the vehicles they operate are not CMVs as defined in the final rule.

A tank vehicle required to be placarded by virtue of its hazardous gaseous or liquid cargo would generally be considered a tank vehicle regardless of its size or weight, and its operator would require the tank vehicle endorsement as well as the hazardous materials endorsement on a license appropriate to the vehicle group involved. However, the definition of "tank vehicle" specifically excludes portable tanks having a rated capacity under 1,000 gallons because their dynamic properties do not present so great a challenge to driver capabilities as to mandate a tank vehicle endorsement. This exclusion of portable tanks under 1,000 gallons relates to the tank vehicle endorsement only; the hazardous materials endorsement would still be applicable in keeping with the placarding requirements of the Hazardous Materials Regulations.

Subpart B—License Requirements

Section 383.23 Commercial Driver's License.

According to the requirements which became effective on July 1, 1987, drivers of CMVs can have only a single license. This section effects additional requirements for persons who operate CMVs. As of April 1, 1992, all operators of CMVs shall take and pass knowledge and driving tests that meet the minimum standards promulgated by FHWA. An operator of a CMV with special handling characteristics such as a double trailer combination, or a vehicle required to be placarded for hazardous materials, shall also take and pass additional tests to obtain an endorsement to the CDL authorizing him/her to operate such a vehicle. This regulation also requires CMV drivers to possess a CDL while operating a CMV. The CDL shall be

issued by States in accordance with these standards.

The Act clearly states that, as of April 1, 1992, at the latest, "no person" shall operate a CMV unless such person has qualified under the standards contained in the subject rule. Nevertheless, 10 States in their responses to the NPRM sought relief from the April 1, 1992, deadline for the qualification of all drivers. They maintained that this final rule would not be issued until July 15, 1988; that additional time would be required for States to implement the program through legislative and administrative action; and that States with 4- and 5-year renewal cycles would therefore find it impossible to handle the new CDL program in the normal course of renewal activity. Moreover, their argument ran, for the States to circumvent the normal renewal process would entail high overhead costs and would lead to confusion due to the existence of two classification systems. Thus, the concerned States argued, the FHWA should interpret the April 1, 1992, date as a deadline for implementation rather than completion of the CDL program.

The FHWA fully understands these States' concerns lest the CDL program deadline lead to temporary higher cost levels and disturb the normal scheduling of license renewals. However, the FHWA believes that the timeframes established in the Act are important to maintain as an acceptable goal for compliance. Many States are already moving to adopt and implement the CDL program based on the dates included in the Act as their goals. Also, the FHWA believes that changes in the April 1, 1992, deadline, either through legislation or rulemaking, would confuse the drivers and other groups, such as motor carriers and enforcement entities, who are necessarily concerned about when and what they need to do as a result of the CDL program. Thus, the final rule continues to incorporate this mandated date, and contains several provisions that will allow the States—with proper planning and programming—to comply more easily. First, the FHWA's adoption of Alternative 2 as the basis for the final rule will permit the States to proceed directly to implement the CDL program without an iterative Federal review and approval process in 1989. Second, the third-party testing provisions (§ 383.75) will assist the States in setting up their skills testing apparatus with minimal expansion of State personnel rosters and facilities. Third, the ability to "grandfather" certain highly qualified drivers from the skills tests can ease the burden on State resources. Finally, the final rule allows the States full discretion to price the CDL. Should a State encounter unusual costs in accelerating its license renewal cycle to meet the April 1, 1992, deadline, it will be free to recover these incremental costs through the pricing mechanism. All these features will assist the States in complying with the April 1, 1992, deadline.

Section 12005(a)(8) of the Act allows the Secretary to consider a requirement that States issue certificates of fitness to operate a CMV to each person who passes the required tests. The NPRM of December 11, 1987, envisioned the creation of a CDC document to be issued by States that are in compliance with this part, so as to fulfill two separate needs. First, a CMV operator domiciled in a noncomplying State would have been eligible to apply for a CDC from a State which does conform to the testing standards. Second, a CMV operator who is domiciled in a foreign country, and whose home jurisdiction does not substantially comply with the testing and licensing standards contained in this part, would have applied for a CDC from a conforming State.

The CDC for domestic drivers elicited nearly unanimous disapproval from the respondents to the NPRM, who considered it premature, likely to undermine full compliance, and contrary to the single-license, single-record concept of the Act. In light of the exemplary cooperation already displayed by the States in the CDL program, the FHWA agrees that a domestic CDC may not be necessary, and has deleted it from the regulation. However, in order to assure that drivers and their employers are not adversely affected by this regulation due to factors that are solely within the purview of the States, the FHWA will monitor the extent of State compliance with this Part, and will deal with this issue, if necessary, in a future rulemaking.

Since Canada is working toward a strong testing/licensing program for CMV operators through its consensus National Safety Code, the CDC for foreign operators would have probably applied in large measure to drivers domiciled in Mexico (depending on an ongoing analysis of Mexican standards). The two States containing the most heavily trafficked Mexican border crossings, Texas and California, already require Mexican CMV operators to secure State licenses. To impose an additional or alternative requirement for a CDC would needlessly multiply the number and type of documents issued by those States. Moreover, in their responses to the NPRM, both California and Texas opposed the issuance of CDCs and suggested that drivers residing in noncomplying jurisdictions receive CDLs instead. For these reasons, the FHWA has eliminated the CDC for foreign drivers and has substituted a "Nonresident CDL" to be issued by complying States as described and analyzed under Subpart E, "Testing and Licensing Procedures."

To allow novice drivers to obtain the necessary training in a CMV, the final rule allows States, if they so choose, to issue limited learner's permits. The issuance of a learner's permit will not be a required precondition to issuing a CDL. However, States may choose to make learner's permits available for limited time periods to first-time applicants for use in behind-the-wheel training on public roads or highways.

The NPRM proposed that States which issue learner's permits for CMV drivers would do so as a continuation of their existing learner's permit programs and might also require applicants to pass test(s) prior to issuance of the learner's permit for the specific vehicle group or endorsement desired. Conditions for issuance of a learner's permit and circumstances under which such permits may be used would have been solely determined by the State of issuance.

Of the 51 respondents addressing the question of learner's permits, about half recommended that Federal standards be set for State learner's permit programs directed toward CDL issuance. For example, the AAMVA urged the FHWA to require that applicants for learner's permits "satisfy CDL requirements including * * * written and medical exams, and that the record be added to the CDL Information System."

Responding to such safety-related concerns as AAMVA's, while preserving maximum flexibility for the States and meeting the behind-the-wheel training needs of prospective CDL applicants, this final rule specifies that a learner's permit holder must always be accompanied by the holder of a valid CDL during on-road training. (This provision was suggested by eight respondents in the trucking and public transit industries and State agencies.) Also, to be issued a learner's permit in a State for training in a CMV, an applicant must already possess a valid automobile driver's license, or pass the State's ordinary battery of vision, sign/symbol, and knowledge tests for automobile licensing purposes.

These learner's permit requirements are minimum standards, which the States can accommodate within their

existing programs. As elsewhere in this regulation, the States will be free to impose more stringent requirements (for instance, making successful completion of the CDL knowledge test a prerequisite for learner's permit issuance), should they elect to do so.

On the other hand, if a State does not issue learner's permits, the requirements stated in § 383.23(c) will not apply. In such a case, applicants would have to acquire their behind-the-wheel driving experience on other than public highways because of the prohibitions contained in § 383.23(a). However, a State not issuing learner's permits may conduct driving skills tests in traffic. Also, the final rule gives States the additional flexibility of allowing a person who does not already hold a valid driver's license to obtain a learner's permit. A typical situation in which this option may be helpful would be that of an individual who immigrates to the United States from another country and does not have a valid license. Therefore, this final rule does not require States to issue learner's permits, or to issue learner's permits only to valid automobile license holders, in order to implement the CDL program.

Subpart E—Testing and Licensing Procedures

This subpart contains the testing and licensing procedures for CDLs. The tests would be required for each vehicle group in which the applicant operates or wishes to operate, and would at least cover the general knowledge areas and skills described in Subpart G. Knowledge tests could be given in written, oral, and/or automated format. Skills tests would have to be given in a vehicle that is representative of the vehicle group within which the applicant operates or expects to operate.

Verification of Driver Qualification. Section 12005(a)(7) of the Act states that regulations for testing of CMV operators shall ensure that each person taking such tests is qualified to operate CMVs under regulations issued by the Secretary and contained in Title 49 of the CFR, "to the extent such regulations are applicable to such person." The driver qualification requirements found in Part 391 of the FMCSRs apply only to drivers of motor vehicles engaged in *interstate commerce* unless adopted by the State for intrastate movements. In response to section 12005(a)(7), the final rule will require that States include in the CDL application process, a means for an applicant to certify that he/she meets Federal driver qualification requirements if he/she operates or expects to operate in interstate commerce. States would continue to have the responsibility to establish intrastate driver qualification standards and to determine the applicant's compliance with these standards. At this time, this regulation does not impose the physical and medical requirements of section 391 of this part on intrastate drivers as a minimum standard.

Enforcement of driver compliance with the driver qualifications requirements would continue under the current practice of roadside inspections, carrier audits, and other State and Federal enforcement avenues. The driver license agencies would also play a related enforcement role by obtaining required certifications, maintaining commercial driver records, completing required checks of these records, and making appropriate notifications to the CDLIS. States would also have the option to have their driver license agencies assume greater review of driver medical and other qualifications during the licensing process.

Section 383.71 Driver application procedures.

A CMV operator will obtain his/her license in the State in which he/she is domiciled, except in the case of foreign drivers as explained further below.

Every CDL applicant will, at a minimum, complete the following process to obtain his/her CDL for the first time (other than renewals or transfers):

(a) An applicant subject to 49 CFR Part 391 will certify that he/she meets the driver qualification requirements of Part 391 as a condition to taking the tests;

(b) Pass a knowledge test (as specified in Subpart G) to demonstrate that he/she is familiar with the regulations designed to ensure the public safety and with the skills needed to safely operate the type of vehicle that he/she operates or expects to operate;

(c) Certify that the vehicle in which he/she will take the driving skills tests is representative of the type of vehicle he/she operates or expects to operate;

(d) Pass the necessary driving skills tests as described in Subpart G; and

(e) Provide all information required by the regulation.

If he/she satisfies all of the requirements described above, surrenders his/her existing license, and is not disqualified according to Subpart D, then the State may issue the applicant a CDL.

Any driver who applies for a renewal of his/her CDL will make the certification of driver qualification, and provide an update of required information. In addition, holders of the hazardous materials endorsement (§ 383.123) must pass the hazardous materials test to retain that endorsement. The hazardous materials endorsement retest will help keep drivers of such vehicles current on changes in the hazardous materials regulations and safety related procedures. As a minimum standard, this rule implicitly permits the State to impose additional testing requirements—for example, the full battery of knowledge and skills tests specified in § 383.71(a)—on CDL renewal applicants.

A commercial driver who wishes to drive a vehicle in a different vehicle group must make the certification of driver qualification, certify that the vehicle in which he/she takes the driving skills tests is representative of the type of vehicle he/she operates or expects to operate, and pass the tests related to the upgraded vehicle group or endorsement.

Any driver who moves (i.e., changes his/her domicile) from another State or jurisdiction will be required to apply for a new CDL within no more than 30 days of moving and to surrender his/her current CDL as a condition of receiving a new CDL. Such a driver would make the certification of driver qualification and provide any new or updated information required by the regulation. As in the case of CDL renewals, the new State may choose to impose additional knowledge and skills testing as a prerequisite to the transfer of a CDL, but is not required to do so. However, if the current CDL contains the hazardous materials endorsement, and the transfer applicant wishes to retain that endorsement, the new State of domicile must ensure that the applicant takes a new test or has, within the 2 years preceding the transfer, either passed a hazardous materials knowledge test given by the old State of domicile in accordance with § 383.121, or successfully completed hazardous materials testing or training that is given by an employer or some other third party. Such third party testing or training must be deemed by the State to substantially cover the knowledge areas listed in § 383.121. This provision reflects the FHWA's belief that an individual who passes a hazardous materials endorsement test or an equivalent third party testing or training program within the 2 years preceding the transfer will be sufficiently knowledgeable of the hazardous material regulations and of any changes in them which may impact safety.

The preceding paragraph will apply to all CMV operators after April 1, 1992, and to all CDL holders who change domicile from one CDL-issuing State to another CDL-issuing State before April 1, 1992. If, before April 1, 1992, a CDL holder moves to a State that does not yet issue CDLs, he/she must adhere both to the licensing requirements of the new State of domicile and to the single license provisions of § 383.21, which require a driver to surrender his/her old license when he/she receives a license from a new State of domicile.

As explained in the analysis of § 383.23, the FHWA has eliminated the proposed commercial driver's certificate (CDC) for domestic drivers, and has replaced the CDC for foreign drivers with the Nonresident CDL. A foreign driver applying for a Nonresident CDL must complete all the State requirements for a CDL. In addition, holders of a Nonresident CDL must notify the State of issuance of any disqualifications or license suspensions/revocations, whether in the United States or in the foreign driver's country of domicile.

Section 383.73 has been modified in the final rule to add a provision to allow the State to use alternative methods to achieve the objectives of the certifications in § 383.71(a). This section specifies that States may substitute these alternative methods, where applicable, as part of the driver application procedure.

Section 383.73 State procedures.

This section outlines the procedures which a State will follow, as a minimum, for the issuance of a CDL which meets the requirements of the Act.

While the procedures below may appear prescriptive, they are in fact the types of transactions and procedures which the States currently utilize. In addition, the AAMVA's Committee on the CDLIS is developing that system based on these transactions. The use of driver certifications is a common method which States now use to ensure compliance with many rules. The certification process places the burden on the driver applicant to know and comply with the rule. If the applicant has falsified the certification, the State would then be in a position to take action against the driver. The FHWA believes that the certification method is the minimum that a State should do to ensure compliance with the requirements of the Act. As discussed in this Section, however, the State would be permitted to use alternative methods to the certification process.

Initial CDL. Prior to the first-time issuance of a CDL to a person, a State will:

(a) Adopt a program for testing and ensuring the fitness of persons to operate CMVs in accordance with the standards;

(b) Ensure that persons choosing to operate in interstate commerce make the appropriate certifications regarding their qualifications under Part 391 of the FMCSRs prior to being issued a CDL;

(c) Issue CDLs only to persons who pass knowledge and skills tests for the operation of a CMV which comply with these standards;

(d) Issue CDLs which contain information and other specifications included in the standard;

(e) For persons moving from another State or jurisdiction, request and consider the applicant's driving record from the prior State of issuance before issuing an initial CDL and require the applicant to surrender his/her existing license;

(f) Not issue a CDL to a person who is disqualified from operating a CMV, or whose driver's license is suspended, revoked, or canceled;

(g) Issue CDLs only to persons domiciled in the State' except persons domiciled in a jurisdiction of a foreign country that does not test and issue licenses meeting the standards may be issued a Nonresident CDL;

(h) Notify the CDLIS of the issuance of a CDL and provide the CDLIS with information on that driver. (The required information will be discussed in a separate rulemaking or other action on the CDLIS.)

Multiple License and Driver's Record Check. Section 383.21 already requires that persons who operate CMVs shall have only one driver's license. Also, section 12009 of the Act requires that a State not issue a CDL to an individual whose license is suspended, revoked, or canceled or who is disqualified from operating a CMV. To ensure these requirements are met by a driver applying for a CDL, States will check and consider information in the applicant's current driving record, in the CDLIS and in the National Driver Register (NDR) before issuing a CDL. Prior to April 1, 1992, a check only of the CDLIS and the NDR may not yield complete information about the driver because he/she does not yet have a CDL and would not be reflected in the CDLIS. To eliminate this problem, the FHWA proposed in the NPRM that States check with all other States to determine if the driver is licensed elsewhere. Citing unacceptable administrative difficulties and high costs in terms of personnel, paperwork, and postage, respondents to the NPRM voiced unanimous disapproval of the 50-State check.

In its enforcement activities relative to the single license requirement, the FHWA has also discovered that some current State driver license records are not accurate. Many drivers who had moved between States and surrendered their former State driver's license were still shown as holding a license from the former State. The FHWA realizes that the proposal for the 50-State check in the NPRM could generate much inaccurate information about a driver's former license.

In light of these facts, the FHWA has determined that the 50-State check is impractical, and has incorporated two safeguards in its stead.

First, the applicant must certify that he/she holds only one license and is not subject to any adverse actions against his/her driving privilege. If a falsehood is discovered either before or after issuance of the CDL, this certification is subject to license suspension, revocation, or cancellation as specified in § 383.73, as well as any additional penalties imposed by applicable State statutes regarding falsification of information on drivers' licenses. The FHWA believes that these penalties, combined with possible disqualification and existing State sanctions for falsifying information, will result in an effective deterrent.

Second, the State must check the applicant's record prior to issuing a CDL. Although the CDLIS component of this check will not insure that the applicant possesses only one license and a satisfactory record prior to April 1, 1992, it will guarantee that the applicant holds only one "commercial driver's license" and that his/her record as a CDL holder meets minimum standards.

Although the States would not be required by this rule to check the NDR until it is determined to be operational by the National Highway Traffic Safety Administrator, it is recognized that the States are exploring the development of systems which would enable them to access both CDLIS and the NDR prior to that time. Efforts in this regard are strongly encouraged.

Transfers. The final rule includes requirements for a person who has a CDL and then changes his/her State of domicile and applies for a CDL from his/her new State. For these cases, the State will have the option to accept the credentials of that driver or to require that the driver be further tested according to its own testing and licensing procedures. At a minimum, the

new State of domicile will be required to obtain the certifications and identifying information updates, and complete the driver record checks that would be required for issuance of an initial CDL.

The State will also be required to ensure that those drivers who wish to retain the hazardous materials endorsement have either successfully passed a hazardous materials knowledge test within the preceding 2 years, or successfully completed hazardous materials testing or training that is given by an employer or some other third party. Such third party testing or training must be deemed by the State to substantially cover the knowledge areas listed in § 383.121. Without such a requirement, the potential would exist for CMV operators who frequently change domicile to avoid retaking the hazardous materials knowledge test for long periods of time. This eventuality cannot be permitted, in FHWA's view, because a CMV operator's hazardous materials knowledge is of critical importance to the public safety. Most States commenting on the retesting of transfer applicants for hazardous materials knowledge, however, felt that such retesting should be at the option of the States. Because the FHWA believes that the States can best determine the knowledge levels of applicants transferring from another State, the final rule allows States the option to either retest or accept certification of successful hazardous materials testing or training within the preceding 2 years by another State or third party, including the employer. This provision reflects the FHWA's belief that an individual who passes a hazardous materials endorsement test or an equivalent third party testing or training program within the 2 years preceding the transfer will be sufficiently knowledgeable of the hazardous material regulations and of any changes in them which may impact safety.

Renewals. Minimum State procedures for renewing a CDL will include the certification of driver qualification, updates of information that would be required to be included on the CDL and completion of a check of the driver's record. A driver who desires to retain his/her hazardous materials endorsement will be required to successfully complete the test being given by the State for the hazardous materials endorsement to ensure he/she continues to be knowledgeable about hazardous materials regulations and safety procedures. This provision for hazardous materials knowledge retesting at license renewal (as opposed to transfer) received the support of a majority of States commenting on the related question in the NPRM.

Upgrades. A State will follow a combination of procedures whenever a driver changes the vehicle group in which he/she is currently licensed to operate. The driver applicant will have to provide the certifications and information specified under the renewal section, and will be tested for the different portion(s) of the CDL as if he/she were making an initial application.

Nonresident CDL. As explained in the commentary to § 383.23, the FHWA has eliminated the CDC for domestic operators, and substituted the Nonresident CDL for the "foreign" CDC. The Nonresident CDL will be a CDL in every sense of the term. It will differ from all other CDLs only in that it will carry the word "Nonresident" on its face, and will show an address outside the United States.

To be empowered to issue a Nonresident CDL, a State must be fully capable of disqualifying its holder and of withdrawing, suspending, canceling, or revoking his/her Nonresident CDL. This provision is necessary because certain States legally require that notifications of certain adverse actions against the driving privilege be delivered by Certified Mail. If a foreign country does not participate in the Certified Mail Service the State could conceivably issue a Nonresident CDL that cannot be suspended, canceled, or revoked. To avoid this eventuality, States wishing to issue Nonresident CDLs may need to modify their statutes and/or regulations to ensure the enforceability of the penalties and sanctions that are integral to the CDL program.

License Issuance and Notification. This paragraph in the rule specifies that if the driver applicant has successfully met the requirements for a CDL, he/she can be issued a CDL. Once the document is issued, the State will inform the CDLIS and provide it with the appropriate information within 10 days beginning on the date of issuance. The NPRM proposed allowing the States 30 days to notify the CDLIS of such issuance. The reduction to 10 days reflects an analysis of comments from respondents to the related question in the docket, most of whom argued that the proposed notification period should be shortened. The 10-day notification period would be long enough to allow the States leeway in processing the required paperwork. The FHWA expects, however, that notification to the CDLIS will be simultaneous with issuance of the license, to prevent CMV operators from applying for multiple licenses in contravention of law and regulation. The FHWA will address this issue further as the CDLIS develops.

Penalties for False Information. This paragraph contains minimum suspension, cancellation, or revocation requirements for persons who falsify the information or certifications required to be provided by CDL applicants. If a State determines at any time that a person falsified the information, the State would at a minimum suspend, revoke, or cancel the CDL no later than 30 days after discovering the falsification. The final rule leaves to the discretion of the States the duration of such a suspension, revocation, or cancellation, and allows the States the option of applying additional civil or criminal penalties in keeping with existing State statutes. Further, § 383.53 provides that individuals who violate the requirements in Subparts B and C are subject to civil or criminal penalties as specified in the Act. Any individual who falsifies license information to obtain more than one CDL would be in violation of Subparts B and C and would thus be subject to civil and criminal penalties under the Act. In responding to the NPRM, the NTSB recommended that the final rule prescribe specific penalties for drivers who falsely certify compliance with CDL requirements. The FHWA will address this issue in a separate NPRM.

To provide an added deterrent, the final rule now explicitly states that the penalties can also come into effect if the factual discrepancies are discovered subsequent to the issuance of the license. These changes from the wording in the NPRM reflect the elimination of the 50-State check and the substitution of a certification; the greater reliance on applicant-provided information requires a corresponding clarification of State procedures in the event of falsification.

Reciprocity. Section 12009(a)(14) of the Act requires that States allow any person who has a valid CDL and who is not disqualified from operating a CMV, to operate a CMV in the State. The FHWA has included this requirement in § 383.73 as a condition for States to issue a CDL which meets the standards.

Alternative procedures. States may implement alternative procedures to the certification requirements described in § 383.71(a), as long as such alternative procedures ensure that the substantive purposes of the requirements are met. For example, if a State undertakes the medical qualification review for the driver, a certification would not be required. This is an area where greater flexibility would be provided to the

State in the final rule than was the case in Alternative 2 of the NPRM.

Section 383.75 Third party testing.

In keeping with section 12005(c)(3) of the Act, this final rule permits States to use a third party to administer driving skills tests. According to the Act, a third party may be a person or a department, agency, or instrumentality of a local government. The FHWA has decided to allow a broad interpretation of this provision to include another State or any public or private organizations with which the State has an agreement. Examples of potential third-party testers would include employers, public transit authorities, school boards, and driver training schools.

Approximately 60 respondents to the NPRM (primarily States, members of the trucking industry, and public interest groups) addressed this issue. One-fourth of this number either opposed third-party testing outright or suggested more stringent FHWA-imposed requirements than those originally proposed. These respondents fear abuses from conflict of interest—for instance, driving schools seeking to upgrade their advertised pass rate, or trucking companies attempting to combat the driver shortage by lowering test standards. While recognizing the potential for such abuses, the FHWA also understands the benefits of a functioning third-party testing apparatus to assist the States in implementing the CDL program.

As minimum standards subject to State enhancement, the FHWA believes that the control mechanisms in the final rule will allow the States to provide adequate checks against abuses. Specifically, in order to ensure that people who pass the tests given by third parties would have passed tests had they taken them from the State, third parties will be able to give driving tests only if all the following conditions are met:

(a) The tests given by the third party are the same as those which would otherwise be given by the State;

(b) The State's agreement with the testing party allows the FHWA or its representative and the State to conduct random examinations, inspections, and audits without prior notice;

(c) The State agrees to conduct on-site inspections at least annually;

(d) All third party examiners meet such qualification and training standards as are imposed on State examiners and are relevant to proper administration of the driving tests (civil service examinations, for example, would not be required);

(e) At least annually, State employees "check-ride" with examiners on actual tests, or States test a sample of drivers who were examined by third parties to compare pass/fail results; and

(f) The State expressly reserves the right to take appropriate action if the third party fails to meet the CDL program standards.

The FHWA has added this last condition to the requirements enunciated in the NPRM to further strengthen internal controls in the third-party testing program, in response to the concerns voiced by the respondents.

Section 383.77 Substitute for driving skills test.

The FHWA recognizes the CMV drivers are professionals who are, as a group, highly experienced in the skills needed to operate such vehicles. In response to the fact, the final rule follows the NPRM in providing States with an option to allow certain drivers to substitute a good driving record and experience for the driving skills tests. The overwhelming majority of comments to the docket from the States and the motor carrier industry support this provision. The provision would not be used for the knowledge tests. The option would apply to a driver of CMVs who was currently licensed at the time of his/her application for a CDL, and who either (1) has a good driving record and has previously passed a State skills test in a CMV, or (2) has a good driving record in combination with certain driving experience. The FHWA believes that for many current drivers, experience is an appropriate indication that the individual has the minimum driving skills to operate a CMV. Accordingly, the FHWA believes that this provision will not diminish public safety or overall safe operation of commercial vehicles.

A State which chooses to exercise this option will have to adopt criteria to eliminate certain applicants from consideration under this provision. As a minimum, an applicant must be a CMV operator who is currently licensed at the time of his/her application for a CDL, and must:

(1) Certify that he/she has not committed certain offenses; and

(2) Certify and show that he/she has previously passed an acceptable skills test or has certain experience driving a CMV.

In the process of developing the NPRM, the FHWA evaluated the practices used by several States to determine whether applicants who are transferring their licenses from another State need to take driving tests. Based on these current analogous practices and the statutory requirements, the FHWA concluded that an applicant for "grandfathering" would first have to certify that he/she has violated neither the single license provisions nor the disqualification provisions in Part 383 for the 2 years prior to applying for the CDL. In addition, an applicant could have neither a violation of State of local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, nor a record of an accident where he/she was at fault, during the 2 years immediately preceding application for a CDL. The applicant would have had to pass a State driving skills test given by a State with a classified licensing and testing system, and which was taken by the driver behind-the-wheel in a vehicle representative of the type of classification which the applicant operates or expects to operate. The State test, in conjunction with a driver's demonstrated safe driving record, is an acceptable substitute for a new driving skills test even if the previous test did not include each of the specific skill items which new drivers will need to demonstrate under the standard.

In lieu of a driving skills test, the applicant may qualify for an exception to the CDL skills test because of his or her prior experience. In this case, an applicant would be required to have 2 years of recent experience driving a vehicle that is representative of the group of vehicles for which he/she wishes to obtain a CDL. A State would need to ensure that the applicant has this experience through mechanisms such as requiring the employer to provide certification.

The NPRM restricted the pool of applicants eligible to substitute a good record and other qualifications for the driving skills test to those holding driver's licenses as of July 15, 1988. Many respondents contended that since the deadline for full CDL program implementation is not until April 1, 1992, the NPRM would arbitrarily exclude persons with up to 4 years' experience from the skills test substitution provisions. The final rule eliminates the July 15, 1988, cutoff date, and instead requires that an applicant hold a driver's license at the time he/she applies for the CDL, and that he/she be regularly employed as a CMV operator.

Similarly, the NPRM required that applicants eligible for substitution of the skills test have a driving record free of license suspensions, revocations, or cancellations, and free of disqualifying offenses, since July 1, 1987. For drivers applying for their CDLs in 1992, this provision would have required them to have a good record for almost 5 years.

The respondents on this issue generally favored less stringent standards and more discretion on the part of the States. As a result, the final rule has eliminated the July 1, 1987, date for all record-related prerequisites to substitution and has instead specified the 2-year period prior to application for the CDL. Each State would be free to impose more stringent requirements.

Several respondents requested that the final rule allow States to allow a substitution for the knowledge test in order not to penalize the safe, but functionally illiterate driver. The FHWA understands this concern; however, the FHWA believes that the purposes of the Act would be best met by retaining the knowledge test requirement for all current drivers. The rule is directed to "knowledge" tests, nor "written" tests, so as to afford the States alternative ways to provide the drivers with the necessary information and to test them. Illiterate drivers have a handicap in regard to reading, but they can and should be expected to possess the required knowledge of safe vehicle oparation. The State will have full discretion to adopt a testing format (or formats) for the knowledge test, as long as the reliability and content standards are met. (See Subpart H.)

Subpart F—Vehicle Groups, Representative Vehicles, and Endorsements

In accordance with section 12005 of the Act, any applicant for a CDL must demonstrate driving skills in a vehicle which is representative of the type of vehicle such person operates or expects to operate. Three broad vehicle groups are established by FHWA to help define the types of vehicles which would be considered acceptable representative vehicles. These groups reflect different vehicle handling characteristics under different traffic conditions and situations. Thus, separate skills and, in some cases, knowledge tests are required for each group. These tests are described in Subpart G.

Section 383.91 Vehicle groups.

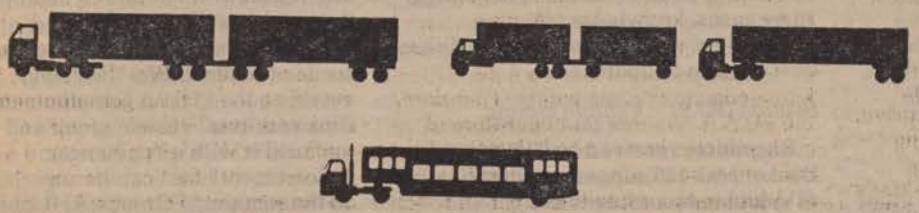
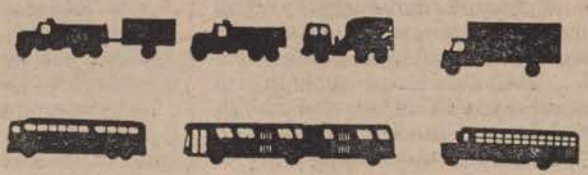
Responses received by FHWA to Docket MC–125 supported classification of vehicles according to weight and number of articulations points. The AAMVA, the American Automobile Association (AAA), the American Trucking Association (ATA), the Highway Users Federation for Safety and Mobility (HUFSAM), and the National Motor Carrier Advisory Committee (NMCAC) suggested specific vehicle classifications to FHWA. The vehicle groups included in the final rule generally follow the recommendations by AAMVA, ATA, and HUFSAM. The three vehicle groups delineated by FHWA are depicted in Figure 1.

The NPRM had included a "Bus" group. However, several comments to the docket emphasized the significant differences in handling characteristics among buses of various sizes and weights. In order to reflect these differences without unduly multiplying the number vehicle groups and increasing the potential administrative burdens on the States' licensing agencies, the FHWA has eliminated the separate "bus" vehicle group and replaced it with a "passenger endorsement" that can be superimposed on the remaining Groups A, B, and C.

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Figure 1
VEHICLE GROUPS AS ESTABLISHED BY FHWA (SECTION 383.91)

[Note: Certain types of vehicles, such as passenger and doubles/triples, will require an endorsement. Please consult text for particulars.]

Group:	*Description:
A	Any combination of vehicles with a GCWR of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds. (Holders of a Group A license may, with any appropriate endorsements, operate all vehicles within Groups B and C.) Examples include but are not limited to: 
B	Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. (Holders of a Group B license may, with any appropriate endorsements, operate all vehicles within Group C.) Examples include but are not limited to: 
C	Any single vehicle less than 26,001 pounds GVWR, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. This group applies to vehicles which are placarded for hazardous materials or designed to transport 16 or more persons, including the operator. Examples include but are not limited to: 

*The representative vehicle for the skills test must meet the written description for that group. The silhouettes typify, but do not fully cover, the types of vehicles falling within each group.

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Representative Vehicles. Section 12005(a)(2) of the Act requires that the skills test be taken in a vehicle representative of the type which the person operates or expects to operate. Generally, the commenters to Docket MC–125 leaned toward testing in the type of vehicle the driver intends to drive. The NTSB recommended that applicants be tested in the largest vehicle allowable in a given class. Such a requirement would place an unreasonable burden on a driver applicant to obtain, for test purposes only, a vehicle other than one he/she typically operates or expects to operate. Alternatively, it would place a burden on States to acquire or to have available such vehicles for applicants to use for the tests.

Thus, the final rule requires an applicant to take his/her skills test in a representative vehicle, defined as *any* vehicle within the vehicle group in which he/she drives or intends to drive. The FHWA believes that the driving tests will adequately determine the ability of the driver to operate any CMV within that group. The applicant will certify to the licensing authority at the time of the test that the vehicle that he/she uses for the skills tests is a representative vehicle. This approach will give the States flexibility to allow drivers to undergo the skills test in vehicles other than the exact vehicle or the exact type of vehicle which the driver operates or expects to operate. By the same token, this broad definition of "representative vehicle" will allow drivers to switch jobs without retaking the skills test in a new, more narrowly defined "representative vehicle," except where endorsements or restrictions are involved. States would also have the option of providing the representative vehicle for any vehicle group. This flexibility could resolve problems associated with bringing unique vehicles, such as fire trucks and specialized auto transporters, to the skills test location while allowing States to require testing with such vehicles if deemed appropriate. As specified in § 383.75, States also have the option of allowing other persons or employers to administer the skills tests.

Section 383.93 Endorsements.

The endorsements to the CDL included in the final rule are designed to ensure that the operators of CMVs with specialized handling characteristics possess specialized knowledge and skills related to those vehicles. Drivers of such equipment must demonstrate this knowledge and skills, in addition to the knowledge and skills required for the basic vehicle group. Endorsements are required for (1) double/triple trailers, (2) passenger vehicles, (3) tank vehicles, and (4) vehicles that carry hazardous materials in quantities sufficient to be placarded. For the passenger endorsement, the driver must pass knowledge and skills tests. For the other endorsements, the driver will be required to pass a knowledge test only.

Accident analyses indicate that the driver's actions and reactions are causal factors in the majority of preventable accidents involving motor carriers. The operation of certain heavy trucks and buses also requires specific skills and knowledge unique to their configuration, and loading and handling characteristics. Of particular concern are vehicles that have increased articulation points, vehicles which carry cargoes that change the handling and operating characteristics of the vehicle, or vehicles which require unique knowledge to operate safely. Therefore, the FHWA requires that operators of such vehicles have knowledge about the safe operation of these vehicles in addition to the knowledge related to the vehicle groups.

Double/Triple Trailers. The relative incidence of accidents involving operation of doubles or triples compared to tractor-semitrailer operation continues to be subject to much debate and study. The results of these debates and research efforts yield no conclusive results; except that it is clear that there are differences in the operation of double or triple trailers compared to the operation of tractor-semitrailers. For example, off-tracking of "twins" at low speeds has been shown to be significantly less than that which occurs at low speeds for a tractor semitrailer. On the other hand, a vehicle with shorter wheelbases, such as those typically used with twins, may be more difficult to control when turns are entered at high speed.

Therefore, the final rule requires drivers who operate or expect to operate doubles or triples to have an endorsement to their CDL in order to operate those vehicles.

The double/triple endorsement will require a knowledge test only. Skills testing was not proposed in the NPRM although comment was specifically sought on whether such tests should be required. Those who commented suggested that skills testing for doubles and triples would not be so different in content from that applicable to the combination vehicle group as a whole as to justify a separate behind-the-wheel examination. It should also be noted that § 391.31 of the FMCSRs already requires an employer to assure that a driver demonstrates skills related to operating the vehicle that the carrier intends to assign him/her. Since most double/triple operations are interstate and since nearly all the States have adopted the FMCSRs for intrastate use or are in the process of adopting them, skills testing for double/triple operators is largely already being done by employers. If additional skills testing methods, specific to doubles and triples, should be developed by the Essex Corporation under the CDL grant to the State of Nebraska, or by other research, the FHWA would consider whether the tests required under § 391.31 and/or this part should be changed.

Passenger vehicles. Because the requirements for carrying passengers are different from those of other operations, and because the safety systems of buses are different from those of other CMVs, the FHWA has established a passenger endorsement. This endorsement will require a specialized knowledge test and a skills test taken in a vehicle that is representative of the applicant's actual or intended vehicle group. Tractor-trailer-type buses will fall into Group A, while flexible buses will be considered "straight vehicles" in Group B, as shown in Figure 1.

The operator of a passenger vehicle will be required to take the skills test in a "passenger" vehicle representative of the vehicle group (A, B, or C) for which he/she is applying. The holder of the passenger endorsement would be allowed to operate the nonpassenger vehicles in his/her vehicle group. However, the holder of a CDL *without* the passenger endorsement could not operate a passenger vehicle without taking the appropriate knowledge and skills tests.

The shifting of the passenger vehicle from a vehicle group, as contained in the NPRM, to an endorsement has a number of advantages. First, it allows the basic vehicle grouping to follow the A, B, C grouping recommended by the AAMVA and a majority of States. Second, it retains the distinction between passenger and nonpassenger vehicle operations. Furthermore, the use of passenger endorsements to a three-vehicle-group basic license requires the driver of a large passenger vehicle to be tested in a large vehicle, and allows a small passenger vehicle driver to be tested in a small passenger vehicle. Such a distinction was made in the material submitted to the docket by the Essex Corporation and is similar to the Canadian classification system which separates large and small passenger vehicles. The distinction among

passenger vehicle sizes should also benefit drivers who may have access only to certain types of vehicles. The FHWA believes that the endorsement is an improvement over the one "bus" class proposed in the NPRM for these reasons.

Tank vehicles. The FHWA recognizes that tank vehicle operations present special concerns. For example, in 1986, there were 818 accidents reported to the FHWA involving tank vehicles transporting hazardous materials resulting in 136 fatalities (from all causes), 761 injuries, and over $17 million in property damage. In the same year there were 1,276 accidents reported by tank vehicle carriers or nonhazardous materials, resulting in 142 fatalities, 1,177 injuries and over $17 million property damage. The most important operating difference between driving a tank vehicle and a standard dry freight truck is liquid product surge which may be the most significant condition that a tank vehicle driver must be able to mitigate. Other factors that may threaten vehicle stability, therefore presenting a safety risk, include: sloshing liquids in various tank vehicle designs; various loading conditions; and the impact of liquids on driving maneuvers such as braking, backing, turning, and combined braking/steering maneuvers. It is important that the drivers of these vehicles be given special emphasis during the licensing process, and FHWA's standard includes a requirement that drivers of tank vehicles have an endorsement.

As a requirement for the tank vehicle endorsement, the NPRM proposed a knowledge test and a skills test in a half-filled vehicle. The majority of the respondents to this topic opposed the skills test because it would not simulate typical tank vehicle operations, because test conditions would vary significantly among vehicle and landing types, and because such a test could depend on the deliberate creation and successful mitigation of an inherently unsafe situation. Typical of these comments was that of the National Tank Truck Carriers, Inc.:

> * * * For an applicant to meet the objective of the proposal (i.e., recognize the dynamics of shifting cargo and their relationship to vehicle stability), he/she would have to operate the test vehicle in such a manner as to approach the threshold of an overturn or jackknife. It is reasonable to assume that some applicants will cross that threshold, thus the potential for compromising the safety of both the applicant and the examiner is evident * * * [furthermore] the vehicle dynamics of different types of trailers may vary considerably and never replicate the actual type of tank operated by a (potential) employer.

Furthermore, according to the National Private Trucking Association,

> The load conditions which FHWA proposes to simulate would not be typical of what drivers experience. Indeed, in the vast majority of situations, tank trucks are operated either full or empty, and companies seek to avoid as much as possible having to operate less-than-full, if for no other reason that it simply is not economical * * *

The FHWA has embodied all these concerns in the final rule, which eliminates the tank vehicle skills test from the minimum standards. The tank vehicle knowledge examination would, however, test applicants' understanding of the causes, prevention, and effects of cargo surge, and related topics.

Just as in the case of double/triple trailers, employers of tank vehicle drivers are required (in § 391.31 of the FMCRs for interstate commerce, and by many States to assure that drivers demonstrate skills related to operating the vehicle that the carrier intends to assign him/her. As in the case of the doubles/triples endorsement, the FHWA intends to monitor the skills qualifications for tank vehicle operators. If additional appropriate testing methods are developed by the Essex Corporation or other research, the FHWA will consider whether the tests required under § 391.31 should be changed.

Hazardous Materials. Section 12005(a)(5) of the Act requires that drivers of vehicles that carry hazardous materials demonstrate a knowledge of hazardous materials regulations and emergency procedures. The FHWA has implemented this provision of the Act by including a special hazardous materials endorsement based on a knowledge test, in the standard. Also drivers of tank vehicles transporting hazardous materials would obtain an endorsement both for tank vehicles and hazardous materials.

Section 383.95 Air brake restriction.

The FHWA's data on equipment-caused accidents consistently show brake defects as the most frequently reported reason for such accidents. The NPRM treated air brake knowledge as an integral part of Group A "Combination Vehicles" (hence, requiring no endorsement), and as an endorsement to all other groups. However, many respondents suggested that the endorsement be eliminated and replaced with a restriction.

Information was also presented to the docket indicating that the vast majority of straight vehicles above 26,001 pounds are manufactured with air brakes. While most of the vehicles below 26,001 pounds do not have air brakes, the only such vehicles specifically covered by this rule are placarded hazardous material laden vehicles and small buses.

In conformance with the comments to the docket, the final rule includes knowledge and skills related to air brakes as part of the basic requirements for all vehicle groups since the majority of CMVs subject to this rule are so equipped. An applicant who either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, will only (if found otherwise fully qualified by the State) be eligible to receive a CDL that must contain an air brake restriction prohibiting him/her from operating any CMV equipped with air brakes. The restriction is the approach now used by virtually all States to limit drivers to specific vehicle or operating conditions. A State may also impose more stringent standards, such as requiring all its CDL applicants to demonstrate knowledge and/or skills in the use of air brakes.

To avoid the restriction, the skills test must be performed in a vehicle equipped with an air brake system, or with a hybrid system containing air brake components. By the same token, the restriction shall apply to all vehicles equipped with air brakes, or with hybrid systems.

This approach will promote administrative uniformity across all vehicle groups, because the States have mechanisms in place to deal with restrictions. There will also be fewer restrictions under the final rule provisions than there would have been endorsements since the majority of CMVs are air brake equipped.

Subpart G—Required Driver Knowledge and Skills

This section describes the knowledge and skills which CMV operators would be required to have and demonstrate for each vehicle group and endorsement. Information about these skills and knowledge areas would be included in drivers' manuals available to driver applicants. The FHWA does not expect that each knowledge test given to each CDL applicant would cover every specific item of required knowledge. Rather, the tests would be a representative sampling designed to ensure that the applicant has sufficient breadth and depth of knowledge to operate his/her vehicle safely. States may also require knowledge of and include questions related to any unique

or special traffic laws and regulations within their jurisdictions. A sample of the more specific items on which a State may test to ensure the applicant's knowledge and skills in each general area is included in the appendix to Subpart G.

Section 383.111 Required knowledge.

A primary cause of accidents is improper vehicle control in adverse environmental conditions and/or emergency traffic situations. More than 20 percent of the preventable accidents involving CMVs are attributable to this cause. Other primary causes of accidents include: Following too closely; failure to maintain control, improper/erratic lane change; improper turning; starting and braking improperly; and failure to yield right-of-away. To ensure that all CMV drivers are at least aware of these dangers and the correct driving responses, an appropriate number of these areas must be covered in questions on the knowledge examinations. Several respondents to the docket, including the AAMVA and the States of California and New York, argued that the knowledge areas included in the NPRM were too rigidly prescribed. Instead, these respondents argued, the FHWA should list general knowledge areas, and the States should have the flexibility to determine specific subtopics for emphasis. In an effort to preserve maximum leeway for the States while assuring minimum uniform Federal standards in keeping with the Act, the FHWA has revised the listing of required knowledge areas to incorporate AAMVA's suggested approach. Thus, the final rule includes general areas which must be included on the tests.

Safe Operations Regulations. Section 12005(a)(4)(A) of the Act requires that tests ensure that drivers have working knowledge of regulations pertaining to safe operation of commercial vehicles issued under Title 49, CFR. To meet this requirement, the final rule specifies that applicants shall be provided with information about the regulations contained in Parts 391 through 397 and shall be tested on this information. This information is limited to that which a *driver* must have for safe operation of a CMV. The driver is not expected to have knowledge of subjects, such as vehicle mechanics, which go beyond the scope of the information necessary for safe operation of his/her CMV.

Commercial Motor Vehicle Safety Systems. Section 12005(a)(4)(B) requires that drivers have a working knowledge of the proper use of the safety systems of commercial vehicles. As promulgated in the final rule, drivers must have a "working knowledge" of such items as proper use of lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, vehicle operation characteristics, diagnosing malfunctions, and proper use of these safety systems during emergencies.

Safe Vehicle Control. Section 12005(a)(1) requires that each CMV operator take written knowledge tests pertaining to safe vehicle control. The FHWA has determined that a CMV operator should have knowledge of the procedures used to safely operate the vehicles under various traffic and road conditions, and under various weather and lighting conditions.

Relationship of Cargo to Vehicle Control. The FHWA is also requiring that drivers have general knowledge about cargo placement, balance, securement and its relationship to safe vehicle operations for the particular vehicle group.

Vehicle Inspections. Pre-trip inspections as well as periodic inspection and repair are important actions which help prevent breakdowns and improve safety. Therefore, the final rule includes a requirement that CMV drivers must know and understand the various inspection procedures.

Hazardous Materials Knowledge. This category of knowledge will involve basic information regarding hazardous materials, in order to assure that every CMV operator can at least identify a hazardous cargo and the implications thereof. For drivers actually transporting placarded hazardous materials loads, the essential facts on the basic knowledge test must be supplemented by a special knowledge test for the hazardous materials endorsement.

Air Brake Knowledge. As discussed in the analysis of § 383.93 (Endorsements), knowledge of air brake systems now forms and integral part of the knowledge test for all vehicle groups.

Combination Vehicle Knowledge. The FHWA requires that an operator of a motor vehicle which falls into the Combination Vehicle classification (i.e., Group A) be tested on additional information as part of the basic knowledge requirements. As delineated in § 383.111, this information address coupling and uncoupling, as well as vehicle inspection procedures that are unique to Group A.

Section 383.113 Required driving skills tests.

Section 12005(a) of the Act requires that each driver applicant demonstrate his/her ability to safely operate a vehicle that is representative of the class or type of vehicle he/she operates or expects to operate. Each driver applicant will be required to demonstrate the basic skills included in this final rule; the State may also test any other skills it deems appropriate and necessary. The skills tests will be conducted entirely in actual road conditions or in a combination of road and off-street conditions. Thus, the FHWA is *not* requiring States to include off-street testing as part of the CDL program. The decision as to where the skills test will be conducted will remain at the discretion of the States, as long as an in-traffic component is included. Wherever the skills test is conducted, an applicant for a CDL will have to demonstrate that he/she is capable of operating the CMV safely.

Applicants for each vehicle group would be required to successfully demonstrate the basic vehicle control skills, safe driving skills, and air brake skills (except for CDLs which restrict air brake use). The specific skills which would be required are contained in § 383.113 (a), (b), and (c).

With respect to safe driving skills, most of the respondents supported the proposal with some minor wording revisions to allow easier examiner interpretation. The FHWA incorporated these suggestions into the final rule. In one case, however, the AAMVA suggested a requirement that applicants "must communicate presence by properly using horns or lights." Since the test is to taken primarily or exclusively in traffic, and since such required "communications" may be unnecessary and distracting to motorists, the FHWA has omitted this suggested addition.

In the NPRM, the FHWA elicited opinions on simulator technology in connection with the skills tests. The consensus of responses was that, as regards CMV operations, simulator technology has not yet advanced to a satisfactory stage of development. So as not to preclude further advances in this field, the final rule allows States to use simulator technology as part of the skills testing program, but *not* as a substitute for the required test in traffic.

Section 383.115–121 Endorsement tests.

The FHWA has determined that an operator of special types of CMVs shall obtain an endorsement to his/her CDL because of the specialized knowledge and skills needed, in addition to the knowledge and skills contained in §§ 383.111 and 383.113. Endorsements to the CDL will be prerequisite to the operation of vehicles equipped with double/triple trailers; passenger vehicles; tank vehicles; or vehicles involved in transportation of hazardous

materials. Each of the endorsements will require additional knowledge tests. The passenger endorsement will also require each driver to take and pass a skills test in a representative passenger vehicle. Information on these knowledge areas and skills will be included in the driver's manuals. The FHWA's specific minimum standards for each endorsement are contained in Subpart G and are summarized below:

Section 383.115 Double/triple trailers endorsement.

Increased length, larger freight capacity and greater number of articulation points lead to differences in handling and performance characteristics of double/triple trailers. Each applicant will undergo a knowledge test covering unit assembly and hookup, trailer placement, handling and stability characteristics, and potential problems of such vehicles in traffic. Skills test(s) are not proposed for this endorsement because of the administrative difficulties cited in the commentary on § 383.93, because the majority of double/triple trailer drivers already undergo road tests administered by employers under § 391.31, and because of a lack of evidence as to the specific skills on which a driver can be tested which would be different from the skills required in the basic test(s).

Section 383.117 Passenger endorsement.

To obtain the passenger endorsement, an applicant must satisfy both knowledge and skills test requirements. In addition to the basic knowledge test for the appropriate vehicle group, passenger operators must undergo a knowledge test pertaining to the operation of passenger transport vehicles and proper emergency and braking procedures. Applicants for the passenger endorsement need take only one skills test. The vehicle used in that test must be a bus or other passenger vehicle satisfying the requirements of the specific vehicle group that the applicant operates or expects to operate.

Section 383.119 Tank vehicle endorsement.

Each applicant for a tank vehicle endorsement must demonstrate his/her knowledge in areas such as vehicle operations under different loadings, product density, tank vehicle type and construction. The driver must also have knowledge of and be tested on the causes and prevention of cargo surge, and the likelihood of rollover due to improper control of cargo surge.

The NPRM proposed that each driver who wishes to obtain a tank vehicle endorsement to his/her CDL would also demonstrate his/her skills by taking a skills test in a partially loaded tank vehicle (between 30 and 60 percent full in each compartment). For reasons addressed in the commentary to § 383.93, the FHWA has eliminated this requirement in the final rule; nevertheless, for employees subject to the FMCSRs and analogous State regulations, a test in a tank vehicle remains an employer responsibility.

Section 383.121 Hazardous materials endorsement.

Section 12005(a)(5) of the Act requires that an individual who will operate vehicles carrying hazardous materials shall be qualified to operate CMV in accordance with all regulations pertaining to the transportation of hazardous materials issued under the Hazardous Materials Transportation Act. The FHWA does not believe that an applicant needs to know all parts of these regulations. For drivers of vehicles which transport non-placarded quantities of hazardous materials, the FHWA believes the questions included in the basic knowledge test are sufficient. Drivers of vehicles carrying hazardous materials in placarded quantities require additional knowledge. In either case, only those sections of the hazardous materials regulations that are essential to a driver's safe operation of his/her vehicle are required to be included in the knowledge tests.

The applicant will demonstrate his/her knowledge of these areas to obtain an endorsement to his/her CDL as follows:

(a) *Hazardous material regulations*—will include the Hazardous Material Table, shipping paper requirements, hazardous material packaging, marking, labeling, and placarding requirements;

(b) *Hazardous material handling*—will include the different procedures to be utilized for different kinds of hazardous materials, general loading and unloading of materials requirements, cargo segregation, and regulations regarding the routing of materials (in tunnels, on highways etc.), attendance of vehicles, parking, fueling, and vehicle repair;

(c) *Operation of emergency equipment*—will include knowledge of when and how such equipment is to be used and any other precautions that the vehicle operator must implement to protect the public; and

(d) *Emergency response procedures*—will include general knowledge of appropriate and necessary actions for all types of hazardous materials. The preamble to the NPRM had suggested that this area of the hazardous materials endorsement test should include specific knowledge for any type of freight (the applicant) expects to transport. However, such an implied standard would have required a customized test for each applicant, and would have implied frequent retesting as operators changed jobs or cargo types. The FHWA has, therefore, removed any mention of driver-specific commodity knowledge as part of this endorsement.

Subpart H—Tests

To ensure that all drivers have the knowledge and skills to safely operate a CMV on the public roadways, every CDL applicant must pass tests which demonstrate the person's knowledge or skills described in Subpart G. The FHWA intends that the tests shall have similar substantive content, and that test administration and scoring procedures shall meet similar performance standards, so as to establish valid and nondiscriminatory testing of CMV operators that is reasonably uniform in substantive results. This section contains the test administration methods and standards for minimum passing scores which the FHWA has adopted for the knowledge and skills tests.

Section 383.131 Procedures.

Because licensing examinations within a State are given to different applicants, at different times, in different locations, and by different examiners, it is critical to minimize any impact of these differences. Therefore, a State's standard test procedures and methods should be similarly applied throughout the State. The CDL program will include procedural information and directions for the test applicant and for the test examiner. For the knowledge and skills tests, the directions given to the driver applicant will cover the purpose of the test, how to choose a response, how to make a response, any time limits, and any other special procedures determined by the State. A State will be free to select a testing format or formats (e.g., paper, oral or automated equipment for knowledge tests) to meet the State's particular needs. Directions for taking knowledge tests will differ depending on the particular testing format(s) used by the States (e.g., written, oral, or automated). All information provided to the applicant will need to be at or below the six-grade reading level. The FHWA understands that this level of reading competency will be sufficient to fully test a driver's knowledge without discriminating based on literacy and

believes that the problems, expressed by some commenters, regarding "illiterate drivers" can be resolved by means of State adoption of several knowledge testing formats. To that end, the FHWA is working with the AAMVA to develop information and testing procedures which are geared to drivers with lower than sixth-grade reading levels.

The information manual(s) furnished by the States to applicants will include the substance of the knowledge and skills for which outlines are provided in Subpart G of the final rule.

Directions for the examiner will include such items as the information the examiner must give to the applicant, information about how to conduct the tests, and how to score the tests. Most respondents to the NPRM agreed with this section of the proposal or made no comment. One respondent did object to the requirement for manuals, evidently as a reaction to the length of the draft Essex Corporation materials. The FHWA believes that the requirements of this section preserve a high degree of flexibility for the States in terms of the contents, structure, and length of the manuals; furthermore, the final rule does not mandate State acceptance of the Essex materials. Because of this flexiblity, and because the vast majority of respondents raised no objection to this section, the FHWA has preserved it essentially intact as proposed.

Section 383.133 Test methods.

The States will construct and offer tests corresponding to the vehicle groups and endorsements in Subpart F, and covering general areas described in Subpart G.

The States will be required to establish specific testing and scoring procedures and the associated administrative procedures that meet the standards. The knowledge and skills tests will uniformly assess the performance of applicants regardless of the location of the test.

To assure that the knowledge and skill tests can accurately determine the proficiency of CDL license applicants, the tests should be reliable. In its response to the NPRM, the Essex Corporation (Essex) provided the following useful definition of reliability:

> The reliability of a test * * * is simply an index of the extent to which a person with a given level of knowledge or skill would make essentially the same score in taking the same test a second time, without any intervening study or forgetting. Or, it sometimes takes the form of a correlation of scores made by the same person on two alternative forms of a test, each of which purports to measure the same knowledge or skills. In the case of skills tests, reliability can [also] refer to the degree of *agreement* between 2 independent examiners concerning the level of skill demonstrated by an examine on a test of performance.
>
> The mathematical index of reliability (correlation coefficient) can range from .00 which means total lack of reliability to 1.00 which means perfect reliability. In practice, no test is perfectly reliable * * * it is commonly accepted that written examinations should have reliabilities of about .80 or better * * *. [for skills tests] reliabilities as low as .70 may have to be accepted in their everyday practical application * * *. Generally speaking, the reliability of a test increases as the length of a test is increased.

The NPRM proposed that knowledge tests would have a minimum reliability coefficient of 0.90, and that skills tests would have a minimum interexaminer reliability of 0.80. The above comments by Essex, and comments by the States of Illinois and Montana, questioned the practicability of such high coefficients. "These requirements," Montana stated, "may exceed the abilities of many States at the outset of this program * * *." In addition, these specific reliability factors run directly counter to the wishes of the 10 respondent States which, in supporting Alternatives 1 or 3, placed a high priority on flexibility. Furthermore, the FHWA recognizes that several States already have in place testing programs that could serve as a strong basis for compliance with this final rule, but for which sophisticated statistical analyses and studies may not be available. Finally, the final rule does not require the States to adopt the Essex materials, which would in fact be the only source readily available to the States for scientifically determined reliability coefficients for CMV skills and knowledge tests. These Essex materials themselves are still in the developmental stage as of the writing of this final rule, so that their ultimate reliability results are not yet known.

To accord maximum flexibility to the States to modify their current examinations, to adopt the Essex materials, or to develop new tests as they see fit, the FHWA has omitted specific numerical reliability standards from the final rule. The rule still places heavy emphasis on the concept of reliability on both the knowledge and skills tests; for that reason, the minimum number of questions for each basic knowledge test has been retained. For the same reason, this section-by-section analysis presents desirable goals for reliability.

Each basic knowledge test must contain a minimum, exclusive of the air brake component, of 30 items covering all of the knowledge areas described in Subpart G for a given vehicle group. The final rule, in response to numerous public comments, does not require a minimum number of questions on each endorsement knowledge test. However, each such test must be of a size sufficient to test a driver's grasp of the related knowledge in the manual. Each basic and endorsement knowledge test must, moreover, be reliable, to the extent required to assure that each applicant possesses the knowledge that the test is intended to cover. A desirable reliability coefficient would be the 0.80 mentioned by Essex.

A State would have flexibility to choose a specific method for giving the knowledge test as long as the tests meet the performance standards. For example, the knowledge tests could be administered by paper and pencil, orally, or given on automated equipment. States may also arrange for tests to be given with an oral interpreter as appropriate. (This would *not* relieve the interstate driver of the language requirements contained in § 391.11.)

Skill tests will have to have sufficient interexaminer reliability to ensure similarity of pass/fail rates on tests given by different examiners. As Essex points out, a practicable coefficient of interexaminer reliability of a State's examiners would be 0.70. Of course, a far more desirable goal would be the coefficient of 0.80 that has been established as a minimum in the *Torque* Tests developed by the National Highway Traffic Safety Administration (NHTSA), and the States are urged to strive to achieve that goal.

Specific methods for skill testing and scoring would be determined by each State. For example, the States may use a single score for a right hand turn starting with the initiation of the right turn signal and ending following the turn and cancellation of the turn signal, or they may use several scores for the turn comprised of the different performances involved in a right hand turn (initiates the turn signal, uses appropriate lanes, uses the right side mirror(s), blocks inside traffic, stays in roadway, cancels turn signal) or they may use some combination of the two approaches. The latter approach is a "disaggregate" or "elements" test approach which is used in the *Torque* tests.

The FHWA requires that the CDL examiners shall be qualified to administer the knowledge and skills tests. The FHWA expects that States will continue to ensure that their examiners have a high degree of ability, for example, by conducting rigorous training programs, by closely evaluating examiners' performance, and/or by requiring that they hold valid CDLs for

the classes of vehicles for which they give exams. States may also require examiners to pass endorsement tests identical to those given to CDL applicants. Although specific qualifications for examiners will remain a State prerogative, the final rule will influence State standards for examiners because achievement of the reliable examinations called for in this section will require not only good test design but also a high degree of examiner training and ability.

Section 383.135 Minimum passing scores.

For the knowledge tests, the driver applicant must correctly answer at least 80 percent of the questions to pass. For the skills tests, the applicant must successfully perform the skills identified in § 383.113 as being required for the standard tests. The State will define "successful performance" in the course of constructing its tests in keeping with §§ 383.131 and 383.133. To assure the required interexaminer reliability, the State's definition will have to be precise.

Section 383.135(d) specifies the procedure to be employed by the State in scoring the air brake components of the knowledge and skills tests (§ 383.133(i)) and issuing the air brake restriction (§ 383.95). If the applicant performs the skills test in a vehicle without air brakes, the air brake restriction will be indicated on his/her CDL, if it is issued. If the applicant fails the air brake component of the knowledge test, the air brake component would be removed from the test for scoring purposes, and the air brake restriction would be imposed. For example, if a State offers a 40-question basic knowledge test including 10 air brake questions, and the applicant scores less than 80 percent on the 10 air brake questions, then he/she can still obtain a CDL. He/she will, however, receive the air brake restriction. Implementing the wishes of most docket respondents, the changes discussed in this paragraph are necessary in order to convert the air brake endorsement in the NPRM into a restriction, while preserving the reliability of the basic knowledge and skills tests when taken by applicants who are not qualified in air brakes.

The State will automatically fail any driver applicant who does not obey traffic laws or causes an accident during the test. The State will determine the appropriate amount of time an applicant must wait in order to retake any test which he/she fails. The State would also determine the maximum number of times a person may take and fail any test before he/she may be prohibited by the State from obtaining a CDL.

Subpart J—Commercial Driver's License Document

This section includes standards for CDLs that are required by section 12006 of the Act. Generally, these State-issued documents will be, to the maximum extent practicable, tamperproof, and will include information as described further below.

The FHWA included in Alternative 2 of the NPRM a sample set of uniform CDL document specifications which might be used by States. This sample set of specifications engendered misunderstandings on the part of the States and other commenters, many of whom interpreted it as a mandatory component of Alternative 2. A clear majority of the States responding to this issue wished to retain the freedom to determine the form of the CDL, with only minimum requirements in the final rule. Some nongovernmental parties expressed a preference for a uniform, Federally-mandated standard form. Because the States would be faced with the costs of creating a new form exclusively for CDL holders, the sample specification for the form of the CDL has been omitted from the final rule. Remaining in the final rule is a list of specific data items which the States must include on the CDL. These items are based on section 12006 of the Act.

Section 383.153 Information on the document and application.

Section 12006 of the Act delineates the information required to be included on all CDLs. Exhibit 3 compares the CDL contents as specified in the NPRM, and those contained in this final rule. In response to numerous comments, the FHWA has deleted the requirement for weight, eye color, and hair color, all of which can be changed by the applicant. However, States will be free to collect this information and submit it to the CDLIS.

EXHIBIT 3.—COMMERCIAL DRIVER'S LICENSE DOCUMENT

	Proposed in NPRM	Treatment in Final rule: Required	Treatment in Final rule: Optional [1]
"Commercial Drivers License"	X		
"Commercial Drivers License" or "CDL"		X	
Full name	X	X	
Signature	X	X	
Mailing address	X	X	
Information to identify:			
Date of birth	X	X	
Sex	X	X	
Weight	X		X
Height	X		X
Eye color	X	X	
Hair color	X		X
Color photograph	X	X	
Social security number	X	[2] X	
State license number (if different from Social Security [2]		[2] X	
Name of State	X	X	
Date of issuance	X	X	
Date of expiration	X	X	
Vehicle groups	X	X	
Endorsements	X	X	

[1] These items are ones that were proposed in the NPRM. However, in response to public comment the final rule will not list them as requirements. States will have the freedom to include other items not listed in the final rule.

[2] States will be required to collect the social security number and submit it to the CDLIS. However, they may choose not to show it on the license. In this case they will substitute a State produced license number on the license.

States will be required to collect the Social Security Number (SSN) and submit it to the CDLIS. They will also have to show the applicant's State license number on the CDL. If the State uses the SSN as the applicant's license number, the SSN must appear on the CDL. If, however, the State does not use the SSN as a license number, the State may choose to omit the SSN from the license document, but not the CDLIS. In addition to the identifiers listed in Exhibit 3, the final rule includes standard codes to be used for the vehicle groups and endorsements. The standard codes are intended to provide uniformity for enforcement purposes. While the FHWA proposal included some codes with double letters, many commenters suggested the use of single letter codes which would be more easily accommodated on the license document. The FHWA has therefore provided single letter codes which would eventually make the CMV driver documentation easily recognizable to enforcement officials. For example, a CDL with A–H would be recognized by enforcement officials across the country to mean the driver is authorized to drive a combination vehicle and has a hazardous materials endorsement.

A nonresident CDL must be clearly labeled as such, although the rule allows the States much latitude in the placement of the word "nonresident." Also, the rule provides for the air brake restriction, at the States' option.

Combined Endorsement Codes. The final rule provides an endorsement code, "X," for those drivers qualifying for both the hazardous materials and tank vehicle endorsements. This change is made in response to a number of States which expressed concern regarding the space limitations of the CDL and computer system needed to record endorsements. In addition, the rule allows States to develop additional combined endorsement codes provided that the codes are explained in the CDL itself.

Improved Identification Techniques. The FHWA and the docket respondents believe that there is room for improvement in assuring positive identification of CDL holders, but that present technologies are not yet cost-effective. For example, commenters believe that fingerprints, or more likely the thumbprint, cannot be placed on the license document because of space and readability after copying. While there was some interest in retaining prints on the application but not placing them on the license, many commenters believed that without digitizing or other special equipment prints are of little practical value.

Although the FHWA is aware of "state-of-the-art" technologies that may be available to help identify the driver, such as retinal imaging and digital dental records, their use is not required at this time as part of the standard because of concerns about their costs, benefits, and practicability. The FHWA and the States will explore these advanced technologies, as well as modern methods of encoding data such as magnetic strips. As technology evolves and better, more cost-effective identification means become available, States would be free to impose such methods. The FHWA believes that it would be premature to include them in this rulemaking.

Section 383.155 Tamperproofing requirements.

Section 12006 of the Act requires that the CDL document be tamperproof to the maximum extent practicable. A tamperproof license is one which is designed, manufactured and/or processed to protect against counterfeiting, forgery, and alteration, i.e., it would be beyond the capabilities of the general public to reproduce or change the document. All State licensing authorities will be required to use license materials and procedures to reasonably assure that their licenses are tamperproof. At a minimum, each State will continue to use the same tamperproof method it currently uses for noncommercial licenses. The FHWA has provided the States flexibility to use current or future technologies to make the CDL tamperproof. As the technology is improved and new methods become cost-effective, the States will be free to improve tamperproof methods.

Regulatory Impact

The FHWA has determined that this action does not constitute a major rule under Executive Order 12291. The final rule is not expected to result in an annual effect on the economy of $100 million, or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. However, because of the public interest in the issue of commercial motor vehicle safety and the expected benefit in transportation, this rule is considered significant under the regulatory policies and procedures of the DOT. For this reason and pursuant to Executive Order 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions.

The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. Since an analysis of impacts, including economic factors, involves consideration of related motor vehicle safety rulemaking proposals, an overall regulatory evaluation has been prepared for the various rulemaking actions that will be issued to implement the Act. This evaluation, which addresses some of the provisions contained in the final rule issued on June 1, 1987, and this final rule, has been placed in the public docket and is available for inspection in the Headquarters office of the FHWA, 400 Seventh Street SW., Washington, DC 20590. A regulatory evaluation addressing the specific impacts associated with this final rule has also been prepared and placed in the docket.

A significant part of the motor carrier industry and other employers covered by the Act consists of small firms, from one-person, one-truck operations of some owner-operators, to the thousands of small fleet operators throughout the country. For this reason, the benefit and cost considerations described in the preliminary regulatory evaluation/initial regulatory flexibility analysis as applicable to employers and the motor carrier industry in general, are equally applicable to the small entity component of the industry. Small entities have been represented at public meetings held to discuss the Act and small entities have had the opportunity to submit comments to the public docket established in conjunction with the NPRM.

Moreover, the requirement that current drivers obtain a CDL will have only a slight effect on small entities. As the section-by-section analysis explains, the drivers will be given all needed materials to study for the tests. Current drivers may be able to substitute specific qualifications (a good driving record, plus experience or successful completion of an acceptable prior skills examination) for the required CDL driving test. The April 1, 1992, deadline provides ample opportunity for employees of small entities to comply with this regulation. In terms of efficiency and safety of operations, and the potential reduction of accidents and attendant liabilities, small business will materially benefit from the standards and controls imposed by the CDL program on holders of CDLs. For example, small entities cannot afford checks of driver's licenses; the CDLIS, and the accumulation of each CMV operator's violations on a single record, will produce better drivers for small business.

As the preceding facts demonstrate, the FHWA is fully committed to doing all that it can to ensure that no undue burdens are placed on small entities as a result of this proposal. Conversely, the CDL program will have distinct advantages to small entities.

Paperwork

While developing the testing and licensing standards, the FHWA recognized that they could impose a major paperwork burden on States and drivers. The FHWA attempted, to the extent practical, to design the final rule to be compatible with testing and licensing procedures now used by the States and to minimize the burden increase. The FHWA, however, believes that an increase in these burdens will be necessary to accomplish the goals and objectives of the Act. In the NPRM, the FHWA invited comments and creative approaches for reducing the burden without compromising safety. Based on these comments, the final rule contains several improvements—foremost among them, the elimination of the CDC, and of the 50-State pre-licensing record check—that will reduce the paperwork burden on the States from the levels implied by the NPRM. While the flexibilities inherent in the final rule will enable the States further to explore options for simplifying the procedures, minimizing the potential expense of licensing CMV drivers, and developing innovative testing techniques, there will remain an irreducible volume of paperwork associated with the CDL program.

Federalism Impact

The FHWA has carefully reviewed the proposed testing and licensing standards in light of the purposes of the Act and the President's Executive Order on Federalism (Executive Order 12612, October 26, 1987). In enacting the Commercial Motor Vehicle Safety Act of 1986, the Congress found that it is in the public interest to enhance commercial motor vehicle safety and that minimum standards for States to use to test and license CMV operators would help ensure that such drivers have the knowledge and skills needed to safely operate their vehicles. Congress thus identified commercial motor vehicle safety as a matter of national importance and included reciprocity requirements as part of the mandates in the Act.

In his Executive Order on Federalism, the President ordered Executive Departments and agencies to be guided by certain fundamental federalism principles in formulating and implementing policies that have federalism implications. These policies have been taken fully into account in the development of this regulation, as the following paragraphs indicate.

The Act provides the Secretary with clear statutory authority to regulate CMV operators as defined in the Act. This means the operation of CMVs in interstate commerce as well as intrastate commerce. Thus, the FHWA recognizes that its minimum testing and licensing standards for CMV operators have Federalism implications.

The Act mandates minimum testing and licensing standards. This means that States may continue to adopt and enforce additional testing and licensing requirements for CMV operators within their State bounds. Also, States will continue to have sole discretion as to whether or not to license any CMV operator and what specific procedures, tests and fees are applicable.

The Federal testing and licensing standards establish minimum safety regulations which must be followed by the States and which may be supplemented by the States. The statutory basis for Federal regulations of CMV operators has been outlined above. Several issues addressed in this final rule, however, involve policies that have federalism implications. These issues have been addressed separately above. (See specifically the discussion of alternatives, substitute for skills tests and third party testing.) This final rule limits the policymaking discretion of the States only in narrow ways, and does so only to achieve the national purposes of the Act. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order, and accord fully with the letter and spirit of the President's Federalism initiative.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 383

Commercial driver's license documents, Commercial motor vehicles, Highways and roads, Motor carriers licensing and testing procedures, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety.)

Issued on: July 15, 1988.

Robert E. Farris,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA hereby amends Title 49, Code of Federal Regulations, Chapter III, Subchapter B, as set forth below.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. The authority citation for 49 CFR Part 383 continues to read as follows:

Authority: Title XII of Pub. L. 99-570, 100 Stat. 3207-170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

2. The table of sections to Part 383 is amended by adding § 383.23 and Subparts E through J to read as follows:

* * * * *

Subpart B—License Requirements

Sec.

* * * * *

383.23 Commercial driver's license.

* * * * *

Subpart E—Testing and Licensing Procedures

383.71 Driver application procedures.
383.73 State procedures.
383.75 Third party testing.
383.77 Substitute for driving skills tests.

Subpart F—Vehicle Groups and Endorsements

383.91 Commercial motor vehicle groups.
383.93 Endorsements.
383.95 Air brake restriction.

Subpart G—Required Knowledge and Skills

383.110 General requirement.
383.111 Required knowledge.
Sec.
383.113 Required skills.
383.115 Requirements for double/triple trailer endorsement.
383.117 Requirements for passenger endorsement.
383.119 Requirements for tank vehicle endorsement.
383.121 Requirements for hazardous materials endorsement.
Appendix to Subpart G—Required Knowledge and Skills: Sample Guidelines

Subpart H—Tests

383.131 Test procedures.
383.133 Testing methods.
383.135 Minimum passing scores.

Subpart I—[Reserved]

Subpart J—Commercial Driver's License Document

383.151 General.
383.153 Information on the document and application.
383.155 Tamperproofing requirements.

3. Section 383.1 is amended by removing the word "and" from the end of paragraph (b)(4), substituting a semicolon for the period at the end of paragraph (b)(5) and adding paragraphs (b)(6) through (b)(11) to read as follows:

§ 383.1 Purpose and scope.

* * * * *

(b) * * *

(6) Establishes testing and licensing requirements for commercial motor vehicle operators;

(7) Requires States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard;

(8) Sets forth commercial motor vehicle groups and endorsements;

(9) Sets forth the knowledge and skills test requirements for the motor vehicle groups and endorsements.

(10) Sets forth the Federal standards for procedures, methods, and minimum passing scores for States and others to use in testing and licensing commercial motor vehicle operators; and

(11) Establishes requirements for the State issued commercial license documentation.

4. Section 383.5 is amended by adding ten definitions and revising two definitions entitled "Commercial driver's license" and "Commercial motor vehicle," placing them in alphabetical order as follows:

§ 383.5 Definitions.

* * * * *

"*Commercial driver's license (CDL)*" means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR Part 383, to an individual which authorizes

the individual to operate a class of a commercial motor vehicle.

"Commercial driver's license information system (CDLIS)" means the CDLIS established by FHWA pursuant to section 12007 of the Commercial Motor Vehicle Safety Act of 1986.

"Commercial motor vehicle (CMV)" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(a) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or

(b) Has a gross vehicle weight rating of 26,001 or more pounds; or

(c) Is designed to transport 16 or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

* * * * *

"Driver applicant" means an individual who applies to a State to obtain, transfer, upgrade, or renew a CDL.

* * * * *

"Endorsement" means an authorization to an individual's CDL required to permit the individual to operate certain types of commercial motor vehicles.

* * * * *

"Foreign" means outside the fifty United States and the District of Columbia.

* * * * *

Nonresident CDL" means a CDL issued by a State to an individual domiciled in a foreign country.

* * * * *

"Representative vehicle" means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate.

* * * * *

"State of domicile" means that State where a person has his/her true, fixed, and permanent home and principal residence and to which he/she has the intention of returning whenever he/she is absent.

"Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in Part 171 of this title. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons.

* * * * *

"Vehicle" means a motor vehicle unless otherwise specified.

* * * * *

"Vehicle group" means a class or type of vehicle with certain operating characteristics.

5. Part 383, Subpart B is revised by adding a new § 383.23 to read as follows:

Subpart B—License Requirements

* * * * *

§ 383.23 Commercial driver's license.

(a) *General rule.* (1) Effective April 1, 1992, no person shall operate a commercial motor vehicle unless such person has taken and passed written and driving tests which meet the Federal standards contained in Subparts F, G, and H of this part for the commercial motor vehicle that person operates or expects to operate.

(2) Effective April 1, 1992, except as provided in paragraph (b) of this section, no person shall operate a commercial motor vehicle unless such person possesses a CDL which meets the standards contained in Subpart J of this part, issued by his/her State or jurisdiction of domicile.

(b) *Exception.* If a commercial motor vehicle operator is domiciled in a foreign jurisdiction which, as determined by the Administrator, does not test drivers and issue a CDL in accordance with, or similar to, the standards contained in Subparts F, G, and H of this part, the person shall obtain a Nonresident CDL from a State which does comply with the testing and licensing standards contained in such Subparts F, G, and H.

(c) *Learner's permit.* State learner's permits, issued for limited time periods according to State requirements, shall be considered valid commercial drivers' licenses for purposes of behind-the-wheel training on public roads or highways, if the following minimum conditions are met:

(1) The learner's permit holder is at all time accompanied by the holder of a valid CDL; and

(2) He/she either holds a valid automobile driver's license, or has passed such vision, sign/symbol, and knowledge tests as the State issuing the learner's permit ordinarily administers to applicants for automobile drivers' licenses.

6. Part 383 is amended by adding Subparts E, F, G, H, I, and J to read as follows:

Subpart E—Testing and Licensing Procedures

§ 383.71 Driver application procedures.

(a) *Initial Commercial Driver's License.*—Prior to obtaining a CDL, a person must meet the following requirements:

(1) A person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to Part 391 of this title, shall certify that he/she meets the qualification requirements contained in Part 391 of this title. A person who operates or expects to operate entirely in intrastate commerce and is not subject to Part 391, is subject to State driver qualification requirements and must certify that he/she is not subject to Part 391;

(2) Pass a knowledge test in accordance with the standards contained in Subparts G and H of this part for the type of motor vehicle the person operates or expects to operate;

(3) Pass a driving or skills test in accordance with the standards contained in Subparts G and H of this part taken in a motor vehicle which is representative of the type of motor vehicle the person operates or expects to operate; or provide evidence that he/she has successfully passed a driving test administered by an authorized third party;

(4) Certify that the motor vehicle in which the person takes the driving skills test is representative of the type of motor vehicle that person operates or expects to operate;

(5) Provide to the State of issuance the information required to be included on the CDL as specified in Subpart J of this part;

(6) Certify that he/she is not subject to any disqualification, suspension, revocation, or cancellation as contained in § 383.51 and that he/she does not have a driver's license from more than one State or jurisdiction.

(7) The applicant shall surrender his/her non-CDL driver's licenses to the State.

(b) *License transfer.* When applying to transfer a CDL from one State of domicile to a new State domicile, an applicant shall apply for a CDL from the new State of domicile within no more than 30 days after establishing his/her new domicile. The applicant shall:

(1) Provide to the new State of domicile the certifications contained in § 383.71(a) (1) and (6):

(2) Provide to the new State of domicile updated information as specified in Subpart J of this part;

(3) If the applicant wishes to retain a hazardous materials endorsement, comply with State requirements as specified in § 383.73(b)(4); and

(4) Surrender the CDL from the old State of domicile to the new State of domicile.

(c) *License renewal.* When applying for a renewal of a CDL, all applicants shall:

(1) Provide certification contained in § 383.71(a)(1);

(2) Provide update information as specified in Subpart J of this part; and

(3) If a person wishes to retain a hazardous materials endorsement, pass the test for such endorsement as specified in § 383.121.

(d) *License upgrades.* When applying to operate a commercial motor vehicle in a different group or endorsement from the group or endorsement in which the applicant already has a CDL, all persons shall:

(1) Provide the necessary certifications as specified in § 383.71(a) (1) and (4); and

(2) Pass all tests specified in § 383.71(a) (2) and (3) for the new vehicle group and/or different endorsements.

(e) *Nonresident CDL.* When an applicant is domiciled in a foreign jurisdiction, as defined in § 383.5, where the commercial motor vehicle operator testing and licensing standards do not meet the standards contained in Subparts G and H of this part, as determined by the Administrator, such applicant shall obtain a Nonresident CDL from a State which meets such standards. Such applicant shall:

(1) Complete the requirements to obtain a CDL contained in § 383.71(a); and

(2) After receipt of the CDL, and for as long as it is valid, notify the State which issued the CDL of any adverse action taken by any jurisdiction or governmental agency, foreign or domestic, against his/her driving privileges. Such adverse actions would include but not be limited to license suspension or revocation, or disqualification from operating a commercial motor vehicle for the convictions described in § 383.51. Notifications shall be made within the time periods specified in § 383.33.

(f) If a State uses the alternative method described in § 383.73(i) to achieve the objectives of the certifications in § 383.71(a), then the driver applicant shall satisfy such alternative methods as are applicable to him/her with respect to initial licensing, license transfer, license renewal, and license upgrades.

§ 383.73 State procedures.

(a) Initial licensure. Prior to issuing a CDL to a person, a State shall:

(1) Require the driver applicant to certify, pass tests, and provide information as described in §§ 383.71(a) (1) through (6);

(2) Check that the vehicle in which the applicant takes his/her test is representative of the vehicle group the applicant has certified that he/she operates or expects to operate;

(3) Initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification, suspensions, revocations, or cancellations as contained in § 383.51 and that the person does not have a driver's license from more than one State. The record check shall include but not be limited to the following:

(i) A check of the applicant's driving record as maintained by his/her current State of licensure, if any;

(ii) A check with the CDLIS to determine whether the driver applicant already has a CDL, whether the applicant's license has been suspended, revoked, or canceled, or if the applicant has been disqualified from operating a commercial motor vehicle; and

(iii) A check with the National Driver Register (NDR), when it is determined to be operational by the National Highway Traffic Safety Administrator, to determine whether the driver applicant has:

(A) Been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) Had a license (other than CDL) suspended, revoked, or canceled for cause in the 3-year period ending on the date of application; or

(C) Been convicted of any offenses contained in section 205(a)(3) of the National Drivers Register Act of 1982 (23 U.S.C. 401 note); and

(4) Require the driver applicant, if he/she has moved from another State, to surrender his/her driver's license issued by another State.

(b) *License transfers.* Prior to issuing a CDL to a person who has a CDL from another State, a State shall:

(1) Require the driver applicant to make the certifications contained in § 383.71(a);

(2) Complete a check of the driver applicant's record as contained in § 383.73(a)(3);

(3) Request and receive updates of information specified in Subpart J of this part;

(4) If such applicant wishes to retain a hazardous materials endorsement, ensure that the driver has, within the 2 years preceding the transfer, either:

(i) Passed the test for such endorsement specified in § 383.121; or

(ii) Successfully completed a hazardous materials test or training that is given by a third party and that is deemed by the State to substantially cover the same knowledge base as that described in § 383.121; and

(5) Obtain the CDL issued by the applicant's previous State of domicile.

(c) *License Renewals.* Prior to renewing any CDL a State shall:

(1) Require the driver applicant to make the certifications contained in § 383.71(a);

(2) Complete a check of the driver applicant's record as contained in § 383.73(a)(3);

(3) Request and receive updates of information specified in Subpart J of this part; and

(4) If such applicant wishes to retain a hazardous materials endorsement, require the driver to pass the test for such endorsement specified in § 383.121.

(d) *License upgrades.* Prior to issuing an upgrade of a CDL, a State shall:

(1) Require such driver applicant to provide certifications and pass tests as described in § 383.71(d); and

(2) Complete a check of the driver applicant's record as described in § 383.73(a)(3).

(e) *Nonresident CDL.* A State may issue a Nonresident CDL to a person domiciled in a foreign country if the Administrator has determined that the commercial motor vehicle testing and licensing standards in the foreign jurisdiction of domicile do not meet the standards contained in this part. State procedures for the issuance of a nonresident CDL, for any modifications thereto, and for notifications to the CDLIS shall at a minimum be identical to those pertaining to any other CDL, with the following exceptions:

(1) If the applicant is requesting a transfer of his/her Nonresident CDL, the State shall obtain the Nonresident CDL currently held by the applicant and issued by another State;

(2) The State shall add the word "Nonresident" to the face of the CDL, in accordance with § 383.153(b); and

(3) The State shall have established, prior to issuing any Nonresident CDL, the practical capability of disqualifying the holder of any Nonresident CDL, by withdrawing, suspending, canceling, and revoking his/her Nonresident CDL as if the Nonresident CDL were a CDL issued to a resident of the State.

(f) *License issuance.* After the State has completed the procedures described in § 383.73 (a), (b), (c), (d) or (e), it may issue a CDL to the driver applicant. The State shall notify the operator of the CDLIS of such issuance, transfer, renewal, or upgrade within the 10-day period beginning on the date of license issuance.

(g) *Penalties for false information.* If a State determines, in its check of an applicant's license status and record prior to issuing a CDL, or at any time after the CDL is issued, that the applicant has falsified information contained in Subpart J of this part or any of the certifications required in § 383.71(a), the State shall at a minimum, and within no more than 30 days after discovering the falsification, suspend, cancel, or revoke the person's CDL, or his/her pending application.

(h) *Reciprocity.* A State shall allow any person who has a valid CDL which is not suspended, revoked, or canceled, and who is not disqualified from operating a commercial motor vehicle, to operate a commercial motor vehicle in the State.

(i) *Alternative procedures.* A State may implement alternative procedures to the certification requirements of § 383.71(a) (1), (4), and (6), provided those procedures ensure that the driver meets the requirements of those paragraphs.

§ 383.75 Third party testing.

(a) *Third party tests.* A State may authorize a person (including another State, an employer, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government) to administer the skills tests as specified in Subparts G and H of this part, if the following conditions are met:

(1) The tests given by the third party are the same as those which would otherwise be given by the State; and

(2) The third party as an agreement with the State containing, at a minimum, provisions that:

(i) Allow the FHWA, or its representative, and the State to conduct random examinations, inspections and audits without prior notice;

(ii) Require the State to conduct on-site inspections at least annually;

(iii) Require that all third party examiners meet the same qualification and training standards as State examiners, to the extent necessary to conduct skills tests in compliance with Subparts G and H;

(iv) Require that, at least on an annual basis, State employees take the tests actually administered by the third party as if the State employee were a test applicant, or that States test a sample of drivers who were examined by the third party to compare pass/fail results; and

(v) Reserve unto the State the right to take prompt and appropriate remedial action against the third-party testers in the event that the third-party fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third-party contract.

(b) *Proof of testing by a third party.* A driver applicant who takes and passes driving tests administered by an authorized third party shall provide evidence to the State licensing agency that he/she has successfully passed the driving tests administered by the third party.

§ 383.77 Substitute for driving skills tests.

At the discretion of a State, the driving skill test as specified in § 383.113 may be waived for a CMV operator who is currently licensed at the time of his/her application for a CDL, and substituted with either an applicant's driving record and previous passage of an acceptable skills test, or an applicant's driving record in combination with certain driving experience. The State shall impose conditions and limitations to restrict the applicants from whom a State may accept alternative requirements for the skills test described in § 383.113. Such conditions must require at least the following:

(a) An applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she:

(1) Has not had more than one license (except in the instances specified in § 383.21(b));

(2) Has not had any license suspended, revoked, or canceled;

(3) Has not had any convictions for any type of motor vehicle for the disqualification offenses contained in § 383.51; and

(4) Has not had any violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault; and

(b) An applicant must provide evidence and certify that:

(1) He/she is regularly employed in a job requiring operation of a CMV, and that either:

(2) He/she has previously taken and passed a skills test given by a State with a classified licensing and testing system, and that the test was behind-the-wheel in a representative vehicle for that applicant's driver's license classification; or

(3) He/she has operated, for at least 2 years immediately preceding application for a CDL, a vehicle representative of the commercial motor vehicle the driver applicant operates or expects to operate.

Subpart F—Vehicle Groups and Endorsements

§ 383.91 Commercial motor vehicle groups.

(a) *Vehicle group descriptions.* Each driver applicant must possess and be tested on his/her knowledge and skills, described in Subpart G of this part, for the commercial motor vehicle group(s) for which he/she desires a CDL. The commercial motor vehicle groups are as follows:

(1) *Combination vehicle* (Group A)—Any combination of vehicles with a Gross Combination Weight Rating (GCWR) of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds.

(2) *Heavy Straight Vehicle (Group B)*—Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR.

(3) *Small Vehicle (Group C)*—Any single vehicle less than 26,001 pounds GVWR, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. This group comprises vehicles designed to transport 16 or more passengers including the driver, and vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

(b) *Representative vehicle.* For purposes of taking the driving test in accordance with § 383.113, a representative vehicle for a given vehicle group contained in § 383.91(a), is any commercial motor vehicle which meets the definition of that vehicle group.

(c) *Relation between vehicle groups.* Each driver applicant who desires to operate in a different commercial motor vehicle group from the one which his/her CDL authorizes shall be required to retake and pass all related tests, except the following:

(1) A driver who has passed the knowledge and skills tests for a combination vehicle (Group A) may operate a heavy straight vehicle (Group B) or a small vehicle (Group C), provided that he/she possesses the requisite endorsement(s); and

(2) A driver who has passed the knowledge and skills tests for a heavy straight vehicle (Group B) may operate any small vehicle (Group C), provided that he/she possesses the requisite endorsement(s).

(d) *Vehicle group illustration.* Figure 1 illustrates typical vehicles within each of the vehicle groups defined in this section.

BILLING CODE 4910-22-M

Figure 1
VEHICLE GROUPS AS ESTABLISHED BY FHWA (SECTION 383.91)

[Note: Certain types of vehicles, such as passenger and doubles/triples, will require an endorsement. Please consult text for particulars.]

Group:	*Description:
A	Any combination of vehicles with a GCWR of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds. (Holders of a Group A license may, with any appropriate endorsements, operate all vehicles within Groups B and C.) Examples include but are not limited to:
B	Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. (Holders of a Group B license may, with any appropriate endorsements, operate all vehicles within Group C.) Examples include but are not limited to:
C	Any single vehicle less than 26,001 pounds GVWR, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. This group applies to vehicles which are placarded for hazardous materials or designed to transport 16 or more persons, including the operator. Examples include but are not limited to:

* The representative vehicle for the skills test must meet the written description for that group. The silhouettes typify, but do not fully cover, the types of vehicles falling within each group.

BILLING CODE 4910-22-C

§ 383.93 Endorsements.

(a) *General.* In addition to taking and passing the knowledge and skills tests described in Subpart G of this part, all persons who operate or expect to operate the type(s) of motor vehicles described in paragraph (b) of this section shall take and pass specialized tests to obtain each endorsement. The State shall issue CDL endorsements only to drivers who successfully complete the tests.

(b) *Endorsement descriptions.* An operator must obtain State-issued endorsements to his/her CDL to operate commercial motor vehicles which are:

(1) Double/triple trailers;

(2) Passenger vehicles;

(3) Tank vehicles; or

(4) Required to be placarded for hazardous materials.

(c) *Endorsement testing requirements.* The following tests are required for the endorsements contained in paragraph (b) of this section:

(1) *Double/Triple Trailers*—a knowledge test;

(2) *Passenger*—a knowledge and a skills test;

(3) *Tank vehicle*—a knowledge test; and

(4) *Hazardous Materials*—a knowledge test.

§ 383.95 Air brake restrictions.

(a) If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the State shall indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.

(b) For the purposes of the skills test and the restriction, air brakes shall include any braking system operating fully or partially on the air brake principle.

Subpart G—Required Knowledge and Skills

§ 383.110 General requirement.

All drivers of commercial motor vehicles shall have knowledge and skills necessary to operate a commercial motor vehicle safely as contained in this subpart. A sample of the specific types of items which a State may wish to include in the knowledge and skills tests that it administers to CDL applicants is included in the appendix to this Subpart G.

§ 383.111 Required knowledge.

All commercial motor vehicle operators must have knowledge of the following general areas:

(a) *Safe operations regulations.* Driver-related elements of the regulations contained in 49 CFR Parts 391, 392, 393, 395, 396, and 397, such as: Motor vehicle inspection, repair, and maintenance requirements; procedures for safe vehicle operations; the effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation; the types of motor vehicles and cargoes subject to the requirements; and the effects of alcohol and drug use upon safe commercial motor vehicle operations.

(b) *Commercial motor vehicle safety control systems.* Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions. Commercial motor vehicle drivers shall have knowledge on the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.

(c) *Safe vehicle control.* (1) Control systems—The purpose and function of the controls and instruments commonly found on commercial motor vehicles.

(2) Basic control—The proper procedures for performing various basic maneuvers.

(3) Shifting—The basic shifting rules and terms, as well as shift patterns and procedures for common transmissions.

(4) Backing—The procedures and rules for various backing maneuvers.

(5) Visual search—The importance of proper visual search, and proper visual search methods.

(6) Communication—The principles and procedures for proper communications and the hazards of failure to signal properly.

(7) Speed Management—The importance of understanding the effects of speed.

(8) Space management—The procedures and techniques for controlling the space around the vehicle.

(9) Night operation—Preparations and procedures for night driving.

(10) Extreme driving conditions—The basic information on operating in extreme driving conditions and the hazards that are encountered in extreme conditions.

(11) Hazard perceptions—The basic information on hazard perception and clues for recognition of hazards.

(12) Emergency maneuvers—The basic information concerning when and how to make emergency maneuvers.

(13) Skid control and recovery—The information on the causes and major types of skids, as well as the procedures for recovering from skids.

(d) *Relationship of cargo to vehicle control.* The principles and procedures for the proper handling of cargo.

(e) *Vehicle inspections:* The objectives and proper procedures for performing vehicle safety inspections, as follows:

(1) The importance of periodic inspection and repair to vehicle safety.

(2) The effect of undiscovered malfunctions upon safety.

(3) What safety-related parts to look for when inspecting vehicles.

(4) Pre-trip/enroute/post-trip inspection procedures.

(5) Reporting findings.

(f) *Hazardous materials knowledge, such as:* What constitutes hazardous material requiring an endorsement to transport; classes of hazardous materials; labeling/placarding requirements; and the need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes.

(g) *Air brake knowledge as follows:*

(1) Air brake system nomenclature;

(2) The dangers of contaminated air supply;

(3) Implications of severed or disconnected air lines between the power unit and the trailer(s);

(4) Implications of low air pressure readings;

(5) Procedures to conduct safe and accurate pre-trip inspections.

(6) Procedures for conducting enroute and post-trip inspections of air actuated brake systems, including ability to detect defects which may cause the system to fail.

(h) *Operators for the combination vehicle group shall also have knowledge of:*

(1) Coupling and uncoupling—The procedures for proper coupling and uncoupling a tractor to semi-trailer.

(2) Vehicle inspection—The objectives and proper procedures that are *unique* for performing vehicle safety inspections on combination vehicles.

§ 383.113 Required skills.

(a) *Basic vehicle control skills.* All applicants for a CDL must possess and demonstrate basic motor vehicle control skills for each vehicle group which the driver operates or expects to operate. These skills should include the ability to start, to stop, and to move the vehicle forward and backward in a safe manner.

(b) *Safe driving skills.* All applicants for a CDL must possess and demonstrate the safe driving skills for their vehicle group. These skills should include proper visual search methods, appropriate use of signals, speed contol

for weather and traffic conditions, and ability to position the motor vehicle correctly when changing lanes or turning.

(c) *Air brake skills.* Except as provided in § 393.95, all applicants shall demonstrate the following skills with respect to inspection and operation of air brakes:

(1) *Pre-trip inspection skills.* Applicants shall demonstrate the skills necessary to conduct a pre-trip inspection which includes the ability to:

(i) Locate and verbally identify air brake operating controls and monitoring devices;

(ii) Determine the motor vehicle's brake system condition for proper adjustments and that air system connections between motor vehicles have been properly made and secured;

(iii) Inspect the low pressure warning device(s) to ensure that they will activate in emergency situations;

(iv) Ascertain, with the engine running, that the system maintains an adequate supply of compressed air;

(v) Determine that required minimum air pressure build up time is within acceptable limits and that required alarms and emergency devices automatically deactivate at the proper pressure level; and

(vi) Operationally check the brake system for proper performance.

(2) *Driving skills.* Applicants shall successfully complete the skills tests contained in § 383.113 in a representative vehicle equipped with air brakes.

(d) *Test area.* Skills tests shall be conducted in on-street conditions or under a combination of on-street and off-street conditions.

(e) *Simulation technology.* A State may utilize simulators to perform skills testing, but under no circumstances as a substitute for the required testing in on-street conditions.

§ 383.115 Requirements for double/triple trailers endorsement.

In order to obtain a Double/Triple Trailers endorsement each applicant must have knowledge covering:

(a) Procedures for assembly and hookup of the units;

(b) Proper placement of heaviest trailer;

(c) Handling and stability characteristics including off-tracking, response to steering, sensory feedback, braking, oscillatory sway, rollover in steady turns, yaw stability in steady turns; and

(d) Potential problems in traffic operations, including problems the motor vehicle creates for other motorists due to slower speeds on steep grades, longer passing times, possibility for blocking entry of other motor vehicles on freeways, splash and spray impacts, aerodynamic buffeting, view blockages, and lateral placement.

§ 383.117 Requirements for passenger endorsement.

An applicant for the passenger endorsement must satisfy both of the following additional knowledge and skills test requirements.

(a) *Knowledge test.* All applicants for the passenger endorsement must have knowledge covering at least the following topics:

(1) Proper procedures for loading/unloading passengers;

(2) Proper use of emergency exits, including push-out windows;

(3) Proper responses to such emergency situations as fires and unruly passengers;

(4) Proper procedures at railroad crossings and drawbridges; and

(5) Proper braking procedures.

(b) *Skills test.* To obtain a passenger endorsement applicable to a specific vehicle group, an applicant must take his/her skills test in a passenger vehicle satisfying the requirements of that group as defined in § 383.91.

§ 383.119 Requirements for tank vehicle endorsement.

In order to obtain a Tank Vehicle Endorsement, each applicant must have knowledge covering the following:

(a) Causes, prevention, and effects of cargo surge on motor vehicle handling;

(b) Proper braking procedures for the motor vehicle when it is empty, full and partially full;

(c) Differences in handling of baffled/compartmental tank interiors versus non-baffled motor vehicles;

(d) Differences in tank vehicle type and construction;

(e) Differences in cargo surge for liquids of varying product densities;

(f) Effects of road grade and curvature on motor vehicle handling with filled, half-filled and empty tanks;

(g) Proper use of emergency systems; and

(h) For drivers of DOT specification tank vehicles, retest and marking requirements.

§ 383.121 Requirements for hazardous materials endorsement.

In order to obtain a Hazardous Material Endorsement each applicant must have such knowledge as is required of a driver of a hazardous materials laden vehicle, from information contained in 49 CFR Parts 171, 172, 173, 177, 178, and 397 on the following:

(a) Hazardous materials regulations including:

(1) Hazardous materials table;

(2) Shipping paper requirements;

(3) Marking;

(4) Labeling;

(5) Placarding requirements;

(6) Hazardous materials packaging;

(7) Hazardous materials definitions and preparation;

(8) Other regulated material (e.g., ORM–D);

(9) Reporting hazardous materials accidents; and

(10) Tunnels and railroad crossings.

(b) Hazardous materials handling including:

(1) Forbidden Materials and Packages;

(2) Loading and Unloading Materials;

(3) Cargo Segregation;

(4) Passenger Carrying Buses and Hazardous Materials;

(5) Attendance of Motor Vehicles;

(6) Parking;

(7) Routes;

(8) Cargo Tanks; and

(9) "Safe Havens."

(c) Operation of emergency equipment including:

(1) Use of equipment to protect the public;

(2) Special precautions for equipment to be used in fires;

(3) Special precautions for use of emergency equipment when loading or unloading a hazardous materials laden motor vehicle; and

(4) Use of emergency equipment for tank vehicles.

(d) Emergency response procedures including:

(1) Special care and precautions for different types of accidents;

(2) Special precautions for driving near a fire and carrying hazardous materials, and smoking and carrying hazardous materials;

(3) Emergency procedures; and

(4) Existence of special requirements for transporting Class A and B explosives.

Appendix to Subpart G—Required Knowledge and Skills—Sample Guidelines

The following is a sample of the specific types of items which a State may wish to include in the knowledge and skills tests that it administers to CDL applicants. This appendix closely follows the framework of §§ 383.111 and 383.113. It is intended to provide more specific guidance and suggestion to States. Additional detail in this appendix is not binding and States may depart from it at their discretion provided their CDL program tests for the general areas of knowledge and skill specified in §§ 383.111 and 383.113.

Examples of specific knowledge elements

(a) *Safe operations regulations.* Driver-related elements of the following regulations:

(1) Motor vehicle inspection, repair, and maintenance requirements as contained in Parts 393 and 396 of this title;

(2) Procedures for safe vehicle operations as contained in Part 392 of this title;

(3) The effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation as contained in Parts 391, 392, and 395 of this title;

(4) The types of motor vehicles and cargoes subject to the requirements contained in Part 397 of this title; and

(5) The effects of alcohol and drug use upon safe commercial motor vehicle operations as contained in Parts 391 and 395 of this title.

(b) *Commercial motor vehicle safety control systems.* Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions. Commercial motor vehicle drivers shall have knowledge on the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.

(c) *Safe vehicle control.* (1) Control systems—The purpose and function of the controls and instruments commonly found on commercial motor vehicles.

(2) Basic control—The proper procedures for performing various basic maneuvers, including:

(i) Starting, warming up, and shutting down the engine;

(ii) Putting the vehicle in motion and stopping;

(iii) Backing in a straight line; and

(iv) Turning the vehicle, e.g., basic rules, off-tracking, right/left turns and right curves.

(3) Shifting—The basic shifting rules and terms, as well as shift patterns and procedures for common transmissions, including:

(i) Key elements of shifting, e.g., controls, when to shift and double clutching;

(ii) Shift patterns and procedures; and

(iii) Consequences of improper shifting.

(4) Backing—The procedures and rules for various backing maneuvers, including:

(i) Backing principles and rules; and

(ii) Basic backing maneuvers, e.g., straight-line backing, and backing on a curved path.

(5) Visual search—The importance of proper visual search, and proper visual search methods, including:

(i) Seeing ahead and to the sides;

(ii) Use of mirrors; and

(iii) Seeing to the rear.

(6) Communication—The principles and procedures for proper communications and the hazards of failure to signal properly, including:

(i) Signaling intent, e.g., signaling when changing speed or direction in traffic;

(ii) Communicating presence, e.g., using horn or lights to signal presence; and

(iii) Misuse of communications.

(7) Speed Management—The importance of understanding the effects of speed, including:

(i) Speed and stopping distance;

(ii) Speed and surface conditions;

(iii) Speed and the shape of the road;

(iv) Speed and visibility; and

(v) Speed and traffic flow.

(8) Space management—The procedures and techniques for controlling the space around the vehicle, including:

(i) The importance of space management;

(ii) Space cushions, e.g., controlling space ahead/to the rear;

(iii) Space to the sides; and

(iv) Space for traffic gaps.

(9) Night operation—Preparations and procedures for night driving, including:

(i) Night driving factors, e.g., driver factors, (vision, glare, fatigue, inexperience), roadway factors, (low illumination, variation in illumination, familiarity with roads, other road users, especially drivers exhibiting erratic or improper driving), vehicle factors (headlights, auxiliary lights, turn signals, windshields and mirrors); and

(ii) Night driving procedures, e.g., preparing to drive at night and driving at night.

(10) Extreme driving conditions—The basic information on operating in extreme driving conditions and the hazards that are encountered in extreme conditions, including:

(i) Adverse weather;

(ii) Hot weather; and

(iii) Mountain driving.

(11) Hazard perceptions—The basic information on hazard perception and clues for recognition of hazards, including:

(i) Importance of hazards recognition;

(ii) Road characteristics; and

(iii) Road user activities.

(12) Emergency maneuvers—The basic information concerning when and how to make emergency maneuvers, including:

(i) Evasive steering;

(ii) Emergency stop;

(iii) Off-road recovery;

(iv) Brake failure; and

(v) Blowouts.

(13) Skid control and recovery—The information on the causes and major types of skids, as well as the procedures for recovering from skids.

(d) *Relationship of cargo to vehicle control.* The principles and procedures for the proper handling of cargo, including:

(1) The importance of proper cargo handling, e.g., consequences of improperly secured cargo, drivers' responsibilities, Federal/State and local regulations.

(2) Principles of weight distribution.

(3) Principles and methods of cargo securement.

(e) *Vehicle inspections:* The objectives and proper procedures for performing vehicle safety inspections, as follows:

(1) The importance of periodic inspection and repair to vehicle safety and to prevention of enroute breakdowns.

(2) The effect of undiscovered malfunctions upon safety.

(3) What safety-related parts to look for when inspecting vehicles, e.g., fluid leaks, interference with visibility, bad tires, wheel and rim defects, braking system defects, steering system defects, suspension system defects, exhaust system defects, coupling system defects, and cargo problems.

(4) Pre-trip/enroute/post-trip inspection procedures.

(5) Reporting findings.

(f) *Hazardous materials knowledge, as follows:*

(1) What constitutes hazardous material requiring an endorsement to transport; and

(2) Classes of hazardous materials, labeling/placarding requirements, and the need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes.

(g) *Air brake knowledge as follows:*

(1) General air brake system nomenclature;

(2) The dangers of contaminated air (dirt, moisture and oil) supply;

(3) Implications of severed or disconnected air lines between the power unit and the trailer(s);

(4) Implications of low air pressure readings;

(5) Procedures to conduct safe and accurate pre-trip inspections, including knowledge about:

(i) Automatic fail-safe devices;

(ii) System monitoring devices; and

(iii) Low pressure warning alarms.

(6) Procedures for conducting enroute and post-trip inspections of air actuated brake systems, including ability to detect defects which may cause the system to fail, including:

(i) Tests which indicate the amount of air loss from the braking system within a specified period, with and without the engine running; and

(ii) Tests which indicate the pressure levels at which the low air pressure warning devices and the tractor protection valve should activate.

(h) *Operators for the combination vehicle group shall also have knowledge of:*

(1) Coupling and uncoupling—The procedures for proper coupling and uncoupling a tractor to semi-trailer.

(2) Vehicle inspection—The objectives and proper procedures that are *unique* for performing vehicle safety inspections on combination vehicles.

Examples of Specific Skills Elements

These examples relate to paragraphs (a) and (b) of § 383.113 only.

(a) *Basic vehicle control skills.* All applicants for a CDL must possess and demonstrate the following basic motor vehicle control skills for each vehicle group which the driver operates or expects to operate. These skills shall include:

(1) Ability to start, warm-up, and shut down the engine;

(2) Ability to put the motor vehicle in motion and accelerate smoothly, forward and backward;

(3) Ability to bring the motor vehicle to a smooth stop;

(4) Ability to back the motor vehicle in a straight line, and check path and clearance while backing;

(5) Ability to position the motor vehicle to negotiate and then make left and right turns;

(6) Ability to shift as required and select appropriate gear for speed and highway conditions;

(7) Ability to back along a curved path; and

(8) Ability to observe the road and the behavior of other motor vehicles, particularly before changing speed and direction.

(b) *Safe driving skills.* All applicants for a CDL must possess and demonstrate the following safe driving skills for any vehicle group. These skills shall include:

(1) Ability to use proper visual search methods.

(2) Ability to signal appropriately when changing speed or direction in traffic.

(3) Ability to adjust speed to the configuration and condition of the roadway, weather and visibility conditions, traffic conditions, and motor vehicle, cargo and driver conditions;

(4) Ability to choose a safe gap for changing lanes, passing other vehicles, as well as for crossing or entering traffic;

(5) Ability to position the motor vehicle correctly before and during a turn to prevent other vehicles from passing on the wrong side as well as to prevent problems caused by off-tracking;

(6) Ability to maintain a safe following distance depending on the condition of the road, on visibility, and on vehicle weight; and

(7) Ability to adjust operation of the motor vehicle to prevailing weather conditions including speed selection, braking, direction changes and following distance to maintain control.

Subpart H—Tests

§ 383.131 Test procedures.

(a) *Driver information manuals.* Information on how to obtain a CDL and endorsements shall be included in manuals and made available by States to CDL applicants. All information provided to the applicant shall include the following:

(1) Information on the requirements described in § 383.71, State procedures described in § 383.73, and other appropriate driver information contained in Subpart E of this part;

(2) Information on vehicle groups and endorsements as specified in Subpart F of this part;

(3) The substance of the knowledge and skills which drivers shall have as outlined in Subpart G of this part for the different vehicle groups and endorsements;

(4) Details of testing procedures, including the purpose of the tests, how to respond, any time limits for taking the test, and any other special procedures determined by the State of issuance; and

(5) Directions for taking the tests.

(b) *Examiner procedures.* A State shall provide to test examiners details on testing and any other State-imposed requirements in the examiner's manual, and shall ensure that examiners are qualified to administer tests on the basis of training and/or other experience. States shall provide standardized scoring sheets for the skills tests, as well as standardized driving instructions for the applicants. Such examiners' manuals shall contain the following:

(1) Information on driver application procedures contained in § 383.71, State procedures described in § 383.73, and other appropriate driver information contained in Subpart E of this part;

(2) Details on information which must be given to the applicant;

(3) Details on how to conduct the tests;

(4) Scoring procedures and minimum passing scores;

(5) Information for selecting driving test routes;

(6) List of the skills to be tested;

(7) Instructions on where and how the skills will be tested;

(8) How performance of the skills will be scored; and

(9) Causes for automatic failure of skills tests.

§ 383.133 Testing methods.

(a) All tests shall be constructed in such a way as to determine if the applicant possesses the required knowledge and skills contained in Subpart G of this part for the type of motor vehicle or endorsement the applicant wishes to obtain.

(b) States shall develop their own specifications for the tests for each vehicle group and endorsement which must be at least as stringent as the Federal standards.

(c) States shall determine specific methods for scoring the knowledge and skills tests.

(d) Passing scores must meet those standards contained in § 383.135.

(e) Knowledge and skills tests shall be based solely on the information contained in the driver manuals referred to in § 383.131(a).

(f) Each knowledge test shall be valid and reliable so as to assure that driver applicants possess the knowledge required under § 383.111.

(g) Each basic knowledge test, i.e., the test covering the areas referred to in § 383.111 for the applicable vehicle group, shall contain at least 30 items, exclusive of the number of items testing air brake knowledge. Each endorsement knowledge test, and the air brake component of the basic knowledge test as described in § 383.111(g), shall contain a number of questions that is sufficient to test the driver applicant's knowledge of the required subject matter with validity and reliability.

(h) The skills tests shall have administrative procedures, designed to achieve interexaminer reliability, that are sufficient to ensure fairness of pass/fail rates.

§ 383.135 Minimum passing scores.

(a) The driver applicant must correctly answer at least 80 percent of the questions on each knowledge test in order to achieve a passing score on such knowledge test.

(b) To achieve a passing score on the skills test, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in § 383.113.

(c) If the driver applicant does not obey traffic laws, or causes an accident during the test, he/she shall automatically fail the test.

(d) The scoring of the basic knowledge and skills tests shall be adjusted as follows to allow for the air brake restriction (§ 383.95):

(1) If the applicant scores less than 80 percent on the air brake component of the basic knowledge test as described in § 383.111(g), the driver will have failed the air brake component and, if the driver is issued a CDL, an air brake restriction shall be indicated on the license; and

(2) If the applicant performs the skills test in a vehicle not equipped with air brakes, the driver will have omitted the air brake component as described in § 383.113(c) and, if the driver is issued a CDL, the air brake restriction shall be indicated on the license.

Subpart I—[Reserved]

Subpart J—Commercial Driver's License Document

§ 393.151 General.

The CDL shall be a document that is easy to recognize as a CDL. At a minimum, the document shall contain information specified in § 383.153.

§ 383.153 Information on the document and application.

(a) All CDLs shall contain the following information:

(1) The prominent statement that the license is a "Commercial Driver's License" or "CDL," except as specified in § 383.153(b).

(2) The full name, signature, and mailing address of the person to whom such license is issued;

(3) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height;

(4) Color photograph of the driver;

(5) The driver's State license number;

(6) The name of the State which issued the license;

(7) The date of issuance and the date of expiration of the license;

(8) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:

(i) A for Combination Vehicle;

(ii) B for Heavy Straight Vehicle; and

(iii) C for Small Vehicle.

(9) The endorsement(s) for which the driver has qualified, if any, indicated as follows:

(i) T for double/triple trailers;

(ii) P for passenger;

(iii) N for tank vehicle;

(iv) H for hazardous materials;

(v) X for a combination of the tank vehicle and hazardous materials endorsements; and

(vi) At the discretion of the State, additional codes for additional groupings of endorsements, as long as each such discretionary code is fully explained on the front or back of the CDL document.

(b) If the CDL is a Nonresident CDL, it shall contain the prominent statement that the license is a "Nonresident Commercial Driver's License" or "Nonresident CDL." The word "Nonresident" must be conspicuously and unmistakably displayed, but may be noncontiguous with the words "Commercial Driver's License" or "CDL."

(c) If the State has issued the applicant an air brake restriction as specified in § 383.95, that restriction must be indicated on the license.

(d) Except in the case of a Nonresident CDL:

(1) A driver applicant must provide his/her Social Security Number on the application of a CDL; and

(2) The State must provide the Social Security Number to the CDLIS.

§ 383.155 Tamperproofing requirements.

States shall make the CDL tamperproof to the maximum extent practicable. At a minimum, a State shall use the same tamperproof method used for noncommercial drivers' licenses.

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Thursday
July 21, 1988

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of an Airport Radar Service Area; Lincoln, NE; Final Rule

DEPARTMENT OF TRANSPORATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-1]

Establishment of an Airport Radar Service Area; Lincoln, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates an Airport Radar Service Area (ARSA) at Lincoln Municipal Airport, NE. This location is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of an ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 u.t.c., August 25, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Gill, Airspace Branch (ATO-240), Airspace—Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA had designated 116 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On February 5, 1988, the FAA proposed to designate an ARSA at Lincoln Municipal Airport, NE (53 FR 3528). This rule designates an ARSA at this airport. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held an informal airspace meeting for this proposed airport. Section 71.501 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

Discussion of Comments

Two commenters wrote in objection to the proposed ARSA. The Soaring Society of America (SSA), though finding no evidence of soaring activities in the vicinity of the proposed location, objected based on a related requirement proposed in FAA Rulemaking Docket No. 25531, Notice No. 88-2, Transponder with Automatic Altitude Reporting Capability Requirement. This proposed rule has been adopted as Amendment No. 91-203 (53 FR 23356, June 21, 1988). SSA stated that when the related proposal was adopted as a final rule in accordance with section 203 of Pub. L. 100-223, the ARSA Regulatory Evaluation would be invalidated. SSA suggested that the FAA should, therefore, suspend all action on any proposed ARSA's. In addition, the SSA requested clarification of an excerpt from the public law.

The FAA does not agree. The possible effect of Amendment 91-203 has no bearing on this action at least until that portion of the rule which impacts upon the ARSA becomes effective on December 30, 1990. Furthermore, the potential impact of the requirements of that final rule on ARSA's has been fully considered in the rule's corresponding regulatory evaluation. Inclusion of those costs in the cost benefit analysis for this rulemaking would represent double-counting of the same impact. The FAA will continue to monitor the potential impact. The interpretation of Pub. L. 100-223 is discussed in the preamble to Amendment 91-203.

Another commenter objected stating that the ARSA was unnecessary; that it would cost him money because he would have to equip his airplane or circumnavigate the ARSA; and that it would overload the controllers. The FAA does not agree. The air traffic control facility has a need to know of all traffic operating in close proximity to the airport once an airport reaches this level of activity. The FAA finds that the cost to the commenter will be insignificant. Based on a comment in his letter, the commenter apparently already has a radio in his aircraft. That is all that is required to operate in an ARSA. Therefore, the commenter could operate through the ARSA if he desired by simply establishing two-way radio communication prior to entry. The small size of the ARSA and the low ceiling make circumnavigation very simple if that is the choice. The FAA, as stated in the Regulatory Evaluation, did not expect and has not found an overwhelming increase in the volume of traffic. The already high participation rate in existing radar services indicated that the major change would be to standardize airspace design and provide the FAA with knowledge of all aircraft in close proximity to the airport to enhance safety.

Regulatory Evaluation

Those comments that addressed information presented in the Regulatory Evaluation of the notice have been discussed above. The Regulatory Evaluation of the notice, as clarified by the "Discussion of Comments" contained in the preamble to the final rule, constitutes the Regulatory Evaluation of the final rule.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA site established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than $100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA site established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the radar services and radio communication with ATC is voluntary, operations at airports inside the core might be altered, and some business could be lost to airports outside of the ARSA core. Because FAA is excluding some satellite airports located within the 5-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to eliminate virtually any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates an Airport Radar Service Area (ARSA) at Lincoln Municipal Airport, NE. This location is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of this ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of The Amendment

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

Part 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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

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

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Lincoln Municipal Airport, NE [New]

That airspace extending upward from the surface to and including 5,200 feet MSL within a 5-mile radius of the Lincoln Municipal Airport (lat. 40°51'03"N., long. 96°45'32"W.) and that airspace extending upward from 2,700 feet MSL to 5,200 feet MSL within a 10-mile radius of the Lincoln Municipal Airport.

Issued in Washington, DC, on July 11, 1988.

Shelomo Wugalter,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 88-16363 Filed 7-20-88; 8:45 am]

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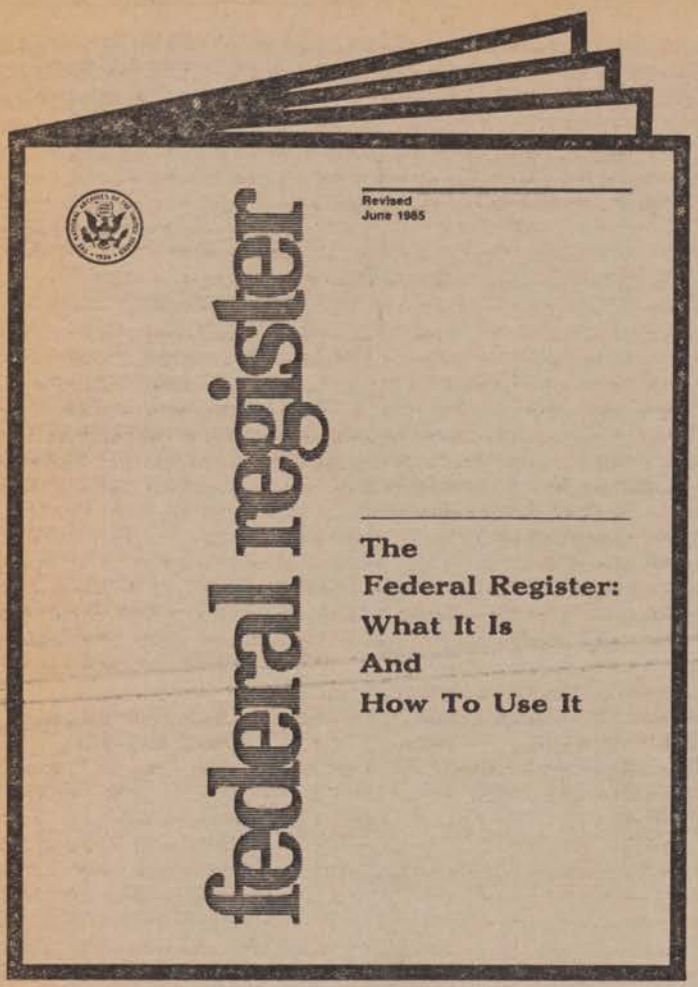
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